

THE
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COUNTY COURTS
PRACTICE
1929

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THE ANNUAL COUNTY COURTS PRACTICE



1929.

48th EDITION.

EDITED BY

HIS HONOUR JUDGE RUEGG, K.C.,

JUDGE OF COUNTY COURTS OF NORTH STAFFORDSHIRE

ASSISTED BY

H. P. STANES,

REGISTRAR OF THE HANLEY AND STOKE-UPON-TRENT COUNTY COURT

COSTS AND COURT FEES,

BY

F. G. GLANFIELD, LL.B.

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ADMIRALTY AND MERCHANT SHIPPING,

BY

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WORKMEN'S COMPENSATION,

BY

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REGISTER OF THE MASTER AND MORTGAGEE BANKS FOR THE
* * All suggestions and notices of error should be addressed to the
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Lane, London, W.C. 2.

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PREFACE

THIS (48th) edition has been revised and brought up to date. In addition to the County Court (No. 2) Rules, 1927, which were published as a supplement to the last edition, the following new matter has been incorporated :—

The County Court (No. 1) Rules, 1928.

The County Court (No. 2) Rules, 1928.

The County Court (No. 3) Rules, 1928.

The County Court (Poor Persons) Rules, 1928.

The County Court Fees (Amendment) Order, 1928.

The Rent (Restrictions) Rules, 1928.

The Landlord and Tenant Act, 1927, and the Rules and Forms issued thereunder.

The Administration of Justice Act, 1928, in so far as it affects the County Court.

An Index to the County Court Forms has been inserted at page 681 in place of the numerical list of Forms in previous editions. It is hoped that this will be a convenience to practitioners.

The Editor-in-Chief has again had the valuable assistance of Mr. H. P. Stanes, Registrar of the Hanley and Stoke-upon-Trent County Court, as Assistant Editor ; of Mr. Glanfield, LL.B., Registrar of the Birmingham County Court, who deals with

"Costs"; of Mr. Sanderson, Solicitor, of Hull, who supervises the Admiralty portion of the book; and of Mr. F. E. Ruegg, M.A., Barrister-at-Law, who is largely responsible for the part of the volume which deals with the important subject of "Workmen's Compensation."

Without the assistance and special knowledge of these gentlemen the present volume could not be presented in the complete and accurate form which, it is believed, it now assumes.

It is hoped this edition of 1929 will uphold and increase the long-established reputation the book has gained in the profession.

ALFRED HENRY RUEGG.

UTTOXETER,

December, 1928.

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THE PRACTICE OF THE COUNTY COURTS.

PART I.

CHAPTER I.

THE COUNTY COURTS ACTS, 1888 TO 1924.

THE COUNTY COURTS ACT, 1888 (CONSOLIDATING ACT), 51 & 52 Vict. c. 43.

THE COUNTY COURTS ACT, 1903, 3 EDW. VII., c. 42 (p. 232).

THE COUNTY COURTS ACT, 1919, 9 & 10 Geo. V., c. 73 (p. 233).

THE COUNTY COURTS ACT, 1924, 14 & 15 Geo. V., c. 17 (p. 245).

(These four Acts may be cited together as the County Courts Acts, 1888 to 1924.)

THE COUNTY COURTS ACT, 1888.

AN ACT TO CONSOLIDATE AND AMEND THE COUNTY COURTS ACTS.
(AUG. 13, 1888.)

PRELIMINARY.

1. This Act may be cited as the County Courts Act, 1888.

Short title

THE County Court, or *sciremote*, was instituted by Alfred the Great (Blackst. Comm. vol. iv. p. 411. For an account of the ancient county court, see also Reeves' History of English Law, vol. i. p. 7, and Bacon's Abridgement, tit. County Court, also Holdsworth's History of English Law, vol. i. pp. 38—42).

Its jurisdiction extended to both ecclesiastical and civil matters; the bishop and the earl or sheriff sitting in the same county court with equal jurisdiction, until the reign of William the Conqueror, when its ecclesiastical jurisdiction was taken away.

The county court was held once in every four weeks, and was presided over by the earl, or in his absence by the sheriff; the suitors, that is, the freemen or landholders, were the judges, and the sheriff sat only in a ministerial character, to pronounce the judgment of the suitors, and execute it (*Jones v. Jones*, (1839) 5 M. & W. 523). It continued the principal court for the civil business of the kingdom until in the reign of Henry II. justices of assize were appointed to visit annually the different counties, whereby the trial of issues was brought within each county, and the people were ensured the trial of their rights by the judges to whom were entrusted the highest questions of law.

From that time the county court, so far as its judicial functions were concerned, gradually fell into disuse.

The old county court was not a court of record; the process was by

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summons, attachment and distress. Pleas were held by plaint in debt, detinue or other personal actions (not being for injuries done *vi et armis*) under the value of 40s. By a writ of *justicies*, which was in the nature of a commission to the sheriff, but which did not alter the nature of the proceedings, he, together with the suitors of the court, might hold plea of certain real and personal actions, although for claims above 40s., or for injuries done *vi et armis*. The court had also jurisdiction in cases of replevin to any amount (2 Inst. 139, 312; Gilbert, Distr. 85); this action might be commenced either by writ, which was in the nature of a writ of *justicies*, or by plaint. A plaint in the county court might in all cases be moved into the Court of Queen's Bench by a writ of *recordari facias loquelam*. If the action was commenced by *justicies*, or where replevin was commenced by writ, the proper writ by which to remove it was a *pone*.

Statutes.

The proceedings in the county court being found expensive and dilatory, courts of request, in which parties might be examined and judgment awarded in a summary manner, were established. The first was created in the city of London by the 3 Jac. I. c. 15. From that period Parliament was from time to time applied to for Acts to establish local courts. In the year 1841 the local courts numbered 106, the jurisdiction of which varied from 40s. to 15l.

From 1842 to 1846 a measure for the establishment of local courts throughout the kingdom was considered from time to time by Parliament, and in 1845 the 8 & 9 Vict. c. 127, was passed. By sect. 9 of this Act the Queen in Council was enabled to extend the jurisdiction of certain courts of request and other courts to demands *ex contractu* not exceeding 20l., and to regulate their districts. Difficulties having arisen in dealing with the numerous petitions presented under this Act, the County Courts Act, 9 & 10 Vict. c. 95, was passed in 1846; and by Orders in Council on March 9th, 1847, county courts were established throughout the kingdom, except in the city of London. Provision for the surrender of manorial and other courts is made by the present Act (51 & 52 Vict. c. 43, s. 6).

The statute 9 & 10 Vict. c. 95, was amended by numerous Acts, by one of which, the 19 & 20 Vict. c. 108, the expense of maintaining the county courts, which was before borne wholly by the suitors, was, with the exception of the salaries of the ministerial officers, to be defrayed by an annual vote. The whole of the provisions of these Acts are consolidated by the Act of 1888 (51 & 52 Vict. c. 43). The jurisdiction and procedure have been extended by the County Courts Acts, 1903 and 1919, which came into operation on January 1st, 1905, and April 1st, 1920, respectively, and by the County Courts Act, 1924, which came into operation on the 14th July, 1924, and applies to England only, and does not affect the Mayor's Court or City of London Court. All these Acts are to be construed as one with the Act of 1888. A large number of other Acts give jurisdiction either exclusive or concurrent to the county courts. See Part V., "Statutes."

Mayor's and City of London Court.

Under the County Courts Acts, 1888, sects. 185 & 186, a county court may now be said to exist for the City of London, and by the Mayor's and City of London Court Act, 1920 (10 & 11 Geo. V., c. xxxiv.), the City of London Court has been amalgamated with the Mayor's Court under the title of "Mayor's and City of London Court." The county court jurisdiction and procedure have not been altered, but the procedure in actions which, previously to the amalgamation, could have been brought in the Mayor's Court and could not have been brought in the City of London Court are governed by "The Mayor's and City of London Court Rules, 1921" (see *Newman v. Klausner*, (1922) 1 K. B. 228; 91 L. J. K. B. 125).

Courts are courts of record.

County courts are courts of record (see sect. 5). All summonses and other process must be under seal of the court (see sect. 180). The seal is judicially noticed (Taylor on Evidence, sect. 6), and all documents purporting to be sealed are admissible in evidence in England without further proof (see sect. 180).

The expression "county court" when used in an Act of Parliament, or

Order in Council, means as respects England and Wales a court under the County Courts Act, 1888, as amended and extended. See Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 6).

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2. [Repealed by Statute Law Revision Act, 1908.]

PART I.

COURTS.

3. This Act shall be in force throughout all those parts of Existing England in which county courts have been established; and, courts continued.
subject to alterations made in pursuance of this Act, the county court districts existing at the commencement of this Act shall continue, and the county courts for such districts shall continue to be held at the places fixed at the commencement of this Act.

Districts.—By the County Courts Act, 1846, power was given to the Queen, with the advice of her Privy Council, from time to time to order that the Act should be put in force in such counties as to her Majesty might seem fit; and also to divide the whole or part of any county, etc., into districts, and to order that the county court should be holden in each of such districts.

By Orders in Council of March 9th, 1847, the whole of England, with the exception of the city of London, was divided into 491 districts, and by subsequent orders various alterations were from time to time made, and additional courts established.

In the original division of the country the districts of the superintendent registrars of births, etc., were taken as the basis upon which to form the districts of the courts. In many cases, however, two or more registrars' districts were comprised in the district of one court, and in others a registrar's district was divided between two or more courts. The districts are described in the Order in Council by the name of the registrar's district, and this description, though convenient for some purposes, gave no information to those who were not acquainted with such districts and the parishes comprised therein. For the convenience of any person resident in one part of the kingdom desirous of suing another resident in some other part, an alphabetical index showing the name of every parish, township or place in the kingdom, and the court in the district of which it is situate, has been supplied by the Treasury to the different courts. The index is published by the Stationery Office, and can be obtained through any bookseller. Moreover every information as to the parishes and places comprised within the several districts can be obtained at the registrar's office.

The distribution of districts as they existed at the date of the commencement of the County Courts Act, 1888 (January 1st, 1889), is expressly confirmed by this section, and courts are directed to be held at the places fixed for them at such date, but numerous alterations are continually taking place. For names of districts, judges and registrars, see Sweet and Maxwell's "Diary for Lawyers."

4. It shall be lawful for her Majesty by Order in Council from time to time to alter the number and boundaries of the districts Power to alter districts.
and the place of holding any court, and to order the discontinu- 9 & 10 Vict.
ance of the holding of any court, and the consolidation of any two c. 95, s. 2.
or more districts, and the division of any district, and to order by what name and in what towns and places a court shall be held in such district.

This section is now amended by the County Courts Act, 1924, as follows:—

Section 4.

Sect. 9 (1).—(a) The powers conferred by the section (*supra*) shall be exercised by the Lord Chancellor by order instead of by His Majesty by Order in Council.

(b) Where an order is made under the section for the discontinuance of the holding of a court, there shall be power to make provision in the order with respect to proceedings which may have been commenced in that court :

(c) An order made under the section (including any Order in Council made thereunder before the commencement of this Act) may be varied or revoked by a subsequent order made thereunder.

Any such order of the Lord Chancellor may declare that a part of any county, liberty, city, borough, or district shall be within the jurisdiction of the court held under this Act for any adjoining county or district in like manner as if such part were a part of such adjoining county or district.

Court to have all jurisdiction of county courts, and to be courts of record.

9 & 10 Vict.
c. 95, s. 3.

5. Every court held under this Act shall have all the jurisdiction and powers at any time prior to the coming into operation of the County Courts Act, 1846, belonging to any court for the recovery of debts and demands as altered by this Act throughout the whole district for which it is held, and there shall be a judge for each district under this Act, and the court may be held simultaneously in all or any of such districts ; and every court held under this Act shall be a court of record.

By sect. 13 the Lord Chancellor has power to re-distribute the districts among the judges.

Lords of manors, &c., may surrender courts.

9 & 10 Vict.
c. 95, s. 14.

6. It shall be lawful for the lord of any hundred, or of any honor, manor, or liberty having any court in right thereof in which debts or demands may be recovered, to surrender to her Majesty the right of holding such court for any such purpose (with the consent of any steward or other officer, if any, having a freehold office in such court, or upon the next vacancy in any such freehold office) ; and from and after such surrender such court shall be discontinued, and the right of holding such court shall cease, and all proceedings commenced in such court may thereafter be continued, and shall be enforced and executed as if they were commenced under the authority of this Act in a court held for the district in which the cause of action arose ; but no person shall be entitled to claim any compensation under this Act by reason of any such surrender : Provided always, that the surrender of the right of holding any such court for the recovery of debts and demands shall not be deemed to infer the surrender or loss of any other franchise incident to the lordship of such hundred, honor,

manor, or liberty, and that the court thereof may be held for all other purposes, if any, incident thereto, as now by law it may. Section 6.

7. If the council of any city or borough, or a majority of the ratepayers of any parish, within the limits of which a court of local jurisdiction, other than a county court, is established, or into the limits of which city, borough, or parish the jurisdiction of such court of local jurisdiction shall extend, shall petition her Majesty in Council that the jurisdiction of such court of local jurisdiction may be excluded in any causes whereof the county court has cognizance, and if notice of such petition shall be given two months before it is presented by public advertisement in such city, borough, or parish, and in some newspaper therein circulated, her Majesty, by Order in Council, may declare the exclusion of the jurisdiction of such court of local jurisdiction throughout the whole or any part of the district assigned or which may hereafter be assigned to such county court, if no petition against declaring the exclusion is presented, and no caveat entered at the council office; and if any counter-petition is presented, or any caveat entered, then her Majesty may refer such petition and counter-petition to the Judicial Committee of the Privy Council, upon whose report her Majesty may make such Order in Council as she shall be advised touching the matter of the said petitions in respect of excluding the jurisdiction of such court of local jurisdiction, and may award compensation to any persons entitled to appoint officers of such court, or to any officers thereof appointed before the passing of this Act, to be given by the Treasury, who are hereby empowered to pay the same.

Power to exclude jurisdiction of court of local jurisdiction from that of county court in concurrent causes.
15 & 16 Vict. c. 54, s. 7.

In 1853, the town council of Birmingham, after much opposition, obtained the exclusion of the mayor's court in that borough from cognizance of all matters that could be heard in the county court, the petition and a counter-petition having been argued for and against before the judicial committee during two days. See order in *Gazette* of January 3rd, 1854. Subsequently similar orders were made respecting the Ipswich Court of Small Pleas, and the Court of Record of the town of Nottingham, and the Court of Pleas of the city of Worcester, in all matters where the amount claimed does not exceed 20*l.*, and in all actions of ejectment where the rent does not exceed 50*l.*; and excepting Oldham from the Salford Hundred Court.

The principal inferior courts, other than county courts, are certain courts of record attached to cities and boroughs, which have power by ancient charters to exercise jurisdiction in certain suits. Of these the chief are:

- The Mayor's Court of London (now united with the City of London Court),
- The Court of Passage of the City of Liverpool,
- The Salford Hundred Court of Record,
- The Oxford University Chancellor's Court.

The Mayor's Court has a special Act, 20 & 21 Vict. c. clvii. The Liverpool Court of Passage has several special Acts. The Salford Hundred Court has special Acts. The Oxford University Chancellor's Court has a special Act, 25 & 26 Vict. c. 26.

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Other inferior courts of record which have no special Acts governing their procedure, are the

Bristol Tolzey and Pie Poudre Court,
Derby Borough Court of Record (a).
Exeter Provost Court,
Kingston-upon-Hull Court,
Newark Court of Record,
Northampton Borough Court,
Norwich Guildhall Court,
Peterborough Court of Common Pleas,
Preston Court of Pleas,
Romsey Court of Pleas,
Southwark Court of Record.

(a) The jurisdiction of this Court is now regulated by Order in Council, "The Derby Borough Court of Record Order, 1927."

PART II.

JUDGES AND OFFICERS.

Appointment and qualification of judges. 9 & 10 Vict. c. 95, s. 16. 21 & 22 Vict. c. 74, s. 3. 25 & 26 Vict. c. 99, s. 4.

8. THE Lord Chancellor shall from time to time appoint as many fit persons, not exceeding sixty as are needed to be judges of the courts under this Act, each of whom shall be a barrister-at-law of at least seven years' standing: Provided that where the whole of a district is within the Duchy of Lancaster the appointment of the judge for such district shall be made by the Chancellor of the said duchy. No judge shall during his continuance in the office of judge be capable of being elected or of sitting as a member of the House of Commons.

Owing to the abolition of certain circuits, or to their absorption in adjoining circuits, there are at present (excluding the judges of the City of London Court) only fifty-six county court judges.

Judge, Appointment and Removal.—The necessary qualification of the judge of a county court is that he shall be a barrister of at least seven years' standing. The judge is appointed by the Lord Chancellor, except where the whole of the district of the court is within the Duchy of Lancaster, in which case he is appointed by the Chancellor of the Duchy. The Lord Chancellor may remove a judge from any district, and appoint him to any other district, or appoint him to additional districts, or direct that he shall sit as additional judge in any district (see sect. 13).

By sect. 2 (4) of the County Court Judges (Retirement, Pensions and Deputies) Act, 1919 (*post*, p. 266) the Lord Chancellor must, before appointing a person to be a county court judge, take steps to satisfy himself that that person's health is satisfactory.

The Lord Chancellor or Chancellor of the Duchy respectively may remove a judge for inability or misbehaviour (see sect. 15). The order to remove a judge, when questionable at all, may be questioned by *quo warranto* to his successor (*R. v. Owen*, (1850) 15 Q. B. 476). But if an inquiry has been held, and the judge has had full opportunity of being heard, and of calling witnesses, the court will not enter into the question whether on the mere balance of the evidence the charge of inability or misbehaviour has been made out (*Ex parte Ramshay*, (1852) 18 Q. B. 173; 21 L. J. Q. B. 238; 88 R. R. 563).

A judge cannot sit as a member of Parliament (*supra*) nor can he practise at the bar, or as a special pleader, or equity draftsman, or be directly or

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Title.

indirectly concerned as a conveyancer, notary public, or solicitor, nor may he act as arbitrator or referee for remuneration to himself (see sect. 14).

A judge is entitled to be addressed as "your honour" in court. He is also, in all places, entitled to be called and addressed as "His Honour Judge ——" He ranks in the table of precedence next after knights bachelors. (The words of the Royal Warrant, dated August 4th, 1884, are as follows:—"We do hereby declare our Royal will and pleasure that, in all times hereafter, the Judges of County Courts in England and Wales shall be called, known, and addressed by the style and title of 'His Honour' prefixed to the word 'Judge' before their respective names, and shall have rank and precedence next after Knights Bachelors.") His name may be included in any commission of assize, oyer and terminer, or gaol delivery (see sect. 16). He may be and is appointed a justice of the peace for any borough, city, county, riding, or division of the county in which he holds a court (see sect. 17), and is to hold this office, though he has retired or ceased to be judge of the district (County Courts Act, 1919, s. 14).

For what Districts.]—A judge is appointed for each district (see sect. 5). The Lord Chancellor may direct that there shall be two judges of a district (see sect. 12). After districts were created by Order in Council, the Lord Chancellor appointed sixty judges to the courts, and the number of districts to which they were respectively appointed varied from one to twelve. In some instances one judge was appointed to hold the courts in several districts. This mode of appointing is legal, and the same person may, at the discretion of the Lord Chancellor, be a judge of two different county court circuits (*R. v. Parham*, (1849); 18 L. J. Q. B. 281).

9. A judge shall, whether within the district of any of his courts or not, have jurisdiction to make any order, or exercise on an *ex parte* application any authority or jurisdiction in any action or proceeding pending in any of the courts of which he is judge, which, if the same related to an action or proceeding pending in the High Court, might be given, made, or exercised by a judge of the High Court in chambers, and, with the consent of both parties to an action or proceeding, to hear and decide any matter at any place, either within or without any such district.

The County Courts Act, 1888, contains comparatively few provisions expressly relating to the making of interlocutory orders. It provides, however, at the end of sect. 164, that in cases not provided for by Act or rules the general principles of the High Court practice may be adopted. Similar provisions under the County Courts Act, 1846, were held to empower the judge to allow a pauper to sue *in formâ pauperis* (*Chinn v. Bullen*, (1849) 8 C. B. 447; 19 L. J. C. P. 42; 79 R. R. 566; but this case so far as it decided that it empowered a judge of County Courts to give leave to sue *in formâ pauperis* is overruled by the case of *Cook v. Imperial Tobacco Co.*, (1922) 2 K. B. 158. Sect. 202 of the Judicature Act, 1925, enables the court in any action or matter to give the same relief and remedies as could have been obtained in the High Court, if the action or matter had been pending there; and probably gives power to the court to make many interlocutory orders which formerly could not have been made (see *Richards v. Cullerne* (C. A.), (1881) 7 Q. B. D. 623; *Martin v. Bannister* (C. A.), (1879) 4 Q. B. D. 491; 48 L. J. Q. B. 677). Moreover sect. 45 of the same Act expressly confers power to grant a mandamus or an injunction, and to appoint a receiver on an interlocutory application.

The original County Courts Act conferred few powers of a judicial kind on registrars. They were, generally speaking, mere ministerial officers, judicial powers were reserved for the judges. The functions of registrars

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were greatly altered, and under sects. 74, 75, 86, 88, 89, 90, 92, 105, 118, and 157 of the County Courts Act, 1888, sect. 5 of the County Courts Act, 1919, and sect. 8 of the County Courts Act, 1924, registrars now enjoy many judicial powers. Nevertheless, the power to order anything to be done in the course of an action is, by the Act generally conferred on the judge (although by the use of the word "court" (see sect. 186), judge or registrar would have been meant), *e.g.*, amendment, sect. 87; order for trial by jury, sect. 101; for assessors, sect. 103; extension of time and adjournment, sect. 106. The Act, moreover, contains in this section, a special provision enabling the judge, in any action or proceeding, to make any order, or to exercise, on an *ex parte* application, any jurisdiction, which, if the action or proceeding had been in the High Court, might have been made or exercised by a judge at chambers. No similar provision is made in favour of the registrar, and the Act, moreover, contains no *express* power enabling the judge, or the rule committee, by rules of practice, to delegate to registrars interlocutory matters of any kind.

The powers of sect. 202 of the Supreme Court of Judicature (Consolidation) Act, 1925, are conferred on every "inferior court," which includes a county court (*ibid.*, sect. 225), whilst sect. 186 of the County Courts Act, 1888, provides that "court" in the Act shall include and mean the judge or registrar. Possibly, therefore, by this means the powers given by sect. 202 (*supra*) to the courts may be construed to be given to "judge or registrar." If not so given, a registrar can have no power to make an interlocutory order (except in the cases expressly provided for by the County Courts Act, 1888), unless the power to frame rules of practice (see sect. 164) gives power to delegate matters which are beyond doubt within the judge's functions to the registrars.

The rules have been framed upon this principle, as many interlocutory matters not mentioned in the Act are delegated to the "judge or registrar," whilst in many cases the rules confer on registrars power given by the Act to the judge alone; *e.g.*, orders for adjournment, sect. 106, and Order XII. rr. 12, 14, 15; extension of time for taking step, sect. 106, and Order LIV. r. 12. On the other hand, if the powers conferred by the Judicature Acts are conferred on judge and registrar, the rules in many cases take away the registrar's power, *e.g.*, Order XII. r. 6, as to injunctions.

Power to Stay Action as Frivolous and Vexatious.]—A judge of county courts has power to dismiss or stay an action as being frivolous and vexatious (*Norman v. Matthews*, (1916) 85 L. J. K. B. 857. And see remarks of Lord Selborne, L.C., in case of *Metropolitan Bank v. Pooley*, (1885) 10 A. C. 214; 54 L. J. K. B. 451). And now by sect. 8 of the County Courts Act, 1924—

Provisions as
to striking out
plaint, &c.

"A registrar on the application of the defendant of the hearing of which application seven clear days' notice shall be given by the defendant to the plaintiff may order a plaint or other proceeding to be struck out on the ground that it discloses no reasonable cause of action, and shall make such order as to costs as he may think proper.

"From the decision of the registrar an appeal shall lie to the county court judge in chambers."

Powers of Registrars.]—A sweeping provision in favour of registrars is made by Order XV., which seems to provide that the judge or the registrar may, under a notice for directions, make any interlocutory order prior to the trial. Whether so intended or not it is submitted that it alone cannot have such an effect, for it is directly opposed to many other rules which have expressly directed application to be made to the judge. Thus Order XII. r. 6, provides a special practice for orders for injunctions, for receivers,

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and for taking accounts, and provides for their being made by the judge. So under Order IV. r. 7, Order III. r. 33, Order VIII. rr. 1, 2, Order XI. r. 4, and many others, application must be made to the judge. There are other cases, too, where the County Courts Act has provided for the order being made by the judge, and where no particular rule of practice specially applicable to it has conferred or purported to confer power on the registrar, *e.g.*, sects. 62, 87, 94, 103, 104, 109, 112, 114. In all these cases, it is believed that the registrar can have no power to make an order. There are other powers which the judge is entitled to exercise by virtue of sect. 202 of the Judicature Act, 1925, or some other Act, and as to which no rules are framed, *e.g.*, order for mandamus, inspection of bankers' books under 42 Vict. c. 11, s. 10. It is believed that in these cases the registrar can make no order, unless, as regards the Judicature Acts, the construction before mentioned be the true one.

To complete the discussion of the question of power or jurisdiction, it may be pointed out that Order XII. r. 11, confers no jurisdiction on registrars. It merely provides a practice for interlocutory applications authorised by some other rule to be made to them.

By the County Courts Act, 1919, s. 9, and Order 1, r. 2c, what are to be called "Registrars' Courts" may now be held in the absence of the judge, at which courts the registrar may exercise all the jurisdiction conferred upon him either by the statutes or rules.

The general practice on interlocutory applications is governed by sect. 9 of the County Courts Act, 1888, by Order XII. r. 11, and by Order XV. Sect. 9 enables the judge, whether within his district or not, to make any order, or to exercise on an *ex parte* application any jurisdiction which, if the action or proceeding had been in the High Court, could have been exercised by a judge at chambers. This practically enables the judge to make any interlocutory order *ex parte*, and it is believed that no rule of practice can take away his power.

The practice to be followed on an *ex parte* application, whether the power of the judge or the registrar to make the order be derived from the County Courts Act, or from any other statute, or from any other rule, is now prescribed by Order XII. r. 11. The rule also supplements the practice when a statute or another rule has only partially prescribed it. In such a case the statute and the rule or the two rules must be read together, and those parts (if any) of Order XII. r. 11, which are inconsistent with the statute or the particular rule must give way before it. The result is that nearly every interlocutory order may be obtained *ex parte*, and that very few cases exist in which Order XII. r. 11, is so entirely inconsistent with the prescribed practice as to be inapplicable.

There are many cases, however, in which no judge, even though he have the power to do it, will make the order without hearing the other side; and parties have therefore the option, under Order XII. r. 11, of applying on notice to the other party. Discretion should be used; trivial and pressing matters should be dealt with *ex parte*, but where the other side ought fairly to be heard the application should be on notice if possible.

An attempt has been made in the table contained in Appendix A, *post*, p. 914, to indicate, on the lines expressed in the preceding pages, to whom and how the various applications, prior to the trial, may be made, and to it the reader is referred.

The right of appeal to the High Court against interlocutory orders generally, for error of law, is now fully established, and appeals have been granted against some of the minor interlocutory orders made during the progress of an action.

See notes to sect. 120.

10. The judge of each district shall attend and hold the court at each place where her Majesty shall have ordered that the court

Times of sittings.
9 & 10 Vict.
c. 95, s. 56.

Section 10. shall be held within the district, at such times as he shall appoint for that purpose, so that a court shall be held at every such place once at least in every month, or such other interval as the Lord Chancellor shall in each case order; and notice of the days on which the court will be held shall be put up in some conspicuous place in the court-house and in the office of the registrar of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court-house and in the registrar's office. Where, by reason of death or unavoidable absence, a judge at the sitting of a court is not present the registrar, after exercising his powers where the defendant does not appear or admits the debt, or in his unavoidable absence the high bailiff shall adjourn the court to such day as he may deem convenient, and enter in the minute book the cause of such adjournment.

19 & 20 Vict.
c. 108, s. 7.
30 & 31 Vict.
c. 142, s. 19.

Sittings.]—Many of the smaller courts in the agricultural districts are held less frequently than once a month by order.

In order that the suitors may know, a convenient time beforehand, when the courts will be held, the rules of practice require the judges to appoint the days and hours for holding each of their courts. A notice of such appointment must, three calendar months before the holding of such courts, be affixed in some conspicuous place in the court-house and in the office of the registrar. Whenever any day or hour so appointed is altered, notice of the alteration must be immediately affixed in the same way. The judge may, however, from time to time hold additional and adjourned courts (see Order I. r. 1).

No two courts may be held before the same judge on the same day, unless by consent of the Lord Chancellor, but an additional or adjourned court may be held on the same day as another court. The rule does not apply to the City of London Court (see Order I. r. 2). And see now Order I., r. 2A, as to Registration Appeals.

By consent of the parties a judge may hear and decide any matter at any place either within or without his district.

Courts need not be held in the month of September, unless the Lord Chancellor otherwise orders, and with his sanction the judge, if he holds courts in September, need not hold them during some other month in the year. The office must, however, always be open for the receipt and payment of money in and out of court pursuant to the rules, or for any proceedings before the registrar (see sect. 11).

Registrars' Courts.]—See *post*, p. 109, and Order I. r. 2c.

Closing
court for
one month.
28 & 29 Vict.
c. 99, s. 14.

11. No judge shall be obliged to hold any courts during the month of September in any year, unless he shall be ordered by the Lord Chancellor so to do; and if any judge shall be desirous of holding courts in the said month of September, and of being relieved from the obligation to do so at some other period of the year, it shall be lawful for such judge, with the sanction of the Lord Chancellor, to close the courts upon his circuit for any periods of time of which the Lord Chancellor shall approve, not

exceeding in the whole four weeks in any one year: Provided **Section 11.**
 nevertheless, that the office of every court shall always be open
 for the receipt and payment out of money due under any order of
 the court, pursuant to the rules and orders in force for the time
 being or for any proceedings before the registrar.

12. The Lord Chancellor may from time to time direct that **Two judges**
 there shall be two judges of a district or districts, and may make **of one**
 such regulations as to their respective sittings, or otherwise as to **district.**
 the division of their duties, as he may think right, and each of the **21 & 22 Vict.**
 judges when acting shall have all such powers and authorities as **c. 74, s. 2.**
 if he had been sole judge of such district or districts.

13. It shall be lawful for the Lord Chancellor from time to time **Power to**
 to alter the distribution of the districts among the judges, and for **re-distribute**
 that purpose to remove any judge from all or any of the districts **districts**
 of which he is the judge, for the purpose of appointing him to any **among**
 other district or districts, or to appoint any such judge to be the **judges.**
 judge of any district or districts in addition to the district or **21 & 22 Vict.**
 districts of which he is the judge, or to direct that any judge shall **c. 74, s. 1.**
 sit as an additional judge in any district or districts.

Many alterations have recently been made

14. No judge shall practise at the bar, or as a special pleader or **Judges not**
 equity draftsman, or be directly or indirectly concerned as a **to practise.**
 conveyancer, notary public, or solicitor, or act as arbitrator or **15 & 16 Vict.**
 referee for any remuneration to himself. **c. 54, s. 16.**

15. It shall be lawful for the Lord Chancellor, or the Chancellor **Judges re-**
 of the Duchy of Lancaster (as the case may be), if he shall think **movable.**
 fit, to remove for inability or misbehaviour any judge already **9 & 10 Vict.**
 appointed or hereafter to be appointed by them respectively. **c. 95, s. 18.**

See note to sect. 8.

16. [Repealed by the Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo. V., c. 49.] **Judges may**
tion) Act, 1925, 15 & 16 Geo. V., c. 49.] **be named**
By sect. 70 (3) of that Act His Majesty may include in any commission of **for assizes.**
assize any judge of county courts.

17. Her Majesty may include in any commission of the peace **Judges in**
 for any borough, city, county, riding, or division of a county **commission**
 where a court is holden, the judge of such court for the time being, **of the peace**
 and he may and shall act in the execution of the office of justice of **9 & 10 Vict.**
 the peace for the said borough, city, county, riding, or division, **c. 95, s. 21.**
[although he may not be qualified in such manner as is required
by law in the case of other persons being justices of the peace.]

Words in italics repealed by 6 Edw. VII. c. 16, which Act abolished the
 property qualification for justices of the peace for counties.

Sect. 14 of the County Courts Act, 1919 (9 & 10 Geo. V. c. 73) enacts

Section 17 Notes.

that where the judge for the time being of a county court is included in any commission of the peace, every person holding the office of judge of that court shall, on ceasing to hold the office, continue to be included in the commission as if he had been personally named therein.

It has been customary to include the county court judge in the various commissions of the peace existing in the district over which he presides. He will now remain in such commissions after he has retired or been transferred to another district.

Appoint-
ment of
deputy
judge.

9 & 10 Vict.

c. 95, s. 20.

19 & 20 Vict.

c. 108, s. 6.

30 & 31 Vict.

c. 142, s. 20.

18. In case of the illness or unavoidable absence of any judge it shall be lawful for such judge to appoint a barrister-at-law of at least seven years' standing to act as his deputy during such illness or unavoidable absence; provided that whenever any deputy is appointed, the fact of the appointment and the name of the deputy shall be forthwith communicated to the Lord Chancellor, and no deputy so appointed shall be entitled to act for more than fourteen days at any time, unless with the approval of the Lord Chancellor; provided also that, in the case of the judge's inability to make such appointment, the Lord Chancellor or the Chancellor of the Duchy (as the case may be) may make the same: and it shall also be lawful for any judge, with the approval of the Lord Chancellor or Chancellor of the Duchy (as the case may be), to appoint a barrister-at-law of at least seven years' standing to act as his deputy for any time or times not exceeding in the whole two months in any consecutive period of twelve months. Every deputy appointed under this section, during the time for which he shall be so appointed, shall have all the powers and privileges and perform all the duties of the judge for whom he shall have been so appointed.

Deputy Judge.—It is a condition precedent to the appointment of a deputy judge that he should be a barrister-at-law of seven years' standing; a judge cannot, therefore, where the claim exceeds 5*l.*, appoint his registrar deputy, unless he has that qualification (*McInally v. Blackledge*, (1911) 2 K. B. 432; 80 L. J. K. B. 882).

The judge may appoint a deputy for a particular court in his district, without appointing him for the whole district; and he may appoint two deputies to act for the same period, provided they are to act for different courts (*R. v. Lloyd* (C. A.), (1906) 1 K. B. 552; 75 L. J. K. B. 406).

The deputy judge formerly had to be paid personally by the judge appointing him, and must still be so paid except when appointed in the case of the illness of the judge, in which event he will be paid by the Treasury. (County Court Judges (Retirement, Pensions and Deputies) Acts, 1919 (9 & 10 Geo. V. c. 70), s. 4). A former county court judge may be appointed as deputy (*ibid.*).

Judgment of Deputy.—Where a deputy presides at the trial, and after consideration prepares judgment, which is actually read and pronounced by the judge, the judgment of the deputy is the judgment of the court (*Rathbone v. Munn*, (1863) 9 B. & S. 708). It is conceived that a deputy becomes *functus officio* on the appointment of a new judge, and that neither he nor the new judge has power to deliver a reserved judgment. It seems that the new judge should rehear the case (*Hoey v. M'Farlane*, (1858) 4 C. B. N. S. 718; 114 R. R. 913).

19. Any judge shall be capable of acting for any other judge within or without the districts presided over by such other judge, and where, in the absence of a judge, a deputy of such judge shall, from illness or otherwise, be incapable of performing his duties as such deputy, it shall be lawful for the Lord Chancellor to appoint another person duly qualified, to be the deputy of such judge. Section 19.
Judges may act for one another.
Substitute for deputy judge.

This probably enables one judge to act for another without express appointment, simply on request, and in other cases than those of illness or unavoidable absence. When he signs any order or document, the memorandum in Form 4 must be made by the registrar at the foot (see Order II. r. 15). 30 & 31 Vict.
c. 142, s. 20.

20. No deputy judge, save and except of the Westminster county court of Middlesex, shall, during the time he acts or is entitled to act as such deputy, practise as a barrister in any court within the district for which he acts or is entitled to act as such deputy. Deputy judge not to practise in district.
13 & 14 Vict.
c. 61, s. 3.

21. The appointment of a deputy of a judge, whether such deputy shall have been appointed by the judge, or by the Lord Chancellor, or by the Chancellor of the Duchy of Lancaster, shall not be vacated by the death or resignation of the judge, but the acts of the deputy done after such death or resignation shall be as valid as if the judge had not died or resigned, and he shall continue to act in all the courts to which he was appointed until the Lord Chancellor or the Chancellor of the Duchy of Lancaster (as the case may be) shall otherwise order, or a successor to such judge shall be appointed; and such deputy shall receive as remuneration for the period that he may act as deputy, after the death or resignation of the judge, a rateable proportion of the salary and travelling allowances attached to the office so vacant during any vacancy. If no such deputy shall have been appointed, the Lord Chancellor may appoint a deputy with the like powers and remuneration for any period not exceeding three months, if the office shall so long remain vacant. Deputy judge to act during vacancy.
Remuneration.
19 & 20 Vict.
c. 108, s. 11.

This section was originally passed after the decision in *Hoev v. M'Farlane*, (1858) (4 C. B. N. S. 718; 114 R. R. 913), where it was held that a deputy's functions entirely ceased on the death of the judge, and that neither he nor the new judge had power to deliver, after the death, judgment in a case which the deputy had heard before, and that the proper course was for the new judge to rehear the case. The section, however, merely enables the deputy to act until a new judge is appointed, and it is conceived that the same difficulty would then arise in regard to judgments not delivered at the date of the appointment.

22. A judge proposing to sue any person dwelling or carrying on business in any district of which he is the judge may bring his action in the court of any adjoining district of which he is not the judge; and any person proposing to sue a judge may bring his Court where judge can sue and be sued.
19 & 20 Vict.
c. 108, s. 19.

Section 22. action in any court of a district adjoining the district of which the defendant is judge.

It seems that by virtue of this section the plaintiff has a right to choose any adjoining district, even if in another county (*Partridge v. Elkington*, (1870) L. R. 6 Q. B. 82; 40 L. J. Q. B. 49).

The section applies to proceedings in equity (*Linford v. Gudgeon*, (1870) L. R. 6 Ch. 359; 40 L. J. Ch. 514).

Salaries and allowances of judges.

9 & 10 Vict.

c. 95, s. 440.

19 & 20 Vict.

c. 108, ss. 80,

81.

28 & 29 Vict.

c. 99, s. 13.

23. The salary to be received by a judge shall be one thousand five hundred pounds a year: Provided that it shall be lawful for the Treasury to allow to a judge such sum as the Treasury shall in each case, with the concurrence of the Lord Chancellor, deem reasonable to defray his travelling expenses, with reference to the size and circumstances of the district for which he is judge, or in which, under the provisions of this Act, he is directed to sit. The salaries of the judges shall be paid out of the Consolidated Fund, and the Treasury shall pay the same accordingly; and the sums which may be allowed to them for travelling expenses shall be paid out of money provided by Parliament.

Pension of judges.

15 & 16 Vict.

c. 54, s. 15.

24. It shall be lawful for the Lord Chancellor from time to time, on a petition presented to him for that purpose, to recommend to the Treasury that there shall be paid out of the Consolidated Fund to any judge who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same, an annuity or clear yearly sum of money for the term of his life, not exceeding two-thirds of the yearly salary which such judge shall be entitled to as a judge at the time of presenting his petition; and such annuity or sum shall be paid out of the Consolidated Fund, quarterly or otherwise, as the Treasury may direct.

This section now only applies to judges appointed before June 1st, 1919, who have not given notice, pursuant to sect. 3 of the County Court Judges (Retirement, Pensions, and Deputies) Act, 1919, accepting the provisions of that Act as to retirement and pensions. For text of Act see *post*, p. 259.

The pension is liable to sequestration for a judgment debt (*Willcock v. Terrell*, (1878) 3 Ex. D. 323).

Appointment, qualification, &c., of registrars of county courts and provision as to high bailiffs.

25. Section 25 is repealed by the County Courts Act, 1924, 14 & 15 Geo. V. c. 17, and the following section, which is sect. 1 of that Act, is substituted therefor:—

1. [Act of 1924]—(1) From and after the commencement of this Act there shall, subject to the provisions of this section, be a registrar for every court who shall be appointed by the Lord Chancellor.

(2) No person shall be qualified to be appointed a registrar unless he is a solicitor of not less than seven years' standing.

Section 1,
C. C. Act,
1924.

(3) The Lord Chancellor may, if he thinks fit, appoint a person to be registrar of two or more courts.

(4) The Lord Chancellor may, if he thinks fit, in the case of a court in a populous district appoint two persons to execute jointly the office of registrar of the court, and may, in any case where joint registrars are appointed, give directions with respect to the division between them of the duties of the office, and may, as he thinks fit, on the death, resignation or removal of a joint registrar, either appoint another person to be joint registrar in his place, or give directions that the continuing registrar shall act as sole registrar.

(5) Where after the commencement of this Act a vacancy occurs in the office of high-bailiff of a court, no person shall be appointed to that office, and thereafter the registrar of that court shall, by virtue of his office, be the high-bailiff of the court.

(6) Notice of a vacancy occurring in the office of registrar or high-bailiff of a court shall be forthwith given to the Lord Chancellor by the judge of the court.

(7) If in any case the Lord Chancellor thinks it expedient so to do, having regard to the amount of business to be performed by the registrar of any court as such together with the business (if any) to be performed by him as high-bailiff of the court or as district registrar of the High Court, he may, with the concurrence of the Treasury, direct that the registrar shall not, directly or indirectly, engage in practice as a solicitor or carry on any employment of such a nature as will, in the opinion of the Lord Chancellor, prevent him from properly performing his duties as registrar.

A registrar in whose case a direction is given under this subsection is in this Act referred to as "a whole-time registrar."

(8) The Lord Chancellor shall, before giving any direction under which a person will on appointment as registrar be, or under which a person holding the office of registrar will become, a whole-time registrar, take steps to satisfy himself that the health of the person concerned is satisfactory.

(9) Nothing in this section shall disqualify a registrar appointed before the commencement of this Act from continuing to hold his office.

A registrar may with the consent of the Lord Chancellor reside outside the district of his court. Sect. 15 of the County Courts Act, 1919, *post*, p. 240.

On any vacancy occurring notice must be given at once by the judge to the Lord Chancellor. It must be observed that the qualification for a registrar is now that he shall be a solicitor of seven years' standing instead of five years as heretofore. No new high bailiff can now be appointed. A registrar who is required by the Lord Chancellor not to practice is now to be referred to as "a whole time registrar."

The Lord Chancellor before appointing a "whole-time registrar" will take steps to satisfy himself that his health is satisfactory.

Section 25 Notes.

Duties of registrars.
9 & 10 Vict.
c. 95, s. 27.

As to retirement and pensions of whole-time registrars, see sect. 4 of the County Courts Act, 1924, *post*, p. 19.

Registrars are required to give security (sect. 40).

26. The registrar of each court, with such clerks as may be required, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said court, and keep an account of all proceedings of the court and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all monies paid into and out of court, and shall enter an account of all such fees, fines, and monies in a book belonging to the court, to be kept by him for that purpose; and shall from time to time, as may be directed, submit his accounts to be audited or settled.

A registrar may, and now must, on a vacancy in the office of high bailiff, exercise its powers and duties, See sect. 1 of Act of 1924.

In populous districts the Lord Chancellor may direct that two registrars shall be appointed to execute the office jointly. On the death, removal or resignation of one of them, the remaining registrar will be sole registrar unless the Lord Chancellor otherwise orders (see sect. 1 (4) of Act of 1924).

The registrar must keep open an office except on certain specified days (see Order I. rr. 3, 4).

His duties generally are set out in Order II. rr. 2—16, but he has many other duties now to perform.

He has power to appoint a deputy (see sect. 31); to try undefended cases (see sect. 90); and on application of the parties and by leave of the judge, to try disputed claims not exceeding 5*l*. (see sect. 5 (1) of the County Courts Act, 1919).

As to his salary, see sects. 2 and 4 of the County Courts Act, 1924.

He is forbidden to act as solicitor in the court of which he is registrar (see sect. 41), and if a whole-time registrar he cannot act at all.

Removal of registrars.
13 & 14 Vict.
c. 61, s. 4.

27. It shall be lawful for the Lord Chancellor, or the Chancellor of the Duchy of Lancaster (as the case may be), when such Lord Chancellor or Chancellor of the Duchy shall in his discretion think fit, to remove the registrar of any court from his office, and from time to time to make orders as to the attendance of any registrar during the sitting of the court or otherwise.

The Lord Chancellor has absolute discretion in the matter of the removal of a registrar from office.

See *R. v. Owen*, (1850) 15 Q. B. 476; 19 L. J. Q. B. 490, as to the original power to remove.

Minutes of proceedings to be kept.
9 & 10 Vict.
c. 95, s. 111.

28. The registrar of every court shall cause a note of all complaints and summonses, and of all orders, and of all judgments and executions and returns thereto, and of all fines, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which shall be kept at the office of the court; and such entries in the said book, or a copy thereof bearing the seal of the court and purporting to be signed and certified as a true copy by the registrar of the court, shall at all times be admitted in all courts and places whatsoever as evidence

of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof. Section 28.

See Buckley, L.J., in *Rex v. Snagge*, (1909) 1 K. B. 644; 78 L. J. K. B. 562.

An action will not lie against a registrar for non-compliance with rules as to practice. See *Robinson v. Gill*, (1852) 21 L. J. C. P. 155.

In merely signing and issuing an order of commitment, the registrar is acting ministerially and is not responsible for the error of the judge in making the order (*Dews v. Ryley*, (1851) 11 C. B. 434; 20 L. J. C. P. 264; 87 R. R. 718).

It is believed that a minute of any leave granted by the judge for the issue of a judgment summons ought, under this section, to be taken by the registrar and duly recorded.

A certified copy of minutes expressed to be of proceedings before the deputy of a county court judge was held to be sufficient evidence of the regularity of his appointment on an indictment for perjury (*R. v. Roberts*, (1878) 38 L. T. 690).

[29 and 30. These sections are repealed by the County Courts Act, 1924, and replaced by sect. 1 of that Act. See *ante*, p. 14.]

31. It shall be lawful for the registrar of any court, with the approval of the judge, or in case of the inability of the registrar to make such appointment, for the judge, to appoint from time to time a deputy, qualified to be appointed registrar, to act for the registrar of the said court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy while acting under such appointment shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour as if he were the registrar of the said court for the time being. The appointment of a deputy of a registrar shall not be vacated by the death or removal of the registrar, but his acts done after such death or removal shall be as valid as if the registrar had not died or been removed, and he shall continue to act until a successor to such registrar shall be appointed; and he shall receive as remuneration for his services during the period he may so act after the death or removal of the registrar, a rateable proportion of the salary attached to the office of registrar.

Deputy registrar.
9 & 10 Vict.
c. 95, s. 26.
19 & 20 Vict.
c. 108, s. 12.

Amended by County Courts Act, 1924, Sched. III. The appointment of registrar is now filled by the Lord Chancellor, but notice of the vacancy must be given as heretofore (County Courts Act, 1924, sect. 1 (1) and sect. 1 (6), *ante*, p. 14).

The registrar with the approval of the judge or, in case of his inability, the judge himself may still appoint the deputy registrar, but sect. 9 (4) of the County Courts Act, 1924, declares that—

“Where a deputy has been appointed in the case of the illness or unavoidable absence of any registrar to whom the provisions of this Act relating to the retirement and pension of registrars apply, the Lord Chancellor may, with the consent of the Treasury,

Section 31. allow to the registrar such sums in respect of the remuneration and expenses of the deputy as he shall think fit."

By sect. 16 of the County Courts Act, 1919 (*post*, p. 241), so much of the above section as relates to the appointment of deputy registrars shall apply to the appointment of deputy high bailiffs, with the substitution of the words "high bailiff" for the word "registrar."

As to the appointment by the judge of a deputy to act on behalf of the registrar when he or his deputy is absent, see Order II. r. 1. As to what constitutes such absence, see *Wetherfield v. Nelson*, (1869) L. R. 4 C. P. 571; 38 L. J. C. P. 220, and note to Order II. r. 1.

As to the provisional appointment by the judge of a registrar for a period not exceeding three months on the death or removal of a registrar who has not appointed a deputy, see *infra*, sect. 32.

Where the registrar is also district registrar of the High Court, he may, with the Lord Chancellor's consent, appoint a deputy to perform such duties. This appears to be the joint effect of sects. 84 (7) and 116 of the Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo. V., c. 49.

Deputy
registrar
provisionally
appointed.
19 & 20 Vict.
c. 108, s. 13.

32. On the death or removal of a registrar who shall not have appointed a deputy, the judge may, for a period not exceeding three months, provisionally appoint a person qualified to be a registrar to discharge the duties of registrar; and such person shall act as and have all the rights and liabilities of a registrar until a permanent successor shall be appointed, and shall receive as remuneration for his services during the period he may so act a rateable proportion of the salary attached to the office of registrar.

Appoint-
ment of
assistant
registrars,
clerks, and
other officers
of county
courts.

Appointment of assistant registrars, clerks, etc.]—The appointment of all assistant registrars, clerks, bailiffs, ushers and messengers of the county courts and all clerks in connection with the district registry of the High Court now rests with the Lord Chancellor. Examiners and other officers are also appointed by him. It will be noticed that an assistant registrar must be a solicitor of not less than seven years' standing.

The section which deals with these appointments is sect. 3 of the County Courts Act, 1924. This section is as follows:—

3. [Act of 1924]—(1) Subject as hereinafter provided, the Lord Chancellor may, with the concurrence of the Treasury as to numbers and salaries, appoint in connection with any court such assistant registrars, clerks, bailiffs, ushers and messengers, and in connection with any district registry of the High Court such clerks, as he may consider necessary for carrying out the work of the court or of the district registry respectively, and may from time to time direct what duties shall be performed by those officers respectively, and may, if he thinks fit, remove any such officer from his office.

(2) No person shall be qualified to be appointed an assistant registrar unless he is a solicitor of not less than seven years' standing.

(3) Where there is an assistant registrar, the Lord Chancellor may direct which of the powers and duties of the registrar are to be exercised and performed by the assistant registrar, and the

**Section 3,
C. C. Act,
1924.**

assistant registrar shall, when exercising the powers or performing the duties specified in the direction, be deemed to be the registrar.

(4) Where a registrar or a high-bailiff is paid a salary inclusive of the remuneration of any officers, whether the part of the salary applicable to the payment of that remuneration is specified under the last preceding section of this Act or not, those officers shall, notwithstanding anything in this section, be appointed and be removable by the registrar.

(5) The Lord Chancellor may, subject to the consent of the Treasury as to numbers and salary, appoint as officers in his department such examiners and other officers as he may consider necessary for the purpose of controlling the accounts of county courts.

Retirement and pensions of registrars.]—The retirement and pensions of whole time registrars and registrars already being paid by salary and who accept the provisions of the Act of 1924, is dealt with in sect. 4 of the Act, and the 1st Schedule. This section is long and somewhat technical. The reader is referred to the section itself, printed below, and the schedule printed on p. 259.

4. [Act of 1924]—(1) A registrar to whom this section applies shall vacate his office at the end of the completed year of service in the course of which he attains the age of seventy-two years : Retirement and pensions of registrars.

Provided that, where the Lord Chancellor considers it desirable in the public interest to retain any registrar in his office after he attains the age of seventy-two years, he may, with the approval of the Treasury, from time to time authorise his continuance in office up to such later age, not exceeding seventy-five years, as he thinks fit.

(2) The provisions of the Superannuation Acts, 1834 to 1919 (in this Act referred to as "the Superannuation Acts"), shall apply to registrars to whom this section applies, subject to the following modifications :—

(a) The superannuation allowance on retirement shall be in accordance with the provisions of the First Schedule to this Act instead of in accordance with the provisions of the Superannuation Acts :

(b) Section two of the Superannuation Act, 1909 (which 9 Edw. 7, authorises the grant of a gratuity in case of death), as c. 10. amended by section two of the Superannuation Act, 1914, section three of the Superannuation Act, 1909 (which 4 & 5 Geo. 5, provides for the application of the Act to existing male c. 86. civil servants), and subsection (2) of section six of the Superannuation Act, 1909 (which relates to compensation on abolition of office), shall not apply ;

(c) Section ten of the Superannuation Act, 1859, (which pro- 22 Vict. c. 26. hibits the grant of superannuation allowance to a person under the age of sixty years except upon evidence of

**Section 4,
C. C. Act,
1924.**

infirmity), shall not apply, but a superannuation allowance shall not be granted under this section to a person who is under the age of seventy-two years, unless the Treasury are satisfied on a medical certificate that he is incapable from infirmity of mind or body of discharging the duties of his office, and that the infirmity is likely to be permanent, or unless he has served fifteen years as a registrar and has attained the age of sixty-five years :

- (d) A registrar shall, for the purposes of the Superannuation Acts, be deemed to have served in the permanent civil service of the State notwithstanding that he has not been admitted to office with a certificate from the Civil Service Commissioners.
- (3) This section shall apply to any registrar—
 - (a) who is a whole-time registrar within the meaning of this Act ; or
 - (b) to whom a salary has been assigned under section forty-five of the principal Act and who gives notice in the prescribed period of his desire to accept the provisions of this Act relating to retirement and pensions :

Provided that, if a registrar who was, immediately before his appointment as registrar, an assistant registrar or a civil servant gives notice in the prescribed form within the prescribed period of his desire to continue, in the case of an assistant registrar subject to the provisions of this Act relating to the pensions of persons in court service, or in the case of a civil servant subject to the statutory provisions relating to the pensions of civil servants, he shall, for the purposes of pension, be deemed not to be a registrar to whom this section applies, but to be a person employed in court service or a civil servant, as the case may be.

(4) For the purposes of subsection (2) of this section, the period of service shall be reckoned, in the case of a whole-time registrar, as from the date on which he becomes a whole-time registrar, and, in the case of any other registrar, as from the date on which the order, by virtue of which the salary was assigned to him, came into operation.

(5) The provisions of this section shall apply to the registrar of the district registries of the High Court at Liverpool and Manchester as they apply to registrars of county courts, but in the case of any such district registrar who holds office at the commencement of this Act only if he gives notice in the prescribed form and within the prescribed period of his desire to accept the provisions of this section.

NOTE.—The proviso to sub-sect. (3), *supra*, is substituted for the original proviso by sect. 18 of the Administration of Justice Act, 1928 (18 & 19 Geo. 5, c. 26).

Section 4,
C. C. Act,
1924.
Notes.

Court Service.—The service of any person engaged in court work as respects whom a direction in that behalf is given by the Lord Chancellor, with the concurrence of the Treasury is now pensionable.

The section relating to such pensions is sect. 5 of the County Courts Act, 1924 :—

5. [Act of 1924]—(1) Subject to the provisions of this section employment in court service shall, in the case of a person as respects whom a direction in that behalf is given by the Lord Chancellor with the concurrence of the Treasury, and whether the employment commenced before or after the commencement of this Act, be deemed to be for all purposes employment in the civil service of the State—and if a certificate has been issued to him by the Civil Service Commissioners, allowances may be granted in his case accordingly under the Superannuation Acts : Court service to be pensionable.

Provided that, except in so far as the Treasury may in any case direct, no account shall be taken for the purposes of this section of court service before the issue of the certificate.

(2) Employment in court service shall, in relation to a person in whose case a direction has been given under this section, be deemed to be employment in a public department within the meaning of section four of the Superannuation Act, 1887, as amended by section three of the Superannuation Act, 1914. 50 & 51 Vict. c. 67.

(3) In the case of a person employed in court service who was appointed to his office before the commencement of this Act, any salary or remuneration received by him from any source whatsoever in respect of that office during any period of which account may be taken for the purpose of this section shall, for the purpose of authorising the grant of an allowance or a gratuity under this section, be deemed to have been paid out of moneys provided by Parliament.

(4) Where a person who was employed at the commencement of this Act in court service and in whose case a direction has been given under this section is in consequence of the provisions of this section required, by reason only of his having attained any age, to retire from court service, the Treasury may, if he has been required to devote his whole time to employment in court service and if he had attained the age of fifty-five years on or before the twelfth day of May, nineteen hundred and twenty-three, grant to him by way of compensation such gratuity, not exceeding twice the amount of the salary and emoluments received by him from whatsoever source during his last year of employment, as may seem to them just.

**Section 5,
C. C. Act,
1924.**

The decision of the Treasury on any question which arises as to the application of this subsection to any person or as to the amount of any gratuity thereunder shall be final.

(5) The provisions of this section shall have effect notwithstanding anything in any contract made between a registrar, a high bailiff, or a district registrar and any other person.

**Appointment
of
bailiffs.**

9 & 10 Vict.
c. 95, s. 31.
13 & 14 Vict.
c. 61, s. 4.
29 & 30 Vict.
c. 14, s. 13.
30 & 31 Vict.
c. 142, s. 22.

33. For every court there shall, unless otherwise provided by this Act, be one or more high bailiffs, whom the Lord Chancellor or the Chancellor of the Duchy of Lancaster (as the case may be), may, if he shall think fit, remove from his office. Every bailiff duly appointed may serve or execute any process which by any act passed or to be passed is directed to be served or executed by a high bailiff, unless otherwise specially provided against therein.

Amended by County Courts Act, 1924, Sched. III. High bailiffs in possession of the office are preserved, but since the County Courts Act of 1924 no high bailiff can in future be separately appointed, the appointment in every case going to the registrar of the court by virtue of his office of registrar (County Courts Act, 1924, s. 1 (5)).

Office.]—In courts where the plaints entered in a year exceed six thousand, the high bailiff must keep his office open during such times as the registrar's office is open (see Order II. r. 20).

The duties of a high bailiff are set out in sect. 35, and in Order II. rr. 17—41.

**Bailiffs
during
vacancy of
high bailiff.**

19 & 20 Vict.
c. 108, s. 14.

34. The appointment of the bailiffs who are appointed to assist the high bailiff shall not be vacated by the death or removal of the high bailiff, but their acts done after such death or removal shall be as valid as if the high bailiff had not died or been removed, and had authorised such acts, and they shall continue to act until they shall be dismissed and they shall be paid for their services during the period they shall so act after the death or removal of the high bailiff the same wages as they were receiving at the date of such death or removal.

Amended by the County Courts Act, 1924, Sched. III. All assistant bailiffs and clerks are now appointed by the Lord Chancellor with the consent of the Treasury (except where the registrar or high bailiff is paid a salary inclusive of the remuneration of any officers) and may be dismissed by him, and are no longer paid out of the salary and allowances attached to the office of high bailiff. See sect. 3 (4) of Act of 1924, *ante*, p. 19.

**Duties of
high bailiffs,
&c.**

9 & 10 Vict.
c. 95, s. 33.

35. The high bailiff shall attend every sitting of the court for such time as shall be required by the judge, unless when his absence shall be allowed for reasonable cause by the judge, and shall, by himself or by the bailiffs appointed to assist him as aforesaid, serve all summonses and orders, and execute all the warrants, precepts, and writs issued out of the court, except as hereinafter provided; and the said high bailiff and bailiffs shall

Section 35.

in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the court as hereinafter provided, and, subject thereunto, to the order and direction of the judge; and every such high bailiff shall be responsible for all the acts and defaults of himself and of the bailiffs appointed to assist him in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

See Order II. rr. 17—41, as to the duties of a high bailiff. As to penalties for assaulting him in the execution of his duty, see *post*, sect. 48.

As to remedies against him for misconduct, see *post*, sects. 49, 50.

As to his liability for escapes and neglects, see *post*, sect. 49.

As to service, endorsement, and affidavit of service, and notice of service or non-service, and proof of service, see Order II. rr. 5, 21—26, 31; and as to the penalty for neglecting to serve the summons of another county court, see Order II. rr. 27, 28, 29. As to delivering a list of the particulars of service or non-service of summonses before each court, see Order II. r. 30; and as to his duties as to warrants of execution, see Order II. r. 33; and as to non-execution in a foreign district, see Order II. r. 37; and as to paying over money received, see Order II. r. 34.

The high bailiff must at all reasonable times give information to suitors as to the execution or non-execution of warrants or orders (see Order II. r. 33).

A high bailiff is liable, to the same extent as a sheriff, for the wrongful acts of a person employed by one of his bailiffs to whom a warrant has been delivered for execution (*Burton v. Le Gros*, (1865) 34 L. J. Q. B. 91; and see *Smith v. Pritchard*, (1849) 8 C. B. 565; 19 L. J. C. P. 53; 79 R. R. 631).

Execution on Wrong Person.]—The high bailiff is responsible where process is served or executed upon a wrong person, resulting in an arrest or other trespass; but such person must not by his conduct contribute to the mistake, or cause the officer to continue the execution of process against him, or he will not be allowed to recover damages (*Kelly v. Lawrence*, (1864) 3 H. & C. 1; 35 L. J. Ex. 197; *Davies v. Jenkins*, (1843) 11 M. & W. 745; 63 R. R. 744; *Walley v. M'Connell*, (1849) 13 Q. B. 903, 911; 19 L. J. Q. B. 162; 78 R. R. 552); as where he failed to give notice to the officer of the mistake, and was afterwards arrested (see *per* Cockburn, C.J., in *De Mesnil v. Dakin*, (1867) L. R. 3 Q. B. 18; 37 L. J. Q. B. 42), or, all the process having been by mistake served upon him, he neglected to appear and to deny his liability (see *Davies v. Jenkins*, *Walley v. M'Connell*, *supra*). If, however, before execution, he did deny his liability, the high bailiff would be responsible, though judgment had been suffered by default (*Kelly v. Lawrence*, *supra*). If process were executed upon the wrong person through his representation that he was the person named in the order or warrant, the high bailiff would not be responsible (*Price v. Harwood*, (1811) 3 Camp. 108; *Dunston v. Paterson*, (1857) 2 C. B. N. S. 495; 26 L. J. C. P. 267; 109 R. R. 771); but he would be responsible if, after notice of the misrepresentation, he refused to withdraw or discharge the person from custody (*Dunston v. Paterson*, *supra*).

If a person sued by a wrong name, but, being the right person served with process, omits to take his objection as required by law, he acquiesces in the process and cannot retract it (*Fisher v. Magnay*, (1843) 5 M. & G. 778; 12 L. J. C. P. 276). Where a debtor paid a judgment debt to the plaintiff instead of paying it into court, and through ignorance of the payment a warrant was executed against the judgment debtor, the officers of the court were held not to be responsible (*Davies v. Fletcher*, (1853) 2 E. & B. 271; 22 L. J. Q. B. 429; 95 R. R. 538).

**Section 35
Notes.**

As to the protection afforded by the Public Authorities Protection Act, 1893, see *post*, p. 30.

[36. Section 36 is repealed by the County Courts Act, 1924. It related to the temporary appointment of a high bailiff by the judge of the court.

See note to sect. 33.

[37. Section 37 is repealed by the County Courts Act, 1924. It related to the office of high bailiff in certain cases of vacancy being taken by the registrar. It is now unnecessary, as since the passing of the County Courts Act, 1924, the office of high bailiff must in future always be held by the registrar. See sect. 1 (5) of this statute.

[38. Section 38 is repealed by the County Courts Act, 1924. It related to treasurers of county courts. There are no longer any treasurers of county courts.]

Treasurer's
superannua-
tion.
29 & 30 Vict.
c. 14, s. 3.
22 Vict. c. 26.

39. Where it shall appear to the Treasury that greater efficiency and economy will be effected by permitting the retirement of a treasurer of a court, it shall be lawful for the Treasury to grant to any such treasurer, out of moneys to be provided for the purpose by Parliament, such superannuation allowance as the Treasury may determine, not exceeding such amount as might be granted under the Superannuation Act, 1859, to a civil servant retiring upon medical certificate.

This section is now obsolete.

Registrar
and high
bailiff
to give
security.
9 & 10 Vict.
c. 95, s. 36.

40. The treasurer, registrar, and high bailiff of every court who may receive any moneys in the execution of his duty, shall give security for such sum and in such manner and form as the Treasury from time to time shall order for the due performance of their several offices and for the due accounting for and payment of all moneys received by them under this Act, or which they may become liable to pay for any misbehaviour in their office.

The Treasury is generally willing to accept a guaranty bond for the security required issued by an approved guaranty society. In the case of whole-time registrars security in the sum of 1,000*l.* is required.

Officers not
to act as
solicitors in
the court.
9 & 10 Vict.
c. 95, ss. 29,
30

41. No registrar, treasurer, high bailiff, or other officer of any court shall, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for any party in any proceeding in the said court. And every registrar, treasurer, high bailiff, or other officer of any court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as solicitor or agent for any party in any proceeding in the said court, shall for

every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same by action of debt. Section 41.

A registrar, who is a solicitor, may defend himself in person in an action brought against him in his own court, and may recover from the plaintiff such costs as a solicitor defendant is entitled to on taxation; in such a case he must, under sect. 118 of the Act, necessarily tax his own bill of costs (*Tolpuitt & Co. v. Mole* (C. A.), (1911) 1 K. B. 836; 80 L. J. K. B. 686). The application by a high bailiff for and the obtaining and issuing a warrant to arrest an absconding debtor under the 14 & 15 Vict. c. 52, was held not to be a proceeding in the county court within the above provision. The court said, however, that a high bailiff who had so acted, had acted very improperly (*Warden v. Stone*, (1857) 7 E. & B. 603; 26 L. J. Q. B. 200; 110 R. R. 750; see also *Longstaffe v. Woodrow*, (1894) 38 S. J. 275). An assistant registrar is within the section (*Ackroyd v. Gill*, (1856) 5 E. & B. 808; 25 L. J. Q. B. 111; 103 R. R. 757).

A registrar or other officer of the court, or his partner or clerk, must not sign the ledger or any other book of account of suitors, or receive money or act as agent on behalf of suitors (Order II. r. 13); nor may such officer become surety in any matter where by the practice of the court security is required (Order XXIX. r. 6).

42. If an action be brought by an officer in the court of which he is an officer, except as official receiver, the judge shall, at the request of the defendant, order that the venue be changed, and that the action be sent for trial to the court of some convenient district of which he is not the judge; and the registrar of the first-mentioned court shall forthwith transmit by post to the registrar of such last-mentioned court a certified copy of the plaint as entered in the plaint book, the duplicate copy of the summons and particulars served on the defendant, and a certified copy of the order for changing the venue as entered in the minute-book; and the judge of such last-mentioned court shall appoint a day for the trial, notice whereof shall be sent by post or otherwise by the registrar of such last-mentioned court to both parties.

If officer plaintiff in his own court, defendant may remove action to an adjoining district.
19 & 20 Vict. c. 108, s. 20.

As to the court in which the judge can sue or be sued, see *ante*, sect. 22.

As to actions to which any of the parties are officers of the court, see Order XXII. r. 23.

43. If an action be brought against an officer of a county court, the summons may issue in the district of which he is an officer, or in any adjoining district, the judge of which is not the judge of a court of which the defendant is an officer.

Where officer of county court may be sued.
19 & 20 Vict. c. 158, s. 21.

[44, 45, 46 and 47. These sections are repealed (see County Courts Act, 1924, Sched. III.). They all related to the remuneration of registrars and high-bailiffs, or other persons performing duties under this Act or other Act or Acts passed or to be passed where no remuneration is given to officers of the courts for the performance of new duties. They are replaced by sects. 2 and 3 of the County Courts Act, 1924. Section 2 runs as follows :—]

Section 47.

Payment of
registrars
and high-
bailiffs.

[Act of 1924.]—2. Every registrar and every high-bailiff of a court shall be paid such salary, to be either exclusive of the remuneration of any officers of the court and of any other expenses of his office or not, as the Lord Chancellor may from time to time with the consent of the Treasury direct and, where the salary is inclusive of any such remuneration or expenses as aforesaid, the Lord Chancellor may, if he thinks fit and subject to the consent of the Treasury, specify what part of that salary is applicable to the payment of the said remuneration or expenses.

Section 3 of the Act of 1924 relates to the appointment by the Lord Chancellor of assistant registrars, clerks and other officers. See *ante*, p. 18. No new high-bailiff can be appointed (see sect. 1 (5) of the Act of 1924). Existing high-bailiffs are in future to be remunerated, as in the case of registrars, by salary (see sect. 2, *supra*).

Penalty for
assaulting
bailiffs,
rescuing
goods taken
in execution.
9 & 10 Vict.
c. 95, s. 114.

48. If any officer or bailiff of any court shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the judge, or on summary conviction in manner provided by the Summary Jurisdiction Acts; and it shall be lawful for the bailiff of the court, in any such case, to take the offender into custody (with or without warrant), and bring him before such judge accordingly.

For procedure to enforce penalty in the county court under this section see Order LII. rr. 1 to 3 and Forms 355 to 360.

Where an assistant bailiff, being left in possession of goods, on the second day went away from the premises to obtain necessary refreshment and on his return was assaulted to prevent re-entry, it was held that he was in execution of his duty within the above section (*Coffin v. Dyke*, (1884) 48 J. P. 757). Cf. *Broughton v. Wilkerson*, (1880) 44 J. P. 781, where the bailiff was assaulted in attempting to force his way into a private house to levy an execution.

NOTE.—A bailiff may break into premises which are not a dwelling-house or connected therewith in order to levy an execution. See *post*, p. 194.

An order imposing a fine under this section is not subject to appeal (*Lewis v. Owen*, (1894) 1 Q. B. 102; 63 L. J. Q. B. 233).

The provision that the bailiff may take the offender into custody is a power given to the individual officer, and a wrongful exercise of it does not render the high bailiff responsible (*Smith v. Pritchard*, (1849) 8 C. B. 565; 19 L. J. C. P. 53; 79 R. R. 631).

It seems that the person committing the assault is liable to an action by the person assaulted as well as to a fine (*Box v. Green*, (1854) 9 Ex. 503; 23 L. J. Ex. 219).

A person assaulting a bailiff may be indicted for the assault instead of being proceeded against under these provisions (*R. v. Davies*, (1861) 8 Cox, C. C. 486; 30 L. J. M. C. 159).

By sect. 167, the fine may be recovered in the same manner as a judgment debt, or a sum ordered to be paid on summary conviction under the Summary Jurisdiction Acts, 11 & 12 Vict. c. 43; 42 & 43 Vict. c. 49. See these statutes, *post*, pp. 909—911.

Bailiffs
made
answerable

49. In case any bailiff of any court who shall be employed to levy any execution against goods and chattels shall, by neglect or

connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to the satisfaction of the court on the oath of any credible witness), the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the court.

Section 49.

for escapes
and neglect
to levy
execution.
9 & 10 Vict.
c. 95, s. 115.

For procedure, see Order LII. rr. 4 and 5, and Forms 361 and 362.

Where a warrant is sent for execution to a foreign court, jurisdiction under this section can be exercised by the judge of the foreign court only (*R. v. Newport (Salop) C. C. Judge*, (1888) 20 Q. B. D. 242; 57 L. J. Q. B. 143).

A party aggrieved is not deprived by this section of his common law remedy (*Watson v. White*, (1896) 2 Q. B. 9; 65 L. J. Q. B. 492).

50. If any registrar, bailiff, or officer of any court, acting under colour or pretence of the process of the said court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs as he shall think just, and also, if he shall think fit, to impose such fine upon the registrar, bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

Remedies
against and
penalties of
bailiffs and
other officers
for mis-
conduct.
9 & 10 Vict.
c. 95, s. 116.

For procedure, see Order LII. rr. 4 and 5, and Forms 363 and 364.

A mere error of judgment in levying is not "misconduct," as where a bailiff by mistake sold protected implements of trade (*Moore v. H. B. of Brompton*, (1893) 62 L. J. Q. B. 498).

51. Every treasurer, registrar, bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon

Penalty on
officers
taking fees
besides
those
allowed.
9 & 10 Vict.
c. 95, s. 117.

Section 51.

proof thereof before the judge of the court, and in the case of a treasurer, registrar, or high bailiff, on allowance of the finding of the judge by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as in this Act before provided.

No officer shall be deemed a trespasser by reason of irregularity. 19 & 20 Vict. c. 108, s. 60.

52. No officer of any court in executing any warrant of a court, and no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such action he shall recover no costs, unless the damage awarded shall exceed forty shillings.

See also sects. 144 and 145, *post*, p. 188, and the notes to sect. 54, *infra*.

Where the irregularity or informality is in the judgment or in the proceedings prior to it, according to the rule of the common law, no action will lie for acts regularly done under it, until the judgment has been set aside (*Riddell v. Pakeman*, (1835) 2 C. M. & R. 30; *Blanchenay v. Burt*, (1843) 4 Q. B. 707; 12 L. J. Q. B. 291); and on any application to set it aside, the judge may make it a term that no action shall be brought, if the applicant asks for costs, but not otherwise (*Rhodes v. Hull*, (1857) 26 L. J. Ex. 265; *Bartlett v. Stinton*, (1866) L. R. 1 C. P. 483; 35 L. J. C. P. 238).

[**53.** Repealed by 56 & 57 Vict. c. 61 (the Public Authorities Protection Act, 1893), s. 2. See *post*, p. 30.]

No action to be brought against bailiff, &c., acting under order of the court without notice; and registrar to be made defendant in the action. 13 & 14 Vict. c. 61, s. 19.

54. No action shall be commenced against any bailiff, or against any person acting by the order and in aid of any bailiff, for anything done in obedience to any warrant under the hand of the registrar and the seal of the court, until demand has been made or left at the office of such bailiff by the party intending to bring such action, or by his solicitor or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same has been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such bailiff, or other person acting in his aid for any such cause as aforesaid, without making the registrar who signed or sealed the said warrant defendant, on producing or proving such warrant at the trial of such action, a verdict shall be given for the defendant, notwithstanding any defect of jurisdiction or other irregularity in the said warrant; and if such action be brought jointly against such

registrar, and also against such bailiff, or person acting in his aid as aforesaid, then on proof of such warrant the finding shall be for such bailiff, and for such person so acting as aforesaid; notwithstanding such defect or irregularity as aforesaid; and if the verdict shall be given against the said registrar, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer as to include such costs as such plaintiff is liable to pay to such defendant for whom such verdict shall be found as aforesaid. Section 54.

It is a rule of the common law that no action will lie against a ministerial officer for acts done ministerially, without negligence (*Countess of Rutland's Case*, (1606) 6 Rep. 54a; *Drury's Case*, (1611) 8 Rep. 142a; *The Marshalsea Case*, (1613) 10 Rep. 76a; *Groenvelt v. Burwell*, (1699) 1 Ld. Raym. 471); and under the County Courts Acts it has been held that, in merely signing and issuing an order of commitment in compliance with the order of the judge, the registrar was acting ministerially, and was not responsible for the error of the judge in making the order (*Dews v. Ryley*, (1851) 11 C. B. 434; 20 L. J. C. P. 264; 87 R. R. 718). So, both at common law and under the County Courts Acts, the bailiff acting under the warrant of the court is acting ministerially, and is irresponsible for error in the judgment or order in pursuance of which it is issued (*Gold v. Strode*, (1690) 3 Mod. 324; *Parsons v. Lloyd*, (1773) 2 W. Bl. 845; *Andrews v. Marris*, (1841) 1 Q. B. 3; 10 L. J. Q. B. 225; 55 R. R. 174; *Aspey v. Jones*, (1884) 54 L. J. Q. B. 98). It does not appear quite clear whether this rule applied at common law, where the error of the judge was the exercise of jurisdiction in a cause over which the court had none, and the officer was ignorant of it (see 10 Rep. 76; *Mayor of London v. Cox*, (1867) L. R. 2 H. L. 263; 36 L. J. Ex. 225, per Willes, J.; *Houlden v. Smith*, (1850) 14 Q. B. 841; 19 L. J. Q. B. 170; 80 R. R. 415). But apparently this section, especially when read in connection with sect. 55, takes away all responsibility of registrar and bailiff (*Aspey v. Jones*, *supra*). It was held at common law that the rule did not protect if the warrant was erroneous on the face of it (*Grant v. Bagge*, (1802) 3 East, 128; 6 R. R. 569; *King v. Harrison*, (1812) 15 East, 615c; *Carratt v. Morley*, (1841) 1 Q. B. 18; 10 L. J. Q. B. 259; 55 R. R. 183); but the court overruled the point when made under the County Courts Acts (*Aspey v. Jones*, *supra*).

If the plaintiff, or his solicitor, merely institutes proceedings which he is entitled to commence, he does not become a trespasser, even if the officer of the court in execution of the process commit a trespass (see *Kinning v. Buchanan*, (1849) 8 C. B. 271; 18 L. J. C. P. 332; 79 R. R. 490; *Abley v. Dale*, (1851) 20 L. J. C. P. 253; 11 C. B. 378; 87 R. R. 697; *The Marshalsea Case*, (1613) 10 Rep. 68b, 76a); for the high bailiff or other officer is not the agent of the plaintiff so long as he does not personally interfere (*Wilson v. Tunnan*, (1843) 6 M. & G. 236; 12 L. J. C. P. 306; 64 R. R. 770; *Whitmore v. Greene*, (1844) 13 M. & W. 104; *Woollen v. Wright*, (1862) 1 H. & C. 554; 31 L. J. Ex. 513; 130 R. R. 658); but if he does interfere, as by accompanying the officer, and pointing out the person to be arrested, who proves to be the wrong one, he becomes personally liable (*Walley v. McConnell*, (1849) 13 Q. B. 903, 911; 19 L. J. Q. B. 162; 78 R. R. 552). A judgment creditor wrote to a high bailiff: "The plaintiff in this action has some reason to believe in the possibility of a third person claiming the goods at the address given on the back of the execution. He will, however, contest any claim that may be made, and he desires that the high bailiff at Liverpool should be so informed, that the officer who levies may not in any way be deterred from putting the warrant in force by reason of any party setting up a claim." The officer having seized the goods of a wrong person, as well as those of the judgment debtor, an action was brought against the writer

Ministerial
acts.

Plaintiff
not respon-
sible for
trespass.

Section 54 Notes.

of the letter. It was, however, held merely to amount to a direction to the officer to do his duty, and not such an interference as to render the writer personally liable for the trespass (*Cronshaw v. Chapman*, (1862) 31 L. J. Ex. 277). Where there has been no personal interference by the judgment creditor, his adoption and ratification of the officer's acts *after* a trespass has been committed will not render him liable for it (*Wilson v. Tumman*, *Woollen v. Wright*, *supra*).

It is not within the implied authority of a solicitor to direct the seizure of *particular* goods; if he do so without express authority, he will be personally liable for the consequences (*Smith v. Keal* (C. A.), (1882) 9 Q. B. D. 340; 51 L. J. Q. B. 487).

Procedure in Actions against Public Officers.—The Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1, enacts, where any action, prosecution or other proceeding is commenced, against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, that:— (A) The action, prosecution or proceeding may not lie or be instituted unless commenced within six months, or in case of a continuance of injury or damage within six months next after the ceasing thereof: (B) If judgment is obtained by the defendant it will carry costs as between solicitor and client: (C) Where the proceeding is an action for damages, tender of amends before action may in lieu of or in addition to any other plea be pleaded. If the action was commenced after tender or is proceeded with after payment into court in satisfaction and the plaintiff does not recover more than the sum tendered or paid, he cannot recover costs incurred after the tender or payment, and the defendant is entitled to costs as between solicitor and client, as from the tender or payment; but this does not affect costs on any injunction in the action: (D) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the proceedings, the court may award the defendant costs as between solicitor and client. Action includes all proceedings in the Chancery Division, but not appeals or interlocutory applications (*Harrop v. Mayor of Ossett*, (1898) 1 Ch. 525; 67 L. J. Ch. 347; *Fielden v. Mayor of Morley*, H. of L., (1900) A. C. 133; 69 L. J. Ch. 314).

This limitation applies though a longer period be allowed by the Act creating the liability (*Markey v. Tolworth Hospital Board*, (1900) 2 Q. B. 454; 69 L. J. Q. B. 738), but see *British Columbia Electric Rail. v. Gentile*, (1914) A. C. 1034; 83 L. J. P. C. 353, where this case was expressly disapproved by the Judicial Committee of the Privy Council, and *Venn v. Tedesco*, (1926) 2 K. B. 227, where McCardie, J., followed the decision in *Markey v. Tolworth Hospital Board* (*supra*), and refused to follow the decision of the Privy Council in *British Columbia Electric Rail v. Gentile* (*supra*). As to the date from which the period of limitation begins to run, see *Polley v. Fordham*, (1904) 2 K. B. 345; 73 L. J. K. B. 687; *Turley v. Daw*, (1906) 94 L. T. 216; *Carey v. Bermondsey Borough Council*, (1903) 67 J. P. 447; 20 T. L. R. 2; *Freeborn v. Leeming*, (1926) 1 K. B. 160; 95 L. J. K. B. 114. The limitation does not (probably) apply to a prerogative writ of mandamus (*The King v. Port of London Authority*, (1919) 1 K. B. 176).

An order by consent dismissing an action is a judgment within the meaning of the section (*Shaw v. Herts County Council*, (1899) 2 Q. B. 282; 68 L. J. Q. B. 857; 81 L. T. 208). So is an order dismissing an action for want of prosecution (*Gilbert v. Gosport and Alverstoke Urban Council*, (1917) 86 L. J. Ch. 54). Aliter where an action is discontinued after a payment into court with denial of liability (*Smith v. Northleach Rural District Council*, (1902) 1 Ch. 197; 71 L. J. Ch. 8).

A public official if he acts maliciously is not protected by the Act, but there must be evidence of malice. A mere allegation in the pleading is not sufficient (*Newell v. Starkie*, (1920) 89 L. J. P. C. 1).

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Notes.

The provision in sect. 1 imposing the six months' limit is a "statute of limitations" within the meaning of Form 85, and a plea in general terms that the action is barred by "a statute of limitations" is good (*Gregory v. Torquay Corporation*, (1912) 1 K. B. 442; 80 L. J. K. B. 981). The Acts have no application to proceedings under the Workmen's Compensation Act (*Fry v. Cheltenham Corporation*, (1911) 81 L. J. K. B. 41), nor to a claim under sect. 6 (2) of that Act brought by the employer who has paid compensation to his workman injured by the negligence of the defendants, and who claims to be indemnified by the defendants (*Tuckwood v. Mayor, &c., of Rotherham*, (1921) 1 K. B. 526).

Sect. 2 repeals sect. 53 of the County Courts Act, 1888, and so much of any public general Act as contains a provision that notice of action shall be given.

This Act not only protects the public authority, but also subordinates carrying out their mandates (*Greenwell v. Howell*, (1900) 1 Q. B. 535; 69 L. J. Q. B. 461). The term "public authority" is not confined to municipal authorities (*The Johannesburg*, (1907) P. 65; (1906) 76 L. J. P. 67).

Notwithstanding sect. 1 of this Act, which gives the successful defendant costs as between solicitor and client, the discretionary power given to a High Court judge to deprive defendants of their costs for good cause is not taken away (*Bostock v. Ramsey Urban Council* (C. A.), (1900) 2 Q. B. 616; 69 L. J. Q. B. 945), and under sect. 113 of the County Courts Act, 1888, presumably there is the same power. No special direction or taxation is necessary (*North Metropolitan Trams. Co. v. London County Council*, (1898) 2 Ch. 145; 67 L. J. Ch. 447; *Chamberlain and Hookham, Ltd. v. Bradford Corporation*, (1900) 83 L. T. 518).

This rule as to costs as between solicitor and client will apply to a *quia timet* action as well as to actions generally. See *Graigola Merthyr Co. v. Swansea Corporation*, (1928) 1 Ch. 235; 97 L. J. Ch. 135.

A company incorporated for the purpose of earning profits is not entitled to protection (*Attorney-General v. Margate Pier Co.*, (1900) 1 Ch. 749; 69 L. J. Ch. 331). A local authority, having power to carry on a business, is so entitled (*Parker v. London County Council*, (1904) 2 K. B. 501; 73 L. J. K. B. 561; approved by C. A. in *Lyles v. Southend Corporation*, (1905) 2 K. B. 1; 74 L. J. K. B. 484; and see *The Ydun*, (1899) P. 236; 68 L. J. P. 101; *Clayton v. Pontypridd Urban District Council*, (1918) 1 K. B. 219; 87 L. J. K. B. 645), but an independent contractor, doing the work which a public body is authorized to do, is not (*Tilling v. Dick, Kerr & Co.*, (1905) 1 K. B. 562; 74 L. J. K. B. 484). Where there is no statutory or public duty to do the act in question, the protection does not avail. Where the servant of a public authority acting negligently in the course of a duty on which they sent him, viz., the delivery of a ton of coke bought from the public authority, but which such public authority was not bound to supply or deliver either in the execution of any Act of Parliament or in the discharge of any public duty or authority, it was held that the protection given by the Act did not apply (*Bradford Corporation v. Myers*, (1916) 85 L. J. K. B. (H. L.) 146). Compare *The Danube II.*, (1921), P. 183, and *Edwards v. Metropolitan Water Board*, (1922) 1 K. B. 291; 91 L. J. K. B. 210, where the protection of the Act was held to apply.

With respect to the words "done in pursuance of this Act," it has been held, upon like clauses in other Acts, that persons are within the protection, although their act be not legally justifiable under the statute, provided they act under an honest belief, whether reasonable or not, in the existence of a state of facts which, if it had existed, would have justified them in acting under the statute (*Herman v. Seneschal*, (1862) 13 C. B. N. S. 392; 32 L. J. C. P. 43; 134 R. R. 569; *Chamberlain v. King*, (1871) L. R. 6 C. P. 474), or with an honest intent to discharge their statutory duties and believe that they are discharging them, but have erred through a mistake of law (*Selmes v. Judge*, (1871) L. R. 6 Q. B. 724). Thus, the bailiff of a county court, if acting *bonâ fide*, is within this protection, although by mistake he has seized

When protection of Act applies.

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the goods of one person under an execution against another (*Burling v. Harley*, (1857) 3 H. & N. 271; 27 L. J. Ex. 258; 117 R. R. 684); nor is his right affected by the fact that he is indemnified in so doing by the party interested (*White v. Morris*, (1852) 11 C. B. 1015; 21 L. J. C. P. 185; 87 R. R. 854). A plaintiff obtaining judgment for want of appearance and execution thereon is within this protection (*Gayton v. Bayman*, (1859) 1 F. & F. 675).

Where an action was brought against the judge of a county court, for making an order for commitment after having been served with a prohibition, it was held that if the judge acted under a *bonâ fide* belief that his duty required him to make the order, it was an act "done in pursuance of the Act" (*Booth v. Clive*, (1851) 10 C. B. 827; 20 L. J. C. P. 151; 84 R. R. 795).

Where, however, a public authority employed a motor car for the purpose of carrying their officials, and a person was injured through the negligent driving of the chauffeur, it was held that the six months' limitation imposed by the statute did not apply (*Clarke v. St. Helen's Borough Council*, (1916) 85 L. J. K. B. 17; and see *Bradford Corporation v. Myers*, *supra*).

An action against a police authority to recover compensation under the Riot (Damages) Act, 1886, is not within the six months' limitation (*Kauffmann Brothers v. Liverpool Corporation*, (1916) 1 K. B. 860; 85 L. J. K. B. 1127).

If the injury and damage are continuing, the statute does not apply (*Boynton v. Aucholme Drainage, &c., Commissioners*, (1921) 2 K. B. 214; *Huyton and Roby Gas Co. v. Liverpool Corporation*, (1926) 1 K. B. 146; 95 L. J. K. B. 269).

See also Justices Protection Act, 1848 (11 & 12 Vict. c. 44), and *Mc Vittie v. Marsden*, (1917) 2 K. B. 878, *post*, p. 48.

Protection
to officers.
15 & 16 Vict.
c. 54, s. 6.

55. In any action commenced against any person for anything done in pursuance of this Act, the production of the warrant under the seal of the court shall be deemed sufficient proof of the authority of the court previous to the issuing of such warrant; and in case the plaintiff shall have a verdict or judgment pass against him, be nonsuit, or discontinue, the defendant shall in any such case be allowed full costs as between solicitor and client.

See *Aspey v. Jones*, (1884) 54 L. J. Q. B. 98, where it was held that this section affords protection from liability to be sued to any party who acts under a warrant signed by the registrar and under the seal of the court, although the judge had no jurisdiction to make the order upon which the warrant was founded.

PART III.

JURISDICTION AND LAW.

Ordinary
jurisdiction
of the court.
9 & 10 Vict.
c. 95, s. 58.
13 & 14 Vict.
c. 61, s. 1.

56. All personal actions, where the debt, demand, or damage claimed is not more than *one hundred (a)* pounds, whether on balance of account or otherwise, may be commenced in the court, and all such actions shall be heard and determined in a summary way according to the provisions of this Act: Provided always that except as in this Act provided, the court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or for any libel or slander, or for seduction, or for breach of promise of marriage.

NOTE.—(a) Jurisdiction increased from 50*l.*: County Courts Act, 1903, sect. 3. As to Ejectment, see *post*, sect. 59.

The statutory county court, established by the County Courts Act, 1846, is a court of record, and has all the jurisdiction and powers of the old county court for the recovery of debts and demands, as altered by that Act, throughout the district for which it is held (see *ante*, sect. 5). It has also by a series of statutes jurisdiction in many cases in which the old county court had no jurisdiction.

Section 53.
Notes.

Effect of the Judicature Acts.]—The Judicature Acts, now repealed and consolidated in the Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo. V. c. 49, although they did not extend the number of heads of jurisdiction, affect the powers of the judge in exercising it in a very important manner.

The County Courts Act, 1888, prescribes the different kinds of common law and equity actions, and matters of which he may take cognizance; but the Judicature Act has an overriding influence upon his treatment of them. Sect. 25 of the Act of 1873 (see now sect. 44 of the consolidating Act) provided that in the High Court where law and equity were in conflict, the rules of equity should prevail; and sect. 24 (now sect. 43 of the 1925 Act) also made provision for the due combination of legal and equitable remedies and defences “so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.”

Sect. 202 of the Supreme Court of Judicature (Consolidation) Act, 1925 (re-enacting sect. 89 of the 1873 Act), compels the judge of a county court to grant in every proceeding, *i.e.*, action or suit (*Pryor v. City Offices Co.*, (1883) 52 L. J. Q. B. 362; 10 Q. B. D. 504), before him the same relief and remedy and combination of remedies, and to give effect to the same defences, equitable and legal, as if the action were in the High Court itself, but see *Smith v. Smith*, *infra*. For text of sect. 202, see *post*, Part V., “Statutes.”

It was thought that if the judge had once seisin of a claim, he could deal with it in the same manner as if the action were in the High Court. This view has been modified by decisions. A defendant entered into possession of a house, the value of which exceeded 500*l.*, under an agreement for a lease for three years to commence at a future date. He afterwards gave notice to quit, and quitted at the end of the first year. The landlord, treating him still as his tenant, sued in the county court for the quarters rent accruing after he had quitted; but the Court of Appeal held that although, in the High Court, the plaintiff would by reason of the Judicature Acts have been able to maintain the action, he could not do so in the county court, because the judge had no jurisdiction to decree specific performance of the agreement, the value of the property exceeding 500*l.* (*Foster v. Reeves* (C. A.), (1892) 2 Q. B. 255; 61 L. J. Q. B. 763; and see *Angel v. Jay*, (1911) 1 K. B. 866; 80 L. J. K. B. 458).

In *Smith v. Smith*, (1925) 2 K. B. 144; 94 L. J. K. B. 813, however, where the plaintiff sued in the county court for a sum of 40*l.* alleged to be due to him under an agreement; and also claimed a declaration that defendant was liable to pay him a pension of 240*l.* per annum by monthly instalments of 20*l.* it was held that the county court had no power to make a declaration which might involve the payment of money in excess of 100*l.*, the limit of jurisdiction prescribed by sect. 56 as amended of the County Courts Act, 1888. “Section 89 of the Judicature Act, 1873, is directed to causes of action within the jurisdiction of the inferior court, and the relief which that section contemplates is not relief extending the jurisdiction of the inferior court, but to complete and make more effective any jurisdiction it may otherwise have.” Bankes, L.J., in *Smith v. Smith* (*supra*).

Whatever the nature of the plaintiff's claim within its jurisdiction, the county court must give the same effect to every ground of defence, equitable or legal, as the High Court can do (see Judicature Act, 1925, s. 202).

Section 56 Notes.

Actions for Debt or Damages.]—Subject to the exceptions following, the court, under the provisions of the County Courts Act, 1888, as extended by the County Courts Act, 1903, has jurisdiction generally in personal actions where the debt, demand or damage claimed is not more than 100*l.*, whether on balance of account or otherwise.

Personal actions are such whereby a man claims a debt or personal duty, or damages in lieu thereof; and likewise where a man claims satisfaction in damages for some injury done to his person or property (3 Blackst. Comm. 117; and see Com. Dig. "Action," D. 3; Bac. Abr. "Actions in General," A.).

The cause of action must not be split, if the claim is on the same contract (*Conquer v. Boot*, (1928) 97 L. J. K. B. 452).

Malicious prosecution and actions in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, are no longer excepted from the jurisdiction.

Cases where County Courts have no Jurisdiction.]—Besides the limit as to amount contained in sect. 56 (*supra*), there is, in actions in which the title to any corporeal or incorporeal hereditaments comes in question, or where an easement or licence is claimed, a further limit imposed as to the yearly rent or value of the hereditaments: it must not exceed 100*l.* (see *post*, sect. 60). The courts also have no jurisdiction to try actions for breach of promise of marriage, libel, slander, or seduction, or in which the title to any toll, fair, market, or franchise is in question (sect. 56). In *Parsons v. Burgess*, (1928) 138 L. T. 134, the plaintiff brought an action in the county court for the return of certain articles and of a sum of money which he said he had entrusted to the defendant during an engagement to marry. *Held*, that the action was for breach of promise of marriage and that a writ of prohibition must issue. A patent is a "franchise"; hence the courts have no jurisdiction over an action for the infringement of a patent (*R. v. Halifax County Court* (C. A.), (1891) 2 Q. B. 263; 60 L. J. Q. B. 550). A registered trade mark is not a "franchise," but there is no jurisdiction to try an action for its infringement, it not being a personal action within the meaning of sect. 56 of the Act of 1888 (*Bow v. Hart* (C. A.), (1905) 1 K. B. 592; 74 L. J. K. B. 341).

Further, the court has no jurisdiction to try an action brought for an injunction *simpliciter* (*Rex v. Cheshire County Court Judge and United Society of Boilermakers*, (1921) 2 K. B. 694; *Simpson v. Crowle*, (1921) 90 L. J. K. B. 878), but only to grant it as additional relief in an action which it has jurisdiction under the County Courts Acts to try. Neither has the court jurisdiction to make a declaration that the plaintiff is entitled to receive (from the stakeholders) a deposit of 100*l.* paid on a contract of sale of freehold property, the stakeholders not being parties to the action and there being no money claim against the defendant (*De Vries v. Smallbridge*, (1928) 1 K. B. 482; 97 L. J. K. B. 244). See further on this question, the note to Order XXII. r. 16.

Illegal Contract.]—An illegal agreement cannot be enforced. The test whether a claim connected with an illegal agreement is enforceable, is whether the plaintiff requires any aid from the illegal agreement to establish his case (*Farmers' Mart, Ltd. v. Milne*, (1915) A. C. 106; 84 L. J. P. C. 33). See also *Montefiore v. Munday Motor Co.*, (1918) 2 K. B. 241; 87 L. J. K. B. 907.

Cause of Action arising out of a Felony.]—If it appears that the cause of action arises from a felony, and that no prosecution for the felony has taken place, it is the duty of the court to stay the action until, either the defendant has been prosecuted, or reasonable excuse has been shown why a prosecution has not been instituted (*Smith and Another v. Selwyn*, (1914) 3 K. B. 98; 83 L. J. K. B. 1339).

Personal Actions.]—The effect of the Act of 1846 was to give limited jurisdiction in every personal action then existing other than those above

Personal
actions.

Section 56
Notes.

mentioned, even where the Act creating the obligation provided that actions in respect of it should be brought in the superior courts at Westminster (*Stuart v. Jones*, (1852) 1 E. & B. 22; 22 L. J. Q. B. 1; 93 R. R. 9). But the principle of this case was not followed by the C. A. in *R. v. Halifax County Court*, *supra*. The reasoning of the court in this case would seem to show that, treating the Consolidation Act as a new departure, the county courts have now jurisdiction over all personal actions (other than those above expressly excepted) which could be brought in any court at the date of the Act. So the courts will have jurisdiction, it is believed, over any new form of personal action arising under any new statute, *e.g.*, *Pickering v. James*, (1873) L. R. 8 C. P. 489; 42 L. J. C. P. 217, under the Ballot Act, 1872; *Mills v. Scott*, (1873) L. R. 8 Q. B. 496; 42 L. J. Q. B. 234, under the Contagious Diseases (Animals) Act, 1869, provided no provision be made in it which expressly or impliedly exempts the jurisdiction; or gives exclusive jurisdiction to another tribunal (*Crystal Palace Gas Co. v. Idris*, (1900) 82 L. T. 200).

Personal actions include actions of contract and of tort. The following are instances of claims recoverable in county courts in personal actions. Money collected by a curate for the purposes of a Sunday school and claimed by its managers (*Christie v. Sandberg*, (1880) W. N. 159); paving rates assessed under an Act of Parliament (*Baddeley v. Denton*, (1849) 4 Ex. 508; 19 L. J. Ex. 44); freight due under a charter-party (*R. v. Southend*, (1884) 13 Q. B. D. 142; 53 L. J. Q. B. 423); damages for collision between barges on the Thames (*Scorell v. Bevan*, (1887) 19 Q. B. D. 428; 56 L. J. Q. B. 604); an action against a bailiff who has distrained for poor rate to recover so much of his charge as is unreasonable (*R. v. Philbrick*, (1905) 2 K. B. 108; 74 L. J. K. B. 464). It is believed that an action against a married woman under the Married Women's Property Act, 1882, in respect of a contract made during marriage, is a "personal" action, although execution can only be levied against her separate property (see the judgments in *Holtby v. Hodgson* (C. A.), (1889) 24 Q. B. D. 103; 59 L. J. Q. B. 46; but see *Scott v. Morley* (C. A.), (1887) 20 Q. B. D. 120; 57 L. J. Q. B. 43; *Re Gardiner*, (1887) 57 L. J. Q. B. 149; 20 Q. B. D. 249).

Detinue is a personal action (*Taylor v. Addyman*, (1853) 13 C. B. 309; 22 L. J. C. P. 94; 93 R. R. 547), the limit of jurisdiction being determined by the value of the goods detained: it must not exceed 100*l.* (*Leader v. Rhys*, (1861) 10 C. B. N. S. 369; 30 L. J. C. P. 345; 128 R. R. 749). In cases of breach of contract to deliver specific goods, specific delivery of the goods may be ordered in lieu of damages for the breach (Sale of Goods Act, 1893, s. 52, *post*, Part V.). The value of an instrument which is not negotiable, *e.g.*, a deposit note, is, for this purpose, the cost of proof of title, not the amount of which it is evidence (*Clegg v. Baretta*, (1887) 65 L. T. 775).

Special Acts.—Under the Public Health Act, 1875, demands below 50*l.*, which may be recovered in county courts as if they "were debts within the cognizance of such courts" (38 & 39 Vict. c. 55, s. 261); the six months' limitation applies. Similar provisions for demands not exceeding 50*l.* are made by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76, s. 117). Under the Private Street Works Act, 1892, claims for expenses of works not exceeding 50*l.* may be recovered as simple contract debts (55 & 56 Vict. c. 57, s. 14). Under the Act for regulating the qualifications of pharmaceutical chemists, the penalty of 5*l.* imposed on non-registered persons for using the title "pharmaceutical chemist" is similarly recoverable (15 & 16 Vict. c. 56, s. 12); also under 23 & 24 Vict. c. 127, in actions to recover the penalty of 50*l.* for wrongfully acting as attorney or solicitor. Fines under the Alkali Act, 1881 (44 & 45 Vict. c. 37, s. 22), and the Hosiery Manufacture (Wages) Act, 1874 (37 & 38 Vict. c. 48, s. 3), are also similarly recoverable. And under the Friendly Societies Act, 1896, moneys payable by members to cattle assurance societies, and some other societies, are deemed to be debts, and are recoverable as such (59 &

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60 Vict. c. 25, s. 31 (2)), as are moneys payable by members of Industrial and Provident Societies under the Act of 1893 (56 & 57 Vict. c. 39, s. 23).

Generally.—The above provisions are subject to the powers enabling parties to give jurisdiction by consent (sects. 61 and 64), to the powers of defendants to object to a trial in a county court (sect. 62), to the powers of removal into the High Court (sects. 68 and 126), to the powers given to the High Court to send actions for trial to the county courts (sects. 65, 66 and 69), and to the power to provide by Order in Council that the actions in which the plaintiff claims more than 50*l.* shall be tried in special courts of the district (County Courts Act, 1903, s. 5; see *post*, p. 232).

Actions not maintainable.—No action is maintainable for money alleged to be due in respect of the sale of ale, porter, beer, cider, or perry consumed on the premises where sold or supplied, or in respect of money or goods lent or supplied, or of any security given for, in, or towards the obtaining of any such liquors (see *post*, sect. 182). The 24 Geo. II. c. 40, s. 12, as amended by 25 & 26 Vict. c. 38, prevents the recovery of sums under 20*s.* for spirituous liquors, unless delivered at the purchaser's residence in reputed quart bottles.

No action may be commenced in a county court on a judgment of the High Court (see *post*, sect. 63), though committals on such judgments may be obtained; nor in the High Court upon an order of the county court for payment of costs (*Furber v. Taylor* (C. A.). (1900) 2 Q. B. 719; 69 L. J. Q. B. 898). Where the county court is exercising jurisdiction in bankruptcy and has made an order for payment to the Official Receiver or Trustee, an action may be brought in the High Court to enforce the order (*Savill v. Dalton*, (1915) 3 K. B. 174; 84 L. J. K. B. 1583).

Right of Alien Enemy to Sue.—An alien enemy in this country who has complied with the Aliens Restriction Order and registered himself thereunder, may enter into lawful contracts in this country and resort to the courts of this country for the purpose of enforcing his rights either under a contract made after the commencement of the war, or under a contract made before the commencement of the war (*Thurn and Taxis (Princess) v. Moffitt*, (1915) 84 L. J. Ch. 220; *Porter v. Freudenberg*, (1915) 84 L. J. K. B. 1001). If he is interned as a civilian prisoner of war he is still under protection and entitled to enforce any civil rights he may have (*Schaffinius v. Goldberg*, (1916) 85 L. J. K. B. 374; see also *Halsey v. Lowenfeld*; *Leigh, Third Party*, (1916) 85 L. J. K. B. 1498). As to right of a limited liability company registered in England, but composed practically entirely of alien enemies abroad, suing in the English courts, see *Daimler Co., Ltd. v. Continental Tyre and Rubber Co., Ltd.*, (1916) 2 A. C. 307; also *Muhesa Rubber Plantations, Ltd., In re* (1917), 1 K. B. 48.

Counterclaim.—Where defendant sets up a defence or counterclaim involving matter beyond the jurisdiction of the court, the provisions of sect. 203 of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. V. c. 49), apply. The section reads as follows:

203. Where in any proceeding before any such inferior court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the court, the defence or counter-claim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counter-claim:

Provided that—

(1) It shall be lawful for the High Court, or any Division or judge thereof, if it be thought fit, on the application of

Counter-claims in inferior courts, and transfers therefrom.

Section 203,
Jud. Act,
1925.

any party to the proceeding, to order that the whole proceeding be transferred from the inferior court to the High Court or to any Division, and in such case the record in the proceeding shall be transmitted by the registrar or other proper officer of the inferior court to the High Court, and the proceeding shall thenceforth be continued and prosecuted in the High Court as if it had been originally commenced therein :

- (2) The jurisdiction of an inferior court in cases of counter-claim shall not be excluded—

(a) by reason that the counter-claim involves matter not within the local jurisdiction of that court, but within the jurisdiction of any other inferior court in England ; or

(b) where the counter-claim involves two or more causes of action as to each of which the defendant might have maintained a separate action and each of which is within the jurisdiction of the court, by reason that the aggregate amount of the counter-claim exceeds the jurisdiction of the court ; or

(c) by reason that the counter-claim is for an amount of money exceeding the jurisdiction of the court, unless the plaintiff, within the prescribed time, objects in writing to relief being given by the court in excess of the relief which the court would before the twenty-fourth day of October, eighteen hundred and eighty-four, have had jurisdiction to administer :

- (3) In any case where the counter-claim involves matter beyond the jurisdiction of the court, the court, notwithstanding the provisions of this section, may, on such terms, if any, as the court thinks just, either adjourn the hearing of the case or stay execution on the judgment for such time as may be necessary to enable any party to apply to remove the proceedings into the High Court or to enable the defendant to take proceedings in a court of competent jurisdiction for the purpose of establishing his counter-claim, and in default of any such application being made or any such action being brought, the court shall, after the expiration of the time limited, have jurisdiction to hear and determine the whole matter in controversy to the same extent as if all parties had consented thereto.

See as to effect of above section, notes to Order X., r. 3.

57. Where in any action the debt or demand claimed consists of a balance not exceeding *one hundred (a) pounds*, after an *Where claim reduced by set-off to*

Section 57. admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the court shall have jurisdiction to try such action.

100*l.* court
to have
jurisdiction.
19 & 20 Vict.
c. 108, s. 24.

NOTE.—(a) Jurisdiction increased from 50*l.* (see sect. 3 of County Courts Act of 1903).

Balance of Account.]—The words “balance of account” mean, “after payment of part, or after the allowance of a set-off as an item in account with the agreement of the parties, which is equivalent to the payment of part, and not when the plaintiff claims more than 50*l.* [now 100*l.*] and seeks to reduce it by giving the defendant credit for a simple set-off” (*per* Pollock, C.B., in *Avards v. Rhodes*, (1853) 8 Ex. 312, 316; 22 L. J. Ex. 106; see also *Turner v. Berry*, (1850) 5 Ex. 858; 1 L. M. & P. 744; 14 Jur. 1099; see also *per* Maule, J., in *Woodhams v. Newman*, (1849) 7 C. B. 654; 18 L. J. C. P. 213).

Set-off.]—Where a plaintiff's claim exceeded 50*l.* [now 100*l.*] and he offered to reduce it by admitting a set-off, never agreed to by the parties, so as to amount to a part payment, the court was held to have no jurisdiction, even if the plaintiff gave credit for the set-off in his particulars, or offered to assent to it after action (see *Avards v. Rhodes*, *supra*; *Woodhams v. Newman*, *supra*; *Beswick v. Capper*, (1849) 7 C. B. 669; 18 L. J. C. P. 216). It was nevertheless held that the judge had jurisdiction to inquire whether the defendant had consented to the claim being so reduced before action; and that if he so found, the court had jurisdiction, although the original claim exceeded 50*l.* [now 100*l.*] (*Kimpton v. Willey*, (1850) 9 C. B. 719; 19 L. J. C. P. 269; 82 R. R. 515; and see *Beswick v. Capper*, *supra*). Sect. 57 was apparently intended to extend the jurisdiction, but it is now clear that it does not, and that the set-off must still be admitted before action (*Walesby v. Goulston*, (1866) L. R. 1 C. P. 567; 35 L. J. C. P. 302; *Hubbard v. Goodley*, (1890) 25 Q. B. D. 156; 59 L. J. Q. B. 285). A set-off admitted on the writ by the plaintiff, and adopted and acquiesced in by the defendant, justifies the conclusion that it was an admitted set-off within sect. 57 (*Lovejoy v. Cole*, (1894) 2 Q. B. 861; 64 L. J. Q. B. 120).

Abandonment of excess.]—See note to sect. 81, *post*, p. 89.

Cases of
partnership
and in-
testacy.
9 & 10 Vict.
c. 95, s. 65.
13 & 14 Vict.
c. 61, s. 1.

58. The jurisdiction of the court shall extend to the recovery of any demand, not exceeding the sum of *one hundred (a)* pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will.

NOTE.—(a) Jurisdiction increased from 50*l.* (see sect. 3 of County Courts Act of 1903).

Ejectment
where
neither
value nor
rent exceeds
100*l.*

30 & 31 Vict.
c. 142, ss. 11,
12.

59. (1) All actions of ejectment, where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect thereof, shall exceed the sum of *one hundred (a)* pounds by the year, may be brought and prosecuted in the court of the district in which the lands, tenements, or hereditaments are situate; provided that the defendant in any such action of ejectment, or his landlord, may within such time as may be prescribed by rules of court, apply to a judge of the High Court at chambers for a summons to the plaintiff to show cause why such action should not be tried in the High Court on the ground that

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the title to lands or hereditaments of greater annual value than *one hundred (a)* pounds would be affected by the decision in such action; and on the hearing of such summons, the judge of the High Court, if satisfied that the title to other lands would be so affected, may order such action to be tried in the High Court, and thereupon all proceedings in the court in such action shall be discontinued.

(2) The rules of court prescribing the procedure under this section may make provision for authorising any proceedings which have been brought under section one hundred and thirty-eight or one hundred and thirty-nine of this Act, but which ought to have been brought under this section, to be amended and to be continued under this section, and for the procedure on any such amendment.

[As amended by County Courts Act, 1924, s. 7]. The rules under this section appear in Order V. as rules 3A and 3B. The application to continue the action under sect. 59 may be made to the judge or registrar before or at the time of the hearing and granted on such terms as the judge or registrar may think fit.

The application to have the action tried in the High Court must be made within eight days from the service of the summons, or eight days after the amendment has been made. (See above rules.)

NOTE.—(a) Jurisdiction increased from 50*l.* (see sect. 3 of County Courts Act of 1903). See notes to sects. 138 and 139, *post*, pp. 178—187, dealing with recovery of possession of premises, and Increase of Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, *post*, Part VI.

Rent and Value.—The rent payable means the rent payable as between the litigant parties, and not any rent that might be paid by a sub-lessee; and the latter rent, if above 100*l.*, though strong evidence of value, is not conclusive against the jurisdiction of the county court (*Brown v. Cocking*, (1867) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250). The value of the tenements means the actual marketable value, and the rent which would be paid by the tenant in occupation is the best criterion of that value (*per Cockburn, C.J., Elston v. Rose*, (1868) L. R. 4 Q. B. 4; 38 L. J. Q. B. 6). The deduction of a yearly ground-rent payable by the landlord from the rent of the tenant, thereby bringing it within the prescribed limits, was, in the case last cited, held to be wrong.

Where the judge decided on the facts that the value of the premises did not exceed the limit of the jurisdiction, the Court of Queen's Bench held that it could not review the decision by prohibition (*Brown v. Cocking, supra*); but where the judge decided as to the value on a wrong assumption of a point of law, the court ordered a prohibition (*Elston v. Rose, supra*).

Where an application for a prohibition is made before the trial, on the ground that the annual value exceeds 50*l.* [now 100*l.*], and is refused, the defendant cannot at the trial impeach the jurisdiction, by evidence to show that the yearly value exceeds 50*l.* [now 100*l.*] (*Symons v. Rees*, (1875) 1 Ex. D. 416).

Procedure.—The practice and procedure in an action for the recovery of land are in general the same as in other actions. There are, however, some variations, which will be pointed out in the following pages. Where an action of ejectment is brought, but in the opinion of the judge an action should have been brought for the recovery of possession, the plaintiff is not entitled to any further relief or to any further costs than

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he would have been in an action for recovery of possession (Order V. r. 3); and now where the action is brought under sect. 138 or sect. 139 and ought to have been commenced under this section, the rules of court quoted above provide that it may be continued under this section. See sub-sect. 2, *supra*. Order V. rr. 3A, 3B.

The action must be commenced in the district in which the land, tenement, or hereditament sought to be recovered is situate (sect. 59). The action is commenced by plaint, as in ordinary actions (Order V. r. 1), and all persons in whom title is alleged should be made plaintiffs, and the persons alleged to be in possession, or apparent possession, of the property sought to be recovered defendants. See Form of Particulars, *post*, p. 904.

Except by leave of the court (see Order IV. r. 1), no cause of action may be joined with it, except claims for mesne profits, or arrears of rent, or double value in respect of the premises claimed or some part of them, or damages for breach of any contract, under which the same or any part of them are held, or for any wrong or injury to the premises claimed (Order IV. r. 1). But in an action for foreclosure or redemption a plaintiff may join a claim for delivery to him of the mortgaged property on or after the order absolute for foreclosure or redemption, and such an action is not to be deemed an action of ejectment within the meaning of these rules. And if a mortgage security is foreclosed by reason of the default to redeem by a plaintiff in a redemption action, the defendant who has obtained an order of foreclosure may obtain from the judge an order for delivery of possession (Order IV. r. 1). The plaintiff, at the time of the entry of the plaint, must file particulars in writing (Form 6, Appendix A) containing a full description of the property sought to be recovered, and of the annual value thereof, and of the rent, if there be any fixed or paid, in respect thereof (Order VI. rr. 1, 3), and as many copies of the particulars must be filed as there are defendants (Order LIV. r. 13).

The summons must contain the names, addresses, and descriptions of all the plaintiffs and defendants; and have annexed to it a copy of the statement of the property sought to be recovered, sealed with the seal of the court (Form 252). Order VII. r. 8, which declared the summons should be delivered to the bailiff forty clear days at least before the return day, and required it to be served thirty-five clear days before the return day is annulled by the County Court (No. 1) Rules, 1925.

Service must be made in the same manner as in other cases, save that in case of vacant possession, if it cannot otherwise be effected, service may be made by posting a copy of the summons on the door of the dwelling-house or other conspicuous part of the property (Order VII. r. 24). This rule does not render Order VII. r. 40, inapplicable to these actions.

Lessee to give notice of ejectment to Lessor.—“Every lessee to whom there is delivered any writ for the recovery of premises demised to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his lessor or his bailiff or receiver, and, if he fails to do so he shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years’ improved or rack rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.” Law of Property Act, 1925 (15 Geo. V. c. 20), s. 145. See also sect. 140 of County Courts Act, 1888.

Proceedings by Defendant after Service.—The defendant or his landlord, within such time as may be prescribed by rules of court (now eight days from service, or if summons has been amended, eight days from amendment), may apply to a judge of the High Court at chambers for a summons calling on the plaintiff to show cause why the action should not be tried in the High Court, on the ground that title to lands or hereditaments of greater annual value than 100*l.* would be affected by the decision; and the judge may, if satisfied that title would be so affected, order the action to be tried in the High Court, and thereupon all proceedings in the county court must be discontinued (sect. 59; Order V. r. 3B).

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It is believed that such an order as the above puts an end to the proceedings entirely, and obliges the plaintiff to commence *de novo* in the High Court.

Any person not named as defendant may, by leave of the court, be allowed to appear and defend, on filing an affidavit, showing that he is in possession, either by himself or his tenant, of the property or some part thereof, describing such part with reasonable certainty. The affidavit must be filed in cases where neither the value nor the rent exceeds 50*l.* a year five clear days, and in cases under the extended jurisdiction up to 100*l.* ten clear days, before the return-day, together with a copy for each plaintiff and defendant (Order X. r. 4; Order XXIIA. r. 11; Form 254).

Upon leave being given, the registrar must enter the name, address, and description of the person filing the affidavit in the plaint book as defendant, in addition to the names of the original defendants, and must in the former class of case three clear days, and in cases under the extended jurisdiction eight clear days, before the return-day give notice by post or otherwise to the plaintiffs and the original defendants of the filing of the affidavit, and that such person will appear and defend at the trial. A copy of the affidavit must be annexed to the notice. In all subsequent proceedings the person filing the affidavit must be named as a defendant (Order X. r. 4; Order XXIIA. r. 11; Form 254).

Limiting Defence.—Where a defendant desires to limit his defence to a part of the property sought to be recovered, he must file a notice in writing (Form 255) with the registrar in cases under the old jurisdiction five, and in cases under the extended jurisdiction ten clear days at least before the return-day, describing the part with reasonable certainty. He must also deliver to the registrar as many copies of the notice as there are plaintiffs, and an additional copy. The registrar must send one sealed with the seal of the court in the former class of case three, and in the latter eight, clear days before the return-day to each of the plaintiffs (Order X. r. 5; Order XXIIA. r. 11; Order LIV. rr. 13, 14).

Confession by Defendant.—Any defendant may at any time before the return-day confess the action as to the whole or any part of the land by signing in the presence of the registrar, or of one of his clerks, or of a solicitor, and attested by the person in whose presence it is signed, an admission of the title of the plaintiff, and of his right to possession (Forms 256, 274). The registrar, on receipt of such admission, must forthwith give notice by post to the plaintiff, and the judge or registrar may on the return-day, upon proof of the signature of the defendant by affidavit or otherwise, if not attested by the registrar or his clerk, and without any proof of the plaintiff's title (if no defendant other than such defendant defends), give judgment for the plaintiff for the recovery of possession and for costs. If the plaintiff receives the notice before the return-day he will not be entitled to any costs incurred subsequently to the receipt of the notice, except the costs of attending court, unless the judge or registrar otherwise orders. Where the admission is not signed by all the defendants, the trial will proceed against those who have not signed (Order IX. r. 7; Form 275).

Plaintiff not Proceeding as to Part or Whole.—If a plaintiff desires to discontinue proceedings as to the whole or any portion of the property, he may discontinue in the mode prescribed by Order IX. r. 1 (Form 253).

Mortgagors.—In actions by mortgagees against mortgagors, money may be paid into court pursuant to the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 219. See forms of orders and notices to mortgagee Forms 276—278.

Evidence.—The evidence necessary where a landlord is seeking to obtain possession of premises against a tenant who holds over is applicable to cases of ejectment between landlord and tenant. In all other cases the plaintiff in ejectment must recover upon the strength of his own title and

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not on the weakness of the defendant's (per Lee, C.J., *Martin v. Strachan*, (1743) 5 T. R. 107, 110 (note)), and he must prove either a title by estoppel or a right to actual possession. The right to possession must be proved to have existed on or before the date of the summons. If, therefore, any notice or demand be necessary to give the plaintiff a right as against the defendant to actual possession, it must be shown that it was served before the date of the summons.

If a landlord seeks to recover possession from a tenant pursuant to a right of re-entry or forfeiture under any proviso or stipulation in a lease for breach of covenant or condition, his right of action is materially affected by the Law of Property Act, 1925 (15 Geo. V. c. 20), ss. 146 & 147 (as modified by sect. 18 of the Landlord and Tenant Act, 1927 (17 & 18 Geo. V. c. 36)). The Act does not apply to cases of non-payment of rent, nor in certain cases, to forfeiture on bankruptcy, or on the taking in execution of the lessee's interest: in all other cases (excepting under certain conditions in mining leases) the lessor must, before commencing his action of ejectment, serve notice on the lessee specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach. As to what is sufficient notice of breach of covenant to repair, see *Fox v. Jolly*, (1916) A. C. 1. If the lessee fails within a reasonable time after notice to remedy the breach, and to make reasonable compensation in money to the satisfaction of the lessor for the breach, the lessor is then at liberty to bring his action. The court may relieve against the forfeiture whilst the action is pending (*Quilter v. Mapleson*, (C. A.). (1882) 9 Q. B. D. 672, 678; 52 L. J. Q. B. 44, for terms imposed); but not after judgment and execution completed by re-entry (*Rogers v. Rice* (C. A.), (1892) 2 Ch. 170; 61 L. J. Ch. 573).

"Lease," for the purposes of sect. 146 of the Law of Property Act, 1925, includes an original or derivative underlease; also an agreement for a lease where the lessee has become entitled to have his lease granted; also a grant at a fee farm rent, or serving a rent by condition.

The landlord may treat a sub-tenant let in by the original tenant as a tre-passer if there is a covenant not to sub-let. By taking proceedings under s. 59 against the sub-tenant he sufficiently manifests his intention to forfeit the tenancy (*Commissioners of Works v. Hull*, (1922) 91 L. J. K. B. 308).

Hearing.]—The action of ejectment is tried in the same way as ordinary actions. Either party may require a jury, unless it is made to appear to the court that the action is more fit to be tried without a jury (Administration of Justice Act, 1925, s. 19, *post*, p. 119 (Order XXII. r. 3)).

Where any defendant appears, and the plaintiff does not, the case will be struck out, and the defendant appearing will have judgment for his costs (Order XXII. r. 6; Form 149). If the plaintiff appears, and no defendant appears, the plaintiff, on proof of service of the summons and of his title, will be entitled to judgment for the recovery of possession.

Where the title of the plaintiff appears to have existed as alleged in the summons, at the time of the entry of the plaint, but to have expired before the return-day, the plaintiff will be entitled to judgment according to the fact that he was so entitled, and for his costs of the action, unless the judge otherwise orders (Order XXIII. r. 16; Form 260).

Execution.]—Where judgment is given for the plaintiff, execution may issue upon a day to be named in the judgment; and if no day be named, then it may issue after the expiration of fourteen clear days from the day on which judgment shall have been given (Order XXV. r. 65; Forms 264, 265). The judgment is enforced by warrant of possession.

; For the purpose of executing a warrant to give possession of any premises it is not necessary to remove any goods or chattels from those premises. See sect. 21 of County Courts Act, 1919.

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If costs have also been awarded to the plaintiff, there may be either one warrant or separate warrants of execution for the recovery of possession, and for the costs, at the election of the plaintiff (Order XXV. r. 66).

Where judgment is for the defendants or any of them, with costs, execution may issue for the costs upon a day named in the judgment; and if no day be named, then after the expiration of fourteen clear days from the day on which judgment was given (Order XXV. r. 67).

Death of Parties.]—The ordinary practice, in case of death before judgment applies. See Order XVII. r. 1, and the notes thereto. For forms of orders to continue proceedings in case of death before judgment, see Forms 268, 269, 272; and for forms of judgment, Forms 270, 271. The practice in cases of death after judgment is governed by Order XXV. r. 14 (see Form 265).

Costs.]—Unless the judge otherwise orders, costs will be taxed under Column B. (Order LIII. r. 11).

Appeal.]—An appeal lies to the High Court in all actions of ejectment in the same manner and subject to the same provisions as described under sect. 120. The appeal lies as of right, irrespective of the value or rental of the premises sought to be recovered (*Millett v. Ballard* (C. A.), (1904) 2 K. B. 593; 73 L. J. K. B. 989, overruling *Earl Shrewsbury v. Garfield*, (1891) 60 L. J. Q. B. 765).

60. A judge shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect thereof, shall exceed the sum of *one hundred* (a) pounds by the year, or in case of an easement or licence, where neither the value nor reserved rent of the lands, tenements, or hereditaments in respect of which the easement or licence is claimed, or on, through, over, or under which such easement or licence is claimed, shall exceed the sum of *one hundred* (a) pounds by the year.

Title where
neither
value nor
rent exceeds
100l.
30 & 31 Vict.
c. 142, s. 12.

NOTE.—(a) Jurisdiction increased from 50l. (see sect 3 of County Courts Act, 1903).

Provisions of County Courts Act.]—The Acts of 1888 and 1903 extend the jurisdiction in actions in which title is in question; but, except as provided by the Act of 1888, county courts have no jurisdiction in actions in which “the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise,” is in question (see *ante*, s. 56). The Act, however, provides that, by consent of the parties, any action assigned to the King’s Bench Division of the High Court may be brought in a county court (see *post*, s. 64); and that when “the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise,” *incidentally* comes in question in any action, the judge shall have power to decide the claim, if both parties consent in writing at the trial (see *post*, s. 61); this consent is apparently necessary even where the action has been remitted from the High Court (*Toon v. Stanbury Eardley*, (1906) 22 Times L. R. 536). It is also provided by sect. 60, as amended by sect. 3 of the Act of 1903, that county courts shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question, where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect thereof, shall exceed the sum of 100l. by the year, or in case of an easement or licence, where neither the value nor reserved rent of the lands, tenements, or hereditaments, in respect of which the easement or licence is claimed, or on, through, over or under

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which such easement or licence is claimed, shall exceed the sum of 100*l.* by the year. It thus follows that, except by consent of the parties, the courts have still no jurisdiction in an action in which the title to any toll, fair, market, or franchise comes in question (*R. v. Halifax C. C.* (C. A.), (1891) 2 Q. B. 263 ; 60 L. J. Q. B. 550).

Where county courts have exclusive jurisdiction over any particular matter, or where they have a distinct and unlimited jurisdiction in a kind of action not comprised in sect. 56, above mentioned, the jurisdiction is available without regard to the fact of title being in question (*R. v. Harden*, (1852) 2 E. & B. 188 ; 22 L. J. Q. B. 299 ; 95 R. R. 495 ; *Hertford Union v. Kimpton*, (1855) 11 Ex. 295 ; *Fordham v. Akers*, (1864) 33 L. J. Q. B. 67)—*e.g.*, in replevin.

When the Question Arises.]—Where county courts have not thus complete jurisdiction irrespective of any question of title, two questions have to be decided to ascertain whether the court has jurisdiction or not—first, is title in question ? second, does the yearly rent or value exceed 100*l.* ? The same questions have to be decided if the action be one for injury to the reversion (*Howarth v. Sutcliffe* (C. A.), (1895) 2 Q. B. 358 ; 64 L. J. Q. B. 729). At whatever stage of the suit these two questions can be answered in the affirmative, the jurisdiction of the court ceases. The duty of the judge is then to strike out the cause, unless the defendant expressly consents to the jurisdiction, or unless the defect in the jurisdiction be cured, if it can be so cured, by acquiescence and waiver. The remedy by prohibition is at all times open to the defendant.

Where the particulars so far disclose the nature of the action, a prohibition may be granted before the hearing (*Sewell v. Jones*, (1850) 1 L. M. & P. 525 ; 19 L. J. Q. B. 372 ; 90 R. R. 946) (see *Symons v. Rees*, (1875) 1 Ex. D. 416). At the trial the judge must of necessity inquire into and determine both points for the time, as on them depends the question whether or not he hears the case on the merits (see *per* Patteson, J., *Thompson v. Ingham*, (1850) 14 Q. B. 710 ; 19 L. J. Q. B. 189 ; 80 R. R. 376). His erroneous decision against the defendant may be reviewed by prohibition, or against the plaintiff, by striking out the cause, by order in the nature of a mandamus. The decision of a judge upon a question of fact going to jurisdiction will not be reviewed in the High Court, at any rate except upon very strong grounds (*Brown v. Cocking*, (1867) L. R. 3 Q. B. 672 ; 37 L. J. Q. B. 250 ; *Elston v. Rose*, (1868) L. R. 4 Q. B. 4 ; 38 L. J. Q. B. 6). And where the question of fact upon which the jurisdiction depends is the very question at issue in the cause, the reluctance to interfere will be still stronger (*Joseph v. Henry*, (1850) 19 L. J. Q. B. 369 ; *Milner v. Rhoden*, (1851) 15 Jur. 1037).

When Title is in Question.]—To raise a question of title which will oust the jurisdiction, there must be something more than a mere suggestion or assertion of right ; the facts or the evidence must show that title is *bonâ fide* in dispute (*Howarth v. Sutcliffe*, (1895) 2 Q. B. 358 ; 64 L. J. Q. B. 729 ; *Lilley v. Harvey*, (1848) 5 D. & L. 648 ; 17 L. J. Q. B. 357 ; *Mountney v. Collier*, (1852) 1 E. & B. 630 ; 22 L. J. Q. B. 124 ; 93 R. R. 317 *Emery v. Barnett*, (1858) 4 C. B. N. S. 423 ; 27 L. J. C. P. 216 ; 114 R. R. 793 ; *Wickham v. Lee*, (1848) 12 Q. B. 521 ; 18 L. J. Q. B. 21 ; 76 R. R. 334). Still, if there is a real dispute, the jurisdiction ceases, even if the judge is satisfied that the evidence supporting the claim is insufficient or not entirely *bonâ fide* (*Marsh v. Dewes*, (1853) 17 Jur. 558 ; 95 R. R. 956) ; but where plaintiff proved possession for fourteen years, which defendant did not dispute, title is not in question (*Hawkins v. Rutter*, (1892) 1 Q. B. 668 ; 61 L. J. Q. B. 146). The claim or right set up must be one which, if proved, would be valid in point of law (*Hargreaves v. Diddams*, (1875) L. R. 10 Q. B. 582 ; 44 L. J. M. C. 178 ; *Reece v. Miller*, (1882) 8 Q. B. D. 626 ; 51 L. J. M. C. 64 ; *Lloyd v. Jones*, (1848) 6 C. B. 81 ; 17 L. J. C. P. 206 ; 77 R. R. 278).

In *Lilley v. Harvey*, *supra*, the claim was for rent, and the defendant said he was the owner of the premises, but he produced *no evidence whatever* to

establish the fact; and the claim was a mere pretence to avoid the jurisdiction. See also *Marsh v. Dewes* (*supra*).

The court has jurisdiction in an action to recover arrears of rent-charge, though the value of the land out of which the rent-charge issues exceeds 100*l.* per annum, as the title to land is not in dispute, but only the title to the rent-charge (*Bassano v. Bradley*, (1896) 1 Q. B. 645; 65 L. J. Q. B. 479).

In trespass for breaking the doors of rooms of a cottage, the point *bonâ fide* in dispute was whether the plaintiff had let the whole house to the defendant, or had reserved the rooms; title was held to be in question (*Chew v. Holroyd*, (1852) 8 Ex. 249; 22 L. J. Ex. 95; 91 R. R. 473). If a tenant, sued for use and occupation, relies on the fact that his landlord's title expired during his tenancy, evidence of it will cause title to be in question (*Mountney v. Collier*, (1852) 1 E. & B. 630; 22 L. J. Q. B. 124; 93 R. R. 317).

Leaseholds are hereditaments within the meaning of these provisions (*Chew v. Holroyd*, (1852) 8 Ex. 249; *Tomkins v. Jones* (C. A.), (1889) 22 Q. B. D. 599; 58 L. J. Q. B. 222).

Paving or other rates levied under the authority of an Act of Parliament are not hereditaments (*Baddeley v. Denton*, (1849) 4 Ex. 508; 19 L. J. Ex. 44; *Gwynne v. Knight*, (1847) 1 Ex. 802; 17 L. J. Ex. 168). So where paving rates were sued for, and the right to levy, and the liability to pay, were both disputed (*Baddeley v. Denton*, *supra*); and where a tenant paid rates towards building a church, and then, pursuant to the Act, sued his landlord for a moiety, and he objected that the Act did not apply (*Gwynne v. Knight*, *supra*), title was held not to be in question. If, however, the dispute as to liability turns on the question whether the defendant is owner of the land in respect of which the rate is claimed, title will be in question (*R. v. Harden*, (1852) 2 E. & B. 188; 22 L. J. Q. B. 299; 95 R. R. 495). A custom is not a hereditament, and the mere fact that a custom is set up and disputed, will not raise a question of title (*Lloyd v. Jones*, (1848) 6 C. B. 81; 17 L. J. C. P. 206; 77 R. R. 278; *Davis v. Walton*, (1852) 8 Ex. 153; 22 L. J. Ex. 25; 91 R. R. 405); as where the dispute was whether by custom the occupiers of a wharf had a right to overlap an adjoining wharf with their vessels when loading (*Davis v. Walton*, *supra*); and as where the defendant set up a custom for the inhabitants of B. to enter the plaintiff's land for the purpose of fishing there (*Lloyd v. Jones*, *supra*).

An office held for life is a hereditament; and where the parish clerk of a chapelry sought to recover a customary sum of 4*d.* from a householder, and his title to the office was disputed, title was held to be in question (*Stephenson v. Raine*, (1853) 2 E. & B. 744; 23 L. J. Q. B. 62; 95 R. R. 775).

Yearly Rent or Value.—Where A. was tenant of premises, which included a wall, at a rent of 56*l.* per annum, and B. denied A.'s title to the wall, it was held in an action by A. against B. for trespass to the wall, that title to the wall only was in question, and that its annual value was under 20*l.* (*Stolworthy v. Powell*, (1886) 55 L. J. Q. B. 228; 54 L. T. 795). The cases hereafter referred to afford an indication of the manner in which the rent or value will be estimated, and show that the decision of the judge upon the facts as to the rent or value cannot be reviewed by prohibition, but that when based upon an erroneous conception of the law, it may be so (*Brown v. Cocking*, (1868) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250; *Elston v. Rose*, (1868) L. R. 4 Q. B. 4; *Crowley v. Vitty*, (1852) 7 Ex. 319; 21 L. J. Ex. 135; 86 R. R. 664).

Toll, Fair, Market, or Franchise.—It has been already stated that Toll, fair, the county courts have not, except by consent of the parties, jurisdiction over any action in which the title to any toll, fair, market, or franchise comes in question.

In such cases, therefore, the question of yearly rent or value would be

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immaterial, and the jurisdiction would be ousted on showing that such title was in question. A railway company were entitled to charge toll on carriages passing on their line. A coal-owner requested them to carry some trucks of coal; the company refused, without pre-payment. The coal-owner sued the company for refusing to carry the coals. On the trial, the plaintiff contended that the company were not entitled to claim the toll in advance, and that coal-trucks were not carriages within the Act: held, that title to take toll was not in question, and that the judge had jurisdiction to determine whether the company were justified in making the particular charge, and whether a coal-truck fell under a denomination in respect of which toll was payable (*Hunt v. G. N. Rail. Co.*, (1851) 10 C. B. 900; 20 L. J. Q. B. 349; 84 R. R. 840). When the existence or right to the toll is disputed, it is otherwise. The Ramsgate Harbour Act imposed certain rates on vessels passing the harbour. A vessel passed the harbour on her outward and homeward voyage, and a claim for two payments was made and paid under protest: held, in an action to recover back the last payment, that the rates were tolls, and that title to a toll was in question (*Adey v. Trinity House*, (1853) 22 L. J. Q. B. 3; S. C. *nom. R. v. Everett*, 1 E. & B. 273; 22 L. J. Q. B. 3; 93 R. R. 133).

In an action for infringement of patent, in which the validity of the patent was in question, it was held that title to a "franchise" was in question (*R. v. Halifax C. C.*, (1891) 2 Q. B. 263; 60 L. J. Q. B. 550). A registered trade mark is not a "franchise," but there is no jurisdiction to try an action for its infringement, for such an action is not a personal action within sect. 56 of the County Courts Act, 1888 (*Bow v. Hart* (C. A.), (1905) 1 K. B. 592; 74 L. J. K. B. 341).

Practice.

Practice.—When actions under the jurisdiction under consideration are brought in county courts, whatever the amount of damages claimed may be, the plaintiff must, at the time of entry of the plaint, file a concise statement in writing (see Form 279) of his cause of action, and of the particulars thereof, together with as many copies as there are defendants, and one for the judge. A copy of the statement, sealed with the seal of the court, must be annexed to the summons, and the statement will be deemed part of the summons (Order VI. r. 4; Order II. r. 8).

Particulars of demand.

Injunction.

Though no action for an injunction *simpliciter* can be brought (see *ante*, p. 34), an injunction may be obtained as ancillary relief against the repetition or continuance of a wrongful act in any action which is within the county court jurisdiction. The application may be made, (a) before the trial or hearing, when it must be made under Order XII. r. 6; (b) at or immediately after the trial or hearing, when the order (if any) must be included in the judgment; or (c) subsequently to judgment, when it is made under Order XII. r. 11, on notice supported by affidavit (Order XXII. r. 16). This subject is dealt with more fully in the notes to Order XXII. r. 16.

The judge may order the costs to be taxed under columns A, B, or C in the scales; if he makes no order they will be taxed under column B (see Order LIII. r. 11).

Jury.

Either party may require a jury, and, unless either party satisfies the court it can be more conveniently tried without, the action will then be tried in the same manner as other actions tried by jury (Order XXII. r. 3). Administration of Justice Act, 1925 (15 & 16 Geo. V. c. 28, s. 19), *post*, p. 119.

Judgment.

When the parties at the trial give jurisdiction to the judge to decide questions of title incidentally arising, the judgment will not be evidence of title between the parties or their privies in any other action.

Appeal.—An appeal is allowed in these cases, and the appeal lies in all cases as of right, irrespective of the amount claimed (see *post*, sect. 120). The consent to allow the judge to decide upon a question of title incidentally arising does not prejudice the right of appeal (see *post*, sect. 61); but the parties may expressly renounce the right of appeal (see *post*, sect. 123).

Costs.—Prior to 1867 the judge had no power to give costs where a case was struck out for want of jurisdiction (*Lawford v. Partridge*, (1857)

26 L. J. Ex. 147; 1 H. & N. 621; 108 R. R. 749); now he may award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction, and the plaintiff had not appeared, or had appeared and failed to prove his demand (see *post*, sect. 114); he may award them even against a defendant (*Watson v. Petts* (No. 2), (1899) 1 Q. B. 430; 68 L. J. Q. B. 249). Still further, since April 1st, 1920, when an action is brought in the wrong county court, the judge may either transfer such action to the court where it should have been entered, or try it himself. See County Courts Acts, 1919, s. 10 (1), *post*, p. 243.

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61. In any action in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise, shall incidentally come in question, the judge shall have power to decide the claim which it is the immediate object of the action to enforce, if both parties at the hearing shall consent in any writing signed by them or their solicitors to the judge having such power; but the judgment of the court shall not be evidence of title between the parties or their privies in any other action or matter in that court, or in any other court; and such consent shall not prejudice or affect any right of appeal of either of the parties to such first-mentioned action.

Jurisdiction by consent in cases of title.

19 & 20 Vict. c. 108, s. 25.

It would appear that, where the action has been remitted from the High Court, the county court judge has no jurisdiction to entertain it in the absence of the written consent of the parties or their solicitors (*Toon v. Stanbury Eardley*, (1906) 22 Times L. R. 536).

62. If in any action of contract the plaintiff shall claim a sum exceeding twenty pounds, or, if in any action of tort the plaintiff shall claim a sum exceeding *ten* pounds, and the defendant shall give notice that he objects to the action being tried in the court, and shall give security, to be approved of by the registrar, for the amount claimed and the costs of trial in the High Court, not exceeding in the whole the sum of one hundred and fifty pounds, and the judge (a) shall certify that in his opinion some important question of law or fact is likely to arise, all proceedings in the court in any such action shall be stayed; but if in any such action the defendant do not object to the same being tried by the court, or shall fail to give the security aforesaid, the court shall dispose of the action in the usual way; and the entry of the plaint in such action shall be a sufficient commencement of the action to prevent the operation of any statute of limitations applicable to the claim; provided that nothing herein contained shall prevent the removal of any action from the court by writ of certiorari in the cases and subject to the conditions in this Act provided.

Cases where defendant may object to action being tried in the court

19 & 20 Vict. c. 108, s. 35.

NOTE.—(a) This is the judge of the county court.

In these cases the county courts have jurisdiction, unless the defendant determines it by objection in the proper manner.

The section does not apply to cases under the Employers' Liability Act (*R. v. Judge of City of London Court*, 14 Q. B. D. 905; 54 L. J. Q. B. 330).

Objection by Defendant to Jurisdiction:—Where a defendant intends

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to avail himself of the above power, he must give notice in writing (see Form 79) of such intention to the registrar and to the plaintiff five clear days (but ten clear days in actions brought under the Act of 1903) at least before the return-day of the summons, and name therein the parties whom he proposes to be his sureties, or state his willingness to deposit money in lieu of giving security, otherwise he will not be entitled to object to a trial in the county court (see Order X. r. 6; Order XXIIA. r. 12; Form 82).

After giving the notice the defendant must apply *ex parte* (see Order XII. r. 11) to the judge on affidavit (see Form 80) for his certificate to the effect above mentioned, and if granted, notice must be sent to the plaintiff by the registrar by post or otherwise (see Form 81). The affidavit must specify the important questions of law or fact likely to arise; and as regards questions of law must also specify the facts which are relied on as likely to raise them. If after the grant of the certificate the defendant fails to give security, or to make the deposit, before the return-day, he will not be entitled to object to the action being tried in the county court (see Order X. r. 6; Order XXIIA. r. 12).

When these things have been done the plaintiff must begin *de novo* by issuing a writ in the High Court, the pleadings in the action being the same as in ordinary actions (see *Flitters v. Alfrey*, (1874) L. R. 10 C. P. 29; 44 L. J. C. P. 10, n.). No provision limits the time in which the action is to be brought. Where money has been deposited, and no action brought, say, for three months, it is conceived that the defendant ought to be entitled to a return of the money. To obtain this result he should apply *ex parte* or on notice under Order XII. r. 11.

Where a new trial was granted by a county court judge on the application of the defendant, it was held that he could not afterwards object to the new trial being had in the county court (see *Campbell v. Fairlie*, (1880) 49 L. J. Q. B. 445); and it would appear from the case just cited that the rule is the same whether the new trial be granted by the county court judge or by the High Court, and whether on the application of plaintiff or defendant. Nor can the defendant object, under these provisions, in cases where the county courts have exclusive original jurisdiction—*e.g.*, under the Employers Liability Act (*R. v. City of London Court* (1) (C. A.), (1885) 14 Q. B. D. 905; 54 L. J. Q. B. 330).

The above provisions as to objecting to the jurisdiction differ from prohibition. It is only by means of the notice and security given by the defendant and the certificate of the judge that the cause, if within the ordinary jurisdiction, becomes one over which it has no jurisdiction. Prohibition would only lie if, after such notice, certificate, and security, the court entertained the cause.

It seems clear that the county court judge making an order under sect. 62 has no power to give the plaintiff costs of the proceedings properly instituted by him in the county court; and as upon an order being made the county court proceedings are *ipso facto* at an end and a new action has to be brought in the High Court, it seems equally clear that the High Court has no power over the costs in the county court action. There seems to be no remedy but legislation for this unsatisfactory state of affairs.

Objection by Justices.]—If an action be brought in a county court against a justice of the peace (by virtue of the general jurisdiction as to personal actions) for anything done by him in the execution of his office, he may, within six days after service of the summons, himself, or by his solicitor or agent, give notice in writing to the plaintiff that he objects to being sued in the county court for such cause of action. All subsequent proceedings in the county court will then be null and void (see 11 & 12 Vict. c. 44, s. 10). After giving notice of objection, the justice is not entitled to remove the plaint by *certiorari* into the High Court (*Weston v. Sneyd*, (1857) 1 H. & N. 703; 26 L. J. Ex. 161; 108 R. R. 787). The above provisions appear to be general, and to apply to all actions against justices for any-

thing done by them as justices. See *McVittie v. Marsden*, (1917) 86 L. J. K. B. 653.

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Default Summons.—Where a defendant has been served with a default summons or special default summons he may object under this section.

63. No action shall be brought in the court on any judgment of the High Court. No action on judgment.

But committals may be obtained on High Court judgments. No action may be commenced in the High Court upon an order of the county court for payment of costs (*Furber v. Taylor* (C. A.), (1900) 2 Q. B. 719; 69 L. J. Q. B. 898). 19 & 20 Vict. c. 108, s. 27.

A county court judgment is a bar to an action on the original consideration in the High Court or any other court (*Austin v. Mills*, (1854) 9 Ex. 288; 23 L. J. Ex. 40; 96 R. R. 717; *Berkeley v. Elderkin*, (1853) 1 E. & B. 805; 22 L. J. Q. B. 281; 93 R. R. 405; *Cheetham v. Hollingworth*, (1914) W. N. 25). *Contra*, when the county court is exercising its bankruptcy jurisdiction (*Savill v. Dalton*, (1915) 3 K. B. 174; 84 L. J. K. B. 1583).

64. With respect to all actions assigned to the Queen's Bench Division of the High Court, if both parties shall agree by a memorandum signed by them or their respective solicitors that the judge of any court named in such memorandum shall have power to try such action, such judge shall have jurisdiction to try the same therein. Jurisdiction by agreement. 19 & 20 Vict. c. 108, s. 23.

Extension of Jurisdiction by Agreement.—This provision is confined to actions assigned to the King's Bench Division, and will not be available to give jurisdiction in cases of partnership or Chancery cases.

The proceedings are by plaint and summons, and are in all respects the same as in ordinary cases (Order V. r. 2; Form 13). Where consent is given costs are to be allowed, according to the higher scale (column C), unless the judge otherwise orders (Order LIII. r. 14). Plaint. Costs.

By sect. 114, *post*, p. 135, whenever an action or matter was commenced which the court has no jurisdiction to try, the judge was compelled to order it to be struck out *unless the parties consented to the jurisdiction*. The consent was not required to be in writing, and the court before granting prohibition in such a case would doubtless inquire whether from the statements and conduct of the parties consent must be inferred (see *per* Watson, B., in *Lawford v. Partridge*, (1857) 26 L. J. Ex 148). See now sect. 10 of County Courts Act, 1919, as to cases commenced in the wrong county court.

Where an action has been commenced in the High Court, and the parties agree under this section to try it in the county court, the action must be recommenced in the county court (*Pearce v. Winkworth*, (1873) 28 L. T. 710).

65.—Repealed by the County Courts Act, 1919, which provides as follows:—

1. [County Courts Act, 1919.] The following section shall be substituted for section sixty-five of the County Courts Act, 1888 (hereinafter referred to as "the principal Act"):

"In any action commenced in the High Court where—

"(1) the plaintiff's claim is founded either on contract or on tort and the amount claimed or remaining in dispute in respect thereof does not exceed one hundred pounds, whether the action could or could not have been com-

Transfer of actions of contract, of tort, and for recovery of land from High Court to county court.

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menced in a county court, and whether the defendant does or does not set up or intend to rely on a counterclaim, and whether the counterclaim (if any) is founded on contract or on tort, and whether the amount claimed on the counterclaim exceeds or does not exceed one hundred pounds ; or

“(2) the only matter remaining to be tried between the parties is a counterclaim, whether founded on contract or on tort, and whether the counterclaim if it had been an action could or could not have been commenced in a county court, and the amount claimed or remaining in dispute in respect of the counterclaim does not exceed one hundred pounds ; or

“(3) the plaintiff’s claim is for recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant or any person holding or claiming by, through, or under a tenant, whose term has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent, and the action could have been commenced in a county court ;

either party may at any time apply to the court or a judge for an order that the claim and counterclaim (if any) or, if the only matter remaining to be tried is a counterclaim, the counterclaim, shall be transferred—

“(a) to any county court in which the action might have been commenced if the subject matter and the amount thereof had been within the jurisdiction of the court ; or

“(b) if the only matter remaining to be tried is a counterclaim, to any county court in which the counterclaim might have been commenced if it had been an action and the subject matter thereof had been within the jurisdiction of the court ; or

“(c) to any county court which the court or judge may deem the most convenient to the parties ;

and the court or a judge may thereupon, if the court or judge thinks fit, order the same to be so transferred accordingly.”

Court in which the Action might have been commenced.—*I.e.*, if the court had had jurisdiction (*Curtis v. Stovin* (C. A.), (1889) 22 Q. B. D. 513 ; 58 L. J. Q. B. 174).

Effect of Section.—This section (sect. 1) of the County Courts Act, 1919, replaces sect. 65 of the principal Act.

It effects a considerable enlargement of the jurisdiction of the courts.

The following points of difference should be noted :—

1. All actions of contract or tort involving not more than 100*l.* may be remitted, so actions of libel, slander, breach of promise of marriage or seduction, or other actions of tort, may be remitted, and there is no necessity to show (as under sect. 66) that the plaintiff has no visible means of paying

costs. So may an action by a borrower against a moneylender (*White v. Smith*, (1927) 96 L. J. K. B. 397).

2 The action may still be remitted though the defendant sets up, or intends to set up a counterclaim either in contract or tort—and even though the counterclaim exceeds 100*l*.

3. Where all that remains to be tried is a counterclaim involving not more than 100*l*., it may be remitted, whether it is founded on contract or tort, and although, if it had been an action, it could not have been commenced in a county court.

4. Sub-sect. (3) of sect. 1 of the Act apparently gives power to remit any such action as could have been brought in a county court under sect. 138 or sect. 139 of the principal Act for the recovery of premises by landlords if it has in fact been brought in the High Court.

5. Either party may apply to the High Court or a judge thereof to remit such an action or counterclaim.

6. It may be remitted either (a) to any county court in which it might have been commenced if the subject-matter and amount had been within the jurisdiction of such court; (b) if only a counterclaim is to be remitted, to any county court in which, had the counterclaim been an action, it might have been commenced, and the subject-matter had been within the jurisdiction of such county court; (c) to any county court deemed most convenient by the judge or master.

The question whether the action or counterclaim shall be remitted or not is entirely in the discretion of the High Court or judge thereof.

Where the registrar of the county court to which any action is transferred, or his partner or clerk, has acted as solicitor for any party to such action, the county court judge may order that the action be transferred to some other court under sect. 85 of the Act (Order XXXIII. r. 19).

Summons and Order.—The application will be by summons, and the order may be made by a master or district registrar (see R. S. C., Order LIV. r. 12. For order, see R. S. C., Form K, 44); and will be subject to review by the High Court (see note “Order to remit,” *post*, p. 56). Where there is an honest intention to apply for judgment under Order XIV., the application to remit should be adjourned until the other application has been disposed of (*Smith v. Hurley*, (1884) W. N. 99).

The order may be refused if a difficult question of law is expected to arise on the trial (*Ginner v. King*, (1886) 34 S. J. 294).

Amendment of Particulars.—The county court judge has jurisdiction, in a remitted action of contract, to amend the particulars by adding a claim in tort (*Spring v. Fernandez*, (1912) 1 K. B. 294; 81 L. J. K. B. 201).

“Amount claimed or remaining in dispute.”—The words of sect. 65 of the principal Act were, “or where such claim, though it originally exceeded 100*l*. is reduced by payment, an admitted set-off, or otherwise to a sum not exceeding 100*l*.” The words of the present section are, “the amount claimed or remaining in dispute in respect thereof does not exceed 100*l*.” These words, it is believed, are wider than those used in the repealed section. Under the wording of that section it was held that the order could not be made unless the payment relied on to reduce the claim was made before action (*Hodgson v. Bell*, (1890) 24 Q. B. D. 525; 59 L. J. Q. B. 231), also that where the claim originally exceeded 100*l*., and a sum was recovered in the High Court under Order XIV., which reduced the amount to less than 100*l*., the order could not be made. (*John Charles and Son v. Corry* (1919), 63 S. J. 212.) It is believed that neither of these circumstances would now of itself prevent an order being made. If, however, the claim of the plaintiff is for damages without stating an amount, there must be evidence, before an order can be made, that the plaintiff’s claim does not exceed 100*l*. (*Roberts v. King*, (1921) 37 T. L. R. 170). Where the claim includes an alternative claim for an injunction, the action may be remitted (*Davey v. Robinson*, (1923) 1 K. B. 563).

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Counterclaim.]—The words of the section are to be taken according to their ordinary grammatical construction; a judge at chambers has jurisdiction to order an action of contract in which the claim indorsed on the writ does not exceed 100*l.* to be tried in the county court, although a counterclaim for unliquidated damages, even to the extent of 1,000*l.*, be set up. The jurisdiction, however, ought not to be exercised if it be thought that a counterclaim of any such magnitude is likely to prove substantial (*Guilford v. Lambeth* (C.A.), (1895) 1 Q. B. 92; 64 L. J. Q. B. 95).

Counterclaim only may be Remitted.]—Under the former section the order could not be made if the plaintiff had discontinued the action, though the defendant had counterclaimed (*R. v. City of London Court*, (1891) 2 Q. B. 71; 60 L. J. Q. B. 575). The present section expressly provides (clause 2) that where only the counterclaim remains to be tried it may be remitted if not more than 100*l.* remains in dispute, and this whether the counterclaim, if it had been an action, could or could not have been commenced in a county court.

Amount of Claim.]—The order cannot be made if 100*l.* and interest be claimed (*Insley v. Jones*, (1879) 4 Ex. D. 16; 48 L. J. Ex. 222); nor under this section if the claim be for unliquidated damages (*Knight v. Abbott*, (1883) 10 Q. B. D. 11; 52 L. J. Q. B. 131; *Bassett v. Tong*, (1894) 2 Q. B. 332; 63 L. J. Q. B. 653); but see now Order XXXIII. r. 3b, and *Roberts v. King* (*supra*). But it may be made where, although the writ was originally indorsed for more than 100*l.*, it has been amended by leave and the claim reduced to 24*l.* (*Sneade v. Wotherton Barytes Co.*, (1904) 1 K. B. 295; 73 L. J. K. B. 170). There is no power, on refusing an order, to impose a term that if only a certain sum be recovered, the plaintiff shall be entitled to county court costs, unless the judge at the trial otherwise orders (*Insley v. Jones*, *supra*).

In any Court convenient thereto.]—These words mean in any county court which the judge at chambers may deem to be convenient to the parties.

Order.]—The county court judge has no right to inquire into what circumstances were taken into account when the order was made. His duty is to obey the order and try the action. If a county court judge is of opinion that an order of the High Court is invalid for want of jurisdiction, it is his duty to give a judgment on the point, giving his reasons fully for arriving at the conclusion that the order was made without jurisdiction. He should then adjourn the hearing to enable either party to raise the question of jurisdiction in the High Court. This is the course which must now be followed (*Rex v. Mellor*, (1914) 2 K. B. 588; 83 L. J. K. B. 996; *Blades v. Lawrence*, (1874) L. R. 9 Q. B. 374; 47 L. J. Q. B. 133). A mere irregularity in the order or the mode of obtaining it would no doubt be waived by appearance in the county court (see *Tomkins v. Beard*, (1868) 18 L. T. 363; 16 W. R. 729).

Proceedings after Order.]—These proceedings are regulated by sect. 4 of the County Courts Act, 1919, (*post*, p. 235) and the rules made thereunder (Order XXXIII. rr. 1—3, 3b). After the order is made, and documents lodged, the action, or counterclaim or matter, proceeds in the county court as though it had been commenced there. Any party may lodge or cause to be lodged with the registrar of the county court named in the order, the order itself and the writ or copies thereof, and such other documents as the court or judge may direct, and such party must obtain from the Supreme Court all documents filed in the High Court relating to the action, counterclaim or matter.

The duty is by the Act (sect. 4 (1)) imposed on the proper officer of the Supreme Court on the application of a party, and production of the order, and filing a copy thereof, to send all such documents by post to the registrar of the county court.

The county court, then, has full jurisdiction to deal with the same, any enactment to the contrary notwithstanding.

The party aforesaid must also lodge with the registrar a statement of the names and addresses of the parties to the action, counterclaim or matter and their solicitors (if any). If no statement of claim has been delivered he must also give—in triplicate—particulars of the claim, similar to those required in a county court action.

If a counterclaim alone is remitted for trial and particulars of the same have not been delivered in the High Court, similar particulars—in duplicate—must be given.

On these things being done the registrar enters the action, counterclaim, or matter, for trial. He must give the parties by post or otherwise ten clear days' notice of the day of trial and annex the particulars of the claim, or counterclaim, so lodged with him.

The registrar endorses on the order, or duplicate, the date on which it was lodged. Where a statement of defence or counterclaim has been delivered in the High Court, no notice of defence, set-off or counterclaim under Order X. is required as to any matter included in such defence or counterclaim. On being served with the notice of trial a defendant to the action or counterclaim shall proceed in all respects as though the action had been brought in the county court, and the notice had been an ordinary summons.

Where the amount claimed on the writ or by the counterclaim exceeds 50*l.*, or where damages are claimed, but the amount is not specified, the notice of trial must be given twenty clear days before the day appointed for the trial, instead of ten days as in other cases, and the extended times required by Order XXII*A.*, for cases within the extended jurisdiction must be observed.

If it appears that the plaintiff (or the defendant, where only a counterclaim is remitted) does not reside in England or Wales, security for costs must be given, unless the judge otherwise orders, before the action is entered for trial. The solicitor's undertaking, pursuant to Order V., r. 10, will be sufficient security.

NOTE.—The above directions as to the proceedings to be taken after the order to remit is obtained are the joint effect of sect. 4 of the Act of 1919 and Order XXXIII., rr. 1—3, 3*B.*

The transfer is not to affect any right of appeal in the High Court, or to the Court of Appeal from the order directing the transfer, or the right to enforce in the High Court any judgment signed or order made in that court before the transfer (sect. 4 (2)).

When any action or matter is remitted in which an infant is suing by next friend the plaintiff must lodge with the registrar the written authority for the use of the name of the next friend filed in the High Court or a copy thereof, and such authority shall be deemed an undertaking to pay costs. See Order V. r. 16 (3).

Transfer of Money paid into High Court.]—If money has been paid into the High Court before the action was remitted or transferred, the county court registrar must, on the request of any party to the action, apply to the accountant-general, or, if the money has been paid into a district registry, to the district registrar, to transmit it to him; and when transmitted the money will be subject to the order of the county court as though it had originally been paid into that court (Order XXXIII. r. 3*a*, Form 283*A*; and see R. S. C., Order XXII. r. 13, and Supreme Court Funds Rules, 1927, r. 46).

Proceedings in County Court.]—After the transfer, the action must proceed in the county court, as if it had been originally commenced there (Order XXXIII. r. 2); and no order, except on appeal, can be made in it by the High Court (*Harris v. Judge* (C. A.), (1892) 2 Q. B. 565; 61 L. J. Q. B. 577; *Duke v. Davis* (C. A.), (1893) 2 Q. B. 260; 62 L. J. Q. B. 549; *Buckley & Beade v. National Electric Theatres*, (1913) 2 K. B. 277; 82 L. J. K. B. 739). The action remains in the High Court until the writ and order are lodged with the registrar (*D'Errico v. Samuel*

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(C. A.), (1896) 1 Q. B. 163; 65 L. J. Q. B. 197). Unless defence has already been delivered, the defendant must, if he relies on any of the special defences of which notice is required, give notice in the ordinary way (Order XXXIII. r. 3). The judge at the trial may amend or add parties (*R. v. Clerkenwell C. C.*, (1890) 7 T. L. R. 40). In an action for demurrage at a specified rate he may even amend the particulars by substituting a claim for unliquidated damages (*Spencer, Whatley & Co. v. Forster & Co.*, (1905) 1 K. B. 434; 74 L. J. K. B. 288).

Times for Interlocutory Proceedings where Writ indorsed for Sum exceeding 50*l.* or for Damages where no Amount specified.—Where the amount claimed on the writ or by the counterclaim exceeds 50*l.*, or where damages are claimed but the amount of the claim is not specified, the notice of trial required by Order XXXIII. r. 1, must be given twenty clear days at least before the day appointed for the trial, and the provisions of Order XXIIA. rr. 6—11, 13, 14, and 16—19, as to the times within which proceedings are to be taken, apply. In the application of those rules the day appointed for the trial is to be deemed to be the return-day (Order XXXIII. r. 3b).

Order and Service where Defendant added or substituted.—Where a defendant is added or substituted in an action or matter remitted or transferred to a county court, except where a defendant is substituted under Order XIV. r. 4, an order must be drawn up; and such order, together with a copy of the writ or other proceeding, and of the pleadings, affidavits, and other documents filed in the High Court, and of the statement and particulars filed in the county court pursuant to Order XXXIII. r. 1, and a notice according to the form in the Appendix as to the day upon which he is to attend at the court must be served on the added or substituted defendant according to the rules applicable to the service of default summonses (Forms 94, 95), and the proceedings as against such party will be deemed to have begun only on the service of such notice (Order XXXIII. r. 3c).

Costs.—In actions which could not have been commenced in the county court, it is believed the costs will be allowed on the High Court scale until the order to remit to the county court is made, and afterwards on the appropriate county court scale, for after it is remitted the action becomes a county court action. See, further, Part II., "Costs and Court Fees," p. 1037.

Costs of Actions commenced in the High Court which could have been commenced in County Court.—These costs, in so far as they relate to the proceedings in the High Court, are regulated by sect. 11 of the County Courts Act, 1919 (as amended by sect. 20 of the Administration of Justice Act, 1925), which section is substituted for sect. 116 of the principal Act.

See notes to sect. 11. *post*, pp. 137 *et seq.*, and Part II., "Costs and Court Fees," p. 1037.

County Court Costs in Actions transferred from the High Court.—In remitted actions costs, in so far as they are not dealt with in the High Court, are in the discretion of the county court judge, both before and after the transfer, but this discretion is subject to the provisions of sect. 11 of the Act of 1919, as amended (County Courts Act, 1919, s. 12).

See sect. 11 and notes thereto, *post*, pp. 137—139, and Part II., "Costs and Court Fees," pp. 1037 *et seq.*

New Trial and Appeal.—See *post*, p. 58.

Remitting application in the High Court for attachment of a Debt under 100*l.* to a County Court.—By sect. 3 of the County Courts Act, 1919, the High Court or judge thereof may, when an application is made for the attachment of any debt to answer a judgment or order of the High Court, and the amount of the debt sought to be attached does not exceed 100*l.*, either (a) transfer the matter to a county court, or (b) direct that an issue necessary for determining the matter shall be tried in a county court.

Such court must be named in the order and is to be the court which the court or judge may deem most convenient (sect. 3 of Act of 1919, *post*, p. 234).

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The procedure is—like the procedure to remit actions or counterclaims—regulated by sect. 4 of the County Courts Act, 1919. See *post*, p. 235. Where an issue only is directed the procedure to be followed is set out in sub-sect. (2) of sect. 4 of the Act, and the County Court Rules made thereunder, which now stand as Order XXXIII. rr. 4a, 4b, 4c. Subject to any directions in the order to remit, the matter proceeds as if it were an ordinary action in the court and the procedure in Order XXVI. applies.

After the issue has been tried the judge of the county court must certify the result of the trial, and send his certificate to the High Court, with the documents, and any report he may think fit to make as to costs or otherwise (sect. 4 (2), Order XXXIII. rr. 4a, 4b, 4c).

Remitting application in the High Court for leave to issue Execution against a Person as being a Member of a Firm.]—By sect. 3 of the County Courts Act, 1919, *post*, p. 234, where an application is made to the High Court for leave to issue execution against a person as being a member of a firm against which a judgment or order has been obtained, the court or judge may, if the amount for which execution is sought to be levied does not exceed 100*l.*, either transfer the matter to a convenient county court, or direct that any issue necessary for determining the matter be tried in such county court.

The procedure for transfer is regulated by sect. 4 (1) of the Act, and Order XXXIII. rr. 1—3 of the County Court Rules. On the matter being transferred it becomes an ordinary county court matter, and Order XXV. r. 11 will apply.

If an issue only is directed by the High Court to be tried in a county court, the procedure is regulated by sect. 3 (2) of the County Courts Act, 1919, and Order XXXIII. rr. 4a, 4b, 4c.

Remitting Interpleader from High Court.]—See sect. 204 of Judicature Act, 1925, *post*, Part V., and notes to sect. 157, *post*, p. 210.

Transfer of Money recovered in High Court by Infants, etc.—See *post*, p. 74.

Transfer from Liverpool Court of Passage.] By sect. 257 of the Liverpool Corporation Act, 1921, a similar power is given to transfer to any court in which it might have been tried any action of contract brought in the Court of Passage where the claim indorsed on the writ is less than 10*l.*, or where the claim, though it originally exceeded 10*l.*, is reduced to a less sum than 10*l.* by payment, an admitted set-off, or otherwise. The jurisdiction is exerciseable by the presiding judge or registrar of the Court of Passage at chambers upon the application of the plaintiff in the action. The procedure is much the same as in the case of the transfer of actions from the High Court, and the transfer involves the same consequences (Liverpool Court of Passage Act, 1896, 59 & 60 Vict. c. 21, s. 4).

66. Repealed by the County Courts Act, 1919, which provides as follows :

2. [County Courts Act, 1919.] The following section shall be substituted for section sixty-six of the principal Act :—

“ In any action founded on tort commenced in the High Court the defendant may, on an affidavit made by himself or by any person on his behalf showing that the plaintiff has no visible means of paying the costs of the defendant should a verdict not be found for the plaintiff, apply to the court or a judge for an order to transfer the action to a county court ; and thereupon the court or

Transfer
of actions
of tort
where plain-
tiff is with-
out visible
means of
paying costs.

Section 66. judge, unless the plaintiff satisfies the court or judge that he has such means, may, if the court or judge having regard to all the circumstances of the case thinks fit so to do, make an order that unless the plaintiff within a time to be limited in the order gives security for the defendant's costs to the satisfaction of the court or a judge the action shall be transferred to such county court to be named in the order as the court or judge may deem the most convenient to the parties."

This section has been substituted by the County Courts Act, 1919, for sect. 66 of the principal Act. The differences between the present and the former section are not very material. Now the affidavit need not be made by defendant himself, but may be made "on his behalf." In the old section the plaintiff could keep the action in the High Court by satisfying the judge that he had "a cause of action fit to be prosecuted in the High Court." Now, unless he can give satisfactory security, the matter is entirely left to the discretion of the judge.

The former section dealt with the procedure to be adopted after the order to remit was made. This is now dealt with by sect. 4 of the Act of 1919, *post*, p. 235, which regulates the procedure on the transfer of any action or counter-claim or matter from the High Court to the county court.

Where plaintiff has been permitted to sue in the High Court as a poor person, the action may still be remitted to the county court under this section, but the order to remit cannot declare that the plaintiff shall be at liberty to sue in the county court as a poor person (*Perry v. London General Omnibus Co.*, (1916) 2 K. B. 335; 85 L. J. K. B. 1609).

In deciding whether the action is in tort or in contract, the substantial cause of action will be considered. If there are distinct claims in contract and in tort, it is doubtful whether any order can be made, unless the claim in contract be abandoned (*McDonnell v. Kavanagh*, (1887) 37 L. T. 444; *Ex parte Baum*, (1874) L. R. 9 Ch. 673; 44 L. J. Bk. 25). Where a counter-claim in tort is raised, the plaintiff cannot get it remitted under these provisions as an action of tort (*Delobel-Flipo v. Varty*, (1893) 1 Q. B. 663; 62 L. J. Q. B. 398).

Where a woman without means brought an action for a slander imputing want of chastity to her, the court held that it was fit to be tried in the High Court (*Critchley v. Brown*, (1885) 2 Times L. R. 238); but see wording of present section.

No order can be made on the ground that one plaintiff is abroad and the other insolvent (*Sykes v. Sykes*, (1869) L. R. 4 C. P. 645; 38 L. J. C. P. 281).

When Power to Remit arises.]—The jurisdiction to make the order arises on the filing of the affidavit made by the defendant or other person who can swear it as to want of visible means—*i.e.*, such proof as is apparent or can be ascertained by the defendant; and the question then is whether the plaintiff has any means of paying costs should the verdict be against him. This is a matter of evidence. The judge has a judicial discretion whether he will make an order (*Lea v. Parker* (C. A.), (1885) 13 Q. B. D. 835; 54 L. J. Q. B. 38; 33 W. R. 101). The order cannot be made without the affidavit (*R. v. Stonor* (2), (1883) 50 L. T. 97).

Order to Remit.]—The order may be made by a judge at chambers or by a master of the King's Bench Division, or by a district registrar (R. S. C., Order LIV. r. 12; Order XXXV. r. 6. For form of order, see R. S. C., Form K, 45). It is subject to appeal, and the transfer does not affect the right of appeal in the High Court, or to the Court of Appeal, or the right to enforce in the High Court any judgment signed or order made in that court before transfer (sect. 4 (1) of Act of 1919); but a strong case must be made to reverse the order (*Owens v. Woosman*, (1867) L. R. 3 Q. B. 469; 37 L. J.

Q. B. 159; *Palmer v. Roberts*, (1873) 29 L. T. 403; 22 W. R. 577, n.; *Jennings v. London Omnibus Co.* (1), (1874) 30 L. T. 266; *Coxwell v. London Omnibus Co.*, (1879) 27 W. R. 381). The affidavit must be produced on appeal (*Holmes v. Mountstephen*, (1875) L. R. 10 C. P. 474).

At what Time made.—No time is fixed by statute for making the application; but the ordinary practice is to apply before statement of defence and where the cause of action is known, before statement of claim.

To what Court remitted.—The Act does not specify the court of any particular district as the one to which the cause may be remitted; the judge's discretion is unfettered, though subject to review by the court (see *Owens v. Woosman*, *supra*); but the court to which the transfer is made must be named in the order (sect. 2 of Act of 1919).

If the registrar of the court to which the action is transferred, or his partner or clerk, has acted as solicitor in such action, the county court judge may order it to be transferred under sect. 85 of the Act to some other court (Order XXXIII. r. 19).

Proceedings after Order.—This is regulated by sect. 4 of the Act of 1919. After the making of the order the same proceedings must be taken, and the same consequences will ensue, as have already been described in regard to actions of contract (see notes, *ante*, p. 52, Order XXXIII. rr. 1, 2, 3 and 3b; Order II. r. 8. Particulars must be in accordance with Form 282; notice of trial with Form 283). Where an action brought by a limited company is remitted under sect. 66 on failure of the company to provide security for defendant's costs or to satisfy a judge of the High Court that they have a cause of action fit to be prosecuted in that Court, the county court judge may, if it appears that the company will, if unsuccessful, be unable to pay the defendant's costs, order the company to give security for costs under sect. 278 of the Companies (Consolidation) Act, 1908 (*Plasycod Collieries Co. v. Partridge*, (1911) 104 L. T. 807). When an action is brought by an infant through his next friend, and the next friend is in impecunious circumstances, it is not necessary to show that the infant also is impecunious (*Masling v. Motor Hiring Co., Ltd.*, (1919) 35 T. L. R. 515). It is sufficient if the affidavit shows that either the infant or the next friend has no visible means of paying the defendant's costs (*Id.*, on appeal, (1919) 2 K. B. 538; 89 L. J. K. B. 109).

Until the plaintiff has lodged the writ and order, the cause remains in the High Court, and a master has jurisdiction to extend the time for giving security for costs (*Welpley v. Buhl* (C. A.), (1878) 3 Q. B. D. 253; 47 L. J. Q. B. 151); or to make any interlocutory order (*D'Errico v. Samuel*, (1896) 1 Q. B. 163; 65 L. J. Q. B. 197). So an application to dismiss for want of prosecution should be made at chambers in the High Court; in default thereof the county court judge is bound to hear the case, although there may be delay in lodging the order (*R. v. Holroyd*, (1883) 32 W. R. 370, *sub nom. Driscoll v. King*, 49 L. T. 599).

Transfer of Money paid into High Court.—As to transfer of money paid into the High Court, see *ante*, note to sect. 65, p. 53.

For proceedings where infant suing by next friend is concerned, see Order V., r. 16.

Proceedings after Lodging Order.—When the transfer has been completed, the county court will have the same jurisdiction as if the action had been commenced there, and the action will be subject to the county court rules (*Moody v. Steward*, (1870) L. R. 6 Ex. 35; 40 L. J. Ex. 25; *Bowles v. Drake*, (1882) 8 Q. B. D. 325; 51 L. J. Q. B. 66; Order XXXIII. rr. 2, 3).

Notice of Special Defences.—Notice of special defences must be given in the prescribed manner, unless a defence has already been delivered in the High Court. If the action be one of libel or slander (over which the county court has no original jurisdiction), and the defendant relies as a defence upon the fact that the libel or slander complained of is true, he must state in his notice that it is true in substance (Order X. r. 16). If in libel or slander he does

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not rely on the truth of it, but relies, in mitigation of damages, on the circumstances under which the libel or slander was published, or the character of the plaintiff, he must in his notice give particulars of the matters as to which he intends to give evidence (Order X. r. 17). If he relies upon an apology, or payment into court and apology, under the Libel Act, 1843, ss. 1, 2, he must give notice in writing of his intention to rely on it (Forms 86, 87), signed by himself or his solicitor, to the registrar, five clear days at least before the day of trial (Order XXXIII. r. 4).

Where a common-law action of negligence is remitted the plaintiff may add in the county court an alternative claim under the Employers' Liability Act, 1880 (*Wood v. Weber*, (1908) 99 L. T. 195).

Payment into Court.—Money may be paid into court by way of damages with an apology, in actions for libel contained in any public newspaper or other periodical publication, by virtue of the Libel Act, 1843, s. 2, and when so paid in, the ordinary rules of practice as to payment into court will apply so far as they are applicable (Order IX. r. 14). So money can be paid into court in any action sent to a county court under the section under consideration (see *post*, sect. 107). The transmission to the county court of money paid into the High Court or a district registry before the action was transferred or remitted is provided for by Order XXXIII. r. 3a.

Trial.—Any variance between writ and statement of claim should be amended at the trial (*Johnson v. Palmer*, (1878) 4 C. P. D. 258; 27 W. R. 941). The judge may amend or add parties as in other cases (*R. v. Clerkenwell*, (1890) 7 T. L. R. 40. *Mulleneisen v. Coulson*, (1888) 20 Q. B. D. 667; 57 L. J. Q. B. 334; 36 W. R. 524, was decided on the particular words of the 30 & 31 Vict. c. 142, s. 10, and is no longer of any authority). He may in a proper case refuse to try, and stay proceedings (*R. v. Bayley*, (1881) 8 Q. B. D. 411; 51 L. J. Q. B. 244, *post*, note to Order XX. r. 1).

Costs.—See sects. 11 of County Courts Act, 1919, and notes thereto, *post*, pp. 136—139.

New Trial and Appeal.—After the order of transfer, the action becomes a county court action for all purposes, and is subject to the same provisions as to new trial and appeal as other actions (*Moody v. Steward*, (1870) L. R. 6 Ex. 35; 40 L. J. Ex. 25; *Jennings v. London Omnibus Co.* (2), (1874) 30 L. T. 640; *Bowles v. Drake* (C. A.), (1882) 8 Q. B. D. 325; 51 L. J. Q. B. 66).

Jurisdiction
in equity.

67. The court shall have and exercise all the powers and authority of the High Court in the actions or matters hereinafter mentioned; (that is to say,)

28 & 29 Vict.
c. 99, ss. 1, 2
30 & 31 Vict.
c. 142, s. 9.

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal or real or personal and real estate against or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of five hundred pounds :
2. For the execution of trusts in which the trust estate or fund shall not exceed in amount or value the sum of five hundred pounds :
3. For foreclosure or redemption or for enforcing any charge or lien, where the mortgage, charge, or lien shall not exceed in amount the sum of five hundred pounds :
4. For specific performance of or for the reforming, delivering

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up, or cancelling of any agreement for the sale, purchase, or lease of any property, where in the case of a sale or purchase the purchase-money, or in the case of a lease the value of the property, shall not exceed the sum of five hundred pounds :

5. Under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the action or matter relates shall not exceed in amount or value the sum of five hundred pounds :
6. Relating to the maintenance or advancement of infants in which the property of the infant shall not exceed in amount or value the sum of five hundred pounds :
7. For the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership shall not exceed in amount or value the sum of five hundred pounds :
8. Actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which relief is sought shall not exceed in amount or value the sum of five hundred pounds.

In all such actions or matters the judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of a judge of the Chancery Division of the High Court ; and the treasurer, registrar, and high bailiff respectively shall in all such actions or matters discharge any duties which an officer of the said division can discharge, either under the order of a judge of the said division, or under the practice thereof, and all officers of the courts shall, in discharging such duties, conform to any rules or orders made in that behalf under this Act.

Jurisdiction.]—The various kinds of equity actions and matters over which county courts have now jurisdiction are described in the following pages, and no action not coming within the classes there described can be safely commenced in a county court. Thus it is believed that the old equity action to enforce a charge on a married woman's separate estate cannot be commenced in a county court.

The provisions enabling parties to give jurisdiction by agreement under sect. 64, *ante*, p. 49, do not extend to equity actions and matters.

By order of Judge of High Court.]—By sect. 68 a judge of the High Court (Chancery Division) has power to make an order, even without consent, that an equity action in progress and beyond the jurisdiction in point of amount shall remain in the county court.

Jurisdiction concurrent.]—The jurisdiction is concurrent with, and not exclusive of, that of the Chancery Division of the High Court.

Costs.]—The judges of the High Court have power, by deprivation of costs, to punish a plaintiff who invokes the more expensive machinery of the High Court, instead of that of the county court ; but the practice has

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not been uniform (*Scotto v. Heritage*, (1866) L. R. 3 Eq. 212; 36 L. J. Ch. 123; *Brown v. Rye*, (1874) L. R. 17 Eq. 343; 43 L. J. Ch. 228; *Simons v. M'Adam*, (1868) L. R. 6 Eq. 324). In one case, Bacon, V.-C., allowed only county court costs in an action to foreclose a mortgage for 65*l.* (*Crozier v. Dowsett*, (1885) 31 Ch. D. 67; 55 L. J. Ch. 210); but Kekewich, J., allowed costs on the High Court scale in an action to try the right to a piece of land less than 20*l.* in value (*Williams v. Allen*, W. N., (1889) 48; 60 L. T. 103).

The county courts have all the power and authority of the High Court in the following actions and matters:—

(1) **Administration.**—In all actions by creditors, legatees (whether specific, pecuniary or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal or real, or personal and real estate against or for an account or administration of which the demand may be made, does not exceed in amount or value the sum of 500*l.* The assignees and representatives of the various classes of persons above enumerated have the same power to institute proceedings under it as the various classes themselves (*Turner v. Rennoldson*, (1873) L. R. 16 Eq. 37; 42 L. J. Ch. 510. For forms of orders, see Forms 304, 323).

Where Value of Estate is above 500*l.*—Where the value of the estate is not shown on the face of the proceedings, and can only be ascertained by the county court judge hearing and determining the question in dispute between the parties, it is his duty to try that question. If it transpires that the value of the estate is above 500*l.* he must transfer the action to the Chancery Division of the High Court under sect. 68 (*Sunderland v. Glover*, (1915) 1 K. B. 393; 84 L. J. K. B. 266), unless any party acts otherwise in accordance with that section.

Effect of the Administration of Estates Act, 1925, on Administrations.—It is not possible here to discuss the law of administration which is now codified in the Administration of Estates Act, 1925 (15 Geo. V. c. 23). Attention is, however, drawn to the important provisions of sect. 34 and the First Schedule of that Act, which contain the rules as to payment of debts where the estate is insolvent, and as to the order in which the assets must be applied where the estate is solvent:—

The section and schedule are as follows:—

34. (1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I. of the First Schedule to this Act.

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person. Subject as aforesaid nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors.

(3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II. of the First Schedule to this Act.

FIRST SCHEDULE.

PART I.

RULES AS TO PAYMENT OF DEBTS WHERE THE ESTATE IS INSOLVENT.

1. The funeral, testamentary, and administration expenses have priority.

2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

PART II.

ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT.

1. Property of the deceased undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.

2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

5. The fund, if any, retained to meet pecuniary legacies.

6. Property specifically devised or bequeathed, rateably according to value.

7. Property appointed by will under a general power, including the statutory power to dispose of entailed interests, rateably according to value.

8. The following provisions shall also apply:—(a) The order of application may be varied by the will of the deceased. (b) This part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.

NOTE.—Where property of the deceased is charged, the charges on such property are to be paid primarily out of the property charged (Administration of Estates Act, 1925, sect. 35).

Where commenced.]—The action must be commenced, where both plaintiff and defendant dwell or carry on business within one or more of the Metropolitan districts, either in the court of the district in which the plaintiff dwells or carries on business or in that in which the defendant dwells or carries on business (see sect. 84; *R. v. Bloomsbury C. C.*, (1890) 24 Q. B. D. 309). In the cases to which this provision does not apply the action must be commenced either in the court within the district of which the deceased had his last place of abode in England or Wales, or in the court of the district in which one of the executors or administrators has his place of abode (see sect. 75, sub-s. 3, *post*, p. 86).

(2) **Execution of Trusts.]**—The courts have jurisdiction in all actions for the execution of trusts, in which the trust estate or fund does not exceed in amount or value 500*l.* (form of particulars, Form 5B).

This jurisdiction applies not only to express or implied trusts, but also to constructive trusts arising by operation of law; thus, where a mortgagee of leaseholds took a renewed lease to himself, it was held that the county court had jurisdiction to declare him a trustee for the mortgagor (*Clayton v. Renton*, (1867) L. R. 4 Eq. 158; 36 L. J. Ch. 428).

Where commenced.]—The action must be commenced, where both plaintiff and defendant dwell or carry on business within one or more of the Metropolitan districts, either in the district in which the plaintiff dwells or carries on business, or in that in which the defendant dwells or

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carries on business (see *post*, sect. 84; *R. v. Bloomsbury C. C.* (1890) 24 Q. B. D. 309). In the rest of England and Wales it must be commenced in the district in which any of the defendants dwell or carry on business, or, by leave, in the other districts mentioned in the section (see *post* sect. 74). But the defendant should be a substantial defendant, not merely a nominal defendant in the same interest with the plaintiff (*Baker v. Wait*, (1869) L. R. 9 Eq. 103; 39 L. J. Ch. 204).

Where in proceedings concerning a trust a compromise is proposed, and some of the persons interested are not parties, but other persons in the same interest are before the court and assent to the compromise, the judge may, if satisfied that the compromise is for the benefit of the absentees, and that to require service on them would cause unreasonable expense or delay, approve the compromise, which will then bind the absent persons, unless the order has been obtained by fraud or non-disclosure (Order III. r. 9).

The following special provisions apply to actions for administration and for the execution of trusts.

Actions for Administration and for the Execution of Trusts.]—The rules extend nearly the whole of the provisions of Order XVI. of the High Court rules in regard to these actions to county courts.

Parties.]—Any residuary legatee or next of kin entitled to a judgment or order for administration of personal estate may obtain it without serving the remaining residuary legatees or next of kin (Order III. r. 20). So a legatee interested in a legacy charged on real estate, and a person interested in the proceeds of real estate directed to be sold, may obtain a judgment or order for administration without serving any other legatee or person interested in such proceeds (Order III. r. 21). A residuary devisee or heir may obtain the like judgment or order without serving any co-residuary devisee or co-heir (Order III. r. 22).

Any of several *cestuis que trust* under any deed or instrument may obtain a judgment or order for the execution of the trusts under any deed or instrument without serving any other *cestui que trust* (Order III. r. 23). In an action to execute the trusts of a will it is unnecessary to make the heir-at-law a party (Order III. r. 32).

In actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest (Order III. r. 24).

Any executor, administrator, or trustee entitled to it, may have a judgment or order against any one legatee, next of kin, or *cestui que trust*, for the administration of the estate or the execution of the trusts (Order III. r. 25. See *Re Peppitt*, (1877) 4 Ch. D. 230; 46 L. J. Ch. 95).

The judge may require any person to be made a party, and may give the conduct of the action to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question (Order III. r. 26).

When the right of an heir-at-law, or customary heir, or the next of kin, or of a class, depends on the construction of an instrument, the judge may, in the cases mentioned in the rule, appoint persons to represent them, and they will then be bound by the judgment (Order III. r. 18). Where an heir-at-law or customary heir, or next of kin or class, is interested, if in his judgment the circumstances render it expedient on account of the difficulty of ascertaining the persons, or on the ground of expense, he may appoint a person to represent the heir or all or any of the absent parties, and the judgment or order will bind the persons so represented (Order III. r. 19). Where there is no personal representative of a deceased person who was interested in the matter in question, the judge may proceed without such representative, or appoint some person to represent the estate in the manner mentioned in the rule, and any order made by the judge will bind the estate (Order III. r. 33).

A plaint for administration has been held to be sufficient without an allegation that the estate did not exceed in value or amount 500*l.* (*Cheeswright v. Thorn*, (1869) 38 L. J. Ch. 615). For forms of orders, see Forms 304 to 323.

Claim for Partial Administration.]—It is not obligatory on the judge in an action for the execution of a trust, or for the administration of an estate, to make an order for a general execution or administration, if the questions at issue can be properly determined without it, but he may make any order that may be necessary for determining such questions (Order XXII. r. 14. See *Jones v. Blake* (C. A.), (1885) 29 Ch. D. 913 : 54 L. J. Ch. 889, as to the proper order to be made in and use of administration actions). This and the next rule give the judge a discretion in all cases to make or refuse a general order or administration (*Pearson v. Pearson*, (1883) 56 L. T. 445).

The questions which may be submitted are as follows :—

- (a) Any question affecting the rights or interests of any person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust* :
- (b) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others :
- (c) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts :
- (d) The payment into court of any money in the hands of the executors or administrators or trustees :
- (e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees :
- (f) The approval of any sale, purchase, compromise, or other transaction :
- (g) The determination of any question arising in the administration of the estate or trust.

The plaintiff's particulars must show concisely the question or matter upon which the decision of the court is required, and must show that the plaintiff is willing to renounce his right to an order for general administration (Order VI. r. 5).

Notice of Defence.]—Whenever they are applicable, the rules as to special defences apply, and it is believed that under Order X. r. 19, there is an obligation to state concisely the facts on which the defendant relies by way of defence, not only in these, but in all equity actions; and that in the event of his not doing so, he might be prevented from relying on such facts by way of defence.

Appearance on Claims by Third Persons.]—No party, other than the executor or administrator, is, without leave of the court, entitled to appear either in court or chambers on the claim of any person not a party against the estate of the deceased, in respect of any debt or liability. The court may direct or give liberty to any other party to appear on such terms as it may think fit (Order III. r. 34).

Interest on Debts and Legacies.]—Creditors will be entitled to interest on such debts as carry interest at the agreed rate, or at 4*l.* per cent. from the date of the order, and to their costs of proof (Order XXIV. rr. 22, 24, 25). Legacies will carry interest at 4*l.* per cent. from the end of a year from the testator's death, unless otherwise ordered, or a different rate or time be appointed by the will, and in that case according to the will (Order XXIV. r. 26).

Order where no Accounts.]—Upon an application by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the judge may (in addition to his other powers) (a) order the application to stand over for a certain time, and that the executors, administrators, or trustees meanwhile render to the applicant

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a proper statement of their accounts, with an intimation that, if not done, they may be made to pay the costs of the proceedings; (b) when necessary, to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under it without leave of the judge in person (Order XXII. r. 15).

A creditor is entitled to the costs of establishing his debt, which are to be fixed by the court and added to the debt (Order XXIV. r. 22).

Notice of Judgment.]—Wherever in an action for administration of the estate of a deceased person, or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or order has been pronounced or made, the judge may direct service of notice (Form 317) of the judgment or order on any persons interested in the estate, or under the trust, or in the hereditaments. After such notice the persons so served will be bound by the proceedings; but any of them may, at the next sitting of the court after service, or by leave of the judge at any other sitting, apply to the judge to discharge, vary or add to the judgment or order (Order III. r. 27).

The notice will be prepared by the registrar, who must annex to it a copy of the judgment or order, and issue it to the bailiff for service, delivering to him also a copy of the notice (Order III. r. 28). The notice, whether the person to be served is or is not an infant or person of unsound mind, not so found by inquisition, must be served in the same manner as a summons, and the bailiff must make on the copy of the notice the usual indorsement of the fact, mode, and place of service (Order III. r. 29).

Service of notice of judgment may be dispensed with, or substituted service or notice by advertisement or otherwise ordered, by the judge in cases where by reason of absence or for other sufficient cause he thinks fit to take that course (Order III. r. 30). The judge may order that the persons as to whom service is dispensed with shall be bound as if served (Order III. r. 31).

Costs.]—The court has complete discretion over the costs in these as in other actions (see sect. 113, *post*; *Plumb v. Craker*, (1885) 16 Q. B. D. 40; 55 L. J. Q. B. 116).

(3) **Foreclosure and Redemption.]**—The county courts have jurisdiction in all actions for foreclosure or redemption, or for enforcing any charge on lien whenever the mortgage, charge, or lien does not exceed 500*l.* in amount (sect. 67, sub-s. 3. For forms of particulars, see Form 8c and Form 311; forms of orders and judgment, Forms 307—310, 312). The jurisdiction depends on the amount of the charge at the time of action (*Shields, Whitley, etc., Building Society v. Richards*, (1901) 84 L. T. 587). The court may direct a sale instead of a foreclosure (Law of Property Act, 1925, 15 Geo. V., c. 20, sect. 91; Annual Practice, notes to Order LI. r. 1, R. S. C.). The jurisdiction to enforce a charge is not affected by the fact that the mortgagor has become bankrupt (*Medhurst v. Golder*, (1867) 16 L. T. N. S. 50). An action by parties claiming through a mortgagor to set aside a sale made by a mortgagee, is an action for redemption (*Powell v. Roberts*, (1869) L. R. 9 Eq. 169; 39 L. J. Ch. 44). Charges under sect. 257 of the Public Health Act, 1875, may be enforced under these provisions (*Tottenham v. Rowell* (C. A.), (1880) 15 Ch. D. 378; 50 L. J. Ch. 99; *Hornsey v. Monarch Building Society* (C. A.), (1889) 24 Q. B. D. 1; 59 L. J. Q. B. 105). The period of limitation for bringing the action is twelve years: see *Wakefield and Barnsley Union Bank, Ltd. v. Yates*, (1916) 1 Ch. 452. The High Court will not exercise jurisdiction in any case where the charge sought to be enforced is less than 10*l.* (sect. 67, sub-s. 3. For forms see Editor's (late) Additional Forms, 5c, *post*, p. 905, and C. C. Form 311; forms of orders and judgment, Forms 307—310, 312).

Where commenced.]—The action must be commenced, where both plaintiff

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and defendant dwell or carry on business within one or more of the Metropolitan districts, either in the district in which the plaintiff dwells or carries on business, or in that in which the defendant dwells or carries on business (see *post*, sect. 84; *R. v. Bloomsbury C. C.*, (1890) 24 Q. B. D. 309). In the rest of England and Wales it must be commenced in the court within the district of which the lands, tenements, or hereditaments, or any part thereof, are situate (see *post*, sect. 75, sub-s. 1).

(4) **Specific Performance, etc.**—The county courts have also jurisdiction in actions for enforcing the specific performance of or the reforming, delivering up or cancelling of any agreement for the sale, purchase or lease of any property, where, in the case of a sale or purchase, the purchase-money, or, in the case of a lease, the value of the property, does not exceed 500*l.* (sect. 67, sub-s. 4). As to the principles on which specific performance of a contract made by correspondence should be granted, see *Hussey v. Horne-Payne*, (1879) 4 A. C. 311; 48 L. J. Ch. 846; *Bellamy v. Debenham*, (1890) 45 Ch. D. 481; 60 L. J. Ch. 166; *Perry v. Suffield's, Limited*, (1916) 85 L. J. Ch. 460. Specific performance of a verbal contract for an interest in land may be granted where there has been part performance of the contract (*Rawlinson v. Ames*, (1925) 1 Ch. 96). The test of the value of the property, in the case of a sale or purchase, for the purpose of jurisdiction is the amount of the purchase-money; therefore an agreement to purchase an equity of redemption for 75*l.* is within the jurisdiction, although the property, if unencumbered, is worth more than 500*l.* (*R. v. Judge Whitehorse*, (1904) 1 K. B. 827; 73 L. J. K. B. 344). But in the case of a lease the value of the property is the test; there is therefore no jurisdiction to order the cancellation of a lease where the value of the freehold exceeds 500*l.*, although neither the value of the lessor's nor of the lessee's interest exceeds that amount (*Angel v. Jay*, (1911) 1 K. B. 666; 80 L. J. K. B. 458). An agreement to grant a licence to use a way over land is not within the section (*R. v. Westmoreland C. C.*, (1888) 36 W. R. 477). As to principles upon which a Court of Equity acts: see *Rutherford v. Acton-Adams*, (1915) 84 L. J. P. C. 238. Not when parties have agreed that time is to be the essence of the bargain, and the time has elapsed (*Steedman v. Drinkle*, (1916) 85 L. J. P. C. 79).

There must be a completed contract before specific performance of it can be decreed. Thus where the contract was made "subject to suitable arrangements between your solicitors and mine" it was held that the contract was incomplete, and specific performance was refused (*Lockett v. Norman-Wright*, (1925) 1 Ch. 56). Where the court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit (Law of Property Act, 1925, s. 49 (2)).

Damages.—Though the county court cannot entertain an action for an injunction *simpliciter* (see *Rex v. Cheshire (Birkenhead) County Court Judge*, (1921) 2 K. B. 694; 90 L. J. K. B. 772), yet in any case where it has jurisdiction it may as an additional remedy grant an injunction. By Lord Cairns' Act (21 & 22 Vict. c. 27), it was provided that, in all cases in which the Court of Chancery had jurisdiction to entertain an action for an injunction, it might award damages either in addition to or in substitution for such injunction the damages to be assessed in such manner as the court might direct (sect. 2), either by jury or otherwise (sect. 3), and where the complaint is a threatened infringement of a right only, though the Court may grant an injunction, it may instead give damages under this Act (*Leeds Industrial Co-operative Society v. Slack*, (1924) A. C. 851; 93 L. J. Ch. (H. of L.), 436. County court judges acquired the powers of this Act under the general powers of Chancery judges given to them by the County Courts Act, 1865, and now continued by the County Courts Act, 1888, s. 67, as well as by sect. 202 of the Supreme Court of Judicature (Consolidation) Act, 1925.

Lord Cairns' Act is repealed by 46 & 47 Vict. c. 49; but sect. 7 would, if it were necessary, prevent the destruction of its operation as regards county

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courts. It is well settled, however, that notwithstanding the repeal, the High Court has all the powers given to it by the Act (*Chapman v. Auckland* (C. A.), (1889) 23 Q. B. D. 294; 58 L. J. Q. B. 504; and there is no doubt that in a case within its jurisdiction the county court may act in the like manner.

Where commenced.]—These actions must be commenced in the same court as actions for the execution of trusts (Form of Particulars, Form 313, Form of Judgment, Form 314).

(5) **Partnership.]**—The county courts have jurisdiction over actions for the dissolution or winding up of any partnership in which the whole property, stock, and credits of such partnership do not exceed in amount or value 500*l.* (sect. 67, sub-s. 7); see Partnership Act, 1890, 53 & 54 Vict. c. 39, s. 35, as to when a dissolution may be decreed. As to winding up of a partnership between a British subject and an alien enemy, see *Hugh Stevenson & Son, Ltd. v. Aktiengesellschaft für Cartonnagen Industrie*, (1916) 1 K. B. 763; 5 L. J. K. B. 846. As to rights of the personal representatives of a deceased partner, see *Manley v. Sartori*, (1927) 1 Ch. 157; 96 L. J. K. B. 65.

Where commenced.]—These actions must, when both plaintiff and defendant dwell or carry on business in one or more of the Metropolitan districts, be commenced either in the plaintiff's district or the defendant's (see *post*, sect. 84; *R. v. Bloomsbury C. C.*, (1890) 24 Q. B. D. 309). In the rest of England and Wales they must be commenced in the court within the district of which the partnership business was or is carried on (see *post*, sect. 75, sub-s. 4. Forms of order and judgment, C. C. Forms 315, 316).

(6) **Fraud or Mistake.]**—The county courts have jurisdiction over actions for relief against fraud or mistake in which the damage sustained or the estate or fund in respect of which the relief is sought does not exceed in amount or value the sum of 500*l.* (sect. 67, sub-s. 8). This provision confers, for the first time, power on the county courts to set aside or reform deeds or documents on the ground of fraud or mistake.

If the county court in an interlocutory application, and after hearing evidence, and without objection to the form of the proceedings, sets aside a deed as fraudulent, an action brought in the High Court raising the question decided below will be stayed as frivolous (*Stephenson v. Garnett*, (1898) 1 Q. B. 677 (C. A.); 67 L. J. Q. B. 447).

Mistake.]—The court must be satisfied when asked to rectify a document on the ground of mistake, that the proposed rectification represents the intention of both parties to the contract (see *Fowler v. Sugden*, (1916) 85 L. J. K. B. 1090).

Where commenced.]—These actions must be commenced in the same court as actions for the execution of trusts (see *ante*, p. 61).

(7) **Maintenance or Advancement of Infants.]**—The provisions of the Guardianship of Infants Acts will be found under this title in Part V. The county courts have jurisdiction in all matters relating to the maintenance or advancement of infants, in which the property of the infant does not exceed in amount or value 500*l.* (sect. 67, sub-s. 6).

Where commenced.]—These proceedings, which are commenced by petition (Order XXXVIII. r. 1), must be commenced, apparently, in the court within the district of which any of the persons who stand in the position of defendants, and on whom the petition must be served, dwell or carry on business, or by leave, in the other districts mentioned in the section (see sect. 74, *post*). Where, however, all parties dwell or carry on business within one or more of the Metropolitan districts, the proceedings must apparently be commenced in accordance with sect. 84, *post*, p. 96 (see *R. v. Bloomsbury C. C.*, (1890) 24 Q. B. D. 309).

(8) **Trustee Act, 1925.**—The law relating to trustees is now consolidated in the Trustee Act, 1925 (15 Geo. 5., c. 19). "The court" for the purposes of that Act means the High Court, and also the Court of Chancery of the County Palatine of Lancaster, or the Court of Chancery of the County Palatine of Durham, or the county court, where those courts respectively have jurisdiction, and the procedure is to be in accordance with the Acts and rules regulating the procedure of those courts (sect. 67).

Hence the county court has all the powers of the High Court under the Trustee Act, 1925, where the trust estate or fund to which the action or matter relates does not exceed 500*l.* in amount or value.

The sections of the Trustee Act, 1925, dealing with the powers of the court are printed in Part V.

Where commenced.—These proceedings which are commenced by petition (Order XXXVIII. r. 1) must be commenced in the court within the district of which any of the persons making the application resides (see *post*, sect. 75 (2)); but where there are respondents, and they and the petitioners all dwell or carry on business within one or more of the metropolitan districts, the proceedings may apparently also be commenced in any of the courts in which the respondents dwell or carry on business (see *post*, sect. 84; *R. v. Bloomsbury C. C.*, (1890) 24 Q. B. D. 309).

Appointment of New Trustees.—The court may, whenever it is expedient to appoint a new trustee or trustees, and it is inexpedient, difficult, or impracticable to do so without the assistance of the court, order the appointment of a new trustee or trustees either in substitution for, or in addition to, any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the above provision the court may order the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved (Trustee Act, 1925, s. 41 (1).) This jurisdiction may be exercised on summons or petition (*In re Dawson's Trusts*, (1899) W. N., 134). The section gives no power to appoint an executor or administrator (*ibid.*, s. 41 (4)).

Verification of Consent to act.—The consent of a person to act as a trustee or a new trustee is sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor (Order XIX. r. 13; Form 332).

The order, and any consequential order or conveyance, will operate no further than an appointment of new trustees under a power in any instrument would have operated (Trustee Act, 1925, s. 41 (3)).

Vesting Orders as to Land.—In the following cases, subject to the provisions of the section, the court may make a vesting order vesting land in such person and such manner, and for such estate as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct (Trustee Act, 1925, s. 44).

The cases referred to are (1) where the court appoints or has appointed a new trustee; (2) where a trustee or mortgagee is (a) an infant, or (b) is out of the jurisdiction of the court, or (c) cannot be found; (3) where it is uncertain which of several trustees was the survivor; (4) where as to the last trustee known it is uncertain whether he is living or dead; (5) where there is no personal representative to a trustee who has died intestate, or where it is uncertain who is his personal representative or devisee; (6) where a trustee has wilfully refused or neglected to convey land, or release a contingent right for twenty-eight days after the date of a due requirement; (7) where it appears to the court to be expedient (*ibid.*, s. 44).

A similar order may be made as to the contingent rights of unborn persons who will become trustees (*ibid.*, s. 45).

So a vesting order may be made in place of a conveyance where the mortgagee is an infant (*ibid.*, s. 46).

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Where the court makes a judgment for the sale or mortgage of land, persons entitled who are parties will be deemed to be trustees, and the court may make an order vesting the property in the purchaser, mortgagor, or any other person (*ibid.*, s. 47). Similarly a vesting order consequent on judgment for specific performance may be made (*ibid.*, s. 48).

In any of these cases the court may, instead of making a vesting order, appoint any person to convey (*ibid.*, s. 50), and for effect of vesting order generally, see sect. 49.

A vesting order may be made in respect of stock and choses in action when the court has appointed a new trustee, or the trustee is an infant, or out of the jurisdiction of the court, or cannot be found, or refuses to transfer stock, or receive dividends, or to sue for a chose in action, or it be uncertain whether he, being jointly entitled with another, be living or dead (*ibid.*, s. 51).

In all cases where a vesting order can be made under sect. 51 the court may, if it is more convenient, appoint some proper person to make the transfer (sect. 51 (2)).

Who may Apply.—Applications to the court, if they be for the appointment of new trustees or concerning any land, stock, or chose in action subject to a trust, may be made by any person beneficially interested, whether under disability or not, or by any person duly appointed a trustee; or, if they relate to similar property subject to a mortgage, by any person beneficially interested in the equity of redemption, whether under disability or not, or any person interested in the money secured (Trustee Act, 1925, sect. 58.)

Settled Land Act, 1925.—The enactments relating to settled land are consolidated in the Settled Land Act, 1925 (15 Geo. V. c. 18). The powers of the court given by that Act may be exercised by any county court within the district whereof is situate any part of the land concerned or from which the capital money arises or in connexion with which the personal chattels to be dealt with in the court are settled. The jurisdiction is limited to land not exceeding in capital value 500*l.* or annual rateable value 30*l.* In the case of capital money the amount must not exceed 500*l.*, and in the case of personal chattels the value must not exceed 500*l.* (Settled Land Act, 1925, s. 113 (3)). An appeal from an order made under this Act lies to a Divisional Court of the Chancery Division (R. S. C., Order LIVd., rr. 5, 8—12).

The important sections of this Act are printed in Part V.

Payment of Trust Funds into Court.—Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of any court, under sect. 67, sub-s. 5, or sect. 70 of the Act, or sect. 63 of the Trustee Act, 1925, must file with the registrar an affidavit intituled in the matter of the Act (Form 333) and of the particular trust, and setting forth:—
1. His own name, address and description: 2. The place where he is to be served with any petition or summons, or any notice of any proceeding or order of the court relating to the trust fund: 3. The amount of money, stock or security which he proposes to pay, transfer or deposit in trust to attend the orders of the court: 4. A short description of the trust or of the nature and contents of the instrument creating it: 5. The names, addresses and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to, the fund, to the best of the knowledge and belief of the trustee: 6. The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred or security deposited as the court may think proper to make or direct (Order XXXVIII. r. 9). The affidavit may be in the prescribed form, with such variations as each particular case may require (Order XXXVIII. r. 10; Form 333).

Where it is desired to retain any sum of money for costs incurred in the payment of money into court, or in any matter connected with the trust prior to such payment, a bill of costs must be filed, and such sum only

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retained as may be allowed by the registrar on taxation (Order XXXVIII. r. 11).

Probate of the will or the original instrument or document, or such evidence as the registrar may require as to the instrument creating the trust, must be left with the registrar for such period as he may reasonably require.

Memorandum of Filing.—Immediately on receipt of the affidavit, the registrar must indorse on it a memorandum of the day on which it was filed, and when the affidavit is so indorsed it will be taken for all purposes to have been duly filed on the date so indorsed.

The registrar must also compare the affidavit with the probate or other instrument deposited with him, or with such evidence as aforesaid, and must indorse on the affidavit a memorandum that he has made such comparison, and may add to such indorsement any memorandum as to any matters which may be omitted in the affidavit and which he may think material.

Certificate.—The persons filing the affidavit, or any of them, may obtain from the registrar a sealed certificate intituled in the matter of the County Courts Act, and of the particular trust, certifying that the affidavit has been filed (Order XXXVIII., r. 15).

Money.—In the case of money, the persons filing the affidavit, or any of them, may, upon the receipt of the certificate, pay the money into a post-office savings bank, established in the town in which the county court is held, and obtain from the officer of the bank a receipt for the same, and must forthwith leave the receipt with the registrar, and the registrar must immediately indorse on it a memorandum of the day on which the same was received by him, and when so indorsed it will be taken for all purposes to have been duly recorded on the date so indorsed.

Stock.—In the case of stock, the persons filing the affidavit, or any of them, may, upon the receipt of the certificate, transfer the stock into the names of the treasurer and registrar of the county court mentioned in the certificate, or of the registrar and superintendent of the county court department of the Treasury if there is no treasurer (Order XXXVIII. r. 20), in trust to attend the orders of the court. They must forthwith leave the transfer ticket with the registrar, and the registrar must immediately indorse on it a memorandum of the day on which the same was received by him. When so indorsed it will be taken for all purposes to have been duly recorded on the day so indorsed (Order XXXVIII. r. 17).

Security.—In the case of security, the person filing the affidavit may forthwith deposit the security with the registrar in the names of the treasurer and registrar, or of the registrar and superintendent of the county court department of the Treasury if there is no treasurer, in trust to attend the orders of the court. The registrar must immediately indorse on the affidavit a memorandum of the day of deposit (Order XXXVIII. r. 18), and must, within twenty-four hours after, send notice by post to the treasurer of the court, stating the particulars of the deposit (Order XXXVIII. r. 19; Form 338).

Immediately after the recording of the receipt or of the transfer ticket, or the deposit of the security, the registrar must give an acknowledgment or certificate (Forms 336, 337) to the persons paying in the money, or transferring the stocks or depositing the security (see *post*, sect. 70; Order XXXVIII. r. 21); and must cause the necessary entries to be made in the book formerly called the "Suits and Proceedings in Equity Book," including the title of the particular trust, and the amount of money paid or stock transferred, or security deposited, and the names and addresses of the persons making the payment, transfer or deposit, and the names of every person stated in the affidavit to be or to claim to be interested in or entitled to the money or stock, and their addresses and descriptions, as given in the affidavit. The registrar must forthwith, by post, send to each of such

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last-mentioned persons, to the addresses given in the affidavit, a sealed notice of the payment, transfer or deposit (Order XXXVIII. r. 22; Form 339).

The registrars must comply with all regulations which may from time to time be made by the Commissioners of His Majesty's Treasury for the safe custody of any securities deposited with them under the above provisions (Order II. r. 16).

Application as to Funds, etc., in Court.]—Moneys, stocks, or securities may be in court, through being paid in, transferred or deposited either by trustees under the provisions above mentioned, or by parties under order of the court or otherwise in the course of any of the actions or matters dealt with in this chapter. When so in court, any person entitled to or claiming to be interested, or (if need be, but not otherwise) the trustee, who desires the direction of the court as to the investment, paying out, or distribution of the whole or any part of the fund or the income thereof, may apply to the court by petition (Form 340), stating the substance of the order which he desires to obtain, and praying for the order and direction of the judge with respect to the fund, and the rights of all persons thereto. The petitioner must file a copy of the petition for every respondent to be served and one for the judge, which latter is to be forwarded to him by the registrar with an office copy of the affidavit filed on the payment of the funds into court; subject to the special provisions immediately following, the provisions of Order XXXVIII. rr. 2 to 8, apply to the service of, and to the proceedings on, the petition (Order XXXVIII. r. 23). If the application relates to the capital of the fund, the trustee and all persons interested must be served with a copy of the petition, unless the court otherwise directs. If it relates to income only the trustee alone must be served unless the court otherwise directs (Order XXXVIII. r. 24).

Hearing.]—If the person filing the petition relies only on the facts stated in the affidavit filed by a trustee, it will be sufficient for him to state on oath at the hearing that he believes the facts to be true, unless the judge requires further evidence (Order XXXVIII. r. 26), and in such cases the trustee need not appear, and if he does so his costs will not be allowed out of the fund unless the judge certifies that it was right and necessary for him to appear (Order XXXVIII. r. 28).

Except as above-mentioned, proof will, if the application relates to the capital of the fund in court, be required at the hearing of all facts necessary to be ascertained, not only to grant the specific relief prayed, but also to declare and decide the rights of all parties in or to the fund in court; and the judge must make such order as to the whole fund as would be made upon a final judgment or order in an action for administration (Order XXXVIII. r. 27; Form 342).

Payment to Person Entitled.]—The registrar must pay the money found due to any person by the final order on his applying for the same and proving his identity; and where the person was an infant at the date of the order, on further proof that he has attained the age of twenty-one years (Order XXXVIII. r. 29).

Petitions.]—Proceedings under the Trustee Act, 1925 (other than proceedings under sect. 63), or relating to the maintenance or advancement of infants, or under the Settled Land Act, 1925, or the Guardianship of Infants Act, 1886, must be commenced by filing a petition intituled in the matter of the particular Act and of the trust or settlement, with as many copies of the petition as there are respondents to be served (Order XXXVIII. r. 1).

General Practice.]—The petition must be filed with the registrar (Order II. r. 3; Order XXXVIII. r. 1; Form 340), and there should be delivered to him also as many copies as there are parties to be served, and an additional copy for the judge (Order LIV. r. 13). A statement must be made at the foot of every petition and of every copy of the persons intended to be served;

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Notes.

if no person is intended to be served, a statement to that effect must be made (Order XXXVIII. r. 2). The registrar must then seal the copies, and deliver them for service upon the parties to the bailiff. He must also deliver to him, for each party to be served, a notice under seal of the court, stating the day and hour upon which the petition is to be heard, and informing them that if they do not attend in person, or by solicitor, the judge will make such order as he may think just and expedient (Order XXXVIII. r. 3; Form 341).

Every petition for dealing with money or securities in court chargeable with any duty payable to the revenue, or with the dividends on any such securities, must contain a statement whether the duty has or has not been paid (Order XXXVIII. r. 31).

Service of the copy petition must be made at least ten days before the hearing, in accordance with the rules as to the service of ordinary summonses (Order XXXVIII. r. 4).

Evidence of facts necessary to be brought before the court must be given by affidavit, unless the judge otherwise orders (Order XXXVIII. r. 5).

The judge may refer any matter to the registrar to make inquiries and report to him (Order XXXVIII. r. 6).

When the judge makes an order on a petition or application the registrar must, as soon as possible, draw up, seal and file it (Order XXXVIII. r. 8). In every final judgment or order liberty must be given to all parties to apply (Order XXXVIII. r. 7; Form 342).

The court, at the instance of any person interested, must inquire into any prolixity, and as to any irrelevant matter in any petition or affidavit, and as to any needless or unnecessary expense incurred, and must make such order in reference thereto as the justice of the case may require (Order XXXVIII. r. 30).

Subject to the above provisions, the general practice, so far as it is applicable, will apply to all proceedings by or under a petition.

Costs.—In proceedings under sects. 67 and 70 of the Act, or under the Settled Land Act, 1925, or in any other proceedings under the equitable jurisdiction of the court, the judge may order the costs to be taxed under column B where the subject-matter does not exceed 20*l.* (Order LIII. r. 12).

Appeal.—There is an appeal for error in point of law or equity in all equity actions and matters authorised by the Act of 1888, pursuant to the general conditions already explained. See, as to the effect of the decision of the Court of Appeal on special Acts which contain no express provisions as to appeal, *The Delano*, (1895) P. 40; 64 L. J. P. 8.

68. If during the progress of any action or matter under the last preceding section it shall be made to appear to the judge that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the court is therein limited, it shall not affect the validity of any order already made, but it shall be the duty of the judge to direct the action or matter to be transferred to the Chancery Division of the High Court; and the whole of the procedure in the said action or matter when so transferred shall be regulated by the Rules of the Supreme Court: provided always, that it shall be lawful for any party to apply to a judge of the said Division at chambers for an order authorising and directing the action or matter to be carried on and prosecuted in the county court, notwithstanding such excess in the amount of the limit to which equitable jurisdiction is given by the said section; and the

Transfer to
Chancery
Division
of action
exceeding
jurisdiction.
28 & 29 Vict.
c. 99, s. 9.

Section 68

judge if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order.

Transfer to High Court.—When the excess of jurisdiction appears from the evidence at the trial, the judge ought not to strike out the action or matter; but he ought to do so if the want of jurisdiction appears on the plaint or petition itself (*Birks v. Silverwood*, (1871) L. R. 14 Eq. 101; *Thomson v. Flinn*, (1881) L. R. 17 Eq. 415; 41 L. J. Ch. 638; 43 L. J. Ch. 256; but see sect. 114, *post*). The proper course in the former case is for the judge, if requested so to do, to make an order of transfer forthwith; but if not so requested, the order must not be made for fifteen days at least (Order XXXIII. r. 5; Form 331j). See *Sunderland v. Glover*, (1915) 1 K. B. 393; 84 L. J. K. B. 266.

When the excess of jurisdiction appears on the taking of accounts, or making inquiries before the registrar, he may proceed with and complete the particular account or inquiry; but at the next sitting of the court he must present a certificate of the state of the proceedings, and if the judge is of opinion that the excess of jurisdiction exists, he must make the order of transfer in accordance with the provisions mentioned in the last paragraph (Order XXXIII. r. 6; Form 331).

When the order is made, the registrar must make and file a copy of the order, and must transmit it, by post or otherwise, to the proper officer of the Chancery Division, and must also give notice, by post or otherwise, to all parties and persons entitled to be served with a copy of the order (Order XXXIII. r. 5).

The registrar must also transmit to the same officer the record of proceedings, and all documents, as required in other cases pursuant to Order XXXIII. r. 7. If the transfer be made by the judge unrequested, as above, the costs of copies and of transmission must be paid by the plaintiff in the first instance, and the registrar may require a deposit for them, but this payment will be without prejudice to any question as to the party by whom the costs are ultimately to be borne (Order XXXIII. r. 7).

When the judge has ordered the transfer, the action or matter will proceed in the High Court in the ordinary way, unless an order be obtained to continue the proceedings in the county court (sect. 68). After transfer the jurisdiction of the county court judge is at an end; he cannot make an order as to costs (*Hares v. Lea*, (1867) L. R. 10 Eq. 683). Fry, J., in giving judgment for the plaintiff in an action transferred under these provisions, made the plaintiff bear the costs of the trial in the county court (*Ward v. Wyld*, (1877) 5 Ch. D. 779). See now County Courts Act, 1919, s. 12, as to costs where any action, counterclaim, or matter, is transferred from a county court to the High Court.

These powers give the judge of the High Court entire discretion to extend the jurisdiction in the action or matter in question, irrespective of the statutory limitations.

69. Where any action or matter is pending in the Chancery Division of the High Court which might have been commenced in a court under this Act, it shall be lawful for any of the parties thereto to apply at chambers to the judge of the said division to whom the said action or matter is attached to have the same transferred to the court or one of the courts in which the same might have been commenced, and such judge shall have power upon such application, or without such application, if he shall think fit, to

Transfer to county courts of equitable actions or matters.

30 & 31 Vict. c. 142, s. 8.

Section 69.

make an order for such transfer, and thereupon such action or matter shall be carried on in the court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal as they would have had if the action or matter had been commenced in such court.

Equity Actions and Matters.]—Though the subject-matter of the action may be within the county court jurisdiction, it has not been the practice to make orders of transfer without some special reason (*Picard v. Hine*, (1868) 18 L. T. 705). Where the judge has made the order, the court will not, except on strong grounds, interfere with his discretion. Where the defendant is an officer of the county court to which otherwise it would be proper to transfer the action, it may be transferred under sect. 43 of the Act to an adjoining district (*Linford v. Gudgeon*, (1870) L. R. 6 Ch. 359; 40 L. J. Ch. 514).

Proceedings after Order.]—See sect. 4 of County Courts Act, 1919, *post*, p. 235, and Order XXXIII. The plaintiff must lodge with the registrar the order, or a duplicate, and the writ, together with the pleadings, affidavits, etc., already filed, or copies thereof, and copies of affidavits on which the order was made, and also a statement of the names and addresses of the several parties to the action and their solicitors, if any, and, if no statement of claim has been delivered in the High Court, a concise statement of the particulars such as would be required on entering the plaint, and the registrar must then enter the action for trial, and give notice to the parties of the day appointed for trial, by post or otherwise, ten clear days at least before the day of trial, and must annex a copy of the particulars sealed with the seal of the court (Order XXXIII. r. 1; Order II. r. 8). The registrar must indorse on the order of transfer the date on which it was lodged (Order XXXIII. rr. 2, 8).

Until the transfer is completed, the action or proceeding will remain in the High Court (*David v. Howe*, (1884) 27 Ch. D. 533; 53 L. J. Ch. 1053; and see *R. v. Holroyd*, (1883) 32 W. R. 370).

The action or matter, after transfer, will be carried on in the same manner as an action or matter commenced in the county court, but no notice or defence under Order X. will be necessary, if a defence has already been delivered (Order XXXIII. rr. 2, 3).

After transfer, the registrar must apply to the judge for directions, and the latter may then give directions for carrying on the action or matter, or may appoint a time to hear and determine any matters in such action or matter, and direct the registrar to summon all parties to appear on the day so appointed. The judge may also order the registrar to give notice to the parties, or any of them, that the order of transfer has been made (Order XXXIII. r. 8).

Transfer of Interpleader Proceedings.]—See sect. 204 of Judicature Act, 1925 (*post*, Part V.), and Order XXXIII. rr. 9—19.

Costs.]—The provisions of Order XXXIII. r. 16, as to costs in interpleaders from the High Court apply also to equity matters. See also s. 12 of County Courts Act, 1919, as to costs where action or matter is transferred from one court to another (*post*, p. 239).

Appeal.]—The parties will have the same right of appeal and the practice on an appeal will be the same as in other cases.

70. Any moneys, annuities, stocks, or securities vested in any persons as trustees, executors, administrators, or otherwise, upon trusts within the meaning of the Trustees Relief Acts, where the same do not exceed in amount or value the sum of five hundred Trustees may pay trust money or transfer stock and

Section 70.

 securities
 into county
 court.
 30 & 31 Vict.
 c. 142, ss. 24,
 25.

pounds, upon the filing by such trustees or other persons, or the major part of them, with the registrar of the court within the district of which such persons or any of them shall reside, of an affidavit shortly describing, according to the best of their knowledge, the instrument creating the trust, may, in the case of money, be paid into a post-office savings bank established in the town in which the court is held, in the name of the registrar of such court, in trust to attend the orders of the court, and upon such persons filing with the registrar the receipt or other document given to them by the officer of the said bank, the registrar shall record the same, and give to them an acknowledgment in such form as may be prescribed, which acknowledgment shall be a sufficient discharge to such persons for the money so paid, and, in the case of stocks or securities, may be transferred or deposited into or in the names of the treasurer and registrars of such court, in trust to attend the orders of the court, and the certificate of the proper officer of the transfer or deposit of such stocks or securities shall be a sufficient discharge to such persons for the stocks or securities so transferred or deposited; and for the above purposes all the powers and authorities of the High Court shall be possessed and exercised by the courts, and any order made by virtue of such powers and authorities shall fully protect and indemnify all persons acting under or in pursuance of such order.

Payment of Trust Funds into Court.]—For procedure, see note to s. 67, *ante*, p. 68; and see Order XXXVIII. r. 9.

Money in the King's Bench or Admiralty Division payable to an infant or person of unsound mind, may be transferred to the county court.]—The Supreme Court of Judicature (Consolidation) Act, 1925, s. 205, enacts that—

Transfer to
 county court
 of money
 recovered in
 High Court
 by infants,
 etc.

205.—(1) Where in any cause or matter in the King's Bench Division or in an admiralty action in the Probate Division money is in any manner recovered by or on behalf of, or adjudged or ordered to be paid to or for the benefit of, a person who is an infant or of unsound mind, the High Court or a judge may order the money or any part thereof to be paid into or transferred to the county court of the district in which that person resides or such other county court as the High Court or judge may order, and the money or the part thereof to which the order relates shall thereupon be paid or transferred accordingly, and shall, subject to any special order or direction of the High Court or a judge and to county court rules, be invested, applied or otherwise dealt with for the benefit of that person in such manner as the county court in its discretion thinks fit.

(2) The provisions of this section shall apply to money which in proceedings under the Fatal Accidents Acts. 1846 to 1908, is recovered by or adjudged or ordered to be paid to the widow of

the person killed as they apply to money recovered by or adjudged or ordered to be paid to an infant. **Section 205.**

(3) The Lord Chancellor may, with the concurrence of the Treasury, by order prescribe the fees to be charged in respect of the payment and investment of money or the application thereof or dealing therewith under this section. **Jud. Act, 1925.**

(4) Where before the first day of October, nineteen hundred and twenty-five, money recovered in any cause or matter in the King's Bench Division by or on behalf of a person who is an infant or of unsound mind has been paid to the Public Trustee, it shall be lawful for the Public Trustee to pay that money, or so much of it as remains in his possession into the county court of the district in which that person resides, and money so transferred shall be invested, applied or dealt with in the same manner as if it had been paid into the county court under subsection (1) of this section.

(5) County court rules may be made for the purpose of carrying into effect the provisions of this section so far as they relate to the receipt of money into county courts and the investment thereof or application thereof or dealing therewith and the duties of registrars of county courts, and any such rules may provide for the transfer of money paid into a county court under this section or the investment representing any such money from one county court to another.

(6) Any order made by the Lord Chancellor under this section may be revoked, varied or amended by a subsequent order so made.

County Court Rules have been made dealing with the above section, and now appear as Order XXXV. rr. 1, 2, 3, 4, 5, 6, 7. See also R.S.C., Order XXII. r. 15, and Supreme Court Funds Rules, 1927, r. 46. For court fees, see C.C. Fees Order, 1925, Fee No. 92.

71. Any money paid into court in the actions or matters mentioned in the last four preceding sections, shall, unless otherwise ordered by the judge, be invested by the registrar in his name as registrar, within forty-eight hours of its payment into court, in a post-office savings bank established in the town in which the court is held, without restriction as to amount, and without the declaration required of a depositor in a savings bank; and no part of any money invested in a post-office savings bank under this Act shall be paid out to any registrar except upon an authority addressed to the Postmaster-General by the Lord Chancellor.

Moneys paid into court in proceedings may be invested in a post-office savings bank.

30 & 31 Vict. c. 142, s. 26.

Any person deriving any benefit under any moneys paid into a post-office savings bank under the provisions of this Act may nevertheless open an account in a post-office savings bank, or in any other savings bank, in his own name, without being liable to

Section 71. any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

This section now extends to all money paid into a county court in any proceeding, and ordered by the judge to be invested for the benefit of any infant or person of unsound mind. See County Courts (Investments) Act, 1900 (63 & 64 Vict. c. 47), s. 1; and War Loan (Trustees) Act, 1915 (5 & 6 Geo. 5, c. 56), s. 2, *post*, p. 262.

Money paid into Court.]—This cannot be drawn out without the authority of the Treasury (see sect. 71; Order XXXVII. r. 1). The ordinary rules as to payment into and out of court do not apply (Order IX. r. 23). Persons deriving benefit under such moneys may deposit moneys in other post-office savings banks (sect. 71).

The registrar must enter in the cash book and ledger for equitable proceedings all sums so paid to the account of the action or matter in which it is paid, and where the interest of any fund paid into a post-office savings bank has been directed to be paid to any person, the registrar must pay the same half-yearly out of any general moneys in his hands (Order XXXVII. r. 2).

The registrar, when directed by the court to draw out the fund or part of the fund in any action or matter, must apply by letter (Form 343) to the commissioners of the Treasury (Order XXXVII. r. 3).

Interest.]—Where money has, before January 1st, 1868, been invested in stocks in the names of the treasurer and registrar alone, the registrar must receive the dividends of all such funds and re-invest the same in the same names, except where the court shall otherwise direct, and apportion the amount so re-invested in his books (Order XXXVII. r. 4).

Legacy and Succession Duty.]—Before executing any order directing the payment or transfer of any fund, or part of any fund, in respect of which any duty is payable to the revenue under the Acts relating to legacy, succession or estate duty, the registrar must, before making the payment, require a certificate from the proper officer of, or the production of the receipt for, the payment of the duty chargeable in respect of such fund, or any part thereof respectively (Order II. r. 14).

Married Women.]—Where a married woman is interested in any principal money, stocks, shares or securities, exceeding in value 200*l.*, or 10*l.* in annual payments, and is not entitled to the same as her separate property, she must be examined by the judge apart from her husband to ascertain whether the same shall be paid to him or made the subject-matter of a settlement; and if the judge thinks that a settlement should be made, and in all cases where the married woman is under age, the judge must by his judgment make such settlement accordingly. The judge may, if he thinks fit, order such settlement to be prepared by counsel (Order XXXVII. r. 5).

Fund Due to Deceased Intestate.]—Where in any action, matter, or proceeding the estate of a deceased intestate is entitled to a fund or to a share of a fund in court not exceeding 100*l.*, and the judge is satisfied that administration has not been taken out, and that his assets (including the fund or share to which the estate is entitled) do not exceed 100*l.*, the judge may direct the fund or share to be paid, transferred, or delivered to the person who, being a widower, widow, child, father, mother, brother, or sister of the deceased, would be entitled to take out administration to his estate (Order XXXVII. r. 6).

72. It shall be lawful for any party to an action or matter or for a solicitor being a solicitor acting generally in the action or matter for such party, but not a solicitor retained as an advocate by such first-mentioned solicitor, or for a barrister retained by or on

Person
qualified to
practise
before
courts.

15 & 16 Vict.
c. 54, s. 10.
45 & 46 Vict.
c. 57, s. 2.

Section 72.

behalf of any party on either side, but without any right of exclusive audience, or by leave of the judge for any other person allowed by the judge to appear instead of any party, to address the court, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the court, the right of a solicitor to address the court shall not be excluded by reason only that he is in the permanent and exclusive employment of any other solicitor. No person other than a solicitor of the Supreme Court shall be entitled to have or recover any fee or reward for appearing or acting on behalf of any other party in any proceeding in the court: provided that nothing in this Act contained shall affect the right of any barrister at law to appear or act in any court, or of any solicitor of the Supreme Court to recover costs in respect of his employment of a barrister at law to appear or act as aforesaid.

Employment of Solicitor.—Any act which may be done by any party to an action or proceeding according to the rules of practice may be done by him either in person or by his solicitor or agent, if it may be legally done by an agent (Order LIV. r. 1).

A corporation, or limited company may issue process in a county court in the same way as an ordinary individual. The old rule that a corporation can only act by attorney appointed under the seal of the corporation does not apply to the issuing process in a county court (*Charles P. Kennell & Co., Ltd. v. Harding, Wace & Co.*, (1918) 1 K. B. 405).

When a plaintiff's solicitor on entering the plaint complies with the requirements of Order VI. r. 9, or when the defendant's solicitor signs a notice of defence, set-off, or counterclaim, or when on behalf of any party, a solicitor gives notice in writing by post or otherwise, to the registrar and the other party, or his solicitor, that he is acting for any party, he will be deemed to be his solicitor until notice of change has been given (Order LIV. r. 4). A solicitor's authority to start proceedings cannot be raised as a relevant issue in the action at the trial (*Richmond v. Branson & Son*, (1914) 83 L. J. Ch. 749). A solicitor who brings an action for an infant, on the instructions of a next friend who is also an infant, is liable to pay the costs (*Fernée v. Gorlitz*, (1915) 1 Ch. 177; 84 L. J. Ch. 404).

No person other than a solicitor can recover any fee or reward from any party, whether for services in or out of court in any action or proceeding (*Verlander v. Eddols*, (1882) 51 L. J. Q. B. 55).

The judge has no power, such as exists in the High Court, to order a solicitor to pay costs personally (*Davies v. Coles and Moulton*, 132 L. T. Journal, 577).

Change of Solicitor.—Subject to the provisions of sect. 72 prohibiting the retainer of a solicitor as an advocate by the solicitor of any party, a party who acts by solicitor may change him, without an order for the purpose. When such change is made, he must give forty-eight hours' notice in writing to the registrar and to the other parties or their solicitors. The notice must contain the name or firm and place of business of the new solicitor, and will be filed by the registrar. Until the notice has been given and filed and a copy served, the former solicitor will be deemed to be the solicitor of the party (Order LIV. r. 6; Form 352).

Authority of Solicitor.—A solicitor retained merely to bring an action has no implied authority, after judgment, to engage in interpleader proceedings (*James v. Ricknell*, (1887) 20 Q. B. D. 164; 57 L. J. Q. B. 113). nor to enter into an agreement to give the defendant time for payment

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(*Lovegrove v. White*, (1871) L. R. 6 C. P. 440; 40 L. J. C. P. 253), nor to assent to the defendant executing a deed of assignment to a trustee in favour of his creditors (*In re "A Debtor"* (No. 1 of 1914), (1914) 2 K. B. 758; 83 L. J. K. B. 1176), nor to compromise an action if expressly forbidden to do so (*Shepherd v. Robinson*, (1919) 88 L. J. K. B. 873).

Cases in which counsel or solicitors appear have no precedence over others although sometimes taken out of their order. Disputed claims which do not exceed 5*l.*, may, at the request of the parties, and by leave of the judge, be heard by the registrar (see sect. 92).

Liability for Client.—A solicitor is not liable to pay for things (such as photographs) ordered, on behalf of his client, for use on the trial of an action (*Wakefield v. Duckworth*, (1915) 1 K. B. 218; 84 L. J. K. B. 335), nor is he liable for the expenses of a witness whom he has subpoenaed on behalf of a client unless he has expressly agreed with the trustee to be personally responsible (*Robins v. Bridge*, (1837) 3 M. & W. 114; *Lee v. Everest*, (1857) 26 L. J. Ex. 334).

Persons entitled to appear.—Parties to a suit may either conduct their cases themselves, or they may employ a solicitor, or, through a solicitor, a barrister to conduct their cases for them. The solicitor, who is thus allowed to conduct a cause in court, must be the solicitor generally retained in the action, and not a solicitor practising as advocate for another. It is for the judge to determine whether this is or is not the case. If there is any evidence on which he can form an opinion, the High Court will not interfere. The fact of a solicitor being in the permanent and exclusive employment of another solicitor will not disqualify him from acting as advocate; but he will still require to be the solicitor acting generally in the action for the suitor (see *Bookham v. Potter*, (1868) L. R. 3 C. P. 490; 37 L. J. C. P. 276; *Shreeve v. Charlesworth*, (1868) 18 L. T. 325; *R. v. Snagge*, (1894) 2 Q. B. 440; 63 L. J. Q. B. 689).

It is not necessary for a party to give notice to any other, or to the court, of his intention to employ a barrister or solicitor, nor is the allowance of costs to the barrister or solicitor affected by want of notice (Order LIV. r. 8).

Where a party appears in person, he has a right to address the judge or jury as his own advocate, and then, being sworn, to give evidence as a witness (*Cobbett v. Hudson*, (1852) 1 E. & B. 11; 22 L. J. Q. B. 11; 93 R. R. 1).

No solicitor may appear for any person, until he has signed the book kept by the registrar for that purpose. No fee is payable for this. He may be required by the registrar to produce his certificate once a year, and the registrar is to note the fact of production on the roll or book (Order LIV. r. 7).

If the judge thinks fit, he may allow a person not a solicitor or barrister to address the court on behalf of, and instead of, a party to the proceeding, but such person will not be entitled to any fee or reward for so doing (sect. 72).

Inland Revenue Proceedings.—The conduct of inland revenue proceedings is provided for by sect. 38 of the Finance Act, 1896, which provides that any person who has been admitted as a solicitor, and is employed or authorised by the Commissioners or the Solicitor of Inland Revenue, may appear in, conduct, defend, and address the court in any legal proceeding in a county court where the proceeding relates to inland revenue or to any matter under the care or management of the Commissioners of Inland Revenue.

Solicitor's Costs.—The scales of costs allowable to solicitors are framed under sect. 164 of the Act. It will be seen that the lower scale of costs contains no provision for any allowance to solicitor in cases where the amount recovered does not exceed 2*l.*; and except in the special cases to which sect. 119 of the County Courts Act, 1888, or Order LIII. r. 17, apply,

no such allowance can be made in such actions. See Part II., "Costs and Court Fees," p. 1017.

Two Counsel.]—On taxation of costs of an action there was formerly no power to allow the fees of more than one counsel, but now where costs are taxed under column B. or C., the fees and costs of two counsel may be allowed if the judge so certifies. Order LIII. r. 8 (3). See Part II., "Costs and Court Fees," p. 1037.

Section 72
Notes.

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PART IV.

PROCEDURE AND TRIAL.

73. On the application of any person desirous to bring an action under this Act, the registrar of the court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the court, according to such form, and be served on the defendant so many days before the day on which the court shall be holden at which the action is to be tried, as shall be prescribed, and delivery of such summons to the defendant, or in such other manner as shall be so prescribed, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

Actions by
plaint.
9 & 10 Vict.
c. 95, s. 59.

Entry of Plaint.]—On application, the registrar enters the plaint in a book kept in his office, stating the names and last known places of abode of the parties, and the substance of the action, every plaint being numbered according to the order in which it is entered. If the plaintiff does not reside in England or Wales, he must give security for costs (Form 16) to the satisfaction of the registrar; where the plaint is entered by a solicitor, an undertaking by him to be responsible for costs is sufficient. If the plaintiff fails in his action or discontinues, and does not pay the costs ordered to be paid by him, payment may be enforced against him, or the solicitor who has given the undertaking, as on a judgment debt (Order V. r. 10; Form 17). The High Court has held that when one only of two plaintiffs is abroad, an order for security cannot be made (*D'Hormussee v. Grey*, (1832) 10 Q. B. D. 13; 52 L. J. Q. B. 192). A plaintiff ordinarily resident out of England and Wales may be ordered to give security, although temporarily resident in England or Wales (Order V. r. 11).

Præcipe.]—No plaint can be entered without filing a *præcipe*. Such *præcipe* must contain (1) the full names, occupation or description, and residence or place of business of the plaintiff and, in the case of an infant required to sue by a next friend, the particulars required by Order V. r. 16; (2) the surname of the defendant, his general occupation or description, and, subject to Order V. r. 13, his residence or place of business, and (where known) his full names, the name of the street in which his residence or place of business is situate, and the number of the house; (3) a statement whether the defendant is male or female, and, if known, whether of full age or not,

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and if a female whether married, single or a widow, provided also that these last-named facts are known; (4) a short statement of the cause of action, or remedy or relief sought, and of the debt or damages claimed (Order V. r. 4a; Form 6). Where a company registered under the Companies Consolidation Act, 1908, is a defendant, the *præcipe* must give an address for service described as "being the registered office of the company" (Order V. r. 5). If the plaintiff sues or any of the defendants is sued in a representative capacity, he must add both in the *præcipe* and particulars (5) a statement of the capacity in which the plaintiff sues, or the defendant is sued (Order V. r. 6). Where an assignee of a debt or other legal chose in action sues, the fact that he is such assignee, and the name, address, and description of the assignor, must be stated in the *præcipe* and summons (Order V. r. 7). If a solicitor enters the plaint, he must add (6) his name and address. No misnomer or inaccurate description of any person or place in a plaint will vitiate it so long as the person or place is described so as to be commonly known.

Illiterate Plaintiff.—Where the intended plaintiff is illiterate and unable to furnish the required information in writing, the *præcipe* shall be filled up by the registrar's clerk (Order V. r. 4).

Summons, how issued.—Upon the entry of the plaint, a summons stating the nature of the action, and bearing the number of the plaint in the margin, is issued under the seal of the court. It must be in one of the prescribed forms, and dated as of the day on which the plaint was entered, and that date is the commencement of the action. If issued by leave of the judge or registrar, the copy of the affidavit mentioned in Order V. r. 13, with a copy thereon of the order granting leave, must be annexed to the summons and served with it.

The registrar must issue the summons within the district to the high bailiff forthwith after the plaint is entered. He must, also, where particulars are required, annex to the summons a copy of the plaintiff's particulars, sealed with the seal of the court, and they will be deemed to be part of the summons, and make and deliver to the bailiff a true copy of the summons; and it is the duty of the bailiff to attend at the registrar's office for the purpose of receiving summonses once at least every day, and to ascertain, by examination and comparison of them, the correctness of the copies. The summons will direct the defendant to appear at the next court for which plaints are then being entered, or, at the request of the plaintiff, at any subsequent court (Order VII. r. 5). The day appointed for the appearance of the defendant, or any other day fixed for the trial, is called the return-day (see *post*, s. 186; Order LV.).

Errors in Summons.—The section provides that no misnomer or inaccurate description of any person or place in the summons will vitiate it, so long as the person or place is described so as to be commonly known. In case of an error by the officers of the court causing the summons to be a nullity, it would appear that the judge has power to order a new summons to issue, bearing, if necessary, the date of the first; as where a defendant, sued as executor of A., was wrongly described by the officer in the summons as executor of B., the court, believing the first summons to be a nullity, refused to disturb a new summons, which the judge had ordered to issue, bearing the date of the first, to save the Statute of Limitations (*Foster v. Temple*, (1848) 5 D. & L. 655; 17 L. J. Q. B. 230).

Default Summons and Procedure.—See sect. 86, *post*, p. 98, and notes thereto.

Where action
may be com-
menced.

74. Except where by this Act it is otherwise provided, every action or matter may be commenced in the court within the district of which the defendant or one of the defendants shall dwell or carry on his business at the time of commencing the action

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or matter, or it may be commenced, by leave of the judge or registrar, in the court within the district of which the defendant or one of the defendants dwelt or carried on business, at any time within six calendar months next before the time of commencement, or, with the like leave in the court in the district of which the cause of action or claim wholly or in part arose.

The procedure for obtaining leave under this section is regulated by Order V. r. 13. No leave can be given where the proposed defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, except where the circumstances set out in Order V. r. 13 (9) (a), (b), (c), (d), exist. Further, in the case of a default summons against such persons, there is an additional limitation imposed by Order VII. r. 29B (2).

For forms of affidavit for obtaining leave under this section, see Forms 8, 8A, 9 and 9A.

Where the plaintiff entered two complaints against his landlord, one of which was regular, and the other irregular in consequence of no leave having been obtained and no affidavit sworn till six days after the entry of the complaint, and summonses were issued on these complaints the plaintiff's claim being statute-barred if there was no jurisdiction to hear the summons irregularly issued. Contended that no effective summons had ever been issued and that the county court had no power to extend time. At the trial no objection was taken by defendant to the irregularity. Held by the Court of Appeal (overruling the Divisional Court) that the irregularity was one that could be waived and that it had been waived by defendant, and the county court had jurisdiction to hear the action irregularly commenced (*Pringle v. Hales*, (1925) 1 K. B. 573; 94 L. J. K. B. 458).

In what District.]—The district in which actions and matters must be commenced is, generally speaking, to be ascertained from sect. 74 of the Act. As regards some particular forms of equity and other actions and matters, special provisions, differing from those contained in the above section, are made by other sections of the Act, and reference to them has already been made.

So, in many special Acts, particular provision is made as to the district in which proceedings under them must be commenced. Where there are no such provisions the general rule laid down by the section above-mentioned will, it is believed, apply.

Metropolitan Districts.]—England and Wales are divided into districts, and a county court is established in each. The city of London forms a district of itself, and the City of London Court is a county court like the others, except that it retains certain privileges (see *post*, sect. 185). The metropolitan districts are Bloomsbury, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, Whitechapel, and the city of London, and if the plaintiff and defendant dwell or carry on business in any of these districts, though not necessarily in the same, the action or matter may be commenced and all proceedings taken, either in the court of the district in which the plaintiff or in that in which the defendant dwells or carries on business (see sect. 84; Order LV., interpreting "metropolitan court," does not add Bow to the courts mentioned in that section).

This provision enables the plaintiff to sue in the district in which he dwells or carries on business, without leave and without its being necessary for any part of the cause of action to arise within the district. The jurisdiction exists even if the plaintiff has become resident within a district for the purpose of giving jurisdiction, if residence was actually and *bonâ fide* enjoyed before the issuing of the summons (*Massey v. Burton*, (1857) 2 H. & N. 597; 27 L. J. Ex. 101; 115 R. R. 714).

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The above provision excepts the Metropolitan districts from the operation of sect. 75 of the Act of 1888, which specifies the district in which certain equity actions and matters must be commenced. Those proceedings must, therefore, in the metropolitan districts, be commenced in accordance with the provision now under consideration (*R. v. Bloomsbury C. C.*, (1890) 24 Q. B. D. 309).

City of London Court.—Sect. 39 of the London (City) Small Debts Extension Act, 1852 (15 Vict. c. lxxvii.), is not repealed by this section; hence the City of London Court has jurisdiction if the defendant has "employment" within the city (*Kutner v. Phillips*, (1891) 2 Q. B. 267; 60 L. J. Q. B. 505), and without leave of the judge or registrar, where the cause of action wholly or in part arose therein (*Felton v. Bower*, (1900) 1 Q. B. 598; 69 L. J. Q. B. 351).

Dwelling or carrying on Business.—If a defendant has two permanent residences, he dwells and may be sued in the district of the one in which he is living at the time of action (*Butler v. Ablewhite*, (1858) 6 C. B. N. S. 740; 28 L. J. C. P. 292; 120 R. R. 345; *Pilgrim v. Knatchbull*, (1865) 18 C. B. N. S. 798; 34 L. J. C. P. 257; 144 R. R. 680); and possibly in the other (*Bailey v. Bryant*, (1858) 1 E. & E. 340; 28 L. J. Q. B. 86). A temporary residence in a district by a person who has a permanent residence elsewhere does not constitute a dwelling within the district of the temporary residence (*Macdougall v. Paterson*, (1851) 2 L. M. & P. 681; 21 L. J. C. P. 27; 87 R. R. 769; *Marsh v. Conquest*, (1864) 17 C. B. N. S. 432; 33 L. J. C. P. 319; 142 R. R. 433; *Kerr v. Haynes*, (1860) 29 L. J. Q. B. 70); nor will a compulsory temporary residence in gaol make the gaol his place of residence (*Dunston v. Paterson*, (1858) 5 C. B. N. S. 267; 28 L. J. C. P. 97; 116 R. R. 670).

Where the defendant had no permanent place of residence, it was held that he must be taken to dwell at the place where he was temporarily residing (*Alexander v. Jones*, (1866) 4 H. & C. 204; L. R. 1 Ex. 133; 35 L. J. Ex. 78).

A corporation or company dwells at the place where its business is substantially conducted and not necessarily at its registered office (*Taylor v. Crowland Gas Co.*, (1855) 11 Ex. 1; 24 L. J. Ex. 233; 105 R. R. 360; *Adams v. G. W. Rail. Co.*, (1861) 6 H. & N. 404; 30 L. J. Ex. 124; 23 R. R. 596; *Keynsham Lime Co. v. Baker*, (1864) 2 H. & C. 729; 33 L. J. Ex. 41; 133 R. R. 765); but it seems that a foreign corporation having an office in England would be considered as dwelling there (*Haggin v. Comptoir d'Escompte*, (1889) 23 Q. B. D. 519; 58 L. J. Q. B. 508; but see *Okura & Co. v. Forsbacka*, (1914) 1 K. B. 715; 83 L. J. K. B. 561).

"Carrying on business" means more than a mere employment; therefore a clerk in a public office does not carry on his business at the office where he performs his duties (*Buckley v. Hann*, (1851) 5 Ex. 43; 19 L. J. Ex. 151; 82 R. R. 553; *Rolfe v. Learmonth*, (1849) 14 Q. B. 196; 19 L. J. Q. B. 10; *Glennie v. Delmar*, (1850) 1 L. M. & P. 402; S. C., *nomine Sangster v. Cave*, 5 Ex. 386; 19 L. J. Ex. 314; 82 R. R. 719); nor does a solicitor's clerk at his master's office (*Graham v. Lewis* (C. A.), (1889) 22 Q. B. D. 1; 58 L. J. Q. B. 117); nor does a foreman or shopman at his master's shop (see *per Rolfe, B.*, in *Glennie v. Delmar*, *supra*). A company director does not carry on his business at the place where the company's business is carried on (*Cain v. Butler*, (1916) 1 K. B. 759; 85 L. J. K. B. 804). A railway company carries on business in the district in which its principal office or station is situate, and not at other terminal or intermediate stations (*Brown v. L. & N. W. Rail. Co.*, (1863) 4 B. & S. 326; 32 L. J. Q. B. 318; 129 R. R. 766; *Shiels v. G. N. Rail. Co.*, (1861) 30 L. J. Q. B. 331; 126 R. R. 856); nor at receiving offices conducted by agents (*Minor v. L. & N. W. Rail. Co.*, (1856) 1 C. B. N. S. 325; 26 L. J. C. P. 39; 107 R. R. 681). A Scotch railway company whose line extends into England does not carry on business

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at its office there, if the principal office in which its business is managed is in Scotland (*Palmer v. Caledonian Rail Co. (C. A.)*, (1892) 1 Q. B. 823; 61 L. J. Q. B. 552). A pier company was held to carry on its business not at the place where the pier was situated, but at its central office in London, where the substantial business of the company was carried on (*Aberystwith Pier Co. v. Cooper*, (1866) 35 L. J. Q. B. 44). A company incorporated for the manufacture and sale of goods carries on its business at the place of manufacture and sale, not at its registered offices (*Keynsham Lime Co. v. Baker*, (1864) 2 H. & C. 729; 33 L. J. Ex. 41; 133 R. R. 765; *Oldham Co. v. Heald*, (1864) 3 H. & C. 132; 33 L. J. Ex. 236; 140 R. R. 350). A company carrying on business in London, which employs in a country town a general commission agent, who transacts the company's business in such town in an office for which the company pays him rent, does not carry on business in that town (*Corbett v. General Navigation Co.*, (1859) 4 H. & N. 482; 28 L. J. Ex. 214; 118 R. R. 564; *Shiels v. G. N. Rail. Co.*, (1861) 30 L. J. Q. B. 331; 126 R. R. 856), and it seems that it would be the same, even if the company's name were outside the office and printed on the agent's note-paper (*Baillie v. Goodwin*, (1886) 33 Ch. D. 604; 55 L. J. Ch. 849). A firm whose principal place of business was in Glasgow, but who had a branch at Middlesbrough, was held to carry on business at Middlesbrough (*Weatherley v. Calder*, (1890) 61 L. T. 508). A temporary carrying on of business in a district by a person whose permanent place of business is elsewhere, does not make it his place of business for the purpose of being sued; as where a contractor erects workshops for men near work upon which he is engaged (see *per Hill, J.*, *Shiels v. G. N. Rail. Co.*, *supra*; *Gorslett v. Harris*, (1857) 29 L. T. O. S. 75). A surgeon who resides in one district, and daily attends patients in another, carries on business within the latter district (*Mitchell v. Hender*, (1854) 23 L. J. Q. B. 273).

As to a foreign corporation carrying on its business by agents in this country, see *Okura & Co. v. Forsbacka Jernverks Aktiebolag*, (1914) 1 K. B. 715; 83 L. J. K. B. 561.

Material Part of Cause of Action.]—The summons may issue in the district in which the "cause of action or claim wholly or in part" arose.

The point to be determined is what are the facts which can fairly be said to be material to the cause of action, as distinguished from those which are immaterial or foreign to it.

The order for goods is a material part of the cause of action for their price; therefore where an order for goods was given in Oxford to a traveller for a Manchester house, and the goods were by the defendant's request sent from Manchester by railway, it was held that the whole cause of action did not arise within the Manchester district (*Borthwick v. Wallon*, (1855) 15 C. B. 501; 24 L. J. C. P. 83; 100 R. R. 463; see also *Jackson v. Beaumont*, (1855) 11 Ex. 300; 24 L. J. Ex. 301; 105 R. R. 536; *Gold v. Turner*, (1875) L. R. 10 C. P. 149; *Green v. Beach*, (1873) L. R. 8 Ex. 208; 42 L. J. Ex. 151). But the posting of a letter containing an offer to purchase goods, does not enable a party to say that part of the cause of action for damages for breach of the contract arose in the district where such letter was posted (*Clarke Brothers v. Knowles*, (1918) 1 K. B. 128; 87 L. J. K. B. 189). No distinction has been made between cases which are taken out of the operation of the Statute of Frauds by delivery and acceptance, and those where the contract is in writing, or where there is a memorandum signed by the party to be charged. So an oral order was held to be a material part (*Borthwick v. Wallon*, *supra*); as was a mere oral offer to purchase, afterwards duly accepted (*Green v. Beach*, *supra*).

Non-payment at a place where a purchaser ought to pay is a material part (*Northey v. Gidney (C. A.)*, (1894) 1 Q. B. 99).

Where the defendant by a letter written and posted in the district of one county court ordered the plaintiff to do certain work in that of another court, and the letter was received and the work done within the district

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of the latter and a plaint issued from the latter court to recover the price, it was held that the whole cause of action arose within its district, and that the court had, therefore, jurisdiction (*Newcomb v. De Roos*, (1858) 2 E. & E. 271; 29 L. J. Q. B. 4; 119 R. R. 717; *Rennie v. Ratcliffe*, (1876) 35 L. T. 833; 25 W. R. 319; and see *R. v. Rogers*, (1877) 3 Q. B. D. 28; 47 L. J. M. C. 11; *Bennett v. Cosgriff*, (1877) 38 L. T. 177; *Household Fire Co. v. Grant* (C. A.), (1879) 4 Ex. D. 216; 48 L. J. Ex. 577; and see *contra*, *Taylor v. Jones*, (1875) 1 C. P. D. 87; 45 L. J. C. P. 110; *R. v. Holmes*, (1883) 12 Q. B. D. 23; 53 L. J. M. C. 37). A similar rule has been held to apply to accounts stated, and to contracts entered into by telegraph (*Cowan v. O'Connor*, (1889) 20 Q. B. D. 640; 57 L. J. Q. B. 401).

A plaintiff orally agreed with the defendant in A. district to purchase a horse to be delivered in B. district. The defendant afterwards brought the horse to the plaintiff in the B. district, when the plaintiff required a warranty which was given and the horse delivered. In an action for breach of the warranty, brought in the B. district, it was held that what had taken place in the A. district did not constitute a material or any part of the cause of action (*Aris v. Orchard*, (1861) 6 H. & N. 160; 30 L. J. Ex. 21; 123 R. R. 428). The case appears at first sight irreconcilable with others just cited; but it appears to have been held that the parties had not finally agreed upon any terms of sale upon the first occasion, or that what took place when the warranty was demanded and given, was equivalent to a rescission of the original contract and the making of a new one, with the addition of a warranty. In that view the whole cause of action obviously arose at B.

In an action for the price of goods sold and delivered, a material part of the cause of action arises at the place where the delivery to the buyer or to his agent takes place (*Kemp v. Clark*, (1848) 12 Q. B. 647; 17 L. J. Q. B. 305. See *Re Wilts Iron Co.*, (1868) L. R. 3 Ch. 443; 37 L. J. Ch. 554). Where delivery is made to a buyer by a carrier paid by the seller, a material part arises at the place of actual delivery (*Arndt v. Porter*, (1861) 30 L. J. Ex. 19). Where a seller in pursuance of a contract of sale sends goods to the buyer, delivery to the carrier is *prima facie* delivery to the buyer, and a material part of the cause of action arises at the place of such delivery, except in cases where the contract is for the sale of goods for 10*l.* and upwards, and fails to satisfy the Sale of Goods Act, 1893, s. 4 (1) (*Smith v. Hudson*, (1865) 6 B. & S. 431; 34 L. J. Q. B. 145; 141 R. R. 459; *Norman v. Phillips*, (1845) 14 M. & W. 277; 14 L. J. Ex. 306; *Borthwick v. Walton*, (1855) 15 C. B. 501; 24 L. J. C. P. 83; 100 R. R. 463. But see *Aris v. Orchard*, and observations thereupon, *supra*). Cases such as *Ex parte Rosevear Clay Co.*, (1879) 11 Ch. D. 560; 48 L. J. Bk. 100, may be usefully consulted.

It may be stated generally, that either the making of a contract or the breach of it, is a material part of the cause of action upon the contract (*Banque de Cr dit Commercial v. De Gas*, (1871) L. R. 6 C. P. 142; *Cooke v. Gill*, (1873) L. R. 8 C. P. 107; 42 L. J. C. P. 98; compare *Wirth v. Austin*, (1875) L. R. 10 C. P. 689). As to the meaning put upon the words "cause of action" in sect. 18 of the Common Law Procedure Act, 1852, see *Sichel v. Borch*, (1864) 2 H. & C. 954; *Allhusen v. Malgarejo*, (1868) L. R. 3 Q. B. 340; 37 L. J. Q. B. 169; *Jackson v. Spittall*, (1870) L. R. 5 C. P. 542; 39 L. J. C. P. 321; *Durham v. Spence*, (1870) L. R. 6 Ex. 46; 40 L. J. Ex. 3; *Cherry v. Thompson*, (1872) L. R. 7 Q. B. 573; 41 L. J. Q. B. 243; *Vaughan v. Weldon*, (1874) L. R. 10 C. P. 47; 44 L. J. C. P. 64.

In an action by an indorsee against the drawer of a bill of exchange, the notice of dishonour is a material part (*Huth v. Long*, (1850) 1 L. M. & P. 333; 19 L. J. Q. B. 325; see *Roff v. Miller*, (1850) 19 L. J. C. P. 278; 14 Jur. 746).

In an action by a solicitor against a mortgagor for the costs of preparing a mortgage, the agreement to give the mortgage is a material part (*Jackson v. Grimley*, (1864) 16 C. B. N. S. 380; 33 L. J. C. P. 238; 139 R. R. 534).

In an action against an administrator the grant of letters of administration is a material part (*Fuller v. Mackay*, (1853) 2 E. & B. 573; 22 L. J. Q. B. 415). In an action by the assignee of a debt, the assignment is a material part (*Read v. Brown* (C. A.), (1889) 22 Q. B. D. 128; 58 L. J. Q. B. 120).

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Debt Composed of Several Items.]—Under the section which gave jurisdiction, where the cause of action did not arise wholly or in some material part within the jurisdiction of the court within which the defendant dwelt or carried on his business, it was held that where the items of a bill were so connected as to form one cause of action (as in *Grimbley v. Aykroyd*, (1847) 1 Ex. 479; 17 L. J. Ex. 157), if any one item arose within the jurisdiction of a county court, within which the defendant dwelt or carried on his business at the time of action brought, the cause of action "in some material point" arose within the jurisdiction (*Wood v. Perry*, (1850) 3 Ex. 442; 18 L. J. Ex. 161; *Bonsey v. Wordsworth*, (1856) 18 C. B. 325; 25 L. J. C. P. 205; 107 R. R. 318; *Copeman v. Hart*, (1863) 14 C. B. N. S. 731; 33 L. J. C. P. 107). Where a defendant entered into a written contract to take a number of bricks, and after some had been delivered, he declined to accept the rest; and it appeared that the contract was signed at the defendant's residence; it was held that the cause of action in a material point arose within the jurisdiction where the defendant dwelt (*Norman v. Marchant*, (1854) 7 Ex. 723; 21 L. J. Ex. 256).

Account stated.]—If an account be stated in one district in respect of a debt, the whole cause of action of which arose in another, an action on the account stated may be maintained in the former district (see *Evans v. Nicholson*, (1879) 32 L. T. 778; 45 L. J. C. P. 111, n.; *Taylor v. Nicholls*, (1875) 1 C. P. D. 242; 45 L. J. C. P. 455). An account stated was defined by Lord Abinger as "an admission of a balance due from one party to another" (*Irving v. Veitch*, (1837) 3 M. & W. 90, 107; 7 L. J. (N. S.) Ex. 25; 49 R. R. 511; and see 2 Wms. Saund. 122, note (c)); but it seems that something more than a mere admission is necessary, it must be assented to by the other party, as by bringing an action upon it (*Grundy v. Townsend*, (1888) 36 W. R. 531). If the evidence of the admission cannot be relied on there is of course no account stated and no jurisdiction (see *Wallace v. Allen*, (1875) L. R. 10 C. P. 607; 44 L. J. C. P. 351; and see *per Brett, J.*, in *Taylor v. Nicholls*, (1875) 1 C. P. D. 242, 245; 45 L. J. C. P. 455).

When a letter sending an account is sent from one district to another by post, and a reply is sent by post promising payment, it appears that an account is stated in the district in which the letter promising payment is received, as well as in that in which it is posted, and that the letter operates as a continuing statement of account from the time of posting to the time of its receipt (*Evans v. Nicholson*, *supra*). This result is singular, for it is substantially that one act—that of posting—establishes two causes of action in different places. In one view it seems to be consistent with *Dunlop v. Higgins*, (1848) 1 H. L. Cas. 381; 73 R. R. 98; and see *Household Fire Insurance Co. v. Grant* (C. A.), (1879) 4 Ex. D. 216; 48 L. J. Ex. 577, and in the other with *Newcomb v. De Roos*, (1858) 2 E. & E. 271; 29 L. J. Q. B. 4. Giving a letter to a town postman outside a post-office, even if the postman goes inside, is not a posting (*Re London and Northern Bank, Ex parte Jones*, (1900) 1 Ch. 220; 69 L. J. Ch. 24).

Leave to commence Proceedings.]—The leave is in certain cases a condition precedent to the jurisdiction. Thus, if no leave has been obtained where it is required, the defendant could oust the jurisdiction of the court by appearing and objecting to the jurisdiction (*Brown v. L. & N. W. Rail. Co.*, (1863) 4 B. & S. 326; 32 L. J. Q. B. 318; 129 R. R. 766). Moreover if the defendant did not appear at all, it was believed that the court had in such a case no jurisdiction. If, however, he did appear and in ignorance of the

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defect raised no objection until the court decided against him as to part of the claim, it was said that he had waived the objection and that the court had jurisdiction (*Moore v. Gamgee*, (1890) 25 Q. B. D. 244; 59 L. J. Q. B. 505); *Pringle v. Hales*, (1925) 1 K. B. 573). See also s. 10 of the County Courts Act, 1919, *post*, p. 238, which section applies to a failure of jurisdiction owing to proceedings begun in a wrong county court. The judge may now if he thinks fit try the action.

An order for leave, which should only be granted when the judge or registrar has duly considered the affidavit and exercised his discretion in each case in accordance with the circumstances (*Reg. v. Turner*, (1897) 1 Q. B. 445; 66 L. J. Q. B. 417), must be signed by the judge or registrar in his own handwriting (Order V. r. 13 (8); Forms 8 (1), 8 (2), 9, 10. See as to the practice, Order V. r. 13).

Actions by or against Officers of the Court.]—See *ante*, pp. 25—32.

Equity and other Actions.]—See special provisions as to actions for the recovery of small tenements, s. 138, *post*; as to actions of ejectment, s. 59; as to actions of replevin, s. 133, *post*; as to equity actions, *infra*.

Debtors Act, 1869.]—See *post*, p. 265.

Justices.]—See *ante*, p. 48.

In what courts proceedings in equity shall be taken.
28 & 29 Vict. c. 99, ss. 10, 11.

13 & 14 Vict. c. 60.
15 & 16 Vict. c. 55.

75. The provisions of the next preceding section shall not apply to any of the following proceedings; but

- (1.) Proceedings which relate to the recovery or sale of any mortgage, charge, or lien on lands, tenements, or hereditaments, or to partition, shall be taken in that court within the districts of which the lands, tenements, or hereditaments, or any part thereof, are situate:
- (2.) Proceedings under the Trustee Acts, 1850 and 1852, shall be taken in the court within the district of which the persons making the application, or any of them, reside or resides:
- (3.) Proceedings for the administration of the assets of a deceased person shall be taken in the court within the district of which the deceased person had his last place of abode in England, or in which the executors or administrators, or any one of them, shall have their or his place of abode;
- (4.) Proceedings in any partnership case shall be taken in the court within the district of which the partnership business was or is carried on:

Provided that if during the progress of any such proceedings it shall be made to appear to the court that the same could be more conveniently heard in some other court, it shall be competent for the court to transfer the same to such other court, and thereupon the proceeding shall be taken in such other court.

Sect. 84 excepts the metropolitan districts from the operation of this section. The equity proceedings here mentioned must, therefore, in the metropolitan districts, be commenced in accordance with the provisions of sect. 84 (*R. v. Bloomsbury C. C.*, (1890) 24 Q. B. D. 309).

76. Any summons or other process which under this Act shall be required to be served or executed out of the district of the court from which the same shall have issued, may be served or executed by the bailiff of any court in any part of England, and such service or execution shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court for which he acts. **Section 76.**
Service of process out of district.
9 & 10 Vict. c. 95, s. 61

For service of default or special default summons, see notes to s. 86.

By Order II. r. 21, the high bailiff is to serve or cause to be served process sent to him for service from other courts as soon as practicable.

In the case of an ordinary summons, the high bailiff of the foreign court must, eight clear days at least before the return-day, transmit the copy thereof to the registrar of the home court duly indorsed and signed by the bailiff (who must name the court of which he is a bailiff), and also the summons itself when not served (Order II. r. 27).

In the case of a judgment summons, this must be done three clear days at least before the return-day (Order II. r. 28).

In case of neglect to comply with either of the two preceding rules, the high bailiff of the foreign court may be ordered by the judge of the home court to pay to the plaintiff such sum as the judge may think reasonable, as compensation for any loss of time and expense which may have been caused to the plaintiff by such neglect (Order II. r. 29).

The City of London Court is included in this rule. See s. 185.

77. Any summons or other process may be served or a warrant executed within five hundred yards of the boundary of the district of the court from which the same issued by the bailiff of such court, or if the judge of such court so orders, by such bailiff within the district of any other court. Service of summons or execution of warrant within 500 yards of district.
19 & 20 Vict. c. 108, s. 17.

This general power of service within five hundred yards of the boundary of the court district is not controlled by the provision of Order VII. r. 29, for service, in the case of metropolitan districts, by a bailiff of the court within the district of which the defendant dwells or carries on business.

78. Where any summons or other process of the court is served by a bailiff of any court, the service may be proved by indorsement on a copy of the summons or process under the hand of such bailiff, showing the fact and mode of the service of such summons or process; and any such bailiff wilfully and corruptly endorsing any false statement on the copy of a summons or other process shall be guilty of a misdemeanor, and on conviction thereof shall be removed from his office or employment, and shall incur the same penalties as are or may be incurred by persons convicted of wilful and corrupt perjury. Proof of service of process by a bailiff.
38 & 39 Vict. c. 50, s. 3.

As to service of default and special default summons, see Order VII. rr. 30—34.

The copy referred to is the one delivered to the bailiff pursuant to Order II. r. 8, and indorsed by him with particulars of service, etc.

Proof of Service.]—Where any summons has been served by a bailiff of any court, service may be proved by the indorsement on the copy under the

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hand of the bailiff, showing the fact and mode of service. Where service is on one of two partners sued, or on a person carrying on business in a name or style as if it were a firm name, see Order VII. rules 15, 16, 16A and 16A (2), and Forms 29A and 37 (2). To prove service by post on a company registered under the Companies (Consolidation) Act, 1908, the indorsement ought, it is believed, to show that the summons was properly directed to the registered office, and was put as a prepaid letter into the post office in such time as to admit of its delivery within the period necessary for due service (see *post*, p. 908). Whether or not the proof of service is sufficient is a matter entirely in the discretion of the court; if it is satisfied with the proof, there is jurisdiction to hear the plaint (*Robinson v. Lenaghan*, (1848) 2 Ex. 333; 17 L. J. Ex. 174).

Where an affidavit of service is required, it must state when, where, how, and by whom service was effected (Order XIX. r. 12).

Where a solicitor represents he is authorised to accept service for a defendant it is sufficient to deliver the summons to him, provided he endorses on the copy retained by the bailiff, or the person serving the summons, a memorandum that he accepts service on behalf of the defendant (Order VII. r. 12).

When process may not be served.—No summons or other process (except a summons *in rem* or a warrant of arrest in an Admiralty action) may be served or executed on Sunday, Christmas Day, Good Friday, or on any day appointed by royal proclamation for a public fast, humiliation or thanksgiving; nor need such summons or process be executed on any day on which the offices of the courts are authorised to be closed (Order LIV. r. 19).

Summons not served or not served in time.—Where an ordinary summons either in or out of the district has not been served by reason of the defendant after issue of the plaint having removed out of the district, a successive summons may be issued, under Order VII. r. 6, for service in the district to which he has removed (Order VII. r. 7).

Proceedings
on hearing
the plaint.
9 & 10 Vict.
c. 95, s. 74.

79. On the return-day the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer the plaint; and on answer being made in court the judge shall proceed in a summary way to try the action and give judgment, without further pleading or formal joinder of issue.

At the trial the judge may try the whole matter of the action and give judgment thereon, or grant any relief, redress, or remedy, or may make any order or give any direction which he may consider necessary to enable final judgment to be given upon a day to which the trial may be adjourned, and also may make such order as to costs as he may think fit (see Order XXII. r. 13).

The judge may in any case where the interests of the public require it, or to secure that justice may be done, hear a case *in camera* (*Norman v. Matthers*, (1916) 85 L. J. K. B. 857), but not a petition under the Legitimacy Act, 1926 (In the Matter of a Petition, (1928) 138 L. T. 64).

No evidence
to be given
that is not
in summons.
9 & 10 Vict.
c. 95, s. 75.

80. Subject to the power of amendment conferred by this Act, no evidence of any demand or claim shall be given by the plaintiff on the trial or hearing, except such as shall be stated in the summons or other proceeding under this Act directed to be issued or taken.

For power of amendment, see sect. 87.

81. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in any of the courts; but any plaintiff having cause of action for more than *one hundred (a)* pounds, for which a plaint might be entered if not for more than *one hundred (a)* pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding *one hundred (a)* pounds; and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

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Demands not to be divided for the purpose of bringing two or more actions.

9 & 10 Vict. c. 95, s. 63.
13 & 14 Vict. c. 61, s. 1.

NOTE.—(a) Increased from 50*l.* by County Courts Act, 1903.

Cause of Action not to be Divided.]—"Cause of action" in this section means "one cause of action," and is not limited to an action on one separate contract: therefore in the case of tradesmen's bills, in which one item is connected with another, "and the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand," the demand, if it exceeds 100*l.*, ceases to be within the jurisdiction of the county court. So, where the sub-contractor of a railway company gave his workmen tickets or orders for goods, which were supplied by the plaintiff, and the latter brought 228 actions in the county court against the defendant in respect thereof, for sums amounting in the aggregate to 303*l.* 19*s.*, the Court of Exchequer granted a prohibition, although one claim only amounted to 5*l.*, and many to less than 20*s.* (*Grimbley v. Aykroyd*, (1847) 1 Ex. 479; 17 L. J. Ex. 157). Where, however, the cause of action consists of items of a different character, as a claim for goods sold and money lent, it is otherwise (*Brunskill v. Powell*, (1850) 1 L. M. & P. 550; 19 L. J. Ex. 362; 87 R. R. 887). So rent in arrear and a claim for double value for holding over, under the 4 Geo. II. c. 28, or indeed any two demands which would have required to be stated in distinct counts, may be sued for by separate plaints (*Wickham v. Lee*, (1848) 12 Q. B. 521; 18 L. J. Q. B. 21; 76 R. R. 334; *Neale v. Ellis*, (1843) 1 D. & L. 163; 12 L. J. Q. B. 329). A plaintiff entered two plaints in the county court, one for 19*l.* 19*s.* for goods sold and delivered, work and labour, and money paid; the other for 19*l.* for money lent. The plaintiff recovered judgment in the first cause for 17*l.*; in the second for 19*l.*. Upon a motion for a prohibition, it was held that the items in the two plaints were not so connected as to form one cause of action (*Kimpton v. Willey*, (1850) 9 C. B. 719; 19 L. J. C. P. 269; 82 R. R. 515). Compare *Conquer v. Boot*, (1928) 97 L. J. K. B. 452.

Distinct claims of different character.

The fact of debts being incurred concurrently, and entered in one account by the plaintiff in his books, and rendered to the defendant in one statement of account, does not constitute a bar to, or a waiver of, his right to treat separate causes of action as distinct demands (*Kimpton v. Willey*, *Brunskill v. Powell*, *supra*). It seems that damage to goods and damage to the person, though occasioned by one wrongful act, give rise to distinct causes of action (*Brunsdon v. Humphrey* (C. A.), (1884) 14 Q. B. D. 141; 53 L. J. Q. B. 476).

Where a plaintiff splits his demand and sues for part, and the defendant omits to take the objection, the plaintiff may afterwards sue for the residue, and the defendant cannot, either at the trial or by prohibition, defeat the claim under this section (see *Vines v. Arnold*, (1851) 8 C. B. 632; 19 L. J. C. P. 98; 79 R. R. 653; *Adkin v. Friend*, (1878) 38 L. T. 393; *Jones v. Jones* (No. 2), (1874) 22 W. R. 577).

For provisions enabling the defendant to consolidate in one action several separate actions, see Order VIII.

Abandonment by Plaintiff of Excess.]--The plaintiff may, in order to

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bring his claim within the jurisdiction of the county court, abandon the excess of his claim over 100*l.*, but the judgment in the action will bar any further proceedings for the recovery of the abandoned excess (see sect. 81). The abandonment of the excess should always be entered at the end of the particulars, annexed to the summons (Order VI. r. 1). The effect of the rules now in force seems to be that the excess may be abandoned at any time; by Order XIV. r. 12, the plaintiff can amend his claim at any time before the return-day, and by Order XIV. r. 13, can, at any time before his case is called on, or in his opening, abandon any part of his claim. This alters the practice on this point, laid down in *Avards v. Rhodes*, (1853) 8 Ex. 312; 22 L. J. Ex. 106; 91 R. R. 504, and *Re Hill*, (1855) 10 Ex. 726; 24 L. J. Ex. 137. It has long been held that if the amount claimed on the particulars did not exceed 50*l.* [now 100*l.*], the plaintiff might abandon any excess which appeared on the trial (*Isaac v. Wyld*, (1852) 7 Ex. 163; 21 L. J. Ex. 46; *Bodger v. Nicholls*, (1873) 28 L. T. 441). A plaintiff may by amended particulars abandon any excess over 100*l.*, even after a summons for prohibition has been taken out (*Haddon v. Morton*, (1893) 37 S. J. 634).

Where upon taking an account it appears that the plaintiff is entitled to a larger amount than 100*l.* and he has not abandoned the excess in his particulars, he may by leave of the court abandon the excess and judgment may be thereupon entered for 100*l.*; if he does not abandon the excess the action will be struck out (Order XIV. r. 16).

Entering a plaint for a sum within the jurisdiction—part of a larger claim, the whole arising out of one cause of action—is not of itself an abandonment of the excess (*Vines v. Arnold*, (1851) 8 C. B. 632; 19 L. J. C. P. 98; 79 R. R. 653); but the abandonment as stated may now be made even during the opening of the case.

The abandonment should be entered in the judgment; since, by the section, “entry of the judgment” must “be made accordingly.”

Notice
of special
defences
to be given
to registrar,
who shall
communicate
same to
plaintiff.
9 & 10 Vict.
c. 95, s. 76.

82. Subject to the power of amendment conferred by this Act, no defendant shall be allowed to set off or set up by way of counterclaim any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence, and to claim and have the benefit of infancy, coverture, or any statute of limitations, or of his discharge under any statute relating to bankrupts, or any act for relief of insolvent debtors, without the consent of the plaintiff, unless the prescribed notice thereof shall have been given to the registrar; and in every case in which the practice of the court shall require such notice to be given, the registrar of the court shall as soon as conveniently may be after receiving such notice, communicate the same to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business, but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the registrar.

Defence and Counterclaim.—The County Courts Act, 1919, s. 24 (2), *post*, p. 249, allows rules to be made for requiring each party in any action where the debt, demand or damage claimed or counterclaimed exceeds 20*l.*, or such greater amount as may be provided by the rules, to state the nature of his claim or defence in writing in sufficient time before the trial in the form of particulars or otherwise.

Rules have been made to carry out this section and inserted in Order X. The title of this order is changed from “Special Defences” to “Defence and Counterclaim.” The rules appear as Order X. rr. 9A, 9B, 10A. They

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are important and must be carefully observed. They apply to all cases where there is a right of appeal under sect. 120 of the principal Act, and are not confined to cases where the debt, demand or damage claimed exceeds 20l.

By these rules, wherever there is a right of appeal, the plaintiff may, not less than seven clear days (or where the claim exceeds 50l., twelve clear days) before the return day, give notice to any defendant that he requires him to state in writing the nature of his defence, if any. The defendant must then, within four clear days of the service of such notice, file a concise statement of his grounds of defence, if any, and within the same time deliver a copy to the plaintiff (Order X. r. 9A (1)).

If defendant fails to comply with the notice or complies insufficiently, the court may, before the trial, if satisfied that plaintiff is thereby prejudiced, order the defendant to file and deliver such statement, or order further and better particulars of any statement delivered, or adjourn the hearing and make such order as to costs as the court may think fit (Order X. r. 9A (3)). The provisions of the rule with the necessary modifications, are to apply to a counterclaim where the counterclaim exceeds 20l., and to a defence to a counterclaim (Order X. r. 9A (4)). If defendant fails to comply with any order so made, he may be debarred from defending, or put on terms (Order X. r. 9A (5)). Where a defendant to a claim or counterclaim has stated the nature of his defence, set-off or counterclaim as in the rules provided, he is not required under this rule to state it again (Order X. r. 9B (2)). Where defendant who is required by the rules to state his grounds of defence, set-off or counterclaim, whether in his notice, or affidavit of defence, or under any of the rules of this order (Order X.), desires at the trial to avail himself of a defence, set-off or counterclaim which he has omitted so to state, and plaintiff does not consent to this, the judge may, on such terms as he thinks fit, adjourn the trial to enable defendant to comply with the notice (Order X. r. 10A).

Notice of Special Defences.]—In addition to the above, if defendant intends to rely on any of the grounds of defence mentioned in rules 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21A of Order X.; or upon any set-off or counterclaim, he must, five clear days before the return-day, file, in duplicate, a notice stating his name and address with a concise statement of such special defence, or set-off or counterclaim. If he omits to do so and plaintiff at the trial refuses his consent to the defendant to avail himself of such defence, set-off, or counterclaim, the judge may on such terms as he thinks just adjourn the trial to enable the plaintiff to comply with the rule (Order X. rr. 10, 10A). Where plaintiff in answer to a counterclaim wishes to rely upon any such special defence, he must file like notices, and the rules as to procedure thereon apply *mutatis mutandis* to such case (Order X. r. 21), but strict adherence to the "five clear days" is not always required.

The notice (Forms 84, 85) must be filed in duplicate with the registrar five clear days (but ten clear days in actions brought under the Act of 1903) at least before the return-day, and must contain the name and address of the defendant, and a concise statement of the grounds of defence or of set-off or counterclaim (Order X. r. 10; Order XXIIA. r. 13 (1)). Defendant must deliver to the registrar, in addition, as many copies of the notice as there are plaintiffs, and an additional copy (if required) for the use of the judge (Order LIV. r. 13); and the registrar must, within twenty-four hours from the time of receiving the same, send one of the copies to each of the plaintiffs, either by post or by delivery at his usual place of abode or business (Order X. r. 10). At the trial it is not necessary for the defendant to prove that the notice was communicated by the registrar to the plaintiff. It is not provided, either by the rules or the statute, for the event of the registrar omitting to send notice to the plaintiff; but it is conceived that it would be such a default of the court as would entitle the plaintiff to an adjournment for the purpose of bringing evidence to rebut the defence, without payment of the costs of the day.

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Amendment of Notice.]—The defendant, whether by original action, counterclaim, or otherwise, may, without any order, file and deliver an amended notice of defence pursuant to Order XIV. r. 12.

Waiver of Irregularity by Notice.]—By giving notice of defence, the defendant waives an irregularity in the process—*e.g.*, the insufficiency of particulars, or an error in the summons (*In re Jones*, (1850) 1 L. M. & P. 65; 19 L. J. Q. B. 257; 87 R. R. 518; *Winsor v. Dunford*, (1848) 12 Q. B. 603; 18 L. J. Q. B. 14; *Wedlake v. Sargent*, (1851) 15 Jur. 1134; *Knowles v. Holden*, (1855) 24 L. J. Ex. 223, *per Parke*, B.; 101 R. R. 909; and see Order LIV. r. 25); and *quære* whether, since the provisions for giving jurisdiction by the parties, an absolute defect in the jurisdiction would not be cured by such notice. The defences above referred to are contained in the following paragraphs, matters peculiar to each head of defence being mentioned in the paragraph particularly relating to it. The provisions as to counterclaims are collected in a separate chapter.

Set-off.]—Where a defendant intends to rely on a set-off of any debt or liquidated money demand, he must in his notice state the particulars of it. The provisions of Order VI. as to particulars will apply to them (Order X. r. 11; Form 84). If a defendant gives an imperfect notice, and is thereby precluded from proving his set-off at the trial, he may still enforce it by subsequent original action (*Stanton v. Styles*, (1850) 5 Ex. 578; 19 L. J. Ex. 336; and see *Hindley v. Haslam*, (1878) 3 Q. B. D. 481).

If a plaintiff sues one of several defendants jointly liable, pursuant to s. 97 of the principal Act, the defendant may avail himself of a set-off as if all had been joined (Order X. r. 7). If a person be improperly joined as plaintiff and defendant raises a set-off or counterclaim, he may establish it as against the other plaintiffs (Order X. r. 8).

A set-off differs in several respects from a counterclaim. Each is in the nature of a cross-action, but a set-off, besides being applicable only to debts or liquidated demands, has an effect upon the original claim different from that of a counterclaim. An established set-off reduces the plaintiff's claim in the action *pro tanto*, or entirely defeats it. An established counterclaim is equivalent to a verdict in a cross-action, and there are two verdicts, each separate and distinct. Moreover, a set-off can go no further than to defeat a claim—the defendant cannot recover anything beyond; but a defendant may establish and obtain judgment on a counterclaim exceeding in amount the plaintiff's original claim. (As to set-off, see the judgments in *Newell v. National Provincial Bank of England*, (1876) 1 C. P. D. 496; 45 L. J. C. P. 285; *In re Whitehouse*, (1878) 9 Ch. D. 595; 47 L. J. Ch. 801; *Stooke v. Taylor*, (1880) 5 Q. B. D. 569; 49 L. J. Q. B. 857; *Neale v. Clarke*, (1879) 4 Ex. D. 286.)

For the special provisions of the Employers and Workmen Act, 1875, enabling county court judges to adjust and set off cross-claims in cases of disputes between an employer and a workman, see "Employers and Workmen Act, 1875," *post*, Part V. "STATUTES."

Infancy.]—Where a defendant intends to rely on the defence of infancy, he must in his statement set forth, so far as he is able, the place and date of his birth (Order X. r. 12; Form 85).

Coverture.]—Where a female defendant intends to rely on the defence of coverture, she must set forth, so far as she is able, the place and date of marriage, the christian name and surname of her husband, and his address and description (Order X. r. 13; Form 85).

Statute of Limitations.]—Where a defendant intends to rely on the defence of any statute of limitations, his statement may be according to the Form 85 (*ib. rr.* 14, 18; Form 85; *Eaton v. Tapley*, (1899) 1 Q. B. 953; 68 L. J. Q. B. 638). The Public Authorities Protection Act, 1893, s. 1, is a statute of limitations, and should be so pleaded (*Gregory v. Torquay Corporation*, (1912) 1 K. B. 442; 80 L. J. K. B. 981). The limitation of three years imposed by sect. 10 of the Copyright Act, 1911 (1 & 2 Geo. 5,

c. 46), should, in like manner, be pleaded. It is, however, doubtful if proceedings under this Act can be taken in the county court.

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Discharge under Bankruptcy Acts.—Where a defendant intends to rely on the defence of a release under any statute relating to bankrupts, he must set forth the date of his discharge, and the court by which it was granted (Order X. r. 15; Form 85).

Libel or Slander.—Where in any remitted action for libel or slander the defendant relies as a defence upon the fact that the libel or slander is true, he must set forth that the libel or slander complained of is true in substance (Order X. r. 16; Form 85). If he relies upon an apology, or payment into court and apology under the provisions of sects. 1 and 2 of the Libel Act, 1843, he must give notice in writing (Forms 86, 87), signed by himself or his solicitor, five clear days at least before the day fixed for the trial (Order XXXIII. r. 4).

If he does not rely as a defence upon the fact that the libel or slander is true, but relies in mitigation of damages on the circumstances under which the libel or slander was published, or the character of the plaintiff, he must give particulars of the matters relating thereto as to which he intends to give evidence (Order X. r. 17). These cases can only arise when the parties agree to give the court jurisdiction, or when an action is remitted for trial by the High Court). This rule would not prevent cross-examination to credit without such notice.

Statutory Defence.—When in any action the defendant relies upon a statutory defence (except the Statute of Limitations) or any defence of which he is required by any statute to give notice, he must set forth the year, chapter, and section of the statute, or the short title thereof, and the particular matter on which he relies, or otherwise sufficiently indicate the nature of the defence on which he relies (Order X. r. 18 (1); Form 85). As to Statute of Limitations, the form provided (No. 85) does not require that the particular Statute of Limitations should be named in the notice. But this rule does not entitle a plaintiff to maintain an action contrary to the provisions of the Gaming Acts, 1845 or 1892, by reason of the Acts not having been pleaded as a defence. See Order X. r. 18 (2), and the notes to that rule.

The defence afforded to county court bailiffs by sect. 54 of the County Courts Act, 1888, is such a defence (*Denny v. Bennett*, (1896) 44 W. R. 333).

The rule clearly covers those cases in which the general issue by statute can be pleaded. In an action against a local board it was held that the board could not, at the trial, object to the sufficiency of a notice of action given under the Public Health Act, 1875, no notice of such defence having been given under the rule (*Kay v. Atherton Local Board*, (1878) 42 J. P. 792; overruled in *Graham v. Mayor of Newcastle*, (1893) 1 Q. B. 643; 62 L. J. Q. B. 315, but on another point). So in an action against a police officer, where notice of action had not been given in time, but no notice of defence had been given, it was held that the judge was wrong in non-suiting the plaintiff (*Allwright v. Perks*, (1893) 9 T. L. R. 235). So want or insufficiency of a notice of injury under the Employers' Liability Act (*Conroy v. Peacock*, (1897) 2 Q. B. 6; 66 L. J. Q. B. 425); no memorandum in writing sufficient to satisfy the Statute of Frauds, or now sect. 4 of the Sale of Goods Act, 1893 (*Brutton v. Branson*, (1898) 2 Q. B. 219; 67 L. J. Q. B. 827); no signed bill of solicitor's costs (*Lewis v. Burrell*, (1898) 77 L. T. 626); a defence under the Gaming Act, 1892 (*Willis v. Lovick*, (1901) 2 K. B. 195; 70 L. J. K. B. 656; and see *Renton v. King*, (1905) 93 L. T. 10), are all statutory defences, though the plaintiff can no longer avail himself of the omission to plead the last-named Act as a defence (Order X. r. 18 (2)). A defence of breach of warranty, though dealt with in the Sale of Goods Act, 1893, s. 53, is not a statutory defence, as it does not owe its existence to a statute (*Bright v. Rogers*, (1917) 86 L. J. K. B. 804).

A defence under sect. 67 of the Highway Act, 1835, is a statutory defence,

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and must be pleaded (*Thomas v. Gower Rural District Council*, (1922) 2 K. B. 76; 91 L. J. K. B. 666).

A defence under the Increase of Rent and Mortgage Interest Acts to an action for possession need not be pleaded. See r. 18 of the rules made under these Acts (*post*, Part VI.) and *Salter v. Lask*, (1924) 1 K. B. 754; 93 L. J. K. B. 685).

Equitable Defence.—Where a defendant claims to be entitled as matter of defence to any equitable estate or right, or to relief upon any equitable ground, he must show concisely the circumstances which give rise to such defence, and set forth separately the grounds of equitable defence (Order X. r. 19): that is to say, where a defendant has to rely on facts which would formerly have entitled him to relief in equity against the plaintiff's claim, he must concisely state them (see *Heap v. Marris*, (1876) 2 Q. B. D. 630; 46 L. J. Q. B. 761, and Judicature Act, 1925, sects. 38 and 202).

A defence of this kind must not be confounded with counterclaim. Where the facts relied on go to defeat the claim of the plaintiff, whether by way of denial of the claim or by way of admission—that, *e.g.*, something was due, the right to recover which has been avoided—then such facts constitute a proper matter of defence. But if they go to show a claim of a different nature, such facts constitute a ground for a counterclaim, and not a defence on equitable grounds.

The defendant may rely on any equitable defence; and, so far as it goes to defeat the plaintiff's claim, the judge has power to entertain any defence whatsoever (see *Davis v. Flagstaff Co.* (C. A.), (1877) 3 C. P. D. 228; 47 L. J. C. P. 503), whether he would or would not have jurisdiction if the matter came before him by way of original claim or counterclaim. A defendant might set up as a defence to an action upon a deed, that its terms had been, by mutual mistake of the parties, wrongly expressed. The court might then for the purposes of the action treat the deed as reformed, though it could not go further and actually reform it on a mere defence (see *Breslauer v. Barwick*, (1876) 36 L. T. 52; 24 W. R. 901; *Mostyn v. West Mostyn Coal Co.*, (1875) 1 C. P. D. 145; 45 L. J. C. P. 401).

Tender.—If the defendant has, at any time before the commencement of the action, tendered to the plaintiff the amount claimed, or what he considers to be due to the plaintiff, he may set it up as a defence; and if he succeeds in establishing it, and no further sum is awarded to the plaintiff, the defendant will generally obtain all the costs of the action. The defence is not available unless, with notice of defence, the defendant pays into court (the payment may be made without costs) the amount alleged to have been tendered (Order X. r. 20; Form 85). Notice of the defence and payment into court will be given by the registrar to the plaintiff in accordance with Order X. r. 10. The plaintiff may accept the money in satisfaction. He is not entitled to take it out of court or to any costs without an order of the court, which may make such order as to the costs of either party as may be just, and may order any costs awarded to the defendant to be deducted from the amount in court (Order IX. r. 18).

The defence of tender cannot be raised to a claim for unliquidated damages (*Dearle v. Barrett*, (1834) 2 A. & E. 82; S. C., *nom. Searle v. Barrett*, 4 N. & M. 200), except in some cases of wrong, as when by statute a tender of amends is permissible, and may be relied on at the trial. Money may, however, be paid into court, with or without a denial of liability, see *post*, Order IX. r. 12.

A tender need not be made by the debtor in person, it may be made by a third person on his behalf (*Bacon's Abridgment, Tend. A.*); nor to the creditor personally; it may be made to an authorised agent (*per Parke, B., Kirton v. Braithwaite*, (1836) 1 M. & W. 310, 313). A tender of part of an entire demand is bad (*Dixon v. Clark*, (1849) 5 C. B. 365; 16 L. J. C. P. 237; 75 E. R. 747). A tender of a larger amount than is due is good (*Wade's Case*, (1601) 5 Rep. 115 a; *Dear v. James*, (1832) 4 B. & Ad.

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546; 2 L. J. K. B. 94), unless objected to for want of change (*Bevans v. Rees*, (1839) 5 M. & W. 306, 308, *per* Lord Abinger, C.B.; 8 L. J. (N. S.) Ex. 263; 52 R. R. 727; *Betterbee v. Davis*, (1811) 3 Camp. 70; 13 R. R. 755). So a tender of 2*l.* by a debtor who owed 1*l.* 13*s.* (*Cadman v. Lubbock*, (1824) 5 D. & R. 289; 3 L. J. (O. S.) K. B. 41) and a tender of 20*l.* 19*s.* 6*d.* in notes and silver by a debtor who owed 20*l.* (*Dean v. James*, *supra*) have been held good. Bank of England notes are a legal tender for all sums above 5*l.* (3 & 4 Will. 4, c. 98, s. 6), so are currency notes for 1*l.* and 10*s.* issued by the Treasury under the statute 4 & 5 Geo. 5, c. 14. There must be an actual production of the money, or its production must be expressly or impliedly dispensed with (*Thomas v. Evans*, (1808) 10 East, 101; 10 R. R. 229; *Finch v. Brook*, (1834) 1 Scott, 70, 76, *per* Tindal, C. J.; 1 Bing. N. C. 253; 4 L. J. (N. S.) C. P. 1; 41 R. R. 595); and the tender must be made unconditionally (*Laing v. Meuder*, (1824) 1 C. & P. 257; *Ford v. Noll*, (1842) 12 L. J. C. P. 2). Merely demanding a stamped receipt for the amount offered would not, it is thought, make a tender bad (*Richardson v. Jackson*, (1841) 8 M. & W. 298; 10 L. J. Ex. 303; 54 & 55 Vict. c. 39, s. 103). A cheque objected to merely as to amount was held to be a good tender (*Jones v. Arthur*, (1840) 8 Dowl. 442).

Fraud or Misrepresentation.—When a defendant, or a plaintiff in reply to a counterclaim, relies on fraud or misrepresentation the notice must set forth concisely the particulars of the fraud or misrepresentation on which he intends to rely (Order X, r. 21 a).

Notice of Defence to Default or Special Default Summons.—As to the notices of defence and procedure required to be followed by the defendant when a default or special default summons is issued, see notes to sect. 86, *post*, and Order VII. rr. 34B—39.

83. An affidavit to be used in a court may be sworn before any judge or registrar, or clerk to the registrar nominated by a judge for that purpose, without the payment of any fee, or before any commissioner to administer oaths in the Supreme Court not being a registrar, or before a justice of the peace.

Before whom affidavits may be sworn.
19 & 20 Vict. c. 108, s. 58.

Affidavits must be expressed in the first person, and drawn up in paragraphs and numbered (Order XIX. r. 1. For heading, see Form 3). All affidavits other than those for which forms are given must state the deponent's occupation, quality, and place of residence, and also what facts or circumstances deposed to are within his own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what those sources are (Order XIX. r. 2). The costs of an affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, are to be paid by the party filing it (Order XIX. r. 2). Every affidavit must be intitled in the action or matter in which it is sworn; but if there are more plaintiffs or defendants than one the full name of the first only must be given, with a statement that there are others (Order XIX. r. 3). It must be stated in a note at the foot on whose behalf it is filed, and that note must appear in all copies (Order XIX. r. 4). The costs of affidavits not in conformity with the preceding rules will be disallowed on taxation, unless the court otherwise directs (Order XIX. r. 5). In an affidavit made by two or more deponents, the names of the several deponents are to be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it will be sufficient to state that it was sworn by both (or all) of the "above-named" deponents (Order XIX. r. 6).

Sources of knowledge to be stated.

Costs when disallowed.

All affidavits must be delivered to the registrar, and must be filed by him before use, and it is his duty to distinguish them by the number of the complaint in respect of which they are filed, and from each other, by a distinctive

Filing.

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Erasure,
blotting,
interlinea-
tion, etc.

letter of the alphabet (Order XIX. r. 7; Order II. r. 3). He is entitled to require also the delivery of copies to him pursuant to Order LIV. r. 13.

The rule as to filing does not hinder a judge from making an order in an urgent case upon the undertaking of the applicant to file an affidavit already sworn, provided that the order be not issued until the affidavit has been filed (Order XIX. r. 7).

An affidavit will not be filed which has been sworn before a commissioner who was at the time of the swearing of the same the solicitor acting for the party on whose behalf such affidavit is to be used, or the agent, correspondent, partner, or clerk of such solicitor, or who is the party himself (Order XIX. r. 8).

No affidavit which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in the body or jurat of which there is any interlineation, alteration, or erasure, unless the person before whom it is sworn has initialled the interlineation or alteration, and in case of an erasure, shall have re-written and signed in the margin the words or figures appearing to be written on the erasure, or which is so imperfect upon the face by reason of blanks or otherwise that it cannot easily be read or understood, is to be filed or used, unless the court otherwise orders (Order XIX. r. 9).

Illiterate or Blind Deponent.—Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer must certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit can be used in evidence in the absence of this certificate, unless the court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent (Order XIX. r. 10).

The court may receive an affidavit sworn for the purpose of being used in any action or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in its form, and may direct a memorandum of its reception to be made upon it (Order XIX. r. 11).

Where a registrar rejects an affidavit, he must give notice (Form 133), by post or otherwise, to the party offering it for filing, of the rejection and the reasons, but no such notice is necessary if the party offering the same is present when the registrar rejects the affidavit (Order XIX. r. 14).

The above rules apply to all cases in which any evidence may be given, or matter proved by affidavit; but, even in cases in which evidence is required or permitted to be taken by affidavit, such evidence may be taken orally on oath, if the judge or registrar shall, at or before the trial, so direct (Order XVIII. r. 1).

Costs of Special Affidavits.—On taxation of costs instructions for special affidavits will not be allowed, unless in the opinion of the registrar the facts on which they were grounded had not become known to the solicitor or his clerks in the course of the business (item 23).

Affidavits of service, when required, must state when, where, how, and by whom service was effected (Order XIX. r. 12).

Districts of
courts in
metropolis
to be treated
as one
district.

19 & 20 Vict.
c. 108, s. 18.
20 & 31 Vict.
c. 142, s. 3.

84. Where a plaintiff shall dwell or carry on business in the district of the Bloomsbury county court of Middlesex, or in the district of the Brompton county court of Middlesex, or in the district of the Clerkenwell county court of Middlesex, or in the district of the Lambeth county court of Surrey, or in the district of the Marylebone county court of Middlesex, or in the district of the Shoreditch county court of Middlesex, or in the district of the Southwark county court of Surrey, or in the district of the

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Westminster county court of Middlesex, or in the district of the Whitechapel county court of Middlesex, or in the district of the City of London Court, and the defendant shall dwell or carry on business in the district of any of the said courts, the action or matter may be commenced, and all proceedings thereon taken and had either in the court of the district in which the plaintiff shall dwell or carry on business, or in the court of the district in which the defendant shall dwell or carry on business.

Metropolitan Districts.—England and Wales are divided into districts, and a county court is established in each. The city of London forms a district of itself, and the City of London Court is a county court like the others, except that it retains certain privileges. The metropolitan districts are Bloomsbury, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, Whitechapel, and the city of London, and if the plaintiff and defendant dwell or carry on business in any of these districts, though not necessarily in the same, the action or matter may be commenced and all proceedings taken, either in the court of the district in which the plaintiff or in that in which the defendant dwells or carries on business.

Order LV. interpreting "metropolitan court" does not add Bow to the courts mentioned in this section.

This provision enables the plaintiff to sue in the district in which he dwells or carries on business, without leave and without its being necessary for any part of the cause of action to arise within the district. The jurisdiction exists even if the plaintiff has become resident within a district for the purpose of giving jurisdiction, if residence was actually and *bonâ fide* enjoyed before the issuing of the summons.

The above provision excepts the metropolitan districts from the operation of sect. 75 of the Act of 1888, which specifies the district in which certain equity actions and matters must be commenced. Those proceedings must, therefore, in the metropolitan districts, be commenced in accordance with the provision now under consideration.

Sect. 39 of the London (City) Small Debts Extension Act, 1852, is not repealed by sect. 74 of the 51 & 52 Vict. c. 43, hence the City of London Court has jurisdiction if the defendant has "employment" within the city, and without leave of judge or registrar, where the cause of action wholly or in part arose therein.

Dwelling or carrying on Business.—For the meaning of these words, see note to sect. 74 *ante*, p. 82.

85. If a judge shall be satisfied by either party to an action or matter pending in his court that such action or matter can be more conveniently or fairly tried or heard in some other court, he shall order that the same be transferred to such other court, or, if the judge shall be interested in any action or matter pending in his court, he shall order that the same be transferred to some convenient court of which he is not the judge at his discretion; and in either case the registrar of the court in which the action or matter was commenced shall forthwith transmit by post to the registrar of the court to which it is to be sent, a certified copy of all the proceedings therein, and the judge of such last-mentioned court shall appoint a day for the trial or hearing, notice whereof shall be sent, by post or otherwise, by the registrar to all parties

Power to judge to change place of trial.
19 & 20 Vict. c. 108, s. 22.

Section 85. interested, and thenceforth all proceedings therein shall be taken in such court as if the action or matter had been commenced therein.

See, as to action commenced in the wrong county court and ordered to be transferred, sect. 10 of the County Courts Act, 1919, and notes to sect. 114, *post*, p. 135.

Transfer to another Court.—If the judge is satisfied, by either party to an action or matter, that it can be more conveniently or fairly tried in some other court, he must send it for hearing to such other court; or, if the judge be himself interested in the action or matter, he must send it for hearing to some other convenient court of which he is not the judge (sect. 85; Form 120). The registrar must forthwith transmit by post a certified copy of all the proceedings to the registrar of the other court, and the judge of it is to appoint a day for hearing, notice (Form 121) whereof is to be given, by post or otherwise, to the parties.

Where actions are commenced in different courts by parties in the same interest, upon application by any of the parties, they must be transferred to the court in which the first plaint was entered, and will then proceed in all respects as if they had been commenced in that court (Order VIII. r. 8).

If an action be brought by an officer of a county court in the court of which he is an officer, except as *official* receiver, the judge, at the request of the defendant, must order that the action be sent for trial to the court of some convenient district of which he is not the judge (see sect. 42; Form 120). Where any of the parties to an action are officers of the court, the judge, if he thinks fit, may direct the trial to take place at some convenient court of which he is not the judge (Order XXII. r. 23; Form 121). The proceedings, after the making of the order, are the same as in the cases above mentioned.

Practice.—Where application is intended to be made for the transfer of any action or proceeding under sect. 85, or Order VIII. r. 8, or Order XXXIII. r. 19, three clear days' notice in writing of such intended application ought to be given by the applicant to the registrar of the court in which such action or proceeding is pending, and to all parties who may be affected; but the judge may at any time, with or without consent, order a transfer, although this rule has not been complied with. The judge may make such order as he thinks fit as to the costs incurred before or occasioned by the transfer, and a certified copy of the proceedings must be transmitted to the registrar of the court to which the transfer has been made in accordance with sect. 85, *supra*. The costs of the copy and of transmission are in the first instance paid for by the applicant, or by the plaintiff if the order is made by the judge without application; without prejudice in either case to any question as to the party by whom the costs are ultimately to be borne (Order VIII. r. 9).

Costs of Transferred Action.—When an action or matter under this section is transferred by the judge to another county court, the costs of the whole proceedings are, subject to any order made by the judge who ordered the transfer, in the discretion of the court to which it is transferred (see sect. 12 of County Courts Act, 1919, *post*, p. 239, and Part II., "Costs and Court Fees," p. 1023).

Default
summons.

§6. Repealed by the County Courts Act, 1919, the following section of that Act being substituted:—

8. [County Courts Act, 1919.] The following section shall be substituted for section eighty-six of the principal Act:—

"(1) County court rules may provide for the issue, under the prescribed conditions, of a default summons, in the prescribed

form or to the prescribed effect, in any action for a debt or liquidated demand in money, and may provide for the manner in which such a summons is to be served and the conditions (if any) under which the defendant is to be entitled to defend the action; and, where such conditions are not complied with, it shall be lawful for the registrar to enter up judgment summarily for the plaintiff in manner prescribed by the rules.

“(2) The rules may provide for different procedure and different conditions according to the amount of the claim or the nature thereof or the position or occupation of the defendant, for the exclusion of any actions from the procedure by default summons, and for the amendments to be allowed in the case of a default summons, and the procedure consequent on any such amendment.”

County Courts Act, 1919, sect. 8, *post*, p. 237.

Default Summons and Special Default Summons.—The above section is a new one (sect. 8 of the County Courts Act, 1919), and substituted for sect. 86 of the principal Act. By virtue of this new section and the rules which have been made under it, the county court procedure by default summons has been materially altered. Under the power given by the section voluminous rules have been made, with the object of increasing the utility of the default procedure, and regulating the circumstances and conditions under which it may be resorted to.

The Order and Rules which regulate default and special default summonses now appear as Order VII. rr. 29B, 29C, 29D, 30, 30A, 30B, 31, 31A, 31B, 32, 33, 33A, 33B, 34, 34A, 34B, 34C, 34D, 34E, 35—39, *post*. Forms of default summonses, Forms 23, 25.

These rules provide for two kinds of default summonses, what may be called the “ordinary default summons” and also a new summons to be called a “special default summons.” This latter summons is intended to effect somewhat the same purpose as the procedure in the High Court under Order XIV., by permitting in such a case judgment to be obtained summarily, unless the defendant is prepared to make an affidavit of the facts upon which he relies as a defence.

When Default or Special Default Summons may issue.—Where the plaintiff seeks only to recover a debt or liquidated demand in money (including a demand on a bill of exchange, promissory note or cheque with expenses of noting or protest (*a*)) he may issue an ordinary summons, or in place thereof either a default summons, or a special default summons.

A default summons cannot be issued where the claim does not exceed 2*l*. (Order VII. r. 29B). If the claim exceeds 2*l*. but does not exceed 10*l*., an ordinary default summons may be issued. It is only when the claim exceeds 10*l*. that a special default summons may be issued (Order VII. r. 29B).

When Ordinary Default or Special Default Summons may not be issued.—Neither an ordinary default nor special default summons may be issued for service *in the district* against a defendant who is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, unless the amount claimed exceeds 5*l*., or unless defendant carries on or formerly carried on some trade or calling, and the claim is for the price, value or hire of goods sold and delivered or let on hire to the defendant to be used

(*a*) This procedure by default or special default summons is substituted for the summary procedure under the Bills of Exchange Act 1855, which, having already been abolished in the High Court, was abolished in county courts by the County Courts Act, 1919.

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or dealt with in the way of that trade or calling, or for the price or value of work done for the defendant for the purposes of that trade or calling (Order VII. r. 29B (2)).

Further, no default summons, either ordinary or special, may issue against any such defendant as mentioned in the last paragraph for service *out of the district*, unless the claim exceeds 5*l.* and defendant carries on or formerly carried on some trade or calling, and the claim is for the price, value or hire of goods sold and delivered or let on hire to defendant to be used or dealt with in the way of that trade or calling, or for the price or value of work done for defendant for the purposes of that trade or calling (Order VII. r. 29B (2)).

NOTE.—As to meaning of “otherwise engaged in manual labour” see cases decided under Employers’ Liability Act, sect. 8 (Ruegg’s “Employers’ Liability and Workmen’s Compensation,” 9th Ed., pp. 17—18).

Actions by Moneylenders.—A default summons cannot be issued by a moneylender in respect of a moneylending transaction (Order VII. r. 29B (2) (d)).

Procedure.—Before a default or a special default summons is issued the plaintiff must file an affidavit, made by himself or some person with knowledge of the facts in accordance with Order V. r. 14. Where leave is required under sect. 74 of the principal Act, the application for leave must be made on affidavit in accordance with Order V. r. 13, Forms 9, 9A, 11 and 12. Every such affidavit shall contain the particulars as to the name, residence, or place of business, and occupation or description of the proposed defendant required by paragraphs (b) and (c) of r. 4 of Order V. See Order V. r. 13.

Personal Service.—Both a default summons and a special default summons must be served personally, subject to the rules which provide for the case where this cannot be effected (Order VII. r. 29c. See *infra*), and may be served in any district in which the defendant may be met with (Order VII. r. 33).

Such a summons is in force for twelve months, but if the registrar is satisfied that reasonable efforts to serve have been made or that there is a good reason why service has not been effected he may (on payment of a fee of 2*s.* 6*d.* (C.C. Fees Order, 1925, Fee No. 4)) extend it for another twelve months and so on from time to time (Order VII. r. 30).

The necessary extension is to be made in red ink and signed by the registrar. The summons so extended remains in force, and is available to prevent the operation of any statute of limitations, and for all other purposes as from the date on which the plaint was entered (Order VII. r. 30).

Where a mistake has been made in the name, residence, or place of business, or occupation or description of the defendant, which are required by Order V. r. 4 (b), (c), or defendant has changed his address before the plaint was issued, the summons may be amended, but plaintiff must correct and reswear his affidavit, or swear a further affidavit on payment of prescribed fee where the summons is to be served by a bailiff (Order VII. r. 30A), but Order V. rr. (2) and (3) apply with the omission of the words in paragraph 2, “in sufficient time before the return day” (Order VII. r. 30A (2)).

Service of Default or Special Default Summons.—A solicitor may accept service on behalf of a defendant, but he must indorse on the copy summons that he so accepts (Order VII. r. 30B).

Service on partners is effected in accordance with the provisions of Order VII. r. 31.

Service is effected on a person who carries on business in a name other than his own in accordance with the provisions of Order VII. r. 31A.

NOTE.—In either of the last two mentioned cases, the indorsement of affidavit of service must state whether the person was served as partner or as the person carrying on the business, or the person having or seeming to have the management of the business, or in both characters (Order VII. r. 31B). Forms of indorsement or affidavit (Forms 34A, 37 (2)). Service on a corporation, or other defendant, or body of defendants mentioned in Order VII. r. 26, must be served in accordance with such rule (Order VII. r. 32).

By whom a Default, or Special Default Summons may be served.]—A default or special default summons may be served by—

(1) A bailiff of the court.
(2) The plaintiff himself, or a clerk or servant in his permanent and exclusive employ.

(3) By the plaintiff's solicitor or agent for such solicitor, or some person in their employ, or some person employed by them, who might be employed to serve a writ issuing out of the High Court (Order VII. r. 33).

NOTE.—In the two last mentioned cases a request must be made that the summons may be so served in the *præcipe* filed before the entry of the plaint (Order V. r. 9). If difficulty is experienced by the bailiff in service the registrar may give leave that it be served in the manner set out in clauses 2 or 3, *supra*.

Where such summons has been served otherwise than by a bailiff, a copy thereof, with the date and place of service endorsed, and an affidavit of service (Form 37) must within three clear days of the service, or such further time as the registrar of the court from which it issues, allows, be delivered or transmitted to such registrar (Order VIII. r. 34).

Service must not be effected by a person under the age of sixteen, and the affidavit of service must state that the person serving the process is over that age (Order LIV. r. 5A).

Where Personal Service cannot be effected.]—Where personal service of a default or special default summons cannot be effected, and the judge or registrar is satisfied, by affidavit, that reasonable efforts have been made, and, either that the summons has come to defendant's knowledge, or that he wilfully evades service, plaintiff may, subject to such conditions as may be imposed, have permission to proceed as though personal service had been effected (Order VII. r. 33A).

The procedure which may be adopted, with the consent of the judge or registrar, in lieu of personal service is embodied in Order VII. r. 33A (2). The form of Order is Form 46. Order VII. r. 33B prescribes the steps to be taken where a bailiff is unable to effect personal service of the summons. The high bailiff must then, on request and payment of prescribed fee, take such steps as may be necessary to enable plaintiff to apply for liberty to proceed as if personal service had been effected, and to carry out the order if made. See as to this procedure, Order VII. r. 33B, (1), (2), (3), (4).

When an order is made giving liberty to proceed as if personal service had been effected, the plaintiff must (unless the defendant delivers a notice, or an affidavit of defence or an admission), after the time for delivering a notice or affidavit of defence or an admission, but before or at the time of entering judgment, deliver or send to the registrar the order giving liberty to proceed, and where conditions have been imposed, an affidavit showing such conditions have been complied with (Order VII. r. 34; Form 46).

Methods to be adopted by a Defendant who wishes to defend a Default Summons, or a Special Default Summons.]—Where defendant wishes to defend a default summons he must within eight days after service (inclusive of the day of service) deliver to the registrar, by post or otherwise, a notice of defence in writing, signed by himself or solicitor, or, in the case of a special default summons, an affidavit of defence with a copy thereof (Order VII. r. 29c). The notice or affidavit of defence must state that he intends to defend the action, and the facts on which he relies. If he has a set-off or counterclaim he must state the facts on which he relies to support it. Where the defence, set-off, or counterclaim goes only to part of the claim, he must state what part (Order VII. r. 34B). The notice or affidavit of defence must be filed within the time limited by the rules. If given later, the plaintiff may sign judgment (*R. v. Judge Parry*, (1916) 2 K. B. 107).

Admissions.]—Where the defendant admits the whole or part of the claim, he may say so in his notice or affidavit of defence either with or without an offer of payment, or he may deliver therewith such an admission in writing either

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with or without such offer, or he may, instead of delivering a notice or affidavit of defence, sign and deliver to the registrar, by post or otherwise, within the time limited by the rules for delivering a notice or affidavit of defence, such an admission either with or without such offer (Rule 34d (1)).

On receipt of the admission, if an admission of the whole claim, the registrar shall, as soon as reasonably may be after its receipt, fix a day for the disposal of the action and send notices to the parties (Forms 39, 41).

Where the admission of the whole claim contains an offer of payment and the plaintiff accepts within five clear days and gives notice to the registrar of acceptance, the registrar shall, on payment of the fee for entering judgment, enter judgment and for court fees and costs, and the order is then for payment in accordance with defendant's offer.

Where the admission makes no offer to pay, or the offer is not accepted within five days, the action is heard on the day fixed for hearing. If the admission is of part only of the claim, the registrar gives the plaintiff notice of the part admission (Form 65) and if plaintiff in same time sends him notice that he accepts the amount admitted in satisfaction, and (a) accepts the mode of payment offered, or (b) whether there is an offer or not, leaves it to the registrar to give judgment for the amount admitted and to direct the time and mode of payment (sect. 5 (4) of Act of 1919, and sect. 105 of Act of 1888) the registrar shall in the case of (a) on payment of fee for judgment, enter judgment for sum admitted and costs in accordance with defendant's offer; or, in case (b) fix a day for disposal of the action and send notices to the parties (Forms 40, 41).

If plaintiff refuses to take in satisfaction the amount admitted, or rejecting the offer of payment gives notice he is not willing to leave it to the registrar to give judgment for this amount and to direct the time and mode of payment, or gives no notice of acceptance within five days, the registrar fixes a day for the trial and gives parties notice.

Where notice or affidavit of defence has been given without admitting any part of the claim, defendant may still admit the whole or a part in writing, with or without an offer of payment, at any time before or when the action is called on, subject to having to pay costs properly incurred through his delay, and plaintiff may, whether the time for acceptance has passed or not, send or give notice of acceptance to the registrar at any time before or when the action is called.

In either of these cases the same procedure is followed where possible as when the notices are given in time. If trial day has been fixed and notice for the disposal of the action cannot be given in proper time or at all before the day fixed for the trial, the action is not tried but disposed of on day of trial.

Notice of the day for disposal of the action must be four clear days' notice except where it is to be disposed of on day of trial. The action need not be disposed of on a court day, but on the day fixed for its disposal (whether court day or not) and by the registrar in chambers or in court who shall, after hearing parties or their representatives, if any, give judgment for the sum admitted and costs or make such order for payment in accordance with the provisions of the county court requirements as may seem just (Order VII. r. 34d (7), (8)).

The judge may, if he likes, deal with the case.

Where Defendant does not deliver Notice of Defence, or Affidavit of Defence.—Where the defendant duly served with a default or special default summons does not, within the eight days, put in his notice of defence, or affidavit of defence as the case may require (a) the plaintiff may then, or within two months from the day of service, on proof of service, have judgment entered for his claim and costs against the defendant. Costs are taxed and the order is for payment forthwith, or at such time or times, and by such instalments as plaintiff agrees to in writing, either at the time of entering plaint, or at time of entering judgment (Order VII. r. 29c; Form 24).

If the notice of defence is put in unsigned, or without stating any facts relied on as a defence, or the affidavit is not duly sworn or does not state

any facts relied on as a defence, the registrar returns the same for amendment (a). If it is not returned amended within twelve days of service (inclusive of the day of service) the defendant may have judgment signed against him as though he had delivered no notice of defence or affidavit of defence. This is subject to an application under Order VII. r. 34F by defendant asking that he may still be let in to defend or asking that the judgment so signed may be set aside (Order VII. r. 34B (3); Form 37 (3)).

Save as aforesaid an informality or defect in the notice of defence, or affidavit of defence, is not to prevent it being accepted (Order VII. r. 34B (4)). It is important to bear in mind that the notice of defence, or affidavit of defence is not to debar the defendant from setting up any further or other defence, set-off or counterclaim in accordance with these rules (Order VII. r. 34B (5)).

Entry of Judgment by Letter.—Where the default summons, or special default summons has been entered by post, under Order V. r. 12, and no notice of defence, or affidavit of defence has been delivered, Order VII. r. 34A provides the method by which judgment can be obtained by letter without attending the office of the court.

Where defendant is a married woman or widow, the *præcipe* shall state this fact, also whether judgment is to be entered against her in respect of a contract before coverture or during coverture, or (in case of a widow) in respect of a contract since the determination of the coverture. See Order VII. r. 34A; Form 37A.

Notice of Trial where Notice of Defence or Affidavit of Defence is delivered or Defendant is let in to defend.—Where a notice of defence to a default summons, or affidavit of defence to a special default summons is duly delivered, or where in either case defendant has been let in to defend, the registrar fixes a day for the trial (Order VII. r. 34C). He then sends to the plaintiff ten clear days at least before the day of trial (a) in the case of a default summons a copy of the notice of defence, and a notice of day of the trial (Form 38). (b) in the case of a special default summons, he sends to the plaintiff ten clear days at least before the day of trial the copy of defendant's affidavit, and a notice of the day of trial (Form 38). He gives notice of trial to the defendant in either case (a) or (b) *supra*, according to Form 40. The costs of these notices are provided for (Order VII. r. 34C (2), (3)).

Where Two or more Defendants.—Where there are two or more defendants, the plaintiff may have judgment against any one or more in default in accordance with Order VII. r. 29C, and execution may be issued thereon without prejudice to plaintiff's right to proceed against any other defendant, whether served or not served and whether in default or not (Order VII. r. 29D).

Letting Defendant in to Defend.—Even though defendant has not put in a notice or affidavit of defence in time, the court may before judgment on an affidavit explaining the neglect and showing a defence on the merits, let him in to defend on terms. The registrar must send this affidavit to the plaintiff with the notice of trial.

Where judgment has actually been signed, in default of notice, or affidavit of defence, it is only under special circumstances, after notice to the plaintiff, and an affidavit satisfactorily explaining the neglect and showing a defence on the merits, that the judge will set aside the judgment and let in the defendant to defend on terms. Where this is contemplated an application may be made to the registrar to stay or set aside execution pending the hearing of the application to the judge. The registrar may do this on terms. If the application is successful, the registrar gives the parties notice of the day fixed for the trial as in other cases. See Order VII. r. 34F.

(a) Where the notice of defence or affidavit of defence has been returned for amendment twelve days must elapse before judgment is signed.

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Generally.]—A default or special default summons not returned to registrar within twelve months, if it has not been extended, is struck out (Order VII. r. 35). Where no notice or affidavit of defence has been delivered, and defendant has not been let in to defend, and two months have expired, either from date of service, or the order giving leave to proceed as though service had been effected, judgment shall not be entered, and the action is to be struck out, subject to the power of the court to enlarge the time under Order LIV. r. 12. See Order VII. r. 36.

Where the default or special default summons has been served in time to prevent the operation of a statute of limitations and either party dies after service and after the period within which it is provided by the statute that an action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representative of the deceased party within one year from day of service of the summons (Order VII. r. 37). This provision is to prevent a statute of limitations applying after action.

A default or special default summons may at plaintiff's request be exchanged for an ordinary summons, without any fee, on the summons being filed in court within twelve months of its issue. (Order VII. r. 38.) Subject to Order VII., any rules or forms referring to default summonses shall apply also to special default summonses (Order VII. r. 39).

A default summons, and it is believed a special default summons, cannot be served even with leave out of England and Wales (Order VII. r. 44A), though if in the case of service on a partner any members of the firm are out of England and Wales, this fact is immaterial. See Order VII. r. 31.

An assignee of a debt or legal chose in action cannot issue a default summons (or, it is thought, a special default summons; See Order V. r. 8, and *Reg. v. Pontypool C. C. Judge*, (1894) 63 L. J. Q. B. 702).

Payment into Court by Defendant.]—When notice of defence, or affidavit of defence, has been delivered, and defendant before notice is given to plaintiff of the day of trial pays into court the amount or part of the amount claimed, together with proper or proportionate costs he is not liable to pay any further costs if plaintiff accepts the money in satisfaction of his claim.

Where he so pays into court, after notice of trial has been so sent, Order IX. r. 13 applies. See Order IX. r. 15.

Claim for Indemnity.]—Where the original action is commenced by default or special default summons defendant cannot claim contribution or indemnity from a third party before he delivers notice of defence or affidavit of defence or is let in to defend. If he wishes to do so afterwards the registrar on the filing of the notice must seal and deliver to defendant a duplicate of the notice of the day of trial, and the defendant must serve the same on the third party (Order XI. r. 1 (2)).

The judge or registrar in cases within his jurisdiction may amend the particulars of claim by substituting or adding, alternatively or otherwise, any claim or claims which they could do if the action was commenced by ordinary summonses. When such amendment is made the action proceeds as though commenced by ordinary summons on such terms and conditions as may be thought just (Order XIV. r. 12A).

Interlocutory Orders, etc.]—As to interlocutory orders applying to default and special default summonses, see Order XII. r. 9. Where leave is required under sect. 74 of the Act, see Order V. r. 13 (4). Where action commenced in one court is to be tried in another, see Order XXIIA. r. 22. See also "Registrars' Courts," *post*, p. 109, and for matters under the Stannaries Court (Abolition) Act, 1896, Order LI. r. 19, *post*, Part V.

Where non-service in a foreign court is caused by the plaintiff having mis-stated or insufficiently stated the particulars as to name, etc., of the defendant required by Order V. r. 4, or by the removal of the defendant from his address given on the summonses, before entry of the plaint, the high bailiff (subject to Order VII. r. 5A, para. II., applied by Order VII. r. 30A,

para. II.), shall return the summons to the registrar of the court from which it issued, and in his notice of non-service sent to the plaintiff shall state that it has been so returned (Order II. r. 31 (2)). In any of the circumstances given in the last paragraph the default summons may be amended at any time during its currency as to such incorrect particulars on plaintiff correcting and re-swearing the affidavit required before entry of plaint, or swearing a further affidavit, and on payment, where the summons is to be served by a bailiff, of such fee as may be prescribed (Order VII. r. 30A).

Foreign Courts.]—The high bailiff of a foreign court must send notice of service within two days, and return the summons duly indorsed to the registrar of the home court. If it cannot be served within a month, notice must be sent to the plaintiff by the high bailiff, who must send a similar notice at the end of each month during which it is in force but not served (Order II. r. 31; Forms 35, 36. See Form 28 for the letter to be sent to a foreign district with the summons). If the plaintiff sues by solicitor these notices must be sent to him (Order II. r. 41).

Where the summons is not returned to the registrar within twelve months from the date of its issue it will be struck out, unless the time for service has been extended (Order VII. r. 35).

Trial.]—When after a notice of defence or an affidavit of defence has been delivered neither plaintiff nor defendant appears when the action is called on, the case is struck out. Where defendant only appears, the action (subject to sect. 88 *proviso* of the Act) shall be struck out, and costs awarded to him. Where plaintiff only appears judgment may be entered for him without further proof, and (subject to the rules as to admissions) the amount ordered to be paid in such way as the court thinks fit. Where the judgment is for more than 20*l.* exclusive of costs, the amount shall be ordered to be paid either forthwith or within fourteen days, unless plaintiff has, or does agree to accept payment on other terms (Order XXII. r. 7). Where judgment is entered on a default or special default summons no order need be drawn up or served unless the judgment is for payment by instalments, or for payment to the other party or his solicitor, or unless plaintiff has abandoned part of his claim under Order XIV. r. 13. See Order XXIII. r. 8.

It appears that the judge alone has power to give judgment without further proof in default of appearance by the defendant. See note to sect. 90, *post*, p. 108.

87. The judge may at all times amend all defects and errors in any proceeding in the court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend, or not; and all such amendments may be made with or without costs, and upon such terms as the judge may think just; and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties shall be so made, if duly applied for.

Amendment of proceedings.
19 & 20 Vict. c. 108, s. 57.

Amendment.]—This power of the judge to grant an amendment for some sufficient reason is not taken away by Order XIV. r. 12, which authorises the plaintiff to file amended particulars, and gives power to the judge to disallow the amendment.

The judge cannot at the hearing, without the consent of the defendant, amend the particulars so as to substitute a cause of action within the jurisdiction for one which is not, as by amending particulars from slander to false imprisonment, even if the evidence supports the latter cause of action (*Hopper v. Warburton*, (1863) 32 L. J. Q. B. 104). But the judge may, in a remitted action for demurrage at a specified rate, amend the particulars by substituting a claim for unliquidated damages (*Spencer, Whitley & Co. v. Forster & Co.*, (1905) 1 K. B. 434; 74 L. J. K. B. 288).

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Notes.

The abandonment of the excess to a claim exceeding 100*l.* has been dealt with in notes to s. 81, *ante*, p. 89.

See generally as to procedure when amendment is required, Order XIV. rr. 1—16.

Recovery of more than Amount claimed.—Where upon taking an account or by verdict or otherwise it appears that the plaintiff is entitled to recover a larger amount than that in the particulars, but not exceeding 100*l.*, he may, by leave of the court and on payment of the difference (if any) in the fees payable on the respective amounts, amend his particulars so as to claim the larger amount, for which judgment may then be entered (Order XIV. r. 15).

88. If upon the return-day, or at any continuation or adjournment of the court, or of the action or matter, the plaintiff shall not appear, the action or matter shall be struck out; and if he shall appear but shall not make proof of his claim to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff or to give judgment for the defendant, and in either case where the defendant shall appear and shall not admit the claim, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think just, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered: provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorised on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the judge, if he shall think fit, may proceed to give judgment as if the plaintiff had appeared.

Where neither Party appears.—If neither party appears at the hearing, the cause is usually struck out by order of the judge.

Where Plaintiff does not appear.—If the plaintiff does not appear, and the defendant appears, and does not admit the claim, the action or matter will be struck out, and the court may award costs to the defendant as if the action had been tried, including costs of counsel, etc., but no hearing fee will be charged (see sect. 89; Order XXII. r. 6; Form 149). The costs may be recovered by the ordinary means for recovering any sum ordered to be paid by the court. If the defendant appears and admits the claim, and pays the court fees payable in the first instance by the plaintiff, the judge may give judgment for the plaintiff. These provisions apply to actions by and against executors and administrators (Order XXX. r. 2). If the plaintiff does not appear, and the cause is struck out, and the judge refuses to restore it, the case is at an end, and the court above cannot interfere (*Jennings v. London Omnibus Co.* (2). (1874) 30 L. T. 640; 22 W. R. 757).

If the defendant has given notice of a counterclaim, he may prove it and get judgment; but the judgment may be set aside on terms pursuant to sect. 91 of the Act (Order XXII. r. 8).

Where a case was adjourned for the attendance of a witness, and after the adjournment the defendant appeared but the plaintiff did not, and the judge directed judgment to be entered for the defendant, it was held that the judge had no jurisdiction to hear the case in the absence of the plaintiff, and that he should have ordered the case to be struck out (*Jordan v. Jones*, (1884) 44 J. P. 800).

As to non-appearance of parties on the return-day of a default summons, see Order XXII. r. 7, and *ante*, p. 105.

Proceedings
if plaintiff
does not
appear or
prove his
case.

9 & 10 Vict.
c. 95, s. 79.

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Notes.

Nonsuit.—Under the above section 88, the judge has power to nonsuit the plaintiff if he appear on the trial but fails to make proof of his claim to the satisfaction of the court. A plaintiff cannot however claim to be nonsuited as of right (*Fox v. Star Newspaper Co.*, (1900) A. C. 9; 69 L. J. Q. B. 117), and it is open to the judge to hear the case out and give judgment for the defendant. Further, if the plaintiff's evidence proves that the defendant is not liable, the latter is entitled to judgment and the judge should not enter a nonsuit (*Westgate v. Crowe*, (1908) 1 K. B. 24). See also sect. 93 of the Act, *post*, p. 111.

A nonsuit cannot, without the plaintiff's consent, be granted on counsel's opening statement and without hearing the evidence for the plaintiff (*Fletcher v. L. & N. W. Rly.*, (1892) 1 Q. B. 122; 61 L. J. Q. B. 24; *Cross v. Rix*, (1913) 29 T. L. R. 85).

The judge trying a case with a jury may, when he has refused to withdraw the case from the jury on the plaintiff's evidence, re-consider the matter after hearing the whole case and direct judgment for the defendant (*Skeate v. Slaters, Ltd.*, (1914) 2 K. B. 249; 83 L. J. K. B. 676).

In the case of *National Cash Register v. Stanley*, (1921) 3 K. B. 292 the plaintiffs proceeded by default summons claiming rent for use and hire of a register, the defendant having refused to accept delivery of the register. *Held*, that the judge rightly nonsuited the plaintiffs, their remedy being a claim for damages only.

Where two defendants are joined in an action for negligence it is not right to dismiss one of them from the action at the close of the plaintiff's case on the ground that no sufficient evidence of negligence against him has been given. The plaintiff is entitled to have the case tried out as a whole (*Hummerstone v. Leary*, (1921) 2 K. B. 664; 90 L. J. K. B. 1148).

89. In every case where the plaintiff shall not appear, either in person or by some person duly authorised on his behalf, upon the return-day, or at any continuation or adjournment of the court or of the action or matter, and the defendant shall appear either in person or by some person duly authorised on his behalf, it shall be lawful for the court to award to the defendant by way of costs of attendance and satisfaction for his trouble such sum as the court shall think just; and the sum so awarded shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the court can be recovered.

Costs of defendant where plaintiff does not appear.
13 & 14 Vict. c. 61, s. 10.

90. If in any action founded on contract a defendant shall not appear at the hearing, either in person or by some person duly authorised on his behalf, and no sufficient excuse for the defendant's absence shall be shown, the registrar may, by leave of the judge or in case of the judge's death or unavoidable absence, upon due proof of the service of the summons and of the debt being due and owing, enter up judgment for the plaintiff, and shall have the same power to make an order for payment by instalments, or to enter up judgment of nonsuit, or to strike out or adjourn the action, as a judge would have; and such judgment shall be as valid as if both parties had attended the court; but the judgment, and any execution thereon, may be set aside by the judge of the court, and a new trial granted upon such terms, if any, as the judge may think just.

Proceedings before registrar where defendant does not appear.
30 & 31 Vict. c. 142, s. 16.

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Notes.

NOTE.—These latter words are repealed by the County Courts Act, 1919. and the power of the judge to set aside a decision of the registrar is contained in sect. 7 of that Act, *post*, p. 237. See notes to sect. 92 and Order XXXI. rr. 1 and 4, as to the judge setting aside any judgment or order of the registrar or the execution thereon, when given or made in the absence of the defendant.

When acting under this section, the registrar has the same powers of amendment as the judge. It appears from the judgments of the Court of Appeal in *Hooper v. Hill*, (1894) 1 Q. B. 659; 63 L. J. Q. B. 598, that actions on default summonses are subject to the provisions of sect. 90 of the Act of 1888, and that in default of appearance by the defendant the judge alone has power under Order XXII. r. 7 to enter judgment without proof, if notice of defence has been given. Where the registrar deals with the case, it appears that proof ought to be given in accordance with sect. 90. See, however, the definition of "court" in sect. 18 of the Act of 1888, and in Order LV., and see also "Registrars' Courts," *post*, p. 109.

Trial in
absence of
defendant.
9 & 10 Vict.
c. 95, s. 80.

91. If on the return-day, or at any continuation or adjournment of the court or of the action or matter, the defendant shall not appear either in person or by some person duly authorised on his behalf, or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service, may proceed to the trial or hearing on the part of the plaintiff only and the judgment or order thereupon shall be as valid as if both parties had attended: provided always, that the judge in any such case, at the same or any subsequent court, may set aside any judgment or order so given or made in the absence of the defendant, and the execution thereupon, and may grant a new trial or hearing, upon such terms, if any, as to payment of costs, giving security or such other terms as he may think just, on sufficient cause shown to him for that purpose.

Where the Defendant does not appear.—This provision applies to actions by and against executors and administrators (Order XXX. r. 2). No proof of the service of the judgment is necessary before issuing execution (Order XXIII. r. 7).

For proof of service of summons, see sect. 78.

Where defen-
dant appears
and admits
the claim.
30 & 31 Vict.
c. 142, s. 17.

92. Where a defendant appearing at the hearing, either in person or by some person duly authorised on his behalf, admits the claim, the registrar may, by leave of the judge, or in case of the judge's death or unavoidable absence, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly as a judgment of the court.

Matters of
account.

The judge may, after deciding or reserving any question of liability, refer to the registrar any mere matter of account which is in dispute between the parties, and after deciding the question of liability may give judgment on the registrar's report.

NOTE.—The provision formally contained in this section giving to the registrar power to try disputed cases up to 2*l*. is repealed by the County Courts Act, 1919. By sect. 5 (1) of that Act (*post*, p. 236) the registrar may, on the application of the parties and by leave of the judge, try any case where the amount involved does not exceed 5*l*.

Jurisdiction of Registrar.—The jurisdiction of the registrar to hear and decide cases involving small amounts, and to enter judgment and arrange

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Notes.

conditions and terms of payment, where claims are admitted, or the defendant does not appear, is derived from sects. 90 and 92 of the principal Act, extended by sect. 5 of the Act of 1919.

Sect. 90 gives him power, by leave of the judge, or in case of the judge's death or unavoidable absence, where the claim is in contract, and the defendant makes no appearance, upon proof of the service of the summons, and the debt being due, to enter up judgment, and arrange terms of payment, or to nonsuit or adjourn or strike out the case as the judge might have done. Such an action, if commenced by ordinary summons, may now be entered for hearing at a registrar's court. See "Registrars' Courts," *infra*.

By sect. 92 of the principal Act (*supra*), the registrar is empowered, where the defendant *at the hearing* admits the claim, by leave of the judge or in case of the judge's death or unavoidable absence, to settle terms and conditions of payment, and enter up judgment. Now by sect. 5 (2) of the Act of 1919, where defendant gives the prescribed notice that he admits the whole or part of the claim, and desires the decision of the court as to the time and mode of payment, and offers to pay, the registrar shall (subject to rules) on notice to the plaintiff—unless where less than the whole claim is admitted, and plaintiff objects to accept it in satisfaction of his claim—have power to enter up judgment and decide as to time and mode of payment (sect. 5 (2); Order IX. r. 2).

He may also, where plaintiff and defendant agree in the prescribed manner (Form 68) as to the amount payable in respect of the whole, or any part of the claim, and the terms and conditions on which it is to be paid, or satisfied, enter up judgment for the agreed amount, and for payment thereof on the terms and conditions of such agreement (sect. 5 (3); Order IX. r. 4).

Further, he may, subject to the rules, on the application of the parties and by leave of the judge, hear and determine any case in which the amount claimed, or the amount involved, does not exceed 5*l*. (Act of 1919, sect. 5 (1)). In such a case, if the action is commenced by ordinary summons, it may be entered for hearing at a registrar's court, but subject to exceptions set out (Order XXII*B*. r. 1).

In any case, where he has power either to hear the case or to enter up judgment, he may make such order as to payment by instalments as the judge might have made and, subject to the right of appeal (see *infra*), any such judgment has the same effect, and is to be enforced in the same manner as if it had been a judgment of the judge himself (sect. 5 (4)).

See, further, notes to sect. 98, *post*, p. 116.

Registrars' Courts.—By sect. 9 of the County Courts Act, 1919, the judge may, and if so required by the Lord Chancellor shall, appoint additional courts to be held, and (subject to rules) the registrar may at such courts, notwithstanding the judge is not present, enter up any judgment, or exercise any jurisdiction given to him by this, or the principal Act, and may adjourn such a court (sect. 9 (1)). Such an additional court may be held at any place within the district at which an office is kept open by the registrar (sect. 9 (2)).

Registrars' courts may be appointed to be held either (*a*) at the court house, or (*b*) at the registrar's office, or (*c*) at any office kept open by the registrar at any place within the district. Any such place is to be kept open and deemed to be an open court. Notice of the place, day and hour for holding registrar's courts, or of any alteration in the day, must be given, in accordance with sect. 10 of the principal Act, four weeks before the day fixed. The notice must state that the court will be held before the registrar only (see Order I. r. 2*c*).

Permitting a registrar to hold courts in the absence of the judge is entirely new procedure. The rules which govern the procedure in such courts appear in what is now Order XXII*B*. of the rules (see County Court rules). The procedure is subject to any general or special directions given by the judge (Order XXII*B*. r. 1).

These courts are by the rules called "Registrars' Courts" (Order I. r. 2*c* (3)). The cases in which jurisdiction is given to the registrar by

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sects. 90 and 92 of the principal Act, and sect. 5 (1) of the Act of 1919 may be entered at a registrar's court if the action has been commenced by an ordinary summons (and the judge has given the registrar permission to hear and determine cases not exceeding 5*l.*), but this is subject to the following exceptions:—

(1) Where the registrar's court is not to be held at the usual court house the registrar must have regard to the comparative convenience of the places and act accordingly.

(2) Where the amount of the plaint exceeds 5*l.* and the registrar is informed, or has reason to believe, that the action will be defended. In this case it must be entered for the judge's court (Order XXII*B.* r. 1).

As to the jurisdiction of the registrar to hear actions commenced by a default summons (Order XXII*B.* r. 2), seems to give jurisdiction to the registrar to fix the day for hearing at a registrar's court of an action for a sum not exceeding 5*l.*, commenced by default summons (not a special default summons) where notice of defence has been given, or for disposing of *any* action commenced by a default or *special default* summons where defendant has delivered an admission of the whole of the plaintiff's claim.

Other Points to be observed with reference to Registrars' Courts.]—The plaint note and summons, in the case of an ordinary summons, or the notice of trial in the case of a default or special default summons, shall state that the court will be held before the registrar only (Forms 46*A*, 46*B*). The action, if for a sum exceeding 5*l.*, must be tried by the judge in the following cases:—

(a) If any defendant gives notice under Order XXII*B.* r. 2 that he intends to dispute the claim or gives notice of any defence, or of a set-off or counterclaim exceeding 5*l.*, or, the defendant pays into court only part of the claim in satisfaction, or admits liability for part only of the claim, and plaintiff does not accept the amount paid into court or admitted in satisfaction of his claim, or

(b) Where defendant files a notice claiming contribution or indemnity against a third party, or demands a jury, or the registrar is otherwise informed that the action is likely to be defended, or

(c) Where any defendant at the hearing disputes the claim (Order XXII*B.* r. 3 (1)).

Even where less than 5*l.* is claimed or involved the case must be tried by the judge if the claim is disputed and either party does not consent to the action being tried by the registrar, or defendant gives notice of a set-off or counterclaim exceeding 5*l.*, or files a notice claiming contribution or indemnity against a third party (Order XXII*B.* r. 3 (2)).

Any party who leaves it until the hearing comes on before stating that he desires the case to be tried by the judge, may be ordered to pay costs incurred by the other party in consequence of the notice not having been given earlier (Order XXII*B.* r. 3 (3)).

Generally.]—The registrar may at a registrar's court hear any application and transact any business, and exercise any other jurisdiction which he would be competent to hear or perform at a court at which the judge is present, or at his office. If the registrar's court is to be held at a place other than the usual court house the registrar must, before fixing business for any such court, consider the comparative convenience for the parties of the alternative places. See Order XXII*B.* r. 4.

Appeal from Registrar.]—Although the registrar now possesses the extensive jurisdiction set out above, it must be borne in mind that by sect. 7 of the Act of 1919 any judgment or order given or made by him and any execution thereon (except where made by consent of all parties) may be set aside by the judge, who may substitute such judgment or order as he thinks right, or grant a new trial, on terms, or otherwise. See sect. 7 of County Courts Act, 1919, *post*, p. 237.

The application to set aside, if the judgment or order was given or made

in the absence of the defendant, may be made in accordance with the provisions of sect. 91 of the principal Act, in any other case in accordance with the provisions of Order XXXI. r. 1. See Order XXXI. r. 4.

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Accounts and Inquiries.]—See notes to Order XII. r. 5.

Reference for Enquiry and Report.]—As to the power of the judge under the County Courts Act, 1919, sect. 6, to refer any action or matter or question arising therein to the registrar or referee for inquiry and report, see notes to sect. 104, *post*, p. 125.

Reference to Arbitration.]—See sect. 104, *post*, p. 124.

93. Every judgment and order of the court, except as in this Act provided, shall be final and conclusive between the parties; but the court shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given entitling either the plaintiff or defendant to judgment. The judge shall also in every case whatever have the power if he shall think just to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

Finality of Judgments.]—When the judgment has been formally given the judge has no power to rescind or alter it, even on the same day with the parties still before him. If he does so he subjects himself to a prohibition (*per Coleridge, J., Jones v. Jones* (2), (1848) 5 D. & L. 628, 632; 17 L. J. Q. B. 170; 79 R. R. 884; *Irving v. Askew* (2), (1870) L. R. 5 Q. B. 208; 39 L. J. Q. B. 118; *The Recepta* (2) (C. A.), (1893) 42 W. R. 73 (a case of alteration of order as to costs); *Robinson v. Fawcett and Frith*, (1901) 2 K. B. 325; 70 L. J. K. B. 639; and see *Re St. Nazaire Co.* (C. A.), (1879) 12 Ch. D. 88, where it was held that there is now no power in the High Court to rehear after judgment). At the present day this rule is not likely to be very strictly enforced, and if the judgment has not been entered on the minutes, and the parties or their solicitors are present, a change in the judgment actually pronounced would probably be justified on the ground that it had not been definitely given (see *Barton v. Titchmarsh*, (1880) 49 L. J. Ex. 573). A county court judge who, at the trial of an action with a jury, has ruled that there is evidence for the jury and has entered judgment for the plaintiff in accordance with the verdict, has no power to grant a new trial on the ground that there was no evidence for the jury (*Clarke v. West Ham Corporation*, (1914) 2 K. B. 448; 83 L. J. K. B. 1306).

All orders and judgments, subject to the right of appeal (*post*, sect. 120), or to apply for a new trial are final and conclusive between the parties and cannot be sued upon; but see *Savill v. Dalton*, *ante*, note to sect. 56. The judgment is a bar to an action on the original consideration in any other court (*Austin v. Mills*, (1854) 9 Ex. 288; 23 L. J. Ex. 40; 96 R. R. 717; *Berkeley v. Elderkin*, (1853) 1 E. & B. 805; 22 L. J. Q. B. 281; 93 R. R. 405). A judgment against A. by default does not debar the plaintiff, if he should afterwards discover that B. is liable and not A., from suing B., unless A. and B. were partners, or in some other way jointly liable (*Isaac & Sons v. Salbstein*, (1916) 2 K. B. 139; 85 L. J. K. B. 1433). As to suing on original consideration where a negotiable instrument is invalid owing to alteration having been made therein, see *Payana Reena Saminathan v. Pana Lana Palaniappa*, (1914) A. C. 618; 83 L. J. P. C. 131. Where a servant sued unsuccessfully for wrongful dismissal, and after waiting a quarter summoned her master before justices for a quarter's wages, it was held that the county court judgment was conclusive against the claim (*Routledge v. Hislop*, (1860) 2 E. & E. 549; 29 L. J. M. C. 90; 119 R. R. 841). Where A. sued B. for rent, and the judge found in favour of B., on the ground of a yearly tenancy, it was held, in a subsequent action, brought in a superior court

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by B. against A., that A. was estopped by the judgment from contending that the tenancy was a weekly one (*Flitters v. Alfrey*, (1874) L. R. 10 C. P. 29; 44 L. J. C. P. 10, n.). Where the judge, after hearing evidence, set aside as fraudulent a deed compromising the judgment, a subsequent action in the High Court raising the question so decided was stayed as frivolous (*Stephenson v. Garnett*, (1898) 1 Q. B. 677 (C. A.); 67 L. J. Q. B. 447).

If damage to goods and damage to the person be occasioned by one wrongful act, the causes of action are distinct; and if an action be brought in respect of one only, the judgment will not be a bar to the maintenance of an action for the other (*Brunsdon v. Humphrey* (C. A.), (1884) 14 Q. B. D. 141; 53 L. J. Q. B. 476). Even where a plaintiff splits his demand contrary to sect. 81 of the Act, it seems that the judgment obtained in the action will not bar another action for the residue of his demand (*Vines v. Arnold*, (1849) 8 C. B. 632; 19 L. J. C. P. 98; 79 R. R. 653; *Adkin v. Friend*, (1878) 38 L. T. 393; *Jones v. Jones* (1), (1874) 22 W. R. 577). Compare *Conquer v. Boot*, (1928) 97 L. J. K. B. 452.

Where a defendant has a set-off or counterclaim which he does not give notice of, or which he is prevented from proving through non-compliance with the rules of practice, the judgment in the action will not prevent him from enforcing it either as a set-off or counterclaim in another action between the same parties, or by original action (*Stanton v. Styles*, (1850) 5 Ex. 578; 19 L. J. Ex. 336; *Hindley v. Haslam*, (1878) 3 Q. B. D. 481). If the set-off or counterclaim were properly raised, and evidence were given by cross-examination or otherwise in support of it, the judgment would no doubt be final.

When a counterclaim is raised which exceeds the statutory limit of the jurisdiction, and the plaintiff gives notice of objection pursuant to sect. 203 of the Supreme Court of Judicature (Consolidation) Act, 1925, judgment as to the cause of counterclaim will estop both parties, but the counter-claimant will, if successful, be able to sue in the High Court for that part of his counterclaim which he is prevented from recovering in the county court by reason of the excess of jurisdiction (*Webster v. Armstrong*, (1885) 55 L. J. Q. B. 236).

As to judgments and orders generally—the drawing up of the same, mode of service, time for compliance with, etc., see Order XXXIII.

Power to Nonsuit.—See sect. 88, *ante*, and notes thereto.

Power to Order New Trial.—Where a judge subsequently to trying an action without a jury comes to the conclusion that he has misdirected himself on a question of fact, he may on application grant a new trial (*Sanatorium, Ltd. v. Marshall*, (1916) 2 K. B. 57; 85 L. J. K. B. 941); and it has been decided by the Court of Appeal (overruling the decision of a Divisional Court to the contrary effect) that he may on application grant a new trial when he is satisfied that he has misdirected himself on a question of law. At all events, where the High Court could grant a new trial if the case had come before them on appeal (*Astor v. Barrett and Another*, (1920) 3 K. B. 633; (1921) 90 L. J. K. B. 177). See, further, notes to Order XXXI. r. 1.

94. The bankruptcy of the plaintiff in any action in the court which the trustee might maintain for the benefit of the creditors, shall not cause the action to abate if the trustee shall elect to continue such action, and to give security for the costs thereof within such reasonable time as the judge shall order, but the hearing of the action may be adjourned until such election is made; and in case the trustee does not elect to continue the action and to give such security within the time limited by the order, the defendant may avail himself of the bankruptcy as a defence to the action.

Bankruptcy.—The bankruptcy of the plaintiff in any action in the county

Bankruptcy
not to cause
action to
abate, if
trustee elect
to continue
it.

19 & 20 Vict.
c 108, s. 62.

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court which the trustee might maintain for the benefit of the creditors does not cause the action to abate if the trustee elects to continue the action; and gives security for costs, within such reasonable time as the judge may order, but the hearing may be adjourned until such election is made. In default of such election and security, the bankruptcy may be relied on as a defence (see Order XVII. r. 9); or an order to stay may be obtained if the bankrupt proceeds with it (*Warder v. Saunders*, (1882) 10 Q. B. D. 114). If the trustee refuses to continue the action the stay is absolute against all subsequent assignees of the cause of action (*Selig v. Lion*, (1891) 1 Q. B. 513; 60 L. J. Q. B. 403). When the trustee elects to continue the action, he should, it is believed, apply to be joined as plaintiff under the rules hereafter mentioned; where he has been so added (in a case commenced in the High Court, but ordered to be transferred to the county court) before the original writ or order has been lodged with the registrar of the county court, the judge of the county court has no jurisdiction to order security for costs under sect. 94 (*Hemming v. Davies*, (1898) 1 Q. B. 660; 67 L. J. Q. B. 458).

The right to maintain actions for breaches of contract resulting in direct injury to the bankrupt's person or feelings does not pass to his trustee, *e.g.*, for a breach of promise of marriage (*Beckham v. Drake*, (1849) 2 H. L. Cas. 579; 81 R. R. 301); nor for personal wrongs, *e.g.*, libel, assault, personal injuries, etc. (*Ib.*; *Howard v. Crowther*, (1841) 8 M. & W. 601; 10 L. J. Ex. 335; 58 R. R. 823). In such cases there is no abatement, but security for costs may be ordered (*Brocklebank v. King's Lynn*, (1878) 3 C. P. D. 365; 47 L. J. C. P. 321).

Where bankruptcy takes place after judgment, the provisions of Order XXV. r. 14 presumably apply (see *East End Building Society v. Slack*, (1891) 60 L. J. Q. B. 359).

If a defendant becomes bankrupt, and the trustee continues the defence and fails, he may be ordered to pay costs personally, even if he has not been added as defendant (*London School Board v. Wall* (C. A.), (1891) 7 T. L. R. 566).

95. It shall be lawful for any executor or administrator to sue and be sued in the court in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the High Court.

Executors may sue and be sued.

9 & 10 Vict.
c. 95, s. 66.

Trustees, Executors, etc.]—Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and will be considered as representing such parties in the action; but the court may, at any stage of the proceedings, order any of them to be made parties to the action, either in addition to or in lieu of the previously existing parties (Order III. r. 6). This rule applies to trustees, executors and administrators sued in proceedings to enforce a security by foreclosure or otherwise.

In county courts, executors and administrators may sue and be sued in their own names, as if the action were brought by or against them in their own right (see Order V. r. 6). Trustees, executors, or administrators so suing will, it is conceived, let in a set-off or counterclaim, available against them in their private capacity. At law, the rule as to joinder was that all the executors named in the will should be joined as plaintiffs, though one only had proved, except in case of renunciation; but the rule in equity was much more elastic. Now, by s. 8 of the Administration of Estates Act, 1925, the executors who have proved may exercise all the powers of a personal representative. Assuming that the provisions of the County Courts Act, 1888, s. 97, extend to actions against executors, the plaintiff will only require to select as defendant an executor who has administered; if not, all who have administered should be joined.

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For further provisions as to actions against executors and administrators, see Order XXX. For forms of judgment, Forms 238—243

Executors and Administrators.]—The ordinary judgment against executors and administrators is to pay the debt and costs to be levied out of the assets of the testator, if the defendant have so much; but if not, then the costs out of the defendant's own goods. If a plaintiff executor fails, the judgment is the same as in ordinary actions; but the costs will, unless the court shall otherwise order, be awarded in favour of the defendant, and be levied *de bonis propriis* (Order XXX. r. 1).

Where devastavit.]—In all cases where the defendant is charged in the summons with wasting assets, if the judge is of opinion that the defendant has wasted the assets, the judgment will be that the debt or damage and costs shall be levied *de bonis testatoris*, *si*, etc., *et si non*, *de bonis propriis*, and the non-payment of the amount of the demand immediately, on the judge finding such demand to be correct, and that the defendant is chargeable in respect of assets, is conclusive evidence of wasting to the amount with which he is so chargeable (Order XXX. r. 4; Form 238. See form of warrant, Form 245; see also *Winch v. Winch*, (1853) 22 L. J. C. P. 104, where it was held that the county court has jurisdiction to try a *devastavit*).

Where the defendant does not appear at the trial, or admits his representative character and the plaintiff's demand, and does not deny assets, the judgment will be that the demand and costs shall be levied *de bonis testatoris*, *si*, etc., *et si non*, as to the costs, *de bonis propriis* (Order XXX. r. 4A; Form 238A).

Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment will be that the demand and costs shall be levied *de bonis testatoris*, *et si non*, etc., as to the costs, *de bonis propriis* (Order XXX. r. 5; Form 239).

Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment will be to levy the costs of proving the demand *de bonis testatoris*, *si*, etc., *et si non*, *de bonis propriis*; and as to the demand, judgment of assets *quando acciderint*, and the plaintiff must pay defendant's costs of proving the administration of assets unless the court otherwise orders (Order XXX. r. 6; Form 240).

Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does *not* prove the administration alleged, the judgment will be to levy the amount of the demand, or such amount of assets as is shown to have come to the hands of the defendant, and costs, *de bonis testatoris*, *si*, etc., *et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets *quando acciderint* (Order XXX. r. 7; Form 241).

Where the defendant admits his representative character and the plaintiff's demand, but alleges and proves a total or partial administration of the assets, the judgment will be of assets *quando acciderint*, and the plaintiff must pay the defendant's costs of proving the administration unless the court otherwise orders (Order XXX. r. 8; Form 242).

Where the defendant admits his representative character and the plaintiff's demand, and alleges a total or partial administration of the assets, but does *not* prove the administration alleged, and does not establish any other ground of defence, the judgment will be to levy the amount of the demand, or such amount of assets as is shown to have come to the defendant's hands, and costs, *de bonis testatoris*, *si*, etc., *et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets *quando acciderint* (Order XXX. r. 9; Form 243).

In actions against executors or administrators for which no special provision is made, if the defendant fails as to any of his defences, the judgment, unless the court otherwise orders, will be for the plaintiff as to his

costs of disproving such defence, and such costs are to be levied *de bonis testatoris*, *si*, etc., *et si non*, *de bonis propriis* (Order XXX. r. 12).

It was formerly held that, if, after a plea of *plene administravit* and judgment of assets *quando acciderint*, the defendant received assets, the plaintiff must proceed by summons stating the judgment *quando*, and suggesting assets, and that a suggestion of a *devastavit* would be wrong (*Ellis v. Watt*, (1851) 8 C. B. 614; 19 L. J. C. P. 113). This was provided for by a rule of practice (Order XXX. r. 10), which directs that, where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff may issue a summons in the prescribed form (Form 244); and, if it appears that assets have come to the hands of the executor or administrator since the judgment, the judge may order that the debt, damages and costs be levied *de bonis testatoris*, *si*, etc., *et si non*, as to the costs, *de bonis propriis*. The party applying may also charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in an original summons, and the provisions of r. 4 apply to such inquiry. The judge may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris*, *si*, etc., *et si non*, *de bonis propriis* (see form of judgment, Form 246; of warrant, Form 245).

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96. It shall be lawful for any person under the age of twenty-one years to prosecute any action in the court for any sum of money not greater than *one hundred* (a) pounds which may be due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age.

Minors may sue for wages. 9 & 10 Vict. c. 95, s. 64. 13 & 14 Vict. c. 61, s. 1.

NOTE.—(a) Jurisdiction increased from 50*l.* (see sect. 3 of Act of 1903).

Infants.]—An infant when suing for any sum not exceeding 100*l.* for wages or piecework, or for work done as a servant, may prosecute such action in the same manner as if he were of full age. In such a case, the provisions of Order IX. r. 24, as to settlement of claims on behalf of infants and payment into court and application of moneys recovered or awarded do not apply. When he is suing for any cause of action, other than the above, or is a claimant in an interpleader proceeding, he must sue by a next friend (Order III. r. 10). For procedure see Order V. r. 16.

Infant plaintiff.

97. Where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court; and every such person against whom judgment shall have been obtained, and who shall have satisfied such judgment, shall be entitled to demand and recover in the court contribution from any other person jointly liable with him.

One of several persons liable may be sued. 9 & 10 Vict. c. 95, s. 68.

Joint Defendants.]—Where there is a demand against two or more defendants who are jointly liable, it is sufficient to serve one with process, leaving out the others, and judgment and execution may go against the defendant or defendants served, who, when the judgment has been satisfied, may recover contribution from any persons jointly liable. Where a plaintiff avails himself of this provision, and does not proceed against all of several joint contractors, every defendant sued may avail himself of any set-off or counterclaim to which he would have been entitled if all the persons liable

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had been made defendants (Order X. r. 7). It should be remembered that it is a principle of law that a judgment against one of several joint contractors is a bar to an action against the others (*King v. Hoare*, (1844) 13 M. & W. 494; 14 L. J. Ex. 29; 67 R. R. 694; *Kendall v. Hannilton*, (1879) 4 App. Cas. 504; 48 L. J. C. P. 705); and that the provision of the County Courts Act above mentioned does not prevent the principle from applying in the county courts, so as to estop the plaintiff from maintaining another action. In a remitted action two defendants were represented by the same solicitor, and, judgment with costs having been given for one and against the other, the successful defendant was held entitled to recover from the plaintiff half the costs of the defence (*Beaumont v. Senior*, (1903) 1 K. B. 282; 72 L. J. K. B. 141).

As to the effect of judgment by default against one defendant; in an action against two joint defendants, where fraud is alleged and proved, see *Ch. Goldrei Foucar & Son v. Louis Sinclair and the Russian Chamber of Commerce in London*, (1917) 33 T. L. R. 318; 34 T. L. R. 74.

Under sect. 97 of the Act the plaintiff may sue one or more partners in their own names for a joint debt, and is not obliged to join all.

If plaintiff sues one of several persons jointly liable under the above section 97, the defendant may counterclaim as if all had been joined (Order X. r. 7).

98 and 99. Repealed.

Confession of debts or part of debts, etc., and judgment thereupon.

Sects. 98 and 99 of the principal Act are repealed by the County Courts Act, 1919 (see Schedule). The provisions as to confession of debts, and agreements as to amount of debt and conditions of payment, are now derived from sect. 5 of the County Courts Act, 1919, and the rules thereunder (Order IX. rr. 2—5).

Sect. 5 (2), (3) and (4) of the County Courts Act, 1919.]—
(2) Where a defendant gives notice in the prescribed manner that he admits his liability for the whole or any part of a claim, but desires the decision of the court as to the time and mode of payment thereof, and offers to pay the same, the registrar shall, subject to county court rules, on such notice to the plaintiff as may be prescribed, and unless, where the defendant admits less than the full amount claimed, the plaintiff objects in the prescribed manner to accept the amount admitted and the offer of payment in satisfaction of his claim, have power to enter up judgment and, for this purpose, to decide any question as to time and mode of payment.

(3) Where the plaintiff and defendant enter into an agreement in the prescribed manner as to the amount payable in respect of the whole or any part of a claim, and the terms and conditions upon which the same is to be paid and satisfied, the registrar shall, subject to county court rules, have power to enter up judgment for the amount so agreed upon and for a payment thereof upon the terms and conditions sanctioned in the agreement. (See Order IX. r. 4, Form 68).

(4) In any case where the registrar has power under the principal Act or this Act to hear and determine a case or to enter up judgment he shall have power to make such order as to payment by instalments as the judge might have made, and to exercise any other power which the judge might have exercised, and, subject

to the provisions of this Act with respect to appeals, any judgment entered up by the registrar in pursuance of the principal Act, or this Act, shall, to all intents and purposes, have the same effect and shall be enforced and enforceable in the same manner as if it had been a judgment of the judge of the same court.

Section 5,
C.C. Act, 1919.

Procedure.]—The procedure, derived from the Act and rules, is as follows:—

The defendant to an ordinary summons may give notice that he admits liability for the whole or any part of the claim but desires the decision of the court as to the time and mode of payment (sect. 5 (2)). The defendant may then sign an admission (Forms 71, 72, 73) stating that he offers to pay the amount admitted within a time or by instalments to be specified in the admission (Order IX. r. 2). This admission should be signed by the defendant or his solicitor and given to the registrar at least five clear days before the return-day. It may be delivered later, even at the time the action is called on, subject to an order by the court or payment by defendant of any costs necessitated by the delay (*ibid.*, Order IX. r. 2). The registrar as soon as reasonably may be after receipt (if delivered in time to allow this) sends notice of the admission to the plaintiff (Forms 66—67).

If the plaintiff in the case of admission of part only of the claim elects to accept the amount admitted in satisfaction of his claim, and to accept the offer of payment made by the defendant, or in the case of admission of the whole claim elects to accept the offer of payment, he should send notice of acceptance to the registrar and to the defendant within such reasonable time before the return-day as the filing of the admission by the defendant may permit; or he may give such notice of acceptance at any time before the return-day or may attend on the return-day and accept the admission and offer, or the offer, as the case may be, without giving such notice.

In any such case of acceptance as aforesaid, the registrar may, on the return-day, on payment of the fee for entering judgment, and whether the parties or either of them attend or not, enter judgment for the amount admitted and for court fees and costs, and payment shall be ordered to be made in accordance with the offer of the defendant.

If the plaintiff in the case of admission of part only of the claim elects to accept the amount admitted in satisfaction of his claim, but objects to the mode of payment offered by the defendant, or in case of admission of the whole claim objects to the mode of payment, he should send notice in that behalf to the registrar and the defendant within such reasonable time before the return-day as the delivery of the admission by the defendant may permit, or he may give such notice at any time before the return-day, or may attend on the return-day and notify the same.

If the plaintiff in the case of admission of part only of the claim objects to accept the amount admitted by the defendant and the offer of payment in satisfaction of his claim, he should send notice in that behalf to the registrar and to the defendant as in above paragraph; or he may give such notice at any time before the return-day or may attend on the return-day and notify the same.

In the case where objection is taken to the amount admitted as well as to the offer of payment as in above paragraph the action shall be dealt with on the return-day in the ordinary way; in any other case (except the case mentioned in above paragraphs) the registrar will on the return-day, if the plaintiff attends and on payment of the necessary court fee, or if he does not attend but sends the fee to the registrar, give judgment for the amount admitted with court fees and costs, and direct the time and mode of payment in accordance with sect. 5 of the County Courts Act, 1919, and sect. 105 of the County Courts Act, 1888.

Where defendant has not signed an admission and does not appear on the return-day, the court may accept as an admission any letter addressed to the court purporting to be written by or on behalf of defendant if satisfied

Section 5, C.C. Act, 1919. that it is genuine. A note that such letter has been so accepted must be entered in the minute book (*ibid.*, Order IX. r. 3).

See also "Jurisdiction of Registrar," notes to, *ante*, p. 108.

Appeals from Registrar.]—See County Courts Act, 1919, sect. 7, *post*, p. 237, and Order XXXI. r. 4.

Judge alone to determine all questions unless a jury be summoned.

100. The judge shall be the sole judge in all actions brought in the court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned.

See notes to sect. 92 and sect. 101.

Illegality.]—If a contract and all the surrounding circumstances are fully before the court, the court must take notice of any illegality in the transaction rendering it non-enforceable, but if all the circumstances are not before the court, the court can only take notice of illegality appearing on the face of the contract (*North Western Salt Co. v. Electrolytic Alkali Co.*, (1914) A. C. 461; 83 L. J. K. B. 530; and see also *Lipton v. Powell and Another*, (1921) 2 K. B. 51).

The judge has power to order any person who in his opinion has been guilty of perjury in any proceedings before him to be prosecuted (see Perjury Act, 1911 (1 & 2 Geo. V., c. 6), s. 9, *post*, Part V., "STATUTES").

Evidence.]—Evidence is generally given before the judge *viva voce*, but the judge has power to order that any particular fact or facts may be proved by affidavit (Order XVIII. r. 2). The judge may also in any action or matter make an order for the examination on oath before the court or any officer of the court, or any other person and at any place in England or Wales of any witness or person, and may empower any party to any such action or matter to give such deposition in evidence on such terms, if any, as he may direct (Order XVIII. r. 18).

Examination of witnesses abroad.]—Until the passing of the County Courts Act, 1919, there was no manner of obtaining the evidence of witnesses residing abroad. This may, however, now be obtained. By sect. 17 of this Act the High Court shall, on application in manner prescribed by rules of the Supreme Court (see these rules, R.S.C. Order LIV. r. 12c, *post*, p. 244), have the same power to issue a commission request or order to examine witnesses abroad for the purposes of an action or matter in a county court as it has for the purposes of an action or matter in the High Court, but on such an application being made the High Court may if it thinks fit make an order for the transfer of the action or matter to the High Court. See County Courts Act, 1919, sect. 17, *post*, p. 241, and Order XVIII. r. 33.

Reference to Registrar.]—Any mere matter of account may be referred by the judge to the registrar for inquiry and report (sect. 92, *ante*, p. 108), and now by sect. 6 of the County Courts Act, 1919, the judge may in any case with consent of the parties refer any action or matter or any question arising therein to the registrar or to a referee for inquiry and report. See notes to sects. 92 and 104.

Trial with jury.

101. The party requiring a jury to be summoned shall give to the registrar of the court, or leave at his office, such notice thereof as shall be prescribed; and the said registrar shall cause notice of such demand of a jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post or by causing the same to be delivered at his usual place of abode or business, but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the registrar. Every party requiring

a jury to be summoned shall, at the time of giving the said notice, and before he shall be entitled to have such jury summoned, pay to the registrar of the court the sum of eight (x) shillings for payment of the jury, and such sum shall be considered as costs in the action, unless otherwise ordered by the judge. Whenever it is required that a jury should be summoned for the trial of any matter arising out of the jurisdiction given to the court by section sixty-seven of this Act, the jury shall be summoned from the list of jurors in the possession of the registrar of the court in which the action or matter was commenced. Section 101.

Jury.—The first part of this section (sect. 101) was repealed by the Administration of Justice Act, 1920, and is not printed.

The right to require a jury is now regulated by the Administration of Justice Act, 1925, 15 & 16 Geo. V., c. 28, sect. 19, as follows:—

19.—(1) The following provisions shall have effect in relation to the trial of actions in a county court or any other inferior court of civil jurisdiction:—

(a) In actions within the equity jurisdiction of the court, and in actions in which the amount claimed does not exceed five pounds, the trial shall, unless otherwise ordered by the court, be without a jury: Trial with jury in county courts and other inferior courts of civil jurisdiction.

(b) Any action, not being an action to which paragraph (a) of this subsection applies, in which there is a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage, shall, if any party thereto so requires, be tried with a jury:

(c) Any action, not being an action to which paragraph (a) or paragraph (b) of this subsection applies, shall, if any party thereto so requires, be tried with a jury, unless the court is satisfied on an application made by any party thereto that the action is more fit to be tried without a jury.

(2) In this section the expression “action” includes any matter or other proceeding requiring to be tried, and the expression “equity jurisdiction” in relation to a county court means the equity jurisdiction given to county courts by section sixty-seven of the County Courts Act, 1888.

The judge must consider each application for a jury on its merits. Unless satisfied that the case can be equally well tried without a jury he must make the order for a jury if asked for. The fact that the court lists are crowded is

(x).—If a jury is to be summoned the number of jurors to be impanelled and sworn for the trial of any action in a county court shall be eight, and the amount to be paid to the registrar for payment of the jury shall be eight shillings (County Courts Act, 1919, sect. 22 (1)), together with a court fee of ten shillings (C.C. Fees Order 1925, Fee No. 10).

Though this section appears in the County Courts Act, 1919, as above, it is only a re-enactment as to the number of jurymen of sect. 4 of the County Courts Act, 1903, which is now repealed.

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no reason for refusing the application (*Calcraft v. London General Omnibus Co.*, (1923) 2 K. B. 608; 92 L. J. K. B. 1093).

No such order can, however, be made where, under the Act, there would be no power to order a trial without a jury in the High Court, or where no such order could be made in the High Court without the consent of both parties.

A special jury cannot be had in the county court (*Ex parte Armitage*, (1880) 17 Ch. D. 13; 29 W. R. 772).

But, notwithstanding any Act, it is not lawful for any party to require a jury in any action or matter arising under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. See sect. 3 (2) of Act.

Particular Actions.]—When an action of contract or tort is remitted, the provisions as to juries apply. Interpleaders, replevin, actions of ejectment or for the recovery of possession, or to enforce any right relating to land (as to what is a right relating to land, see *Rex v. Surrey County Court Judge*, (1910) 2 K. B. 410; 79 L. J. K. B. 802), or to recover damages in respect of such right, may, subject to the Administration of Justice Act, 1925, sect. 19, be tried by jury, or any other action or matter may, by order, be tried by jury (Order XXII. r. 3). The application may be by notice for directions (Order XV. rr. 1, 4), or *ex parte* or on notice (Order XII. r. 11). When a new trial is granted, the judge may make it a condition that it shall take place before a jury, although the former trial did not (Order XXXI. r. 2), or either party may demand and obtain a jury in the manner before described (*R. v. Harwood*, (1853) 22 L. J. Q. B. 127; 94 R. R. 860; *Ford v. Taylor*, (1878) 3 C. P. D. 21; 47 L. J. C. P. 116).

There is no right to have a trial by jury in equity actions or matters, but the Act gives a discretion to allow such actions or issues of fact therein to be tried by jury (see as to the exercise of the discretion in the High Court, *Swindell v. Birmingham* (C. A.), (1876) 3 Ch. D. 127; 45 L. J. Ch. 756; *West v. White*, (1877) 4 Ch. D. 631; 46 L. J. Ch. 333; *Ruston v. Tobin* (C. A.), (1870) 10 Ch. D. 558).

Verdict.]—When the jury have once given a general verdict, the judge is not entitled to ask any further question of the jury for the purpose of ascertaining whether the ground of their verdict was one which there was evidence to support; *Arnold v. Jeffreys*, (1914) 1 K. B. 512; 83 L. J. K. B. 329.

The judge trying a case with a jury may, when he has refused to withdraw the case from the jury on the plaintiff's evidence, direct judgment for defendant after hearing the whole case (*Skate v. Slaters, Ltd.*, (1914) 2 K. B. 429; 83 L. J. K. B. 676).

Notice of Demand of.]—Notice of a demand of a jury must be made in writing according to the form in the Appendix, ten clear days at least (in actions under the Employers' Liability Act fifteen clear days at least) before the return-day, and the summons to the jurors must be delivered to the bailiff forthwith and served six clear days at least before the return-day. A fee of 10s. is payable on filing the notice, and in addition a deposit of 8s. for the jurors' fees must be made (C.C. Fees Order, 1925, Fee No. 10). The registrar must forthwith give to the other party notice of the demand (Order XXII. r. 1; Forms 142, 143, 144, 144A, 144B, 144C).

Where notice has not been given in time, or if at the trial both parties desire to try by jury, the judge may, on such terms as he thinks fit, adjourn the action in order that the necessary steps for such trial may take place accordingly (Order XXII. r. 2). If an adjournment is granted for other reasons, a party who has not given due notice for a jury cannot give notice for a jury on the adjourned hearing (*Fletcher v. Baker*, (1873) L. R. 9 Q. B. 370; 43 L. J. Q. B. 112; *R. v. Leeds C. C.*, (1885) 16 Q. B. D. 691; 55 L. J. Q. B. 365).

The applications for trial with or without a jury are now regulated by r. 3 of Order XXII. substituted for r. 3 and r. 3A of the former rules.

102. *The sheriff of every county, and the high bailiffs of Westminster and Southwark, shall cause to be delivered to the registrar of the court a list of persons qualified and liable to serve as jurors in the courts of assize and nisi prius for their county, city, and borough respectively, within fourteen days from the receipt of the jury book from the clerk of the peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the court, for which list the said sheriffs and high bailiffs shall be entitled to receive a fee after the rate of twopence for every folio of seventy-two words; and whenever a jury shall be required the registrar of the court shall cause as many of the persons named in the list as shall be prescribed, to be summoned to attend the court at a time and place to be mentioned in the summons, and shall administer, or cause to be administered, to such of them as shall be impanelled, an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the judge shall direct, not being more than five pounds for each default (a); and the delivery of such summons to the person whose attendance is required on such jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: Provided always, that no person shall be summoned or compelled to serve on such jury more than twice within one year, or who shall have been summoned and shall have attended upon any jury for the same county at the assizes, or any court of nisi prius, or at the central criminal court within six months next before the delivery of such summons. Whenever there are any jury trials eight (a) jury-men shall be impanelled and sworn, as occasion shall require, to give their verdicts in the actions which shall be brought before them in the said court, and being once sworn shall not need to be re-sworn in each trial; and either of the parties to any such action shall be entitled to his lawful challenge against all or any of the said jurors in like manner as he would be entitled in the High Court; and the jurymen so sworn shall be required to give an unanimous verdict.*

Section 102.
Who shall be jurors, and their number.
9 & 10 Vict.
c. 95, ss. 72, 73.
28 & 29 Vict.
c. 99, s. 7.

NOTE (a).—The alteration of the number of jurymen from five to eight now appears in sect. 22 (1) of the County Courts Act, 1919. Sect. 22 (2), (3), of the County Courts Act, 1919, effects the following alterations of sect. 102 (*supra*). It limits the amount which a jurymen may be ordered to forfeit in default of attendance to not more than 5*l.*; before he could be ordered to forfeit not more than 5*l.* for each default. It enacts that the list of persons qualified and liable to serve as jurors shall not be delivered by the sheriff or high bailiff to the registrar of the court unless and until a demand is made.

Women jurors are qualified and must be summoned. See Order 22, rr. 4A, 4B, 4C, 4D, 4E; and form of summons to woman juror, Form 144c.

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The prescribed number of jurors to be summoned is sixteen, unless the judge otherwise orders (Order XXII. r. 4).

Summonses.]—Summonses (Form 144) are issued by the registrar, on receipt of the demand for a jury, and are forthwith delivered to the bailiff for service (Order XXII. r. 1A). The persons summoned must attend; in default of attendance, they will forfeit such sum of money as the judge may direct, not exceeding 5*l*. Payment may be enforced in the same manner as a judgment debt, or as money adjudged to be paid under the Summary Jurisdiction Acts (*post*, pp. 909—911, and see sect. 167). (For warrant of execution, see Form 146.) The fine may be remitted on cause shown by affidavit, or by the juror in person (Order LII. r. 6). The delivery of the summons to the person, or to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, is good service. No person can be summoned or compelled to serve on a jury more than twice in one year, nor can a person who has been summoned and has attended any jury at the assizes, or any court of nisi prius, or at the central criminal court for the same county, within six calendar months next before the delivery of the summons.

Notice to Jurors.]—Where a jury has been summoned, but the action or matter is settled or withdrawn before the return-day, it is the duty of the party who caused the jury to be summoned to inform the registrar of the fact, who is thereupon to return the deposit, and, unless the jury are required in another action, forthwith to send notice to the persons summoned by post, that their attendance will not be required; where the action or matter is adjourned, the registrar must forthwith send notice by post to the persons summoned as jurors of the adjournment and of the day on which their attendance will be required (Order XXII. r. 5 (1)). Where a non-jury action is settled or withdrawn before the return-day, the parties must inform the registrar of the fact (Order XXII. r. 5 (2)). If notice under this rule is given three clear days before the return-day, and costs are taxed on the higher scale, item 97 may be allowed for such notice (Order XXII. r. 5 (3)). Where on the trial a jury has been impanelled, and the hearing is adjourned, the registrar must, if the adjournment is to a further date than the next day but one, forthwith give or send by post to the jurors impanelled notice of the adjournment and of the day on which their further attendance will be required (Order XXII. r. 5A (1)).

Where a jury has been summoned, but the action or matter is adjourned on the return-day before a jury has been impanelled, the registrar must, unless the judge orders the persons summoned as jurors to be discharged and a fresh jury to be summoned, forthwith give or send by post to the persons summoned as jurors notice of the adjournment and of the day on which their attendance will be required (Order XXII. r. 5A (2)).

Swearing.]—If there are several successive jury cases, it is not necessary to impanel a fresh jury in each case, nor need the jurors be even re-sworn. They must be sworn to give true verdicts, according to the evidence, in the actions which shall be brought before them. If, therefore, there are many jury cases appointed for one day, after summoning a jury in the first two or three cases, it is unnecessary to summon more; the court fee of 10*s*. and the deposit of 8*s*. must, however, be taken in each case from the party requiring the jury.

Challenge.]—Either party is entitled to his lawful challenge against all or any of the jurors, as he would be in the High Court. The verdict of the jury must be unanimous. Separation of the jury after the summing up does not invalidate the verdict (*Fanshaw v. Knowles*, (1916) 2 K. B. 538; 85 L. J. K. B. 1735).

Appointment
of assessors.
38 & 39 Vict.
c. 50, s. 5.

103. In any action or matter it shall be lawful for the judge, if he think fit, on the application of either party, to summon to his assistance, in such manner as may be prescribed, one or more

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persons of skill and experience in the matter to which the action or matter relates, who may be willing to sit with the judge and act as assessors ; and their remuneration for so sitting shall be at such rate as may be prescribed, and shall be costs in the action or matter, unless otherwise ordered by the judge ; but, where any person is proposed to be summoned as an assessor, objection to him, either personally or in respect of his qualification, may be taken by either party in the prescribed manner.

NOTE.—This section is not much used.

List of Assessors.—It is the duty of the registrar of each county court, from time to time, at the request of the judge, to submit to him the names of as many persons as he may direct, whom, having regard to the nature of the ordinary business of the court, and to their fitness from ability and reputation, he believes to be qualified to act as assessors. From the names the judge frames a list of persons to act as assessors for each court within his circuit (Order XXI. r. 1). The registrar must apply to such persons as the judge may approve to know if they are willing to act as assessors and to attend any court they may be summoned to attend at a reasonable time beforehand (Order XXI. r. 2). When the judge has completed the list of assessors, the registrar must cause a printed list of their names in alphabetical order to be hung up in the court and office (Order XXI. r. 3 ; Form 135). Every assessor continues to be an assessor until a new list is framed and approved, or until he has given to the registrar notice in writing that he is unwilling to act as an assessor from and after a day named (Order XXI. r. 4). Upon receipt of such notice the registrar must remove the name from the list of assessors (Order XXI. r. 5).

Application for and Summons to Assessors.—A party who desires assessors to be summoned must six clear days (in actions under the extended jurisdiction conferred by the Act of 1903 twelve clear days) at least before the return-day file an application (Form 136), giving the names of the assessors he wishes to be summoned, and if he has obtained the consent of the other party to the assessors named he must file the consent with his application (Order XXI. r. 7 ; Order XXIIA. r. 19).

Upon receipt of the application the registrar must forward a copy to the judge, who, if he sees fit, must return it with his approval, and the registrar must forthwith summon the assessors named (Form 137). If the judge does not think that assessors should be summoned, notice must be given by the registrar to all parties (Order XXI. r. 8 ; Form 141).

Where the party applying does not file the consent of the other party to the assessors proposed, the registrar must, after obtaining the consent of the judge, forthwith cause notice (Form 138) to be served on the other party, and the party so served must, as soon as may be after receipt of the notice, inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in the notice, or any of them, and give the names of such assessors as he is willing should be summoned (Order XXI. r. 9 ; Form 138).

Where the party served with the notice does not accept the proposed appointment, he must forthwith after receipt of the notice inform the registrar in writing of his non-acceptance and of the reasons for it, and the registrar must thereupon fix a time and place for hearing the objection and selecting the assessors. The objection may be heard either on the return-day of the summons or before the judge acting under the powers conferred on him by sect. 9 of the County Courts Act, 1888, or by direction of the judge before the registrar. Notice (Form 139) of the time and place at which the objection will be heard must be given to all parties interested. On the hearing such order (Form 140) will be made as the judge or registrar thinks just, and any costs occasioned by the objection or consequent thereon

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may be ordered to be paid by the party objecting (Order XXI. r. 10). When assessors are appointed, they are to be summoned by the registrar (Order XXI. r. 10).

If at the time and place appointed for the trial the assessors summoned do not attend, the judge may either proceed to try the action, with the assistance of such of the assessors, if any, as do attend, or, if none attend, without assistance, or he may adjourn the trial (Order XXI. r. 11).

Assessors' Fees—Costs.—Each assessor is entitled for each day's attendance to one guinea or two guineas according as the subject-matter of the action does or does not exceed 20*l.* in value, together with such sum, if any, for his expenses as the judge may order (Order XXI. r. 6).

Every person applying for assessors must at the time of application pay to the registrar the sum of two guineas if the amount of the subject-matter of the action does not exceed 20*l.*, and four guineas if it does exceed that amount, which payments will be costs in the action, unless otherwise ordered by the judge (Order XXI. r. 12).

Where an action is adjourned, the plaintiff must pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made (Order XXI. r. 13).

Actions may
be settled by
arbitration.
9 & 10 Vict.
c. 95, s. 77.

104. The judge may in any case, with the consent of both parties to the action, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration, to such person or persons and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the judge; and the award of the arbitrator or arbitrators, or umpire, shall be entered as the judgment in the action, and shall be as binding and effectual to all intents as if given by the judge: Provided that the judge may, if he think fit, on application to him at the first court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

As to power to refer with consent for inquiry and report, see *post*, p. 125.

Reference to Arbitration.—The judge may, with the consent of both parties, at any time after an action has been commenced, in all cases within the ordinary jurisdiction of the court, and in cases of agreement under sect. 64 of the Act, order the action, with or without other matters within the jurisdiction of the court in dispute between the parties, to be referred to arbitration, in such manner and on such terms as he thinks reasonable and just. The same fees are payable as on entering judgment under a default summons; but where any reference is ordered to the registrar or other officer of the court, the ordinary hearing fee must be paid (Order XX. r. 1; Forms 134, 134A).

An order of reference, when once made, cannot be revoked by either party, except by consent of the judge (sect. 104).

The Evidence Act, 1851 (14 & 15 Vict. c. 99) provides, by sect. 16, that "every court, judge, justice, officer, commissioner, arbitrator or other person, now or hereafter having by law or by consent of parties authority to hear, receive and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively."

The award of the arbitrator or umpire is entered as the judgment in the action, and is as binding as if given by the judge; but, at the first court held after the expiration of one week after the entry of the award, the judge may

set it aside, or, with the consent of both parties, may revoke the reference or order another (sect. 104). The award must be duly stamped before being filed.

As to the power of arbitrators to make an alternative award, see *Olympia Oil and Cake Co. v. Macandrew & Co.*, (1919) 88 L. J. K. B. 227.

An arbitrator has authority to decide as to a custom affecting the contractual rights of the parties if not inconsistent with the express terms of the contract (*Produce Brokers Co., Ltd. v. Olympia Oil and Cake Co., Ltd.*, (1916) A. C. 314). An arbitrator appointed to act for one of the parties should never allow himself to take up the position of an advocate for the party by whom he has been appointed (*Roff v. British, etc. Manufacturing Co.*, (1918) 87 L. J. K. B. 996).

The court has jurisdiction, where an arbitrator is guilty of legal misconduct, at any stage of the arbitration, either to set the award aside or to order the arbitrator to state a case (*Fischel & Co. v. Mann & Cook* (1919) 2 K. B. 431; 88 L. J. K. B. 1173). As to misconduct in taking evidence in the absence of one of the parties see *O'Connor and Whittlaw's Arbitration, In re*, (1919) 88 L. J. K. B. 1242.

The High Court had, before the Act of 1888, no jurisdiction to entertain an appeal from the refusal of a judge to set aside an award (*Mayer v. Farmer*, (1878) 3 Ex. D. 235; 47 L. J. Ex. 760).

Application, how made.—The application to refer before the trial cannot be made *ex parte*, as the consent of both parties is required. It may be made on notice (Order XII. r. 11) or by notice for directions (Order XV. rr. 1, 4).

Before the County Courts Act, 1856, it was held that a defendant, by consenting to a reference, did not waive his right to obtain a prohibition, if the court had no jurisdiction over the cause (*Knowles v. Holden*, (1855) 24 L. J. Ex. 223; 101 R. R. 909). It is conceived, however, that the defendant would now be held to have waived such right. The order of reference is proof in other proceedings of an agreement to refer (*Roper v. Levy*, (1851) 7 Ex. 55; 21 L. J. Ex. 28). The death of either party before award would not, it is thought, revoke the authority of the arbitrator, and the provisions of Order XVII. r. 1 will apply.

Where parties who have a dispute agree to abide by the decision of the judge, but do not follow the practice required to give him jurisdiction, his position becomes that of an arbitrator, and no appeal lies from his decision (*Pearce v. Winkworth*, (1873) 28 L. T. 710). Where, during the hearing of a case of trespass, the parties agreed to withdraw a juror and abide by the decision of the judge, and before his decision the defendant withdrew his consent, the court held that the power of the judge as arbitrator was gone, but that the cause remained, and so ordered the judge to rehear it (*Norburn v. Hilliam*, (1869) L. R. 5 C. P. 129; 39 L. J. C. P. 183).

Staying Proceedings.—The judge has jurisdiction to stay proceedings under sect. 4 of the Arbitration Act, 1889, where there is a submission to arbitration (*Morrison Tinplate Co. v. Brooker*, (1908) 1 K. B. 403; 77 L. J. K. B. 197). Where a charge of fraud is made, or where, in an action on an insurance policy, the insurance company contends that the policy is absolutely void, in consequence of misstatements in the proposal form, there is no right to refer to arbitration, though there may be an arbitration clause in the contract; see *Jureidini v. National British and Irish Millers Insurance Co.*, (1915) A. C. 499; 84 L. J. K. B. 640; but contra where an insurance company only contests their liability upon the policy (see *Woodall v. Pearl Assurance Co., Ltd.*, (1919) 1 K. B. 593; 88 L. J. K. B. 706).

It is not misconduct on the part of an arbitrator or umpire to refuse to state a case on a point of law if his findings of fact makes the decision of the question of law immaterial (*Buerger & Co. v. Barnett*, (1920) 89 L. J. K. B. 161).

Power to refer Matters for Inquiry and Report.—In addition to the powers given to the judge by sects. 92 and 104 of the principal Act to refer to the

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registrar any mere matter of account, or to refer the action with the consent of the parties to arbitration, he is now by sect. 6 of the County Courts Act, 1919 (9 & 10 Geo. 5, c. 73), given power to refer any action or matter, or any question arising therein either to the registrar, or a referee for inquiry and report. *This must, however, be done with the consent of the parties.* The judge may direct how the reference shall be conducted, and may remit the report for further inquiry and report, and finally give such judgment or make such order as may be just, without prejudice to any right of appeal (sect. 6 (1), *post*, p. 236).

It is subject to rules. The rule made under this section now appears as Order XXA. r. 1.

This rule provides, *inter alia*, that the place for holding the inquiry is left to the registrar or referee; that either may have inspection or view; the inquiry to be conducted as nearly as possible as though it were a trial; discovery and production can be obtained; any question arising may be submitted to the judge or facts may be stated with power to the judge to draw inferences therefrom: the judge has power to require explanation or reasons and to remit the report for further consideration. The report must be in writing and filed and open to the parties, and notice by post sent to all parties. On the day of hearing by the judge any party may apply to him to adopt the report, or, on four days' notice, ask the judge to vary it, or remit it.

Neither the registrar nor referee has power to commit for contempt of court.

The judge may give such judgment or make such order as he may think just, without prejudice to the right of appeal. See, for fuller information, Order XXA. r. 1; the Order of reference is Form 134b.

Where judgment does not exceed 20*l.*, court may order payment by instalments. In other cases consent of plaintiffs necessary. 19 & 20 Vict. c. 108, s. 45.

105. Where judgment has been obtained for a sum not exceeding twenty pounds, exclusive of costs, the court may order such sum and the costs to be paid at such time or times, and by such instalments, if any, as it shall think fit, and all such moneys shall be paid into court (a); but in all other cases the full amount for which judgment has been obtained shall be ordered to be paid either forthwith or within fourteen clear days from the date of the judgment, unless the plaintiff, or his counsel, solicitor, or agent, will consent that the same shall be paid by instalments, in which case the court shall order the same to be paid at such time or times, and by such instalments, if any, as shall be consented to; and all such moneys, *whether payable in one sum or by instalments, shall be paid into court.*

See note (a), below, as to these words printed in italics.

Ordinary Judgments for Payment of Money.—Money payable under the

(a) **The County Courts Act, 1919.**—By sect. 18 (1) of the County Courts Act, 1919, where a judgment or order has been obtained in a county court for a sum of money, and no order is made as to payment by instalments, the money shall, if the court so directs, be paid by one party to the other party or his solicitor, subject to the lien, if any, of that solicitor, instead of being paid into court as required by sect. 105 of the principal Act. By Order XXIII. r. 7A, where the court orders this to be done, a direction to that effect is to be inserted in the judgment or order. Such a direction may be given subsequently, in which case an order shall be prepared and serve in accordance with Order XXIII. r. 7. This section (sect. 18 (1)) of the 1919 Act accordingly varies sect. 105 of the principal Act (*supra*) to this extent. (See italics in section.)

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judgment is payable within fourteen days from the date of the judgment, unless the court otherwise orders (Order XXIII. r. 11). If the amount, exclusive of costs, exceed 20*l.*, the judge may direct payment forthwith or within fourteen clear days, and the costs to be taxed and paid forthwith or within fourteen clear days after taxation (Order XXIII. r. 12), and by consent of the plaintiff may order payment by instalments (see Form 151).

Where under a judgment or order money is payable within fourteen days of the date of the judgment or order, or in the case of costs within fourteen days after taxation, the judge may at any time before the expiration of the fourteen days, for good cause shown on application made on oath or affidavit in accordance with the rules as to interlocutory applications, make an order for payment at an earlier date. An order so made must be served in accordance with Order XXIII. r. 7; and, if made *ex parte*, any party affected by it may within two days after service apply to set it aside (Order XXIII. r. 12A).

The registrar must give notice to the party interested of all payments into court where the amount exceeds twenty shillings, but notice need not be given of a payment transmitted from a foreign court (Order XXIII. r. 13).

By Instalments.—If the amount, exclusive of costs, do not exceed 20*l.*, the judge or registrar may order the judgment and costs to be paid by instalments. See sect. 105.

The party entitled to enforce a judgment may at any time after judgment obtain *ex parte* an order from the judge or from the registrar sitting in court for payment by instalments, or renewing or diminishing the instalments payable under a previous order. The application may be made in person or by solicitor or by request in writing giving the letter, number, names of the parties to the action or matter, and the instalments by which the applicant desires the amount due to be paid. The request must be left at or sent by post to the registrar's office accompanied by the plaint note (or duplicate mentioned in Order VII. r. 1), or where a defendant is entitled to enforce a judgment or order, by the summons (or duplicate mentioned in Order LIV. r. 26) and a stamped and directed envelope; when the request has been dealt with, the registrar will return the plaint note, summons, or duplicate, with a minute of the order made, in the envelope. By leave of the judge the registrar may deal with any such application out of court without requiring the attendance of the applicant, but the registrar may, and where no payment has been made within six years must, refer the application to the judge, who may make such order as he thinks right, and may require the attendance of the applicant. The order must be entered in the minute book, and prepared and served in accordance with Order XXIII. r. 7, and has the same effect as a fresh order for payment by instalments made on the hearing of a judgment summons. This is not an interlocutory application within Order XII. r. 11 (Order XXIII. r. 14; Order XXV. r. 55; Order LV. ; Form 157).

Where the judgment or order is for payment by instalments or otherwise, and the judge is satisfied that the person liable is unable to pay at the time or by the instalments ordered, he may, upon the application of the person liable, made upon notice to the person entitled to enforce the judgment or order two days at least before the hearing, order the amount due and unpaid to be paid by instalments, or, if already payable by instalments, by the like or smaller instalments; the order may be varied from time to time. The judge may also, on the application of the person entitled to enforce the judgment or order made on the like notice to the person liable, order the amount to be paid in one sum or by larger instalments than those previously ordered, and may vary his order. An order made under this rule is entered in the minute book and prepared and served in accordance with Order XXIII. r. 7, and has the same effect as a fresh order for payment made on the hearing of a judgment summons (Order XXIII. r. 15).

Instalments are payable as directed. If no date is mentioned, the first becomes due on the twenty-eighth day, and every successive instalment

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after a like period from the day of the last previous instalment becoming due (Order XXIII. r. 11; Form 151).

Default in payment of an instalment subjects the defendant to execution for the whole amount remaining unpaid, unless the judge or registrar otherwise orders (see sects. 149, 186).

Judgment will not be given for a fraction of a penny (Order VI. r. 8).

Service.—A judgment or order for the payment of money or costs or both or any other order, except an order on a default summons, after being prepared by the registrar, is delivered to a bailiff, who must, within twenty-four hours, send the same by post or otherwise to the party on whom service has to be made (Order XXIII. r. 7). It is unnecessary to prove that the judgment was posted or reached the opposite party (Order XXIII. r. 7). Where judgment is entered up against a party served with a default summons, no order need be drawn up or served, unless the judgment is for payment by instalments or unless the plaintiff has abandoned part of his claim under Order XIV. r. 13 (Order XXIII. r. 8).

Interest.—The judgment does not carry interest (*R. v. Essex C. C.* (C. A.), (1886) 18 Q. B. D. 704; 56 L. J. Q. B. 315).

Stay of Judgment or Order.—See notes to sect. 153, *post*, p. 208.

Registration of Judgments.—See sect. 183, *post*, p. 228.

Judge may
grant time.
9 & 10 Vict.
c. 95, s. 81.

106. The judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the action or matter, and also may from time to time adjourn any court, or the hearing or further hearing of any action or matter, in such manner as the judge may think fit.

Adjournment.—The judge may adjourn any court, hearing, or further hearing of any action or matter as may seem fit to him (see Form 92). When anything required by the practice of the court to be done by either party before or during the trial is not done, the court may in its discretion, and on such terms as it thinks fit, adjourn the trial, to enable the parties to comply therewith (Order XII. r. 15). The court may at any time postpone the trial of any action or matter upon the joint application of the parties (Order XII. r. 12). In any case not coming within Order XII. rr. 12—15, the court has a discretion, on the application of any party made on motion in accordance with r. 11, to postpone or adjourn for good cause the trial of any action or matter upon such terms as may be just; the order, if made in the absence of the other party, must be served on him (Order XII. r. 16). The order under this rule may be on notice under Order XII. r. 11, or by notice for directions (Order XV. rr. 1, 4), not *ex parte*. No adjournment by the parties is operative (*Morgan v. Rees* (C. A.), (1881) 6 Q. B. D. 508; 50 L. J. Q. B. 491). If from the state of the proceedings the case cannot be tried on the return-day, the court may postpone the trial, and notice must be given by the registrar to all parties and persons interested not present when the order was made (Order XII. r. 14; Form 92).

When a cause is adjourned, no order of adjournment need be drawn up or served unless directed (Order XXIII. r. 5). When service is directed, the order must be prepared by the registrar, and delivered to the bailiff, who must serve it by post or otherwise. Proof of service is unnecessary (Order XXIII. r. 7).

Where, in any action or matter, interlocutory proceedings are contemplated or pending, which cannot be concluded in time to enable the parties to prepare for trial on the day fixed for it, the court may, on the application of any party, make an order postponing the trial on such terms as to costs or otherwise as it may think fit. The order, if made in the absence of the other party, must be served on him (Order XII. r. 13).

The judge may adjourn the hearing where the defendant wishes to set up a defence of which notice is required (Order X. r. 10); also when either

party requires a jury (Order XXII. r. 2); also where assessors do not attend (Order XXI. r. 11); also to add parties (Order XXII. r. 18).

Also where a summons is served on a defendant about to remove out of the jurisdiction (Order VII. r. 9). So also when service has come to the knowledge of the defendant less than ten days before the trial (Order VII. r. 28).

As to adjournment when the plaintiff has become bankrupt, see sect. 94; and when two actions are brought in different courts for the same cause of action, Order XXII. r. 11; for production or proof of documents, Order XVIII. r. 9; in case of the death or absence of the judge, *ante*, sect. 10.

Section 10;
Notes.

107. It shall be lawful for the defendant in any action or matter within such time as shall be prescribed, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the registrar to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if the plaintiff shall elect to proceed, and shall recover no further sum in the action or matter than shall have been so paid into court, he shall pay to the defendant the costs incurred by him in the said action or matter after such payment; and such costs shall be settled by the court, and an order shall thereupon be made by the court for the payment of such costs by the plaintiff.

Defendant may pay money into court; notice to be given to plaintiff. 9 & 10 Vict. c. 95, s. 82.

As to admissions of liability by defendant of the whole or part of the plaintiff's claim, and also as to agreements between plaintiff and defendants as to the amount payable, and the terms and conditions of payment, see County Courts Act, 1919, sect. 5 (2) (3), *ante*, p. 116, and Order IX. rr. 2, 3, 4; also notes to Jurisdiction of Registrar, *ante*, p. 108.

Payment of Money into Court.]—A defendant in any action or matter may pay into court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such payment may be made either with or without a denial of liability. See Order IX. rr. 12—26, and the notes to r. 12 of that Order.

108. Where a party is required to give security, such security shall be at the cost of the party giving it, and in the form of a bond, with sureties, to the other party or intended party in the action or matter: Provided always, that the court in which any action on the bond shall be brought may by order give such relief to the obligors as may be just, and such order shall have the effect of a defeasance of such bond.

How securities to be given and enforced. 19 & 20 Vict. c. 108, s. 70.

In what Cases.]—The principal cases in which security is required to be given in the county court are as follows:—

- (1.) By treasurers, registrars, and high bailiffs (sect. 40, *ante*, p. 24).
- (2.) Upon its appearing, on application for the entry of a plaint that the plaintiff does not reside in England (Order V. r. 10). When the plaint is entered by a solicitor, it is sufficient if he gives an undertaking to pay the costs of the defendant.

Section 108
Notes.

(3.) By plaintiff, when defendant in foreign district makes affidavit of merits (Order XII. r. 9; Order XXIIA. r. 15).

(4.) When the trustee of a bankrupt plaintiff elects to continue an action (sect. 94, *ante*).

(5.) Upon a defendant objecting to a cause being tried in the county court (see sect. 62).

(6.) By parties for the safe keeping or payment of the value of goods (Order XII. rr. 1, 2, 3; Order II. r. 40).

(7.) By persons appointed receivers (Order XIII. rr. 2, 14 (4)).

(8.) Upon application for a warrant to return goods to a replevisor (sects. 135, 136, *post*).

(9.) On application in the county court for a new trial, where security is ordered to be taken by the court (see sects. 91, 93).

(10.) On orders for certiorari or transfer, when security ordered (see sect. 126).

(11.) On appeal, when security for costs or otherwise ordered (see sect. 120).

The security in any case may be either by bond, or by a deposit of money (see sects. 108, 109).

The costs of discovery are secured by a payment into court to which the provisions of sect. 108 do not apply (see Order XVI. r. 23).

If by Bond.—The party intending to take the proceeding must find sureties to join with him in the bond (see sects. 108, 109), and must serve by post or otherwise, on the opposite party and the registrar at his office, notice of the persons whom he proposes as his sureties (Form 235). The registrar must forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and must state in the notice to the obligee that, if he have any valid objection to make to the proposed sureties or either of them, he must make it at that time (Order XXIX. r. 1; Form 237). The sureties must make an affidavit of their sufficiency before the registrar (Form 236), unless the opposite party dispenses with it (Order XXIX. r. 2). The bond must be given at the cost of the party giving it, and must be made to the other party or intended party to the action or matter (sect. 108). It must be executed in the presence of the judge, registrar, or a commissioner to administer oaths, or of the clerk to the registrar nominated to take affidavits (Order XXIX. r. 3). It must be given to the party or persons requiring the security, and be deposited with the registrar until the action is finally disposed of (Order XXIX. r. 5).

The registrar has only to see that the bond is duly executed, and that the sureties are sufficient; he cannot decline to approve of the bond upon the ground that the defendant is by law incompetent to execute it (*Young v. Brompton Waterworks Co.*, (1862) 1 B. & S. 675; 31 L. J. Q. B. 14; 124 R. R. 709. In this case it was held that an incorporated joint-stock company, limited, could properly execute such a bond).

In cases of objection to the trial in the county court the bond must be in a sum not exceeding 150*l.* and the security must be approved by the registrar (see sect. 62).

In cases of replevin the bond must be in a sum sufficient to cover the alleged rent or damage, and the probable costs of the action in the High or county court, according to the court in which the replevisor elects to sue (see sects. 135, 136).

Where the high bailiff is ordered to take possession of goods until security is given for their safe keeping or payment of their value in default, but the amount of security is not specified, an inventory and appraisement must be made; upon receiving as a deposit the amount of the appraisement, or sufficient security to be approved by the registrar, for their safe custody and for their delivery up on request, the high bailiff will relinquish possession on condition that they shall be re-delivered to him on request or held to abide the order of the court. Where the warrant specifies the amount of security, no less deposit or security will be sufficient (Order II. r. 40).

In cases other than those which have been above mentioned, where the Act or rule does not specify the sum for which security must be given, the amount must be fixed by the judge or registrar.

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Notes.

Action on.]—If any action be brought on the bond, the court in which the action is brought may, by order, give such relief to the obligors as may be just, and such order will have the effect of a defeasance of the bond (sect. 108).

Forms of Bonds.]—See, as to bond by defendant objecting to jurisdiction, Form 82. As to bond to be given by defendant in an action of replevin, Forms 287 and 288; by receiver, Form 303. Form of security for costs by plaintiff out of England, Form 16.

Officers not to be Sureties.]—No officer of the court may become a surety under any of the above provisions (Order XXIX. r. 6; see *Carr v. Stringer*, (1858) 4 Jur. N. S. 439; 111 R. R. 876).

The party giving security, or depositing money under the provisions mentioned below, is excused from a strict compliance with the statute, or the rules, if such compliance is rendered impossible by the act of the court or registrar, or if performance of the conditions is prevented or waived by the opposite party (*Francis v. Dowdeswell*, (1874) L. R. 9 C. P. 423; 43 L. J. C. P. 248; *Waterton v. Baker*, (1868) L. R. 3 Q. B. 173; 37 L. J. Q. B. 65; *Park Gate Co. v. Coates*, (1870) L. R. 5 C. P. 634; 39 L. J. C. P. 317; and see *Ex parte Johnson*, (1870) L. R. 5 Ch. 741).

If Security by Deposit.]—Where a party is required to give security, he may, in lieu of giving a bond, deposit with the registrar a sum equal in amount to the sum for which he would otherwise give security, together with a memorandum, to be approved of by the registrar, and to be signed by the party, his solicitor or agent, setting forth the conditions on which the money is deposited, and the registrar must give a written acknowledgment of the deposit (see sect. 109; Form 234). The party, upon making the deposit, must give notice to the opposite party, by post or otherwise, of the deposit having been made (Order XXIX. r. 4).

Any objection to receive the money without the memorandum named in the statute should be made before the acknowledgment is given by the registrar; as the want of the memorandum cannot afterwards be relied on as vitiating the deposit if the other requisite forms have been complied with (*Griffin v. Coleman*, (1859) 4 H. & N. 265; 28 L. J. Ex. 134; 118 R. R. 426; *Walters v. Coghlan*, (1872) L. R. 8 Q. B. 61).

Payment out of Court of Deposit.]—The judge of the court in which the money has been deposited may, on the same evidence as would be required to enforce or avoid a bond, given by way of security, order the sum deposited to be paid out to such party or parties as he shall think just (see sect. 109).

In High Court.]—Where security is required to be given in the High Court, it may be by bond or deposit, as if it were required to be given in a county court (see sects. 108, 109); and if an action be brought on the bond, the High Court or a judge has the same powers, as to giving relief to the obligors, and to the disposal of the money deposited, as are above stated to be possessed by the county court (see sects. 108, 109).

109. Where a party is required to give security, he may in lieu thereof deposit with the registrar, if the security is required to be given in the court, or with a master of the Supreme Court if the security is required to be given in the High Court, a sum equal in amount to the sum for which he would be required to give security, together with a memorandum, to be approved of by such registrar or master, and to be signed by such party, his solicitor or agent, setting forth the conditions on which such money is deposited, and the registrar or master shall give to the

Where security is required to be given, a deposit of money may be made in lieu thereof. 19 & 20 Vic. c. 108, s. 71.

Section 109. party paying a written acknowledgment of such payment; and the judge of the county court, when the money shall have been deposited in such court, or a judge of the High Court when the money shall have been deposited in the High Court, may, on the same evidence as would be required to enforce or avoid such bond as in the last preceding section is mentioned, order such sum so deposited to be paid out to such party or parties as he shall think just.

See notes to sect. 108.

Service of
summonses
to witnesses
and others.
38 & 39 Vict.
c. 50, s. 2.

110. Either of the parties to any action or matter may obtain from the registrar summonses to witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in the possession or control of the person summoned as a witness; and such summonses, and any summonses which are now or may be required to be served personally, may, under such regulations as may be prescribed, be served by a bailiff of the court or otherwise.

See Order XVIII. rr. 3, 3A, 4; Forms 123, 124, 124A

Witnesses.]—Except where it is otherwise provided by the rules, evidence is to be taken orally on oath (Order XVIII. r. 1).

The attendance of witnesses for this purpose is enforced by means of summonses, to be served either in the home or in any foreign district; they may be issued without leave, and are then served by bailiff. They may, also, by leave of the court, be issued in blank and served by the party applying for the same or some person in his permanent and exclusive employ, or by his solicitor or a solicitor acting as agent for such solicitor, or by some person in the employ of either of them, or some person employed by either of them to serve such summonses who might be so employed to serve a summons in an action in the High Court. In no case may more than one name be placed on any summons (Order XVIII. r. 3; Forms 123, 124, 124A). A summons to a witness may be issued by post. The plaintiff or his solicitor must transmit to the registrar (a) the plaint note, or summons, or a duplicate; (b) a request for the issue of summonses to witnesses, and (where the service is to be by bailiff) their names and addresses, or (if service is not to be by bailiff) a request to serve them in accordance with Order XVIII. r. 3; (c) a money order for the fees, and (where service is to be by bailiff) the amount to be tendered to each witness for expenses; (d) a stamped addressed envelope (Order XVIII. r. 3A). It is sufficient if a summons to a witness is served within a reasonable time; it may be served by delivering it to the witness personally, or to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the witness, or in the cases mentioned in Order VII. rr. 18, 19, 21, and 22, in the manner prescribed by those rules for the service of an ordinary summons (Order XVIII. r. 4; Form 125). For the purposes of this rule a place of business is not deemed to be the place of business of a witness unless he is the master or one of the masters of it (Order XVIII. r. 4). The parties themselves and their wives are competent witnesses (Evidence Act, 1851, s. 2).

Summons to produce Documents.]—The summons may be issued with or without a clause requiring the production of books, deeds, papers, and writings, in the possession or control of the person summoned as a witness (see sect. 110; Form 124).

Where a witness served with such a summons does not produce the documents at the trial, the judge may, upon admission or proof that the summons

was served within a reasonable time, and that such documents are in the possession or under the control of the witness, and that they are relevant, make an order for their production by the witness, and may deal with all costs occasioned by their non-production, as may be just. This rule does not affect the rules as to the admission of secondary evidence of such documents (Order XVIII. r. 5; Form 126).

Section 110
Notes.

111. Every person summoned as a witness, either personally or in such other manner as shall be prescribed, to whom at the same time payment or a tender of payment of his expenses shall have been made on the prescribed scale of allowances and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, or who shall refuse to be sworn or give evidence, and also every person present in court who shall be required to give evidence, and who shall refuse to be sworn or give evidence, shall forfeit and pay such fine, not exceeding ten pounds, as the judge shall direct; and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall be accounted for by the registrar to the treasurer.

Penalty for witnesses neglecting summons.
9 & 10 Vict. c. 95, s. 86.

A fine on a witness for non-attendance may be remitted on cause shown. The practice is, under Order LII. r. 6, the same as in the case of a juror (Order LII. r. 7A). Where a fine is inflicted on a judgment debtor for refusing or neglecting without reasonable cause to appear at the hearing of a judgment summons, the judge has no jurisdiction to apply the fine in reduction of the judgment debt, though he may order the same or part thereof to be allotted to the plaintiff for his expenses caused by such non-appearance (*R. v. Snagge*, (1909) 1 K. B. 644; 78 L. J. K. B. 562). The payment of the fine may be enforced as an ordinary judgment, or as money adjudged to be paid under the Summary Jurisdiction Acts (see sect. 167; Forms 167, 127—129; see these statutes, *post*, pp. 909—911).

Bringing up Prisoners.—Where the witness is a prisoner, not under process in a civil proceeding, the judge may, upon application by affidavit (Form 130), issue a warrant to bring him up to give evidence: the prisoner will then be brought up as by writ of habeas corpus; but a reasonable sum must be tendered for the conveyance and maintenance of the officers and prisoner in going to, remaining at, and returning from court (see sect. 112; Form 131).

If a prisoner be in custody on civil process, he can only be brought up by a writ of *habeas corpus ad testificandum*, issued from the High Court pursuant to 44 Geo. 3, c. 102. The application should be made to a judge of the High Court at chambers (see Annual Practice, notes to R.S.C. O. 36, r. 35).

Expenses.—All witnesses, and all plaintiffs and defendants personally attending the court, may be allowed for travelling and hotel expenses the sums actually and reasonably paid by them (Order LIII. r. 39). A witness can also recover from the person on whose behalf he is summoned, or from any other person by agreement, an allowance for loss of time (*Chamberlain v. Stoneham*, (1890) 24 Q. B. D. 113; 59 L. J. Q. B. 95), according to the scale of allowance to witnesses on taxing costs. As to liability of the solicitor issuing the subpoena, see note, *ante*, p. 78.

Judges differ as to the meaning of “expenses”; some hold expenses to include an allowance according to scale for loss of time, others that “expenses” simply means travelling expenses, and that allowances for loss of

Section 111
Notes.

Judge may
issue war-
rant for
bringing up
a prisoner
to give
evidence.
19 & 20 Vict.
c. 108, s. 31.

time must be claimed in court before being sworn. The latter seems the better course, as a litigant could not reasonably be expected to determine what the allowance should be.

See, further, Part II., at p. 1067, "Allowances to witnesses."

112. A judge in any case where he shall think fit, upon application on an affidavit by either party, may issue an order under his hand and the seal of the court for bringing up before such court any prisoner or person confined in any gaol, prison, or place under any sentence or under commitment for trial or otherwise, except under process in any civil action, or matter (*a*), to be examined as a witness in any action or matter depending or to be inquired of or determined in or before such court; and the person required by any such warrant or order to be brought before the court shall be so brought under the same care and custody, and be dealt with in like manner in all respects as a prisoner required by any writ of habeas corpus awarded by the High Court to be brought before such court to be examined as a witness in any action or matter pending before such court is by law required to be dealt with: Provided always, that the person having the custody of such prisoner or person shall not be bound to obey such order unless a tender be made to him of a reasonable sum for the conveyance and maintenance of a proper officer or officers and of the prisoner or person in going to, remaining at, and returning from such court.

See notes to sect. 111.

NOTE (*a*).—In this case by writ of *habeas corpus ad testificandum* issued from the High Court.

Costs to
abide the
event.
9 & 10 Vict.
c. 95, s. 88.

113. All the costs of any action or matter in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the court shall think just, and in default of any special direction shall abide the event of the action or matter, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said court.

Discretion as to Costs.—The discretion of the judge as to costs must, like any other discretion, be exercised judicially and the judge ought not to exercise it against a successful party except for some reason connected with the case. But when a judge, deliberately intending to exercise his discretionary powers, has acted on facts connected with or leading up to the litigation which have been proved before him or which he has himself observed during the progress of the case, then the Court of Appeal will not interfere (see judgment of Lord Chancellor in *Donald Campbell & Co., Ltd. v. Pollak* (No. 2), (1927) W. N. 240, overruling *King v. Gillard*, (1905) 2 Ch. 7; *Edmund v. Martell*, (1907) 24 T. L. R. 25; and *Ritter v. Godfrey*, (1920) 2 K. B. 47).

This decision of the House of Lords was given upon the provisions of s. 50 of the Judicature Act, 1925, and R. S. C. Order LXV., r. 1, under which, in a non-jury action in the High Court, a successful party has no right to costs unless and until the court awards them to him. In the county court the position is somewhat different as, in default of any special direction by the

judge, the costs follow the event (sect. 113, *supra*) ; but it would appear that the power of the county court judge over costs is generally the same as that of a judge of the High Court in a case tried without a jury (see *Temperance Loan Fund v. Erwood*, (1927) 137 L. T. 449). This discretion is however subject to limitations, and costs on a scale higher than that applicable to the amount recovered cannot be awarded unless the judge grants a certificate under sect. 119 (*Davies v. Davies*, (1927) 137 L. T. 567). Also, in *Bevington v. Perks and The Bell Insurance Co.*, (1925) 2 K. B. 229, a Divisional Court, without hearing argument for the respondent, decided that the county court judge could not fix the scale of costs provided by the county court rules, but that the scale must apply where there was no judicial reason for giving costs on a lower scale than that applicable to the amount. Followed in *Hughes & Son v. Satchell*, (1926) 134 L. T. 93. See on same principle *Jenkins & Co. v. Simon*, (1926) 95 L. J. K. B. 97 ; 1 K. B. 111.

See, further, Part II., "Costs and Court Fees," p. 1017.

114. Whenever an action or matter is commenced over which the court has no jurisdiction, the judge shall, unless the parties consent to the court having jurisdiction, order it to be struck out, and shall have power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction therein, and the plaintiff had not appeared, or had appeared and failed to prove his demand or complaint.

Section 113
Notes.

Court may award costs where action or matter is struck out for want of jurisdiction.
30 & 31 Vict. c. 142, s. 14.

Action commenced in the wrong County Court.—Sect. 10 of the County Courts Act, 1919 (9 & 10 Geo. 5, c. 73), *post*, p. 238, deals with an action commenced in the wrong county court. By the principal Act, sect. 114 (*supra*), if the judge had no jurisdiction to hear the action, and the parties would not consent to his trying it, he was obliged to strike it out. Now, if the action or matter ought to have been commenced in some other county court, he may, upon such terms as he thinks fit, either transfer it to such other court or try it himself. The consent of the parties is not required. If the judge prefers to transfer the action to the court in which it ought to have been commenced, the procedure set out in sect. 85 of the principal Act must be followed.

Quære, whether this section (114) allows the parties to give jurisdiction except in cases within sect. 64 at all events where express consent is not given (*Simpson v. Crowle*, (1921) 3 K. B. 243).

115. If any party shall sue another in any court for any debt or other cause of action for which he has already sued him and obtained judgment in any other court, proof of such former action having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second action, and shall be adjudged to pay three times the costs of such second action to the opposite party.

No second action for same cause.
Treble costs.
13 & 14 Vict. c. 61, s. 18.

NOTE.—See, as to suing for a debt for which judgment has already been obtained by error against the wrong party, *Isaacs v. Salbstein and Another*, (1916) 2 K. B. 139 ; 85 L. J. K. B. 1433.

Treble Costs.—See Part II., "Costs and Court Fees," p. 1016.

116. Repealed by the County Courts Act, 1919, sect. 11 of that Act being substituted.

11. [County Courts Act, 1919, s. 11.] The following section shall be substituted for section one hundred and sixteen of the principal Act :—

**Section 11,
C. C. Act,
1919.**

Costs of
actions com-
menced in
High Court
which could
have been
commenced
in county
court.

(1) Where an action is brought in the High Court which could have been commenced in a county court, then, if the plaintiff recovers a sum less, in the case of an action founded on a contract, than forty pounds, or in the case of an action founded on tort than ten pounds, he shall not be entitled to any costs of the action, and if he recovers, in the case of an action founded on contract a sum of forty pounds or upwards but less than one hundred pounds, or in the case of an action founded on tort a sum of ten pounds or upwards but less than fifty pounds, he shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a county court, and where a plaintiff is entitled to costs on a county court scale only the taxing master shall have the same power of directing on what county court scale and under what column in the scale costs are to be allowed and of allowing any items of costs as the judge would have had if the action had been brought in a county court :

Provided that—

- (i.) In any such action, whether founded on contract or tort, the court or a judge, or where the action is tried before a referee or officer of the Supreme Court, that referee or officer, if satisfied that there was sufficient reason for bringing the action in the High Court or that the defendant or one of the defendants objected to the transfer of the action to a county court, may make an order allowing the costs or any part of the costs thereof on the High Court scale or on such one of the county court scales and under such one of the columns in the scale as he may direct ; and
- (ii.) if in any action the claim is for a debt or liquidated demand only for a sum of twenty pounds or upwards and—

(a) the defendant pays the amount claimed or a sum of not less than twenty pounds within the time limited in that behalf by the endorsement made on the writ in accordance with the rules of the Supreme Court ; or

(b) the plaintiff, within twenty-eight days after the service of the writ or within such further time as may be allowed by the court or a judge, obtains judgment in default of appearance or of defence for a sum of twenty pounds or upwards ; or

(c) the plaintiff, within twenty-eight days after the service of the writ or within such further time as may be allowed by the court or a judge, obtains under any rule of the Supreme Court providing for

summary judgment without trial an order empowering him to sign judgment for a sum of twenty pounds or upwards, either unconditionally or unless that sum is paid into court or to the plaintiff's solicitor; the plaintiff shall, unless otherwise ordered by the court or a judge, be entitled to costs on such scale as may be prescribed by rules of court.

(2) This section applies only to the costs of the proceedings in the High Court.

The above proviso (ii.) was substituted for the former proviso by sect. 20 of the Administration of Justice Act, 1925 (15 & 16 Geo. 5, c. 38). For rule of court made under this proviso, see R.S.C., O. 65, r. 28.

This new section (sect. 11 of the County Courts Act, 1919, as amended by the Administration of Justice Act, 1925) is designed to prevent actions from being brought in the High Court for small amounts, by subjecting the plaintiff bringing such an action to the risk of losing all the costs he otherwise would have been entitled to receive, or to the risk of only getting costs on a county court scale.

It considerably increases the amount which must be recovered either in an action of contract or of tort, before costs on the High Court scale, or anything other than costs on the county court scale, can be recovered.

The limitation of the plaintiff's right to costs contained in this section does not apply when the substantial relief sought is other than a money claim, *e.g.*, an injunction or specific performance. In such cases the plaintiff will not be deprived of costs by this section, but the court may still for good cause make a special order as to costs (*Keates v. Woodward*, (1902) 1 K. B. 532; *Deverell v. Milne*, (1920) 2 Ch. 52; *Cooper v. Streeter*, (1889) 60 L. T. 95).

Where no Costs recoverable.]—Where plaintiff in the High Court recovers in an action of contract less than 40*l.*, or in an action of tort less than 10*l.*, he gets no costs at all, if the action could have been brought in a county court, unless the court, judge or officer of the Supreme Court, who tries the action, is satisfied that there was reasonable cause for suing in the High Court, or that the defendant or one of the defendants objected to the transfer of the action to a county court, in which cases the court, judge or officer has discretion to allow costs on the High Court scale or any of the county court scales that he may think right; or unless he can bring himself within the exceptions in proviso ii. (see *infra*).

Where plaintiff in the High Court recovers in an action of contract 40*l.* or upwards, but less than 100*l.*, or in an action of tort a sum of 10*l.* or upwards, but less than 50*l.*, he gets no more costs than he would have been entitled to if the action had been brought in a county court, if the action could have been brought in a county court.

Exceptions.]—(1) In either of the above cases the court or a judge, or, where the action is tried before a referee or officer of the Supreme Court, that officer is satisfied that there was sufficient reason for bringing the action in the High Court, or that defendant, or one of the defendants, objected to the transfer to a county court, may allow the costs or any part thereof on the High Court scale, or on any county court scale, and under such one of the columns in the scale as he may direct.

(2) Where the action is for debt or liquidated demand for 20*l.* or more and defendant pays the claim or not less than 20*l.* within the limited time, or, the plaintiff with twenty-eight days after service of writ, or further time allowed, obtains judgment in default of appearance or defence for 20*l.* or more, or, the plaintiff within twenty-eight days of the writ, or further time allowed, obtains under any rule of the Supreme Court providing for summary

Section 11,
C. C. Act,
1919.

**Section 11,
C. C. Act,
1919,
Notes.**

judgment without trial an order to sign judgment for 20*l.* or more either unconditionally or unless that sum is paid into court, or to plaintiff's solicitor, the costs are to be awarded on such scale as may be prescribed by rules of court.

NOTE.—This section (sect. 11) applies only to the costs of the proceedings in the High Court.

“Which could have been commenced in a County Court.”—As to actions which cannot be commenced in a county court, see note to sect. 56, *ante*, at p. 34.

Contract or Tort.—It has already been pointed out, *supra*, that sect. 11 has no application to actions where the main relief sought is something other than a mere money claim founded on a contract or a tort. As to what are actions founded on contract and what on tort, see *Bayliss v. Lintot* (1873) L. R. 8 C. P. 345; *Bradford Corporation v. Myers*, (1916) 1 A. C. 242. The distinction is sometimes a fine one. An action against a common carrier for loss of goods is founded on contract (*Fleming v. Manchester Railway Co.*, (1879) 4 Q. B. D. 81), whereas an action for injury to a horse which has been agisted to the defendant and injured through his negligence reafounded on tort (*Turner v. Stallibrass*, (1898) 1 Q. B. 56). See also *Sachs v. Henderson*, (1902) 1 K. B. 612; *Edwards v. Mallam*, (1908) 1 K. B. 1003; and the cases cited Annual Practice, 1928, p. 2304.

“Amount Recovered.”—This means the total amount recovered in the action, and includes any sum paid after the issue of the writ, whether voluntarily or on an order giving leave to sign judgment if a certain sum be not paid within so many days, or on a judgment under Order XIV. (*Keeble v. Bennett*, (1894) 2 Q. B. 329; 63 L. J. Q. B. 694; *White v. Headlands Electric Co.*, (1899) 1 Q. B. 507; 68 L. J. Q. B. 354; *Pearce v. Bolton*, (1902) 2 K. B. 111; 71 L. J. K. B. 558).

Costs in Actions transferred from the High Court.—Sect. 12 of the County Courts Act, 1919 (*post*, p. 239), provides that the costs of the whole proceedings, both before and after removal, shall, subject to any order of the court which ordered the transfer, be in the discretion of the county court judge, who shall have power to make orders with respect thereto, and as to the scales or columns on or under which the costs of the several parts of the proceedings are to be taxed. This provision is, however, subject to the limitation that the costs incurred in the High Court before transfer are to be governed by sect. 11 (*supra*).

The discretion given to the county court judge by sect. 12 must be judicially exercised, and a successful plaintiff cannot be deprived of High Court costs, wholly or in part, on that part of the proceedings which has taken place in the High Court if he brings himself within the provisions of sect. 11, entitling him to High Court costs and there has been no misconduct on his part. It is not a judicial exercise of the discretion to deprive him of High Court costs merely because the judge thinks that the proceedings ought to have been commenced in the county court (*Jenkins v. Simon*, (1926) 1 K. B. 111; 95 L. J. K. B. 97).

With regard to the costs of the proceedings after transfer, it seems that a successful plaintiff will be entitled to county court costs on the scale appropriate to the amount recovered in the action, and that the judge cannot order the costs to be taxed on a lower scale without good cause (*Bevington v. Perks*, (1925) 2 K. B. 229; *Hughes & Son v. Satchell*, (1926) 134 L. T. 93; *Gold Bros. v. Fuller*, (1926) 134 L. T. 151).

If the judge simply gives judgment for the plaintiff “with costs,” it is thought that this is sufficient to enable the registrar to tax the costs incurred in the High Court on the High Court scale (if plaintiff is not deprived of these by sect. 11), and in the county court on the county court scale according to the amount recovered (*Gold Bros. v. Fuller*, *supra*). Sect. 12*cf* the Act

Costs
before
transfer.

Costs
incurred
after
transfer.

of 1919 directs that the costs of the whole proceedings shall be taxed in the court to which the action is transferred.

The judge has no power under this section to allow costs on a scale higher than that applicable to the amount recovered, unless he grants a certificate under section 119 of the principal Act (*Davies v. Davies*, (1927) 137 L. T. 567).

Where the amount recovered is insufficient to entitle the plaintiff to High Court costs, the practice on taxation is to allow him as nearly as possible the costs to which he would have been entitled had he commenced the action in the county court.

The reader is referred to Part II., "Costs and Court Fees," at pp. 1037—1044, where the effect of sects. 11 and 12 on costs in the different classes of remitted actions is tabulated, and the points arising under these sections are further discussed.

Power to make Special Order as to costs in High Court.]—By sect. 11, proviso (i.) the High Court may, in any action to which the section refers, if satisfied that there was sufficient reason for bringing the action in the High Court, or that the defendant objected to the transfer to the county court, make an order allowing costs on the High Court scale, or on such one of the county court scales as the court may direct. This power, if not exercised by the High Court, may, by sect. 12, be exercised by the county court judge.

In exercising this jurisdiction it is believed that one of the matters which the county court judge may and should consider is whether, notwithstanding that the plaintiff failed to obtain an order for 20*l.* or upwards under Order XIV. in the High Court, he was prevented from so obtaining it by the defendant putting in an untrue or disingenuous affidavit.

Costs of Successful Defendant.]—If the defendant succeeds in defeating the plaintiff's claim entirely, he will, of course, be entitled to costs on the High Court scale of the proceedings in that court, and to costs of the proceedings after transfer on the county court scale applicable to the amount claimed, unless for good cause he is deprived of costs by a special order of the judge.

In an action for 71*l.*, 23*l.* was paid into court under an order made under Order XIV., and the action sent to the county court as to the residue of 48*l.* In the county court there was judgment for the defendant in respect of the residue. Held, the defendant was entitled to costs on the C scale from the date of his consent to judgment for the 23*l.*, the subject-matter of the action exceeding 50*l.* (*Aston Tube Works v. Dumbell*, (1904) 1 K. B. 535; 73 L. J. K. B. 208; see also *Powell v. Vickers*, (1907) 1 K. B. 71).

Where two defendants are represented by the same solicitor, and judgment with costs is given for one and against the other, the successful defendant is entitled to recover from the plaintiff half the costs of the defence (*Beaumont v. Senior*, (1903) 1 K. B. 282; 72 L. J. K. B. 141).

See also Part II., "Costs and Court Fees," pp. 1019 and 1042.

117. Where any action shall be brought in any other court than the High Court which could have been brought in a county court, and the verdict recovered is for a less sum than ten pounds, the plaintiff shall not recover from the defendant a greater amount of costs than he would have been allowed if the action had been brought in a county court.

Costs of action brought elsewhere than in county court. 30 & 31 Vict. c. 142, s. 29.

118. All costs and charges between party and party shall be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge on

Costs of solicitor to be taxed by registrar.

Section 118. the application of either party, and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force. All costs and charges between solicitor and client shall, on the application either of the solicitor or client, but not otherwise, be taxed by the registrar of the court in which such costs and charges were incurred, but his taxation may be reviewed by the judge on the application of either party, and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force unless the registrar shall be satisfied that the client has agreed in writing to pay them, in which case they may be allowed; and no solicitor shall have a right to recover from his client any such costs or charges unless they shall have been allowed on taxation.

See Order LIII. and Part II., "Costs and Court Fees."

The section does not make taxation a condition precedent to the solicitor's right to sue for his costs, even if the time within which the client is entitled to taxation has not expired (*Bell v. Girdlestone*, (1913) 2 K. B. 225; 82 L. J. K. B. 696).

Costs on
higher scale.
19 & 20 Vict.
c. 108, ss. 34,
35, 36.
45 & 46 Vict.
c. 57, s. 5.

119. The judge may award costs on any scale higher than that which would be otherwise applicable to the plaintiff on any amount recovered, however small, or to a defendant who successfully defends an action brought for any amount, however small, provided that the said judge certifies in writing that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons (a), or of general or public interest.

See *Davies v. Davies*, (1927) 96 L. J. K. B. 1066, *ante*, p. 135, and Part II., "Costs and Court Fees," at p. 1034.

NOTE (a).—"Questions of importance to class of persons." See *Day v. Day*, (1916) 85 L. J. K. B. 917.

PART V.

APPEALS, ETC.

Parties
aggrieved
may appeal
by notice of
motion.

13 & 14 Vict.
c. 61, ss. 14,
15.
19 & 20 Vict.
c. 108, s. 68.
28 & 29 Vict.
c. 99, s. 18.
30 & 31 Vict.
c. 142, s. 13.
38 & 39 Vict.
c. 50, s. 6.
47 & 48 Vict.
c. 61, s. 23.

120. If any party in any action or matter shall be dissatisfied with the determination or direction of the judge in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the rules of the Supreme Court regulating the procedure on appeals from inferior courts to the High Court; Provided always, that there shall be no appeal in any action of contract or tort, other than an action of ejectment or an action in which the title to any corporeal or incorporeal hereditament shall have come in question, where the debt or damage claimed does not exceed twenty pounds, nor in any action of replevin, where

the amount of rent or the damage or value of the goods seized does not exceed twenty pounds, nor in any action for the recovery of tenements where the yearly rent or value of the premises does not exceed twenty pounds, nor in proceedings in interpleader where the money claimed or the value of the goods or chattels claimed, or of the proceeds thereof, does not exceed twenty pounds, unless the judge shall think it reasonable and proper that such appeal should be allowed, and shall grant leave to appeal. At the trial or hearing of any action or matter, in which there is a right of appeal, the judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action or matter. Section 120.

In what Cases.]—The County Courts Act of 1888 has consolidated the provisions of several statutes regulating appeals, and provides generally, subject to the limitations hereafter mentioned, that “any party in any action or matter” may appeal for error of the kind hereafter mentioned. These words are wide enough to include all those cases in which jurisdiction is given by particular Acts which are not County Courts Acts. Some of these Acts—*e.g.*, the Friendly Societies Act, 1896—do not in terms give an appeal, but give power to the judge to state a case for the opinion of the High Court on any question of law (59 & 60 Vict. c. 25, s. 68 (7); see also 37 & 38 Vict. c. 42, ss. 4 36 (Building Societies Act, 1874), and others, *e.g.*, the Settled Land Act, 1925 (15 Geo. V., c. 18), the Succession Duty Act, 1853 (16 & 17 Vict. c. 51, s. 50), the Local Loans Act, 1875 (38 & 39 Vict. c. 83, ss. 12, 25), contain no provision for appeal. See these Acts, Part V. It was considered as doubtful whether the Act of 1888 operated so as to give an appeal (see *Wilkinson v. Jagger*, (1887) 20 Q. B. D. 423; 57 L. J. Q. B. 254). That doubt is now set at rest. The Court of Appeal has decided that sect. 120 of the Act gives an appeal (subject to the limitations contained in the section) in every action or matter which may come before a county court, unless the court is satisfied that the words of that section were intended by the Legislature to be cut down (*The Delano* (C. A.), (1895) P. 40; 64 L. J. P. 8).

An appeal lies under the Agricultural Holdings Act, 1923 (13 & 14 Geo. v. c. 9), s. 16, from the refusal of a county court judge to set aside the award of an arbitrator on the ground of misconduct, where a question of law is involved (*Williams v. Wallis*, (1914) 2 K. B. 478; 83 L. J. K. B. 1296).

Sect. 63 of The Supreme Court of Judicature (Consolidation) Act, 1925, provides that in all cases where there is a right of appeal to the High Court from any court or person the appeal shall be heard and determined by a divisional court, and, by sect. 31 (1) (f) of the same Act, no appeal shall lie from such decision of the divisional court without the leave of that court or the Court of Appeal.

Appeals from Interlocutory Decisions.]—It has been decided that since the Act of 1888, it is no longer an objection to the hearing of an appeal that it is against an interlocutory order (*Gilson v. Kilner*, (1894) 69 L. T. 310). See *Jonas v. Long*, (1888) 20 Q. B. D. 564; 57 L. J. Q. B. 298, as to interlocutory appeals in equity under the Act of 1865. Hence an appeal lies against an order granting a new trial (*Murtagh v. Barry*, (1890) 24 Q. B. D. 632; 59 L. J. Q. B. 388; *Bryant v. North Met. Tramways Co.*, (1890) 6 T. L. R. 396; *How v. L. & N. W. Ry. Co.*, (1892) 1 Q. B. 391; 61 L. J. Q. B. 368); or refusing it (*Dingor v. Matthews*, (1889) 65 L. T. 748, n.; *Pole v. Bright*, (1892) 1 Q. B. 603; 61 L. J. Q. B. 139); an order refusing

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to review a taxation of costs (*Wilson v. Statham*, (1891) 2 Q. B. 261; 60 L. J. Q. B. 725; and see *Goodman v. Blake*, (1887) 19 Q. B. D. 77; 56 L. J. Q. B. 441), under repealed Acts; an order refusing to order a better answer to interrogatories (*Meek v. Witherington*, (1892) 67 L. T. 122); and an order refusing attachment of the person (*Vallentin v. Woodley*, (1889) 5 T. L. R. 462). Assuming that the appeal will lie generally, it is subject to the same rules and limitations which affect appeals against final judgments. It will lie, therefore, in those actions or matters only in which an appeal could have been brought had the decision complained of been a final judgment, and doubtless on the same grounds only. Thus, in an action to recover a debt of 10l., there can be no appeal against any interlocutory order made in it without leave (*Ward v. Sneiman*, (1925) 133 L. T. 560; *Hives v. Dawson*, (1928) 138 L. T. 238, and no appeal under any circumstances in any case, except for error of law (see *Smith v. Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683).

There is no appeal against an order fining a person for assaulting an officer in the execution of his duty, such proceeding being of a criminal nature (*Lewis v. Owen*, (1894) 1 Q. B. 102; 63 L. J. Q. B. 233).

Though the right of appeal is extended to interlocutory orders generally, it does not follow that an appeal will always lie against, for instance, the judge's decision to review a taxation of costs; so far as it is a matter of discretion it is a matter purely for the judge; but should his decision be affected by error of law or the misapplication of a legal principle, then an appeal will lie.

It was held under the old Acts that no appeal lay from the refusal of the judge to set aside an award (*Mayer v. Farmer*, (1878) 3 Ex. D. 235; 47 L. J. Ex. 760); and except for error of law causing the decision, no appeal would lie now (see *Williams v. Wallis*, *supra*).

It was formerly held that no appeal lay from an order of commitment (*Rackham v. Blowers*, (1849) 15 Jur. 758), and it has, since the Debtors Act, 1869, been always assumed that no appeal will lie. It has been suggested that in some cases there may be an appeal (*Draycott v. Harrison*, (1836) 17 Q. B. D. 147), but see note, *post*, p. 284, "Appeal."

It was held with regret by the court prior to the Act of 1888, that no appeal lay by a garnishee against an erroneous garnishee order (*Mason v. Wirral Board*, (1879) 4 Q. B. D. 459; 48 L. J. Q. B. 679). The decision did not turn on whether the decision was final or interlocutory, but on the point that the garnishee was not an original party to the action. In so holding the court followed the cases in which, prior to the County Courts Act, 1856, it had been held on the same ground that no appeal lay in interpleader matters.

The words of the County Courts Act, 1850, s. 14, under which the above cases were decided, were "if either party in any cause" be dissatisfied, he may appeal. The words of the 1888 Act, are "if any party in any action or matter," and the words "action" and "matter" together include every proceeding in the court, whether commenced by plaintiff or otherwise (sect. 186, *A. W., Ltd., v. Cooper & Hall, Ltd.* (1925), 2 K. B. 816). They are wide enough to include both interpleader and garnishee proceedings, and the intention to give an appeal in interpleaders is shown by the limit imposed upon the absolute right of appeal in such cases by sect. 120. The mere giving of an appeal "in proceedings in interpleader" by the County Courts Act, 1856, was held to give an appeal to the claimant (*Vallance v. Nash*, (1858) 2 H. & N. 712; 27 L. J. Ex. 142; 115 R. R. 759); and to the execution creditor, and to a landlord who appeared on the summons (*Foulger v. Taylor*, (1860) 5 H. & N. 202; 29 L. J. Ex. 154; 120 R. R. 542); and it is therefore submitted that the Act of 1888 continues the right of appeal in interpleaders, and also confers a right of appeal on parties to garnishee proceedings.

Jurisdiction given by Consent.—The appeal section does not expressly mention actions in which jurisdiction is given by consent of the parties (see

sect. 64, *ante*, p. 49). Prior to the County Courts Act, 1856, which expressly gave an appeal in such cases, it was held that no appeal would lie *Groves v. Janssens*, (1854) 9 Ex. 481; 23 L. J. Ex. 91). But the section of that Act which gave the power to confer jurisdiction (sect. 23) was passed some years after the County Courts Act, 1850, and that fact may have influenced the minds of the judges. It is, however, submitted that the Act of 1888 gives an appeal in "any action," and that where parties confer jurisdiction and bring an action the proceeding afterwards commenced by plaintiff is none the less an action (see sect. 186), and that there is therefore clearly an appeal.

Title incidentally in Question—Where parties give jurisdiction when a question of title beyond the jurisdiction incidentally arises, their right of appeal is expressly reserved (sect. 61, *ante*, p. 47).

There is an absolute right of appeal in all actions in which title is in question; in all actions of ejectment; in all actions where an injunction has been granted or apparently claimed, see *Dixon v. Brown*, *infra* (*Brune v. James*, (1898) 1 Q. B. 417; 67 L. J. Q. B. 283); and in all equity actions and matters.

The appeal lies in all cases quite irrespectively of the fact whether they are tried by jury or by the judge alone (*Cawley v. Furnell*, (1852) 12 C. B. 291; 20 L. J. C. P. 197; *East Anglian Co. v. Lythgoe*, (1851) 10 C. B. 726; 20 L. J. C. P. 84).

Where the judge gives leave to move in the county court for a new trial, the dissatisfied party, if he have a right to appeal, may appeal at once to the High Court, instead of moving in the county court (*Outhwaite v. Hudson*, (1851) 7 Ex. 380).

There is no appeal where the rules of practice are entirely disregarded; as where the parties to an action in a superior court agree to try the case without plaintiff or formalities before the county court judge as arbitrator (*Pearce v. Winkworth*, (1873) 28 L. T. 710).

When actions of contract and tort, or equity actions or matters are sent for trial to a county court under sects. 1 and 2 of the County Courts Act, 1919, or sect. 69 of the principal Act, or interpleaders under the Supreme Court of Judicature (Consolidation) Act, 1925, sect. 204, there is, it is believed, an appeal in the same manner and under the same conditions as in other actions or matters commenced in a county court (see *Cousins v. Lombard Bank*, (1876) 1 Ex. D. 404; 45 L. J. Ex. 573; *Bowles v. Drake* (C. A.), (1882) 8 Q. B. D. 325; 51 L. J. Q. B. 66).

Limit on Right of Appeal.—No appeal will lie if, before the decision of the court be pronounced, both parties agree, in writing signed by themselves or their solicitors or agents, that the decision of the judge shall be final (sect. 123, *post*, p. 152). The agreement does not require a stamp (*ib.*).

The next friend of an infant plaintiff, who has failed in an action, cannot bind him by agreement not to appeal in consideration of forbearance of costs against the next friend (*Rhodes v. Swithenbank* (C. A.), (1889) 22 Q. B. D. 577; 58 L. J. Q. B. 287).

There is no appeal of right in any action of contract or tort, not being an action in which title is in question, where the debt or damage does not exceed 20*l.* (sect. 120, *supra*); but where an injunction and 20*l.* damages for trespass were claimed, and the claim for the injunction was withdrawn during the hearing, and damages for the trespass were assented at 15*l.*, there is apparently a right to appeal without leave (*Dixon v. Brown*, (1915) 2 K. B. 294; 84 L. J. K. B. 1248).

Generally the right of appeal depends upon the amount claimed. If it exceeds 20*l.*, although the judgment be for less, an appeal lies (*Harri v. Dreesman*, (1854) 9 Ex. 455; 23 L. J. Ex. 210). So a defendant whose counterclaim exceeds 20*l.* has an absolute right of appeal, though the plaintiff's claim is less (*Smith v. Gill*, (1896) 2 Q. B. 166; 65 L. J. Q. B. 556). But the nature of the case is such, that the judge cannot lawfully

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award more than 20*l.*, there is no right of appeal, although the damages claimed are unliquidated and exceed 20*l.* Thus in an action against a bailiff for omission to levy a debt and costs, amounting to 12*l.* 17*s.* 8*d.*, in which the judge decided against the plaintiff it was held that no appeal would lie, though he had claimed 20*l.* 1*s.* (*Mayer v. Burgess*, (1855) 4 E. & B. 655; 24 L. J. Q. B. 67; 99 R. R. 677). A plaintiff cannot at the trial abandon the excess of his claim over 20*l.*, so as to deprive the defendant of his right of appeal (*North v. Holroyd*, (1867) L. R. 3 Ex. 69; 37 L. J. Ex. 42).

There is no appeal of right in any action of replevin where the amount of rent or damage or value of the goods seized does not exceed 20*l.*, nor in any action for the recovery of tenements where the yearly rent or value of the premises does not exceed 20*l.*, nor in interpleader proceedings where neither the money claimed nor the value of the goods or of their proceeds exceeds 20*l.* (sect. 120, *supra*); but the appeal in interpleaders will lie if the value of the goods seized exceeds 20*l.*, although the claim in the original action is below it (*Vallance v. Nash*, (1858) 2 H. & N. 712; 27 L. J. Ex. 142; 115 R. R. 759). Where the goods are appraised and a deposit made to prevent a sale, the appraised value is the value for the purpose of appeal (*White v. Milne*, (1888) 58 L. T. 225); and if it does not exceed 20*l.*, there is no appeal even though a claim for damages exceeding 20*l.* be made (*Lumb v. Teal*, (1889) 22 Q. B. D. 675; 58 L. J. Q. B. 298).

Appeal by Leave.—When there is no right of appeal on account of the limit imposed, the judge may, if he thinks fit, give leave to appeal. Where leave is not asked for at the trial, and the judge dies before the expiration of the period during which leave could be applied for, leave cannot be granted by a judge of the High Court, and there is no jurisdiction to hear an appeal (*Fell v. L. & Y. Ry. Co.*, (1907) 96 L. T. 785).

The judge may impose terms as a condition for granting leave, e.g., that the appellant shall pay the respondent's costs in any event, and if unsuccessful pay the costs of trial on the higher scale (*Goodes v. Cluff*, (1884) 13 Q. B. D. 694; also *Barker v. Phillips and Others*, (1920) 89 L. J. K. B. 51). Under rule 129 of Bankruptcy Rules, 1914, no appeal lies without leave from a county court in bankruptcy proceedings unless the money or money's worth involved exceeds 50*l.* This means without the costs of the proceedings (*Arnold, In re*, (1915) 3 K. B. 1078; 84 L. J. K. B. 110).

On what Grounds.—The power of appealing is confined to those cases in which one of the parties is dissatisfied with the "determination or direction of the judge in point of law or equity, or upon the admission or rejection of any evidence"; therefore, where there is no jury, the judge's findings of fact are final if there is any evidence on which he could so find (*Cousins v. Lombard Bank*, (1876) 1 Ex. D. 404; 45 L. J. Ex. 573; *Smith v. Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683); still if the inferences of fact drawn by the judge from the evidence could not have been arrived at without an error in point of law, an appeal will lie (*Cawley v. Furnell*, (1852) 12 C. B. 291; 20 L. J. C. P. 197; *Cuthbertson v. Parsons*, (1852) 12 C. B. 304; 21 L. J. C. P. 165; and see *Le Blanche v. L. & N. W. Rail. Co.*, (C. A.), (1876) 1 C. P. D. 286; 45 L. J. C. P. 521). This rule applies to equity actions; to support an appeal, a misapplication by the judge of the principles of equity to the facts must be shown (*Hill v. Persse*, (1876) 25 W. R. 275).

Where there is a misdirection or a non-direction to a jury, the objection to the judge's direction must be taken at the time if the objector desires to appeal to the High Court direct (*Clifford v. Thames Ironworks and Ship-building Co.*, (1898) 1 Q. B. 314; 67 L. J. Q. B. 244); but the objection may also be taken for the first time upon an application for a new trial, and if refused relief then appeal will lie (*Handley v. London, Edinburgh, and Glasgow Assurance Co.*, (1902) 1 K. B. 350; 71 L. J. K. B. 39).

If the trial is by jury, their findings of fact cannot be questioned on appeal

in the High Court; but only by an application to the judge of the county court for a new trial.

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An appeal was held to lie under the County Courts Equitable Jurisdiction Act, on the ground that a decree was irregular in form, and that costs were wrongly disallowed (*Cooper v. Busbridge*, (1867) 16 L. T. 5). It has also been held, that whether certain conversations amount in equity to a contract between the parties is not a mere question of fact but a question of equity, the judge's decision upon which may be the subject of appeal (*Williams v. Williams*, (1868) 37 L. J. Ch. 854).

An appeal may lie even under circumstances which would justify a prohibition (*Sweetland v. Turkish Cigarette Co.*, (1899) 47 W. R. 511; 80 L. T. 472; *Barker v. Palmer*, (1882) 8 Q. B. D. 9; 51 L. J. Q. B. 110); but it is difficult to understand how, if a county court had no jurisdiction, there could be an appeal, which presupposes jurisdiction.

No appeal lies from a ruling that the stamp on a document is sufficient (*Mander v. Ridgway*, (1898) 1 Q. B. 501; 67 L. J. Q. B. 335).

The point which a party relies on should be distinctly raised before the judge of the county court, since it is a condition precedent to the right of appeal that the point should be made at the trial (*Rhodes v. Liverpool Co.*, (1879) 4 C. P. D. 425; *Pierpoint v. Cartwright*, (1880) 5 C. P. D. 139; *Clarkson v. Musgrave*, (1882) 9 Q. B. D. 386; 51 L. J. Q. B. 525; *Smith v. Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683, *per* Lord Halsbury, L.C., and Lords Watson and Morris). This rule applies even when the ground of appeal is that the jurisdiction of the county court in the matter in question has been ousted by a public statute: *Taylor v. National Amalgamated Approved Society*, (1914) 2 K. B. 352; 83 L. J. K. B. 1020.

The court will not hear an appeal where a point has been taken and the judge has given judgment *pro forma* in order that the opinion of the High Court may be taken (*Chapman v. Withers*, (1887) W. N. 235; 58 L. T. 24).

The mere fact that a defendant, who has unsuccessfully applied for a nonsuit calls witnesses, will not debar him from appealing on this ground (*G. N. Ry. Co. v. Rimell*, (1856) 18 C. B. 575; S. C. *nom. G. W. Ry. Co. v. Rimell*, (1856) 27 L. J. C. P. 201; *Groves v. Cheltenham, etc. Building Society*, (1913) 2 K. B. 100; 82 L. J. K. B. 664).

An appeal on the ground of misdirection in law does not succeed unless substantial wrong has been occasioned thereby, and this, whether the ground of appeal is misdirection by the judge of the jury, or misdirection of himself. See R. S. C. Order LIX., r. 7, and *Tullis v. North Pole Ice Co., Ltd.*, (1916) 32 T. L. R. 114.

Mode of Appeal.—Appeals from county courts must be brought in accordance with the provisions of the Rules of the Supreme Court (sect. 120, R. S. C., Order LIX., r. 1 (c)). They provide that every appeal must be by notice of motion only (R. S. C., Order LIX. rr. 10 to 18). See these Rules, pp. 264—266.

The appeal is generally to a divisional court of the High Court (sect. 63 of the Judicature Act, 1925), but appeals under the Workmen's Compensation Act, 1925, go directly to the Court of Appeal. See *post*, p. 15).

The method of appeal by motion now clearly applies to all actions or matters commenced or authorised by the County Courts Act, and also to those cases in which a special Act has given an appeal and prescribed the mode of it as by case stated by the judge, *e.g.*, under the Rivers Pollution Act, 1876 (39 & 40 Vict. c. 75, Part V.) (*Kirkheaton Local Board v. Ainley* (C. A.), (1892) 2 Q. B. 274; 61 L. J. Q. B. 812). Where, however, the special Act has not given an appeal, but merely power to state a special case, *e.g.*, under the Friendly Societies Act, 1896, the Agricultural Holdings Act, 1923, an appeal to the Divisional Court apparently lies on a point of law (*Williams v. Wallis & Cox*, (1914) 2 K. B. 478). The point was discussed but not decided in *Wilkinson v. Jagger*, (1887) 20 Q. B. D. 423; 57 L. J. Q. B. 254.) Under the provisions as to disputes in the

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Building Societies Act, 1874, an appeal is directly forbidden; it seems clear, therefore, that in that case a case must be stated. It is possible that whenever there is power to state a special case, the judge may under the Arbitration Act (52 & 53 Vict. c. 49, s. 19) be compelled to state it by order of a judge of the High Court at chambers (*Tabernacle Building Society v. Knight*, (1892) A. C. 298; 62 L. J. Q. B. 50); but the rule is never to grant a mandamus where there is another remedy.

Point of Law must have been raised below.—The Court of Appeal will not hear argument on a point of law which was not raised by the appellant in the county court (*Smith v. Baker*, (1891) A. C. 325; 60 L. J. K. B. 683; *Moriarty v. Regent's Garage and Engineering Co.*, (1921) 90 L. J. K. B. 783), but the respondent may take any point of law on appeal in order to defeat the appeal, though he did not raise it in the county court (*Waller & Son v. Thomas*, (1921) 37 T. L. R. 325; *Simpson v. Crowle*, (1921) 3 K. B. 243).

Notice of Motion.—The notice of motion (see Form 6, *post*, p. 905) must be an eight days' notice (R. S. C., Order LIX. r. 10), and it must be served and the appeal entered within twenty-one days from the date of the "judgment, order or finding complained of" (R. S. C., Order LIX. r. 12). The notice must fix a day not less than eight days from the date of the notice as that upon which the court will be moved; but the eight days need not be part of the twenty-one (see *Dingor v. Mattheus*, (1889) 65 L. T. 748, n.). The time for appealing may be extended by the High Court (R. S. C., Order LIX. r. 16); but some good ground must be shown (R. S. C., Order LIX. r. 17). Where through a mistake of counsel the appellant was a day too late for entry of the appeal the court extended the time on payment of costs (*Cusack v. L. & N. W. Rail. Co.* (C. A.), (1891) 1 Q. B. 347; 60 L. J. Q. B. 208).

The time from which the twenty-one days begins to run is that at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given (R. S. C., Order LIX. r. 12). The question as to the date of the decision of the judge in the county court has already been considered. The county court judge, by ordering judgment to be entered as of a later day than that on which he delivers it, cannot extend the time for appealing (*Wilberforce v. Sowton*, (1878) 48 L. J. C. P. 28). When judgment is reserved, and notice of the judgment is afterwards sent to the parties, for the purpose of appeal, time will, it is believed, still run from the date of the notice, and not from an earlier day for which judgment is ordered to be entered (*Waterton v. Baker*, (1868) L. R. 3 Q. B. 173, 176, *per* Cockburn, C.J.; 37 L. J. Q. B. 65; *Francis v. Dowdeswell*, (1874) L. R. 9 C. P. 423, 430, *per* Lord Coleridge, C.J.; 43 L. J. C. P. 248). If on a special finding of facts the county court judge directs judgment, but reserves leave to move him to enter judgment the other way, the time for appeal against the judgment would, probably, date from the day of the hearing of the motion (*Foster v. Green*, (1861) 6 H. & N. 793; 30 L. J. Ex. 263).

On appeal against an order granting or refusing a new trial, time runs from the date of the making of the order, not from the date of the original judgment (*Dingor v. Mattheus*, (1889) 65 L. T. 748, n., overruling *McHardy v. Liptrott*, (1887) 19 Q. B. D. 151).

Grounds of Appeal.—The notice of motion must state the grounds of appeal (R. S. C., Order LIX. r. 10; see Form 6, *post*, p. 905). The absence of grounds would, it is believed, now be fatal unless amended (R. S. C., Order LIX. r. 16). Nevertheless, the grounds appear to be matters of procedure imposed for the benefit of the respondent, and he might, it is believed, waive any objection to them or their absence (see *Park Gate Co. v. Coates*, (1870) L. R. 5 C. P. 634; 39 L. J. C. P. 317; *Ward v. Raw*, (1872) L. R. 15 Eq. 83). The appellant, moreover, would not be prejudiced by any act of the court, or the respondent himself which prevented his stating the grounds of appeal. "Thus, if the judge were to pronounce judgment at one court day, and to state the grounds of his

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decision at a future day, after the expiration of the [twenty-one days] the appellant might be unable to show his grounds of appeal. In that case, I think that if the grounds were given as early as possible after the latter day, the delay would be the act of the court, and the appellant would be excused" (*per Brett, J., Francis v. Dowdeswell*, (1874) L. R. 9 C. P. 423, 432; 43 L. J. C. P. 248).

The notice of motion must state whether the whole or part only of the judgment, order or finding is complained of.

The notice of motion must be served within the time above named on every party directly affected by the appeal. Service on the solicitor of a party who acts by solicitor suffices (Order LIV. rr. 3—6), but service on the London agent of a country solicitor does not (*Powell v. Thomas*, (1891) 1 Q. B. 97; *Jackson v. Margrett*, (1893) 41 W. R. 267; 68 L. T. 91). When an action is sent from the High Court to the county court, service may be made on the solicitor who acts in the county court, not on his London agent (*Malley v. Shepley*, (1893) 62 L. J. Q. B. 31; see Order XXXIII. r. 1; Order LIV. rr. 3—6). The High Court has a general power to extend the time for appealing, or to make any other order necessary to determine the controversy between the parties (R. S. C., Order LIX. rr. 16, 17).

The appeal must be entered within the time above named, by lodging a copy of the notice of motion at the Crown Office Department of the Central Office at the Royal Courts of Justice (R. S. C., Order LIX. r. 11).

Extended Jurisdiction.—In the case of an appeal in an action under the extended jurisdiction sent for trial to a foreign court, a copy of the notice of motion must be lodged by the appellant with the registrar of that court (Order XXIIA. r. 27 (1)). If it is lodged before the documents in the action have been transmitted to the home court under Order XXIIA. r. 26, the registrar of the foreign court will, if there is no stay, proceed under that rule, and will transmit the copy with the other documents to the registrar of the home court; if there is a stay, the registrar of the foreign court will retain the documents until the appeal is disposed of (Order XXIIA. r. 27 (2)). If the copy is not lodged until after the documents have been transmitted to the home court, the registrar of the foreign court must forthwith transmit the copy to the registrar of the home court, and give him notice of a stay of proceedings (if any) (Order XXIIA. r. 27 (3)). When the appeal has been heard or otherwise disposed of, either party may deposit with the registrar of the foreign court the judgment of the Court of Appeal, or an office copy, or a memorandum signed by the parties and showing how the appeal has been disposed of, and the like proceedings will be taken as are prescribed where an application for a new trial has been heard or otherwise disposed of, and the provisions of Order XXII. r. 26, and of Order XXXII. rr. 2, 3, 4, will apply with the necessary modifications (Order XXIIA. r. 27 (4)).

Security.—No security is required unless ordered by the High Court; and the court may equally order security in applications for new trials as well as in final appeals (*Wightwick v. Pope*, (1902) 2 K. B. 99; 71 L. J. K. B. 709).

Where an infant sues by a next friend, the High Court may order security for the costs of the appeal if the next friend is without means (*Swain v. Follows*, (1887) 18 Q. B. D. 585; 56 L. J. Q. B. 310); so where an appellant has disposed of his goods to avoid paying respondent's costs (*Moore v. Pinnick*, (1901) 70 L. J. K. B. 471); but, as a general rule, not in any case where the judge has given unconditional leave to appeal (*Ex parte Society of Apothecaries*, (1890) 38 W. R. 478).

Stay Pending Appeal.—The appeal will not operate as a stay of proceedings, unless the judge so orders, or unless within ten days after the decision a deposit be made of, or security given to the satisfaction of the county court for, a sum to be fixed by it, not exceeding the amount of the money or the value of the property affected by the judgment, order or finding appealed from (R. S. C., Order LIX. r. 14, *post*, p. 265). The money "affected

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by the judgment" includes the costs as well as the debt; the judge may therefore, as a condition of a stay, order security to be given for the costs, although the amount of the judgment debt is paid into court (*Grimshaw v. Parker*, (1910) 2 K. B. 161; 79 L. J. K. B. 780).

Security must always be by bond or deposit of money. No doubt the respondent may waive his right to security (*Park Gate Co. v. Coates*, (1870) L. R. 5 C. P. 634; 39 L. J. C. P. 317; *Waterton v. Baker*, (1868) L. R. 3 Q. B. 173; 37 L. J. Q. B. 65); and if the appellant, not being himself in fault, failed to complete his security, either through the default of the respondent or of the judge or registrar, he could not be deprived of the benefit of the stay of proceedings (*Francis v. Dowdeswell*, (1874) L. R. 9 C. P. 423, 432; 43 L. J. C. P. 248).

Cross Appeal.—A respondent need not give notice of motion by way of cross appeal, but if he intends on the hearing of the appeal to contend that the decision of the county court should be varied, he must, within eight days apparently before the case is heard, give notice of his intention to the parties who may be affected by it. The omission to give the notice will not affect the power of the court, but may be a ground for adjournment or special order as to costs (R. S. C., Order LVIII. rr. 6, 7; see Form 7, *post*, p. 906). The grounds of cross appeal must be stated (*Williams v. Taperell*, (1892) 92 L. T. 213). A respondent cannot by way of cross appeal raise questions which he could not have originated by appeal (*The Alne Holme*, (1893) P. 173; 62 L. J. P. 51).

Judge's Notes.—To facilitate appeals the judge must, at the request of either party, make a note of any question of law raised at the trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action or matter (sect. 120). This provision has given rise to much discussion. "The statute seems to suppose that the point of law may be stated at once at the trial, and then a note taken of all the evidence; but it is obvious that a point of law may arise in the course of the case; or it may arise afterwards at the end" (*Morgan v. Rees* (C. A.), (1881) 6 Q. B. D. 508, 513, *per* Bramwell, L.J.; 50 L. J. Q. B. 491). In this case it was held that a statement by the solicitor of the plaintiff that the case was important and might be taken to the High Court was technically insufficient. So a request made an hour and a half after judgment was held to be too late (*Pierpoint v. Cartwright*, (1880) 5 C. P. D. 139).

The provisions as to obtaining notes above referred to are for the benefit of the party intending to appeal, and do not constitute a condition precedent to the right of appeal (*Wohlgenruth v. Coste*, (1899) 1 Q. B. 501; 68 L. J. Q. B. 373). Where, without any request having been made, the judge had taken a note, and had added a statement of the points of law raised and determined, the Court of Appeal held that an appeal would lie (*Seymour v. Coulson* (C. A.), (1880) 5 Q. B. D. 359; 49 L. J. Q. B. 604). Where evidence had been given by affidavits, and the judge compiled notes from them, they were allowed to be used on the appeal (*Hill v. Persse*, (1876) 25 W. R. 275).

A rule provides that if the notes are not produced, the court may hear the appeal on any other evidence or statement of what occurred in the court below which the court may deem sufficient (R. S. C., Order LIX. r. 8, *post*, p. 264). In *Abrahams v. Dimmock*, (1915) 1 K. B. 662; 84 L. J. K. B. 802, the Court of Appeal decided that though the point of law must be raised at the trial it is sufficient if raised by the judge himself and discussed. It is not a condition precedent to appeal that the judge should have taken a note, or been asked to take a note, or if he has not taken one, that he should certify to this effect. *Cook v. Gordon*, (1892) 67 L. J. Q. B. 445, in so far as it was an authority for the contrary view must be considered overruled. Still, the point of law must be raised (*Smith v. Baker*, (1891) A. C. 325). In one case the appeal was adjourned, in order that the certificate of the county court judge that there was no note might

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be obtained (*Brown v. Book*, (1892) 8 T. L. R. 227). In another, where no request had been made and the judge's notes were very incomplete, the court heard the motion without any notes (*Morgan v. Davies*, (1878) 3 C. P. D. 260; *The Confidence*, (1879) 40 L. T. 201). In another, where there was no request, and no notes, the court ordered that the witnesses examined at the trial might be called on appeal, and examined as to their evidence (*The Crescent* (C. A.), (1893) 62 L. J. P. 63). When counsel had merely requested the judge "to take the usual note," the court held that his duty was to raise the question of law, and then to ask the judge to make a note of the evidence and of his decision, and it dismissed an application to state a case, or to furnish a copy taken for the use of the court (*R. v. Kerr*, (1894) 70 L. T. 595). *Abrahams v. Dimmock*, *supra*, is not inconsistent with this case.

Where there is a right of appeal, and the judge has at the request of either party made a note as above mentioned, he must at the expense of any party (see sect. 186) furnish a copy of the note, or allow a copy to be taken by or on behalf of such party, whether notice of motion by way of appeal has been served or not, and he must sign the note (sect. 121).

In the event of no request being made as required by sect. 120, the judge will not be bound either to take a note or to furnish or sign a copy (*Morgan v. Rees* (C. A.), (1881) 6 Q. B. D. 508; 50 L. J. Q. B. 491, *supra*). Where the point of law arose in the summing up and could not have been revised without the evidence being read, the court allowed a transcript of a shorthand note taken by a writer of the Corporation of the City of London, but not signed by the judge, to be used on the appeal, and allowed the successful plaintiff the costs of obtaining the note (*Barber v. Burt*, (1894) 2 Q. B. 137; 63 L. J. Q. B. 700); but such costs are allowed on vital points only (*In re Sprange*, (1898) 77 L. T. 808). In cases tried with a jury the costs of the note of the summing up only will be allowed (*Barber v. Burt*, *supra*).

The note, as stated, must be signed by the county court judge, and must be used at the hearing of the appeal (sect. 121). It is the duty of the appellant, in accordance with the practice of the Court of Appeal, to supply copies of the notes for the use of the judges (*McGrah v. Cartwright*, (1889) 23 Q. B. D. 3; 58 L. J. Q. B. 331).

Hearing of Appeals.—The appeal lies to a divisional court of the High Court of Justice, constituted as prescribed by rules of the High Court. The decision is final unless leave to appeal is given by that court or by the Court of Appeal (Supreme Court of Judicature (Consolidation) Act, 1925, sects. 31 (1) (f), and 63); R. S. C., Order LIX. r. 4).

The appeal must be entered in the proper list (the Civil paper) for hearing and will come on to be heard in its order, unless the High Court otherwise directs (R. S. C., Order LIX. r. 15). One counsel only will be heard on each side. The appellant begins, and replies after the respondent has been heard.

If one of the parties dies after the entry of an appeal the High Court has jurisdiction to give leave to add the personal representatives of the party dying (*Blakeway v. Patteshall*, (1894) 1 Q. B. 247; *Hemming v. Williams*, (1871) L. R. 6 C. P. 480; 40 L. J. C. P. 270).

The court cannot entertain objections not made in the court below (*Cox v. Slater*, (1866) 14 L. T. 511; *Williams v. Evans*, (1875) L. R. 19 Eq. 547; 44 L. J. Ch. 319; *Yorke v. Smith*, (1852) 21 L. J. Q. B. 53; *Smith v. Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683, *per* Lord Halsbury, L.C., and Lords Watson and Morris). Where a new point was raised in the county court more than an hour after judgment the court dismissed the appeal, although the judge made a note and reserved the point (*Pierpoint v. Cartwright*, (1880) 5 C. P. D. 139; *Rhodes v. Liverpool Co.*, (1879) 4 C. P. D. 425). If, upon the facts appearing on the notes, the judgment can be supported on grounds different from those taken in the court below, judgment will not be disturbed (*Chapman v. Knight*, (1880) 5 C. P. D. 308; 49 L. J. C. P. 425).

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The High Court has power to draw any inference of fact and to amend the grounds of appeal, and may grant a new trial on such terms as it thinks fit, or order judgment to be entered for any party, or dismiss the appeal, or make any final or other order, on such terms as it thinks just, to ensure the determination of the real questions between the parties (see sect. 122; R. S. C., Order LIX. rr. 7—16). No appeal will succeed merely on the ground of misdirection or improper reception or rejection of evidence, unless, in the opinion of the court, substantial wrong or miscarriage has been thereby occasioned in the court below (R. S. C., Order LIX. r. 7; framed to meet *Matthews v. Ovey*, (1884) 13 Q. B. D. 403).

The power to enter judgment is well settled whether the trial be before a judge alone (*Eastland v. Burchell*, (1878) 3 Q. B. D. 432; 47 L. J. Q. B. 500; *Whiteman v. Hawkins*, (1878) 4 C. P. D. 13; *King v. Oxford*, (1885) 51 L. T. 94), or with a jury (*Snowden v. Baynes*, (1890) 24 Q. B. D. 568; 59 L. J. Q. B. 325; (C. A.), 25 Q. B. D. 193; *Amos v. Duffy* (C. A.), (1890) 6 T. L. R. 339; *Whatley v. Holloway*, (1890) 6 T. L. R. 190; (C. A.), 353; *Winterbotham, Gurney & Co. v. Sibthorp & Cox*, (1918) 87 L. J. K. B. 527).

Appeals under Workmen's Compensation Act, 1925.—Appeals under this Act lie to the Court of Appeal direct. See Act, Sched. I. (4).

Appeal from Order of High Court.—The judgment of the divisional court is final unless special leave to appeal to the Court of Appeal be granted by that court or by the Court of Appeal (Supreme Court of Judicature (Consolidation) Act, 1925, sect. 31 (1) (f)); *Godman v. Moses* (C. A.), (1900) 69 L. J. Q. B. 823). An application for leave to appeal when made to the Court of Appeal should be always made *ex parte*; if the court wishes the other side to be heard it will direct notice to be served (*County Council of Dorset v. Pethick*, (1898) 14 Times Rep. 183). Where divisional court orders new trial, an appeal to the Court of Appeal is from an interlocutory, not final, order. See *M. Isaacs & Sons, Ltd. v. Salbstein*, (1916) 85 L. J. K. B. 1436. Where leave to appeal is given by a county court judge, a right of appeal is created within the meaning of sect. 63 of the Judicature Act, 1925, and a further appeal lies to the Court of Appeal by leave of the divisional court or of the Court of Appeal (*Moore, Nettlefold & Co. v. Singer Manufacturing Co.* (C. A.), (1904) 1 K. B. 820; 73 L. J. K. B. 457). In the Court of Appeal the argument will be confined to the point as to which leave to appeal has been given (*Jones v. Biernstein*, (1900) 1 Q. B. 100; 69 L. J. Q. B. 1). Leave to proceed as a pauper may be granted by the Court of Appeal to a party appealing thereto from the divisional court which has affirmed the judgment of the county court (*Clements v. L. & N. W. Rail. Co.* (C. A.), 1894) 2 Q. B. 482). No appeal lies against the refusal to grant leave (*Kay v. Briggs* (C. A.), (1889) 22 Q. B. D. 343; 58 L. J. Q. B. 182). From the Court of Appeal an appeal lies as of right to the House of Lords (*Crush v. Turner*, (1879) 4 App. Cas. 221; *Thomas v. Kelly*, (1889) 13 App. Cas. 506; 58 L. J. Q. B. 66); *aliter* where the county court was sitting in bankruptcy (Bankruptcy Act, 1914, s. 108).

Where the parties have agreed to postpone the setting down of an appeal till after the date allowed by the Rules of the Supreme Court the Court may vary its practice and extend the time (*Pole Carew v. Western Counties and General Manure Co., Ltd.*, (1920) 89 L. J. Ch. 100).

Probate Matters.—There is no appeal from the decision of the High Court on any appeal from a county court on a point of law arising in any probate cause or matter (Supreme Court of Judicature (Consolidation) Act, 1925, sect. 31 (1) (k)).

For jurisdiction of the county court in probate matters, see Part V.

Proceedings after Judgment.—When the court has pronounced judgment, either party may deposit the same, or an office copy, with the registrar of the county court, and upon being so deposited the judgment will be filed, and may be enforced as if it had been made by the county court (Order XXXII. r. 2).

Where the divisional court has given judgment on an appeal, and the judgment has been drawn up and perfected, there is no power to restore it to the list, even though it was heard in the absence of the respondent, and the decision was against him (*Hession v. Jones*, (1914) 2 K. B. 421; 83 L. J. K. B. 810).

When a new trial is ordered, the cause must be entered for trial at the first county court held next after twelve clear days from the time when the order or office copy has been deposited, unless the parties agree that it shall take place sooner, or the judge otherwise orders. The new trial must be conducted in the same manner as any new trial granted by the county court itself (Order XXXII. r. 3).

If the order of the High Court be that judgment be entered for either party, the judgment must be entered accordingly, and the successful party will be at liberty to proceed as on a judgment of the county court (Order XXXII. r. 4).

Costs.—Although the court refuses to hear an appeal on the ground that the appeal will not lie, it frequently does entertain it so far as to dismiss it with costs (*Carr v. Stringer*, (1858) E. B. & E. 123; 113 R. R. 570), but as its power depends on jurisdiction, it is difficult to see how it can do so (*Lawford v. Partridge*, (1857) 1 H. & N. 621; 26 L. J. Ex. 147; 108 R. R. 74; *Brown v. Shaw*, (1876) 1 Ex. D. 425; *Clarke v. Roche* (2), (1877) 36 L. T. 78; see, however, *Ex parte Pringle* (C. A.), (1889) 60 L. T. 796). It seems that the court cannot make a conditional order that the costs of the appeal shall abide the event of the new trial (*Gibbon v. Gibbon*, (1853) 13 C. B. 205; 22 L. J. C. P. 131, 135, *in notis*). The costs of appeal, as a general rule, follow the event; and unless there are special circumstances to take a case out of the rule, the appellant, if successful, is now allowed his costs of appeal (*Mountney v. Collier*, (1852) 1 E. & B. 630; 22 L. J. Q. B. 124; 93 R. R. 317; *Schroeder v. Ward*, (1863) 13 C. B. N. S. 410; 32 L. J. C. P. 150; *Richardson v. N. E. Rail. Co.*, (1872) L. R. 7 C. P. 75, 83; 41 L. J. C. P. 60).

Where the judge of a county court ruled a point of law against a plaintiff with leave to move to set aside the verdict, and the plaintiff, instead of so moving, appealed to a superior court, which decided the point in his favour: it was held that he ought to have his costs of appeal, since he was not bound to try the experiment of going a second time before the same judge, who had once expressed an opinion against him (*Outhwaite v. Hudson*, (1851) 7 Ex. 380; 21 L. J. Ex. 151).

Costs of appeal will not be allowed unless the application for them is made at the time the case is disposed of (*Taylor v. G. N. R. L. Co.*, (1866) L. R. 1 C. P. 420; 35 L. J. C. P. 210).

See also Part II., "Costs and Court Fees," p. 1063.

121. In any action or matter in which there is a right of appeal, and the judge has at the request of either party made a note of any question of law raised at such trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action or matter, he shall at the expense of any person or persons being party or parties in any such action or matter, furnish a copy of the note so taken at the said trial or hearing, or allow a copy to be taken of the same, by or on behalf of such person or persons, and he shall sign such copy, whether a notice of motion in the matter of the said appeal has been served or not, and the copy so signed shall be used and received at the hearing of such appeal.

Judge's Notes.—The judge may make an alteration in his note of a

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Procedure
on appeal.
38 & 39 Vict.
c. 50, s. 6.

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Jurisdiction
of High
Court.
13 & 14 Vict.
c. 61, s. 14.

Parties may
agree not
to appeal.
19 & 20 Vict.
c. 108, s. 69.

No appeal
allowed
except as in
this Act
mentioned.
13 & 14 Vict.
c. 61, s. 16.

Assessors on
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Where action
may be
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given.
9 & 10 Vict.
c. 95, s. 90.
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c. 99, s. 3.

judgment after its delivery for the purpose of explanation or the clearing away of a possible misunderstanding (*Lowery v. Walker*, (1911) A. C. 10; 80 L. J. K. B. 138).

122. On the hearing of an appeal the High Court shall have power to draw any inference of fact, and may either order a new trial on such terms as the court shall think just, or may order judgment to be entered for *any* party, as the case may be, or may make a final or other order on such terms as the High Court may think proper to ensure the determination on the merits of the real questions in controversy between the parties.

123. No appeal shall lie from the decision of the judge, if before such decision is pronounced the parties shall agree, in writing, signed by themselves or their solicitors or agents, that his decision shall be final, and no such agreement shall require a stamp.

The next friend of an infant plaintiff, who has failed in an action, cannot bind him by agreement not to appeal in consideration of forbearance to enforce costs against the next friend (*Rhodes v. Swithenbank* (C. A.), (1889) 22 Q. B. D. 577; 58 L. J. Q. B. 287).

124. No judgment or order of any judge, nor any action or matter brought before him or pending in his court, shall be removed by appeal, motion, certiorari, or otherwise, into any other court whatever, save and except in the manner and according to the provisions in this Act mentioned.

125. Repealed by the Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo. V., c. 49, and substantially re-enacted by sect. 33 (3) of that Act, which provides as follows:—

(3) Where, on an appeal from an admiralty action which has been heard in the county court with the assistance of nautical assessors, any party makes application to the High Court in that behalf, the Court shall summon Trinity Masters to assist on the hearing of the appeal if the court is of opinion that such assistance is necessary or desirable.

Assessors merely sit to advise the judge. If he differs from them, he must decide in accordance with his own opinion (*The Beryl*, (1884) 9 P. D. 137; 53 L. J. Adm. 75).

126. It shall be lawful for the High Court or a judge thereof to order the removal into the High Court, by writ of certiorari or otherwise, of any action or matter commenced in the court under the provisions of this Act, if the High Court or a judge thereof shall deem it desirable that the action or matter shall be tried in the High Court, and upon such terms as to payment of costs giving security, or otherwise as the High Court or a judge thereof shall think fit to impose.

After the service of proceedings on a defendant, it is open to him, in certain cases, to obtain their removal into the High Court by *certiorari* or

order (a), and thus to stop the proceedings in the county court. A power to object to the jurisdiction of the county courts in cases where a claim exceeds a certain sum is also given; but those provisions extend only to cases where the claim exceeds a certain sum.

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By Certiorari or Order.—The section which now confers the power of removal above mentioned consolidates the provisions which formerly applied to common law and equity proceedings respectively (County Courts Act, 1846, s. 90; County Courts Act, 1856, s. 38; County Courts Act, 1865, s. 3), and places all upon the same footing, quite irrespectively of the amount in dispute. (Formerly there was a distinction between cases in which the claim exceeded or did not exceed 5*l.*) The two sets of provisions just mentioned provided, in the case of common law actions, for removal by writ of *certiorari*, and in the case of equity actions or matters, for removal by order. Now any action or matter (terms which include every proceeding in a county court (see sect. 18)), if commenced under the Act of 1888 (as to when an action is commenced in a county court within the meaning of sect. 126, see *General Estates Co. v. Beaver*, (1912) 2 K. B. 398; 81 L. J. K. B. 761), may be removed by the High Court or a judge either by *certiorari* or otherwise, *i.e.*, presumably, by mere order; but, except in the cases and in the manner mentioned in the Act, no action, matter, judgment, or order can be removed from the county court (see sect. 124).

In what cases.

Section 126 does not confer the power of removal on the judges of any particular division, but it is apprehended that in practice, for convenience, applications in common law actions and matters should be made to a divisional court or a judge of the King's Bench Division, and in equity actions and matters to a judge of the Chancery Division, and that, according to the nature of the matters in issue, the removal should be into one division or the other.

By what division.

Apparently a plaintiff cannot remove the action he has brought in the county court into the High Court by *certiorari* (*Ginsti Patents, Ltd. v. Maggs*, (1923) 1 Ch. 515; 92 L. J. Ch. 345).

Landlord and Tenant Act, 1927.—Proceedings in the county court under this Act (17 & 18 Geo. V. c. 36, sect. 21) may be transferred to the High Court under the above section.

Grounds for Removal.—The grounds upon which the High Court or a judge may remove an action or matter are that they shall deem it desirable that the action or matter shall be tried in the High Court; and in that case they may impose such terms as to payment of costs, giving security, or otherwise as they may think fit (see sect. 126). The party applying must show that the action is more fit to be tried in the High Court (*Donkin v. Pearson*, (1911) 2 K. B. 412; 80 L. J. K. B. 1069). But the section is not confined to cases in which the action is in itself more fit to be tried in the High Court than in the county court. It gives an absolute discretion to the High Court to consider, having regard to all the circumstances, whether it is desirable that the action should be tried in the High Court, or remain in the county court (*Challis v. Watson*, (1913) 1 K. B. 547; 82 L. J. K. B. 529).

The Crown may of right obtain the removal of any plaint affecting the revenue or its rights at any stage of the case (*Mountjoy v. Wood*, (1856) 1 H. & N. 58; 108 R. R. 453; *Stanley of Alderley (Lord) v. Wild*, (1900) 1 Q. B. 256; 69 L. J. Q. B. 318); but in other cases the writ is not granted of course, but *ex debito justitiæ* (*R. v. Surrey Justices*, (1870) L. R. 5 Q. B. 466; 39 L. J. M. C. 145). The section is so general, that possibly actions brought under the peculiar jurisdiction of county courts in cases of partnerships and intestacies (they could not formerly be removed: *Durant v. Tomlin*, (1848) 11 L. T. O. S. 267), and interpleader proceedings (they were not removable before: *Ex parte Summers*, (1852) 18 Jur. 522), may be removable. It is important to observe that actions and matters com-

(a) It is in fact generally done by *certiorari*.

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menced under the Act of 1888 are alone removable under these provisions (*Donkin v. Pearson*, *supra*); yet it has been held that a petition to wind up under the Building Societies Act may be removed (*Re East Dulwich Building Society* (North, J.), (1891) 39 W. R. 32); but a writ of *certiorari* cannot be issued to bring up an order of a county court judge when exercising bankruptcy jurisdiction (*Skinner v. Northallerton County Court Judge*, (1899) A. C. 439; 68 L. J. Q. B. 897).

It is conceived that an action, the particulars of which disclose a cause of action not within the jurisdiction of the county court, cannot be removed, the proper remedy being by prohibition. A justice of the peace who has objected to be sued in the county court, under the provisions referred to (*ante*, p. 49), cannot remove the plaint by *certiorari* (*Weston v. Sneyd*, (1857) 1 H. & N. 703; 26 L. J. Ex. 161; 108 R. R. 787).

As to the removal by *certiorari* of unsatisfied judgments, see sect. 151; as to replevin, see sect. 137; as to the removal by order of actions of ejectment, see sect. 59.

Usual Ground of Removal.]—That difficult questions of law are likely to arise on the trial is a usual ground (see *Longbottom v. Longbottom*, (1853) 8 Ex. 203; 22 L. J. Ex. 74; *Hunt v. G. N. Rail. Co.*, (1851) 2 L. M. & P. 268; 20 L. J. Q. B. 349; 84 R. R. 840). Where there were six or seven actions pending against the same defendant, and arising out of the same matter, and difficult questions of law were likely to arise in them, the Court of Appeal granted a *certiorari* to remove an action under the Employers' Liability Act against the same defendant involving the same facts and law (*Potter v. G. W. Colliery Co. (C. A.)*, (1894) 10 T. L. R. 380); and where a plaint was removed by *certiorari* on an affidavit that difficult questions of law were likely to arise, the court refused to quash the writ, though counter-affidavits were made that no such difficult questions would arise (*Rees v. Williams*, (1851) 7 Ex. 51; 21 L. J. Ex. 24). But where the court considered that a defence was not *bonâ fide* they quashed the writ, although it was sworn that difficult matters of law would arise (*Kenworthy v. Sidebottom*, an unreported case argued in the C. P. D. on the 16th May, 1876). Where the claim was under 20*l.*, a *certiorari* was refused, though it was sworn that various nice questions of law and fact, important to the applicant, would probably arise (*Soloman v. L. C. & D. Rail. Co.*, (1861) 10 W. R. 59). The fact of the plaintiff being an officer of the court would probably be a ground which would be entertained (*Box v. Green*, (1854) 9 Ex. 503; 23 L. J. Ex. 219), but as there is now ample power to change the venue (see sect. 85), it would hardly be of much weight alone.

Practice on application for Certiorari.]—The application for a *certiorari* must be made to a judge at chambers, not to the court (*Bowen v. Evans*, (1848) 3 Ex. 111; 18 L. J. Ex. 38; *Robertson v. Womack*, (1850) 19 L. J. Q. B. 367). It may be made to a master (R. S. C., Order LIV. r. 12), but not, it seems, to a district registrar (R. S. C., Order XXXV. r. 6). There is no cause "proceeding" in the registry to give the power.

Affidavit.]—The application must be made on affidavit intitled "In the High Court of Justice, — Division," but not in any cause or matter (*Ex parte Nohro*, (1823) 1 B. & C. 267). The proceedings are on the civil, not on the Crown side.

The affidavit must be drawn up in the first person, and divided into paragraphs; each paragraph must be numbered consecutively, and must be confined as much as possible to a distinct portion of the subject (R. S. C., Order XXXVIII. r. 7). The affidavit must state the description and true place of abode of the deponent (Order XXXVIII. r. 8), and, subject as aforesaid, generally the rules of the High Court as to affidavits must be observed (see Annual Practice, notes to R. S. C., Order XXXVIII. r. 7, and following rules).

As the judge to whom the application is made may exercise his discretion with respect to the terms upon which he will grant it, it is important that the affidavit should state all the facts material to the case. Where a

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certiorari had been obtained by a plaintiff upon an affidavit which omitted to disclose facts as to costs which the defendant had already incurred, the Court of Exchequer, upon those facts being brought before it, quashed the writ (*Parker v. B. & E. Rail. Co.*, (1851) 2 L. M. & P. 136; 20 L. J. Ex. 112). Where, however, a *certiorari* had been issued by leave of a judge, upon an affidavit which stated generally that difficult questions would arise, but did not state what those questions were, or the grounds upon which they would arise, the court refused to set the writ aside, as it did not appear that those particulars were not pointed out to the judge at chambers (*Golding v. Caudwell*, (1851) 2 L. M. & P. 175).

If a *certiorari* be refused by the court or judge, no other judge may grant it. The applicant may, however, appeal from a judge to the court, or make a second application on different grounds. See s. 132, *post*.

Order.—When security is ordered to be given, it may be by bond, or by deposit of money. The court held to be unreasonable a term which had been imposed by a judge at chambers, that the defendant, if successful, should only recover county court costs. Such an order is sometimes made by consent.

The grant of an order *nisi* or summons for a *certiorari* will, if the court or a judge so direct, operate as a stay of proceedings in the action or matter until the determination of the order or summons, or until the court or judge otherwise orders: and the judge of the county court must from time to time adjourn the trial to such day as he thinks fit. If, however, a copy of the order or summons be not served by the party who obtained it on the opposite party and on the registrar of the county court two clear days before the day fixed for the trial, the judge of the county court may order the party who obtained it to pay the costs of the day, or part of them, unless the High Court or judge has made some order respecting them.

Where a writ of *certiorari* has been granted on an *ex parte* application, and the party who obtained it does not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day fixed for the trial, the judge of the county court may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much as he thinks fit, unless the High Court or judge has made some order respecting them (see sect. 130; Form 148; see R. S. C., Forms G 13, J 9, K 30).

The court has power under this section to order the re-transfer from the county court to the High Court of an action originally commenced in the Chancery Division and remitted to the county court under sect. 69 *General Estates Co. v. Beaver*, (1912) 2 K. B. 398; 81 L. J. K. B. 761).

Service of Writ of Certiorari.—The writ should be delivered as early as possible to the registrar of the county court, so as to render all proceedings taken in that court after its service irregular and *coram non jure*. According to the old practice, the writ must have been delivered to the judge or officer of the court before the jury appeared, or before one of them had been sworn; otherwise the inferior court might proceed with the cause (43 Eliz. c. 5). And this would seem to be still the law in a case tried before a jury. If the judge of the county court refuses to obey it, he is liable to an attachment for contempt (*Muneean v. Wheatley*, (1851) 6 Ex. 88; 20 L. J. Ex. 106). The effect of the service of the writ of *certiorari* is instantly to suspend the power of the county court in the cause which it removes (Tidd's Prac. 9th ed. p. 404; *Cross v. Smith*, (1703) 1 Salk. 148; *Bevan v. Prothesk*, (1761) 2 Burr. 1151; *Muneean v. Wheatley*, *supra*). Where the writ was left with a clerk at the registrar's office, it was held to be good service; but the court intimated that the strictly proper course to pursue, where there has been no personal service on the judge, and the cause does not come on for hearing until after the return-day, would be to rule the judge to return the writ (*Brookman v. Wenham*, (1851) 2 L. M. & P. 233; 20 L. J. Q. B. 278).

Where a defendant has removed an action from a county court by *certiorari*, the plaintiff is not bound to follow it; and if he decline, the defen-

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dant cannot sign judgment, nor recover from the plaintiff the costs of removal (*Garton v. G. W. Rail. Co.*, (1858) 1 E. & E. 258; 28 L. J. Q. B. 103; 117 R. R. 202). If the plaintiff continues the proceedings after the grant of a *certiorari*, he does not commence *de novo* in the High Court, but delivers statement of claim reciting the proceedings in the county court, and the issue of the *certiorari* (see *Ashley v. Ashley*, (1867) 17 L. T. 265; Bul. & L., 3rd ed. p. 33). The plaintiff cannot be compelled to proceed with the action in the King's Bench Division (*Harrison v. Bull*, (1912) 1 K. B. 612; 81 L. J. K. B. 656).

When the writ is granted, the costs in the court below will be costs in the cause (R. S. C., Order LXV. r. 3). A fee may be charged for making a return to a *certiorari* (*Ball v. Price*, (1875) 1 Q. B. D. 264; 45 L. J. Q. B. 170).

Order to remove Equity Proceedings.]—If application be made for an order, under the above provisions, for the transfer of an equity action or matter to the High Court, it is probable that the application should be made to a judge of the Chancery Division. According to the former practice the order was not made *ex parte*, but by summons to show cause (*Anon.*, (1876) W. N. 12). An affidavit would no doubt be required. After an order of transfer the plaintiff must deliver statement of claim before he can obtain an order for discovery (*Davies v. Williams*, (1880) 13 Ch. D. 550; 49 L. J. Ch. 352). See also power of transfer given by sect. 68 of the Act, *ante*, p. 71.

Transfer under Judicature Act, 1925.]—Where any defence or counter-claim involves matter beyond the jurisdiction of the court, the High Court or any division or judge thereof, may order the whole proceeding to be transferred to the High Court, or to any division of it (Judicature Act, 1925, sect. 203, *ante*, p. 36).

The application under this provision ought, it is believed, to be made by summons as in the case last mentioned, to a judge of the division to which it is proposed to transfer the proceeding. After the making of the order the action or matter will proceed in the High Court as if it had been originally commenced there (*ibid.*).

Practice after Order of Transfer.]—Where an order is made by a judge of the High Court under the last-mentioned provision, or under sects. 68 or 126 of the County Courts Act, then, subject to such order, the record in the proceeding must be transmitted by the registrar, in the following manner: The registrar must make and certify under his hand office copies of all entries of record in the books of the court, and must forthwith transmit them, together with all such documents as have been filed in the action or matter, to the proper officer of the High Court. The copies and the cost of transmission must be paid for, in the first instance, by the party on whose application the transfer has been made; and the registrar may require deposit of the costs of such copies and transmission before making or transmitting the same; such payment is to be without prejudice to the question as to by which party the costs are ultimately to be borne (Order XXXIII. r. 7).

When Defendant may Object to Jurisdiction.]—Where the plaintiff claims more than 20*l.* in actions of contract, or more than 10*l.* in actions of tort, if the defendant gives notice that he objects to the action being tried in the county court, and gives security, to be approved of by the registrar, for the amount claimed, and the costs of trial in the High Court, not exceeding in the whole the sum of 150*l.* (for form of bond, see Form 82; see *Young v. Brompton*, (1862) 1 B. & S. 675; 31 L. J. Q. B. 14; 124 R. R. 709, decided under the corresponding section), and the judge certifies that in his opinion some important question of law or fact is likely to arise, all proceedings in the county court will be stayed. The entry of the plaints prevents the operation of any statute of limitation. This power does not prevent, and is quite distinct from, the removal of a cause by *certiorari* (see sect. 62, *ante*, p. 47, and the notes to that section).

Objection by Justices.]—See *ante*, p. 48.

127. It shall be lawful for any judge of the High Court, as well during the sittings as in vacation, to hear and determine applications for writs of prohibition to any court and to make such orders for the issuing of such writs as might have been made by the High Court, and all such orders so made by any such judge of the High Court shall have the same force and effect as heretofore.

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Judge of High Court may hear applications for prohibition.

The writ of prohibition is a writ issuing out of the High Court to restrain any inferior courts within the limits and bounds of their several jurisdictions prescribed to them by law. It is granted in all cases where an inferior court exceeds its powers, either by acting where it has no jurisdiction, or where, having a primary jurisdiction, it takes upon itself the decision of something not included within its jurisdiction (2 Inst. 601; F. N. B. 40; 12 Rep. 65; Bac. Ab. tit. Prohibition). There was formerly great difference of opinion whether this writ was discretionary, or to be granted *ex debito justitiæ*; but it is now clear that at the suit of the party aggrieved it is of right, though discretionary in the sense that, from the circumstances of the case, the courts may exercise a legal, not arbitrary discretion (Bac. Ab. Prohibition (B.) and cases there cited; *Mayor of London v. Cox*, (1867) L. R. 2 H. L. 239, 278; 36 L. J. Ex. 225; see the opinion of the judges delivered by Willes, J., which contains a great body of learning on the Law and Practice of Prohibition; and *Worthington v. Jeffries*, (1875) L. R. 10 C. P. 379; 44 L. J. C. P. 209). And consequently, when a party establishes to the court facts upon which an application is properly founded, whether appearing on the face of the proceedings or not, he is entitled to the writ as of right (*Jackson v. Beaumont*, (1855) 11 Ex. 300; 24 L. J. Ex. 301; 105 R. R. 536; *Mayor of London v. Cox*, *ubi supra*).

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c. 61, s. 22.

What Court may grant a Prohibition.]—Any one of the superior courts of common law at Westminster could always award prohibitions to the county courts; so also could the Court of Chancery (F. N. B. 53; 4 Inst. 71; 1 Peere Wms. 476; *Wright v. Cattell*, (1850) 13 Beav. 81; 19 L. J. Ch. 527; *Jacobs v. Brett*, (1875) L. R. 20 Eq. 1; 44 L. J. Ch. 377). The writ from Chancery appears not to have been returnable, but if disobeyed that court granted an attachment returnable in the King's Bench or Common Bench (Inst. 81). A writ of prohibition might also issue out of the Petty Bag Office (*Wright v. Cattell*, (1850) 13 Beav. 81). The duties of the clerk of the petty bag are, under a rule of the Supreme Court dated January 30th, 1889, to be performed by the senior clerk of the Crown Office Department; and it is believed that no prohibition will be issued by him. By sect. 127 (*supra*), any judge of the High Court may, as well during sittings as in vacation, hear and determine applications for writs of prohibition to any county court.

If the court has no jurisdiction, a writ of prohibition may be granted even on the application of a stranger (2 Inst. 602; *Wadsworth v. Queen of Spain*, (1851) 17 Q. B. 171; 20 L. J. Q. B. 488; 85 R. R. 398; *Mayor of London v. Cox*, *supra*; *Robinson v. Emanuel*, (1874) L. R. 9 C. P. 414; 43 L. J. C. P. 244). But the grant of the writ at the suit of a stranger is discretionary; not *ex debito justitiæ* as at the suit of the party aggrieved (*Re Forster*, (1863) 4 B. & S. 187; 129 R. R. 713; *Mayor of London v. Cox supra*).

In what Cases granted.]—A prohibition is granted either absolutely or *hoc usque* only until a particular act be done. The first is peremptory and ties up the inferior jurisdiction till a consultation is awarded; the second is *ipso facto* discharged upon performing the act, and that without any writ of consultation (Bac. Ab. Prohibition (F.); *Treil v. Edwards*, (1705) 6 Mod. 303). A writ of prohibition will be granted to a county court in any case in which it exceeds the jurisdiction given by the several statutes by which it is governed, or takes upon itself the cognizance of any action of ejectment

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in which the value or rent of the lands exceeds 100*l.*, or of any action in which the title to any corporeal or incorporeal hereditaments, of which the value or rent exceeds 100*l.*, or to any easement or licence where the value or rent of the dominant or servient tenement exceeds 100*l.*, or to any toll, fair, or market or franchise, is in question, or (except where such a case is sent for trial from the High Court) for any libel, or slander, seduction, or breach of promise of marriage. Or if a plaint be entered, under the common law jurisdiction, claiming more than 100*l.*, for the whole or part of the unliquidated balance of a partnership account, or for a distributive share of personal estate under an intestacy, or of any legacy under a will, or if at the trial, after notice of objection pursuant to sect. 203 of the Supreme Court of Judicature (Consolidation) Act, 1925, the judge entertains a counterclaim not within the jurisdiction of the court, further than he is justified in doing to defeat or counterbalance the plaintiff's claim (*Davis v. Flagstaff Silver Mining Co.* (C. A.), (1877) 3 C. P. D. 228; 47 L. J. P. C. 503); or if, in any of the special subjects of jurisdiction noticed in Part V., e.g., the Friendly Societies Acts) (*Hull v. M'Farlane*, (1857) 2 C. B. N. S. 796; 27 L. J. C. P. 41; 109 R. R. 896), or in any equity action or matter, the court exceeds the jurisdiction which is given to it; unless the defendant has consented before plaint entered, or consents at the hearing, to give the court jurisdiction, or by neglect or waiver, as hereafter mentioned, has lost his right to obtain it, the writ of prohibition will lie.

The writ will issue also if the action be in its nature one over which the county court has jurisdiction, but the defence raises a question which it has no power to try, as where a defence raises a question of title to hereditaments of more than 100*l.* value or rent (*Mayor of London v. Cox*, (1867) L. R. 2 H. L. 239; see *Pearson v. Glazebrook*, (1868) L. R. 3 Ex. 27; 37 L. J. Ex. 15). Other instances in which a writ of prohibition will be granted are *pro defectu triationis*; that is, the want of any means of trying, as when it is impossible to try the cause by the proper and legitimate evidence (*per* Lord Denman, C.J., in *Winsor v. Dunford*, (1848) 12 Q. B. 603, 608; 18 L. J. Q. B. 14). Taking a wrong course in trying is not, however, such a defect (*per* Patteson, J., in *Winsor v. Dunford*, *supra*).

Where the existence of jurisdiction in the county court depends upon the decision of a point of law going to jurisdiction, a prohibition will be issued if the county court assumes jurisdiction in consequence of a wrong decision of the point (*Elston v. Rose*, (1868) L. R. 4 Q. B. 4; 38 L. J. Q. B. 6; *Thompson v. Ingham*, (1849) 14 Q. B. 710; 19 L. J. Q. B. 189; 80 R. R. 376; *Crowley v. Vitty*, (1852) 7 Ex. 319; 21 L. J. Ex. 135; 86 R. R. 664). If it depends upon a question of fact, and the county court judge decides it upon evidence, the High Court will not review his decision at any rate except upon very strong grounds (*Brown v. Cocking*, (1867) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250; *Elston v. Rose*, *supra*). And where the question of fact upon which the jurisdiction depends is the very question at issue in the cause, the reluctance to interfere will be still stronger (*Joseph v. Henry*, (1850) 19 L. J. Q. B. 369; 15 Jur. 104; *Milner v. Rhoden*, (1851) 15 Jur. 1037).

The distinction between the two classes of cases as to facts going to jurisdiction is thus explained by Cockburn, C.J.: "If there has been a real conflict of testimony upon some fact which goes to the question of jurisdiction, the court will not interfere except on very strong grounds. The judge has then really exercised his discretion; but where he has given himself jurisdiction by coming to an erroneous conclusion upon a point of law, the case is very different, and he is in fact without jurisdiction, and has no authority to entertain the question" (*Elston v. Rose*, *supra*). So where a lessee for years, with a rent reserved, brought ejectment, and the annual value of the premises to let to an occupying tenant exceeded 20*l.*, but the value of the plaintiff's interest, after deducting the rent paid by him, was less than 20*l.* a year, and the judge decided that the yearly value did not exceed 20*l.*, and that he had, therefore, jurisdiction, the court held that the value of the tenements meant the marketable value, and not the value of the plaintiff's interest,

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and that the judge had assumed jurisdiction, not by deciding upon conflicting facts, but on a wrong assumption as to a point of law, and so ordered that the writ should go. "I think," said Blackburn, J., "that the judge was wrong in the conclusion at which he arrived, because he applied a wrong rule of law to the facts" (*Elston v. Rose, supra*). So, where the judge wrongly decided on the facts that title to land was not in question a prohibition was allowed to go (*Thompson v. Ingham, supra*); as it was where a judge, through the erroneous construction of a will, held that he had power to make an order on trustees to pay income to a receiver, although they had a discretion as to its application (*R. v. Lincoln County Court*, (1887) 20 Q. B. D. 167; 57 L. J. Q. B. 136). And where in interpleader proceedings, the particulars of the claimant were wrongfully held to be insufficient by the judge, and he refused to hear the claim, a prohibition was issued to restrain proceedings under the original judgment (*Hardy v. Walker, Ex parte McFee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700). Where a judge, of his own motion, amended the plaint and reduced a claim originally in excess of the jurisdiction to an amount within the jurisdiction (*Hill v. Swift*, (1854) 10 Ex. 726; 24 L. J. Ex. 137; 102 R. R. 793), a prohibition issued.

The writ will issue where a judge has given leave to serve a summons on a defendant domiciled and resident in Scotland, notwithstanding that there is an alternative remedy under Order VII. r. 49, by application to the judge himself to set aside the service or discharge the order (*Channel Coaling Co. v. Ross*, (1907) 1 K. B. 145; 76 L. J. K. B. 145).

So a writ of prohibition will lie to prevent a person from splitting his demand and bringing several actions contrary to the provisions already noticed (*ante*, s. 81) (*Grimbley v. Aykroyd*, (1847) 1 Ex. 479; 17 L. J. Ex. 157); and to stay proceedings on a plaint entered without leave of the judge or registrar in a case where leave is required (*Brown v. L. & N. W. Rail. Co.*, (1863) 4 B. & S. 326; 32 L. J. Q. B. 318; 129 R. R. 766); and to restrain execution on an order for payment of costs where the court has no jurisdiction to award them (*Lawford v. Partridge*, (1857) 1 H. & N. 621; 26 L. J. Ex. 147; 108 R. R. 749), as where under 45 & 46 Vict. c. 57, s. 5 (now 51 & 52 Vict. c. 43, s. 119), the judge ordered costs on the higher scale without certifying in writing (*Howard v. Graves*, (1885) 52 L. T. 858). It will lie to prevent a judge from hearing a cause in which he is interested (*Ex parte Medwin*, (1853) 1 E. & B. 609; 22 L. J. Q. B. 169; 93 R. R. 304); from altering or rescinding a judgment after it has been once pronounced (*Jones v. Jones* (3), (1848) 5 D. & L. 623, 632; 17 L. J. Q. B. 170; 79 R. R. 884, *per Coleridge, J.*; *Irving v. Askew* (2), (1870) L. R. 5 Q. B. 208; 39 L. J. Q. B. 118); from entering judgment for the applicant on an application for a new trial (*Robinson v. Fawcett*, (1901) 2 K. B. 325; 70 L. J. K. B. 639); the same rule obtains upon an application for a new trial (*G. N. Rail. Co. v. Mossop*, (1856) 17 C. B. 130; 25 L. J. C. P. 22; 104 R. R. 626). It will lie to prevent a judge from proceeding with a citation to appear to answer a contempt committed out of court (*R. v. Lefroy*, (1873) L. R. 8 Q. B. 134; 42 L. J. Q. B. 121), and to stay proceedings on an order for commitment, where an order has been already obtained for the same debt, and is still in force (*Horsnail v. Bruce*, (1872) L. R. 8 C. P. 378; 42 L. J. C. P. 140), or has been executed (*Evans v. Wills*, (1876) 1 C. P. D. 229; 45 L. J. C. P. 420), or where the judge has for other causes no jurisdiction to make it (*R. v. Brompton County Court* (C. A.), (1887) 18 Q. B. D. 213; S. C., *Reeve v. Fowle*, 56 L. J. Q. B. 49. This case was reversed on the facts, but the proposition of law was not impeached ((1887) 13 App. Cas. 20; 57 L. J. Q. B. 387)). So if a judge exceeds his jurisdiction under the Friendly Societies Acts, a prohibition will lie (*Hull v. M'Farlane*, (1857) 2 C. B. N. S. 796; 27 L. J. C. P. 41; 109 R. R. 896; *Smith v. Pryse*, (1857) 7 E. & B. 339; 26 L. J. Q. B. 95; 110 R. R. 623).

A writ of prohibition may be partial, and prohibit so much of a plaint as exceeds the jurisdiction of the inferior court, allowing it to proceed as

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to the residue. Thus, where the cause of action disclosed by the particulars was divisible, and part had arisen within the jurisdiction of a county court and part out of the jurisdiction, the Court of Queen's Bench granted a prohibition as to the latter only (*Ex parte Walsh*, (1853) 1 E. & B. 383; 22 L. J. Q. B. 137; 93 R. R. 192; see also *Free v. Burgoyne*, (1826) 5 B. & C. 400; *R. v. Westmoreland C. C.*, (1888) 36 W. R. 477).

In what Cases not granted.]—The court will not inquire by prohibition into the correctness of the judge's decision, where it is upon a matter clearly within his jurisdiction (*Winsor v. Dunford*, (1848) 12 Q. B. 603, 608; 18 L. J. Q. B. 14; *Joseph v. Henry*, (1850) 19 L. J. Q. B. 369; *Lexden Union v. Southgate*, (1854) 10 Ex. 201; 23 L. J. Ex. 316; 102 R. R. 531; *Norris v. Carrington*, (1864) 16 C. B. N. S. 396; 139 R. R. 543). It cannot look to see whether the decision on a question of fact going to jurisdiction was, on the balance of evidence, right or not (see *per Cockburn, C.J.*, *Brown v. Cocking*, (1868) L. R. 3 Q. B. 676; 37 L. J. Q. B. 250). Where the judge of a county court gave judgment for the plaintiff, notwithstanding that the defendant's plea (that judgment had already been obtained and execution executed against him in another inferior court) was admitted to be true, the superior court declined to interfere (*Toft v. Rayner*, (1847) 5 C. B. 162). So, where an insolvent pleaded his discharge to a judgment summons, and the judge notwithstanding made an order for payment by instalments, and afterwards for committal of the defendant, it was held to be at most an error in the exercise of the powers of the judge, and that therefore prohibition would not lie (*Still v. Booth*, (1850) 1 L. M. & P. 440). It does not lie for receiving improper evidence (*Winsor v. Dunford*, (1848) 12 Q. B. 603, 611; 18 L. J. Q. B. 14), nor for the misconstruction of a statute (*In re Bowen*, (1851) 15 Jur. 1196), nor on the ground that a former action has been removed by *certiorari* and is still pending (*Edwards v. Rogers*, (1850) 1 L. M. & P. 196; 19 L. J. Ex. 149; 86 R. R. 889). Where an action was brought for false imprisonment, but the judge in giving judgment used expressions as if he were giving damages for a malicious prosecution (not then within his jurisdiction), the court held that it was not a case for a prohibition (*Chivers v. Savage*, (1855) 5 E. & B. 697; 25 L. J. Q. B. 85; 103 R. R. 689).

Where a defendant was sued in the double capacity of executor and administrator, and objected that the plaintiff should elect in which capacity he would proceed against him, and the judge overruled the objection, the court, assuming the objection was right, refused a prohibition (*Lexden Union v. Southgate*, *supra*). So where, in an action of ejectment, the judge decided on conflicting evidence that the yearly value of the premises did not exceed 20*l.*, the then limit of the jurisdiction, the court refused a prohibition though there was strong evidence that the yearly value did exceed 20*l.* (*Brown v. Cocking*, (1868) L. R. 3 Q. B. 672; 37 L. J. Q. B. 250). And where a defendant did not appear, and the judge held that service of the summons had been duly made, and gave judgment against the defendant in his absence, and it was afterwards discovered that service had been wrongly made, the court refused a prohibition, holding that the decision as to the service was one of fact within the judge's jurisdiction (*Robinson v. Lenaghan*, (1848) 2 Ex. 333; 17 L. J. Ex. 174; see also *Zohrab v. Smith*, (1847) 5 D. & L. 635; 17 L. J. Q. B. 174; compare *Liverpool Gas Co. v. Everton*, (1871) L. R. 6 C. P. 414).

Where a summons was issued incorrectly against the defendant as executor of A. B., instead of executor of C. D., the plaint having been entered correctly, and the judge, on its being represented that the Statute of Limitations would bar the claim if a new summons were issued, ordered a new summons to issue, bearing the date and number of the first, the court declined to interfere (*Foster v. Temple*, (1848) 5 D. & L. 655; 17 L. J. Q. B. 230). The writ was not allowed to go, because, under process of the court, to levy a sum within its jurisdiction, the officer seized property to a greater amount (*Ex parte Summers*, (1852) 2 C. L. R. 1286; 18 Jur. 522).

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No prohibition will lie to the judge or to the defendant before the trial merely because the latter gives notice of a counterclaim not within the statutory jurisdiction of the court, even, it is believed, after notice of objection pursuant to Judicature Act, 1925, s. 203 (*ante*, p. 36) (*Davis v. Flagstaff Co.*, (1877) 3 C. P. D. 228; 47 L. J. C. P. 503).

The Application for, when made.]—A prohibition may be granted upon the request of a stranger as well as of the defendant himself, the reason being that, when an inferior court exceeds its jurisdiction, it is chargeable with a contempt of the Crown as well as a grievance to the party (*Ede v. Jackson*, (1720) Fortescue, 345; *Wadsworth v. Queen of Spain*, (1851) 17 Q. B. 171; 20 L. J. Q. B. 488; 85 R. R. 398). At whatever stage of the proceedings the defect of jurisdiction is made manifest to the court, it may grant a prohibition (*Burder v. Veley*, (1840) 12 A. & E. 233, 263; and *per Willes, J.*, *Mayor of London v. Cox*, (1867) L. R. 2 H. L. 239, 279; 36 L. J. Ex. 225). Where there is a total want of jurisdiction, which is disclosed by the plaintiff's particulars, a prohibition may be obtained by the defendant before the trial (*Sewell v. Jones*, (1850) 1 L. M. & P. 525; 19 L. J. Q. B. 372; 90 R. R. 946, *per Wightman, J.*; *Hunt v. N. S. Rail. Co.*, (1857) 2 H. & N. 451; 26 L. J. Ex. 374; 115 R. R. 634). So, where the particulars showed a claim for damage to plaintiff's reversionary interest, a prohibition was granted, on the defendant showing that the title to land was *bona fide* in dispute (*Sewell v. Jones*, *supra*). And even though the court has now a limited jurisdiction in such cases a prohibition may still be obtained before the trial, if the High Court or a judge, on the evidence used in support of the application, decides that the rent or value of the land exceeds 100*l.* a year (see *Symons v. Rees*, (1875) 1 Ex. D. 416).

A prohibition may in certain cases be obtained after hearing and judgment. The rules now applicable are stated by Willes, J., in delivering the opinion of the judges in the House of Lords in *Mayor of London v. Cox*, (1867) L. R. 2 H. L. 239, 282. "There is a distinction after sentence between a patent and a latent defect, for if the party below, whether plaintiff or defendant, thinks proper, instead of moving for a prohibition, to proceed to trial in the special or inferior court and is defeated, then if the defect be of power to try the particular issue only (*defectus iurisdictionis* as it has been called), the right to move for a prohibition is gone. If the defect be of jurisdiction over the cause (*defectus jurisdictionis*), and that defect be apparent upon the proceeding, a prohibition goes after sentence (see *Farquharson v. Morgan* (C. A.), (1894) 1 Q. B. 552; 63 L. J. Q. B. 474). Comp. *Clarke Bros. v. Knowles*, (1918) 87 L. J. K. B. 188. If it be not apparent, but the party, instead of moving for a prohibition, pleads in the special or inferior court the facts ousting the jurisdiction, and such court improperly decides that it has jurisdiction, he may, notwithstanding such decision, upon satisfying a superior court that it was erroneous, obtain a prohibition. Where, however, the defect is not apparent, but depends upon some fact in the knowledge of the applicant which he had an opportunity of bringing forward in the court below, and he has thought proper, *without excuse*, to allow that court to proceed to judgment without setting up the objection, and without moving for a prohibition in the first instance, although . . . the right to grant a prohibition in respect of the right of the Crown is not taken away, for mere acquiescence does not give jurisdiction, yet considering the conduct of the applicant, the importance of making an end of litigation, and that the writ, though of right, is not of course, the court would decline to interpose, except perhaps upon an irresistible case, and an excuse for the delay, such as disability, malpractice, or matter newly come to the knowledge of the applicant." (The Court of Appeal has after argument before the full court affirmed and adopted the opinion of Willes, J.: *Broad v. Perkins* (C. A.), (1888) 21 Q. B. D. 533; 57 L. J. Q. B. 638.)

Hence where there is an entire absence of jurisdiction in the county court, though not apparent on the proceedings, and the defendant takes

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the objection at the trial, the matter is, for the purpose of prohibition, thereby put on the same footing as if the defect had appeared on the face of the proceedings (*Marsden v. Wardle*, (1854) 3 E. & B. 695; 23 L. J. Q. B. 263; 97 R. R. 711; *Thompson v. Ingham*, (1849) 14 Q. B. 710; 19 L. J. Q. B. 189; 80 R. R. 376; *Denton v. Marshall*, (1863) 32 L. J. Ex. 89). It appears also that if the want of jurisdiction appears from the order made by the court, it is "a defect apparent upon the proceeding" within the rule mentioned in the above opinion of Wilks, J. (*R. v. Newport (Salop) C. C.*, 1888) 20 Q. B. D. 242; 57 L. J. Q. B. 143). In the case last cited, the judge of one court made without jurisdiction an order on the bailiff of another court, under the enactment corresponding with sect. 49 of the County Courts Act, 1888; and it was held that prohibition would go although no formal objection to the jurisdiction had been taken at the hearing (*R. v. Newport (Salop) C. C.*, *supra*). Apparently in the opinion of the learned judges who heard the case, neither neglect to object to the jurisdiction nor acquiescence in the jurisdiction could prevent the issue of the prohibition, as the defect was apparent upon the proceedings. This view seems to accord with many cases decided before the Act of 1856, which enabled the parties to give jurisdiction by consent in a particular manner (*Knowles v. Holden*, (1855) 24 L. J. Ex. 223; 101 R. R. 909; *Yates v. Palmer*, (1849) 6 D. & L. 283, *per* Wightman, J.; *De Haber v. Queen of Portugal*, (1851) 20 L. J. Q. B. 498; 85 R. R. 398, *per* Lord Campbell, C.J.; *Wadsworth v. Queen of Spain*, (1851) 20 L. J. Q. B. 493, *per* Erie, J.); but the effect (if any) of those provisions, and of sect. 114 of the County Courts Act, 1888 (see *per* Watson, B., *Lawford v. Partridge*, (1857) 26 L. J. Ex. 148), upon the question under consideration does not appear to have been yet discussed.

The writ may issue after execution has issued and a levy has been made if no sale has taken place (*Kimpton v. Willey*, (1850) 9 C. B. 719; 19 L. J. C. P. 269; 82 R. R. 515; *Marsden v. Wardle*, (1854) 3 E. & B. 695; 23 L. J. Q. B. 263; 97 R. R. 711); but if execution has been completed by seizure and sale, and the money paid out of court, the writ cannot go, for there is nothing to prohibit, and the applicant loses the writ by his own laches (*Hall v. Norwood*, (1664) 1 Sid. 165; and see *Denton v. Marshall*, (1863) 1 H. & C. 654; 32 L. J. Ex. 89; 130 R. R. 712; *Yates v. Palmer*, *supra*). When, however, under proceedings for the recovery of small tenements, a warrant of possession was obtained in a case in which the court had no jurisdiction, and the defendant obtained a rule *nisi* for a prohibition the day before the execution of the warrant, the court made it absolute, with a clause of restitution, although it was not served on the plaintiff until after the execution of the warrant of possession. But the defendant's attorney had protested at the trial against the jurisdiction, and upon his expressing his intention of applying for a prohibition the judge had ordered possession in seven days instead of a month (*Jones v. Owen*, (1848) 5 D. & L. 669; 18 L. J. Q. B. 8; 79 R. R. 888; a nice distinction between this case and that of *Denton v. Marshall* was drawn by Martin and Wilde, BB., in the latter case, viz., that in it a summons to show cause only had been obtained which had no effect until returnable, whilst in the former a rule *nisi* had been obtained).

If an objection to the jurisdiction is taken in the inferior court, the judge ought to enter it on the proceedings, in order that the superior court may see if there is ground for prohibition (*per* Parke, B., in *Pears v. Wilson*, (1851) 20 L. J. Ex. 383; 86 R. R. 502).

Waiver.—It has been shown that in cases where the want of jurisdiction does not appear on the face of the proceedings, the defendant may, by lying by and acquiescing in the proceedings up to judgment, lose his right to a prohibition. Thus in the case of *Broad v. Perkins*, (1888) 21 Q. B. D. 533; 57 L. J. Q. B. 638, an action for libel was brought in the Lord Mayor's Court, and after judgment for the plaintiff, no objection to the jurisdiction having been previously made, the defendant applied for a prohibition

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on the ground that there was no publication within the jurisdiction. The full Court of Appeal refused the writ on the grounds stated by Willes, J., *supra*. See also *Clarke Brothers v. Knowles*, (1918) 87 L. J. K. B. 189. Where the solicitor wrote for further particulars of the claim, and notified that he was prepared to accept service at a particular place, and said further that he was reserving his right to object to the jurisdiction, it was held this was not a sufficient waiver of his right to prevent him afterwards asking for prohibition.

Where the jurisdiction of the county court depends upon the raising or not raising of some particular issue, the right to a prohibition is lost if the defendant appears before the court and abstains from raising the issue (*Mayor of London v. Cox*, (1867) L. R. 2 H. L. 239, 274; 36 L. J. Ex. 225; *Home v. Earl Camden*, (1795) 2 H. Black. 533) which would oust the jurisdiction; as, if the question of title to an office is not raised at the hearing of a plaint, but the party is taken to be duly appointed (*per Erle, J.*, *Stevenson v. Stickle*, (1849) 13 Jur. 1103), or if title to corporeal or incorporeal hereditaments is admitted (*Gwynne v. Knight*, (1847) 1 Ex. 802; 17 L. J. Ex. 168; 74 R. R. 857). A mere irregularity in process may be similarly waived. Thus, a defendant was held to have waived any objection to the validity of an order for service of the summons out of the jurisdiction by appearing and giving notice of the Statute of Limitations (*Jones v. Jones*, (1850) 19 L. J. Q. B. 257; and see *per Parke, B.*, *Knowles v. Holden*, (1855) 24 L. J. Ex. 224; 101 R. R. 909).

Where a summons was issued without leave, in a case in which leave was a condition precedent to jurisdiction, and the defendant being ignorant of it appeared and raised no objection, and judgment was given against him as to part of his claim, and the case adjourned to the following day, and he then objected to the jurisdiction, it was held that he had waived the defect. The court treated it as a case of irregularity (*Moore v. Gamgee*, (1890) 25 Q. B. D. 244; 59 L. J. Q. B. 505).

Consent to Jurisdiction.—In addition to the authorities cited above, showing that by waiver or acquiescence a party neglecting to raise in the county court an objection to the jurisdiction which is open to him, may lose his right to or may not be permitted to obtain a prohibition, attention may be called to the provisions of sects. 61 and 64 of the County Courts Act, 1888, enabling the parties to give jurisdiction by consent in writing in a particular manner, and also to sect. 114 of the same Act, which provides that whenever an action or matter is commenced which the court has no jurisdiction to try, the judge must order it to be struck out *unless the parties consent to the jurisdiction*. The consent under this latter section is not required to be in writing, and the court before granting a prohibition in such a case would doubtless inquire whether from the statements and conduct of the parties consent must be inferred.

In face of the decisions and statutory provisions already mentioned, it is a matter of doubt whether a prohibition would now be granted in such a case as *Knowles v. Holden*, *supra*. There the parties appeared before the judge, and consented to a reference without objecting to the want of jurisdiction, but one of them during the progress of the reference objected to the jurisdiction of the arbitrators, on the ground that title to land came in question, and the arbitrators proceeded with the reference: it was held that he was entitled to a prohibition.

It has been held that where, on the hearing, a party objected to the jurisdiction of the county court, he did not waive his right to a writ of prohibition by obtaining from the judge a statement of a case for appeal (*Jackson v. Beaumont*, (1855) 11 Ex. 300; 24 L. J. Ex. 301; 105 R. R. 536).

Effect of Refusal of Writ.—Where an application for a prohibition is made before the trial and refused, and the question upon which the jurisdiction depends is one of fact, which is decided adversely to the applicant, the refusal to grant the prohibition is a conclusive judgment as to such

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question of fact for the purpose of jurisdiction. So where a defendant in ejectment applied before the trial for a prohibition, on the ground that the annual value of the land to be recovered exceeded 20*l.*, and the prohibition was refused, the court upheld the decision of the county court judge rejecting evidence offered by the defendant to show for the purpose of ousting the jurisdiction, that the annual value exceeded 20*l.* (*Symons v. Rees*, (1875) 1 Ex. D. 416).

Practice.—Although there is power in the judges of the Chancery Division to grant the writ, and although it could (possibly) issue out of the Petty Bag Office as before mentioned, the writ should be generally applied for to a divisional court or a judge of the King's Bench Division; and the proceedings form part of the civil proceedings on the Crown side. The application may be made during sittings or in vacation (see sect. 127).

By Rule 70 of the Crown Office Rules, 1906, an application for prohibition in civil proceedings on the Crown side shall be made by motion for an order *nisi*, or by summons before a judge at chambers. It may be made absolute *ex parte* in the first instance, on special circumstances being shown, in the discretion of the court or judge (*ib.*, r. 71). Order LIX. r. 8*a* of the R. S. C., which required that the application should be made by notice of motion, and not for an order *nisi*, is repealed (see Crown Office Rules, 1906, r. 1). The application cannot be made to a master or district registrar (R. S. C., Order LIV. r. 12(*d*); Order XXXV. r. 6). No notice of the application must be served on the judge of the county court (*King v. Charing Cross Bank*, (1889) 24 Q. B. D. 27; 59 L. J. Q. B. 24).

Affidavits.

The application should be made on affidavit, but the court or judge may, on the application of either party, order the attendance of the deponents for cross-examination (*Harte v. Byrne*, (1851) 1 Ir. C. L. R. 557; it is assumed that an affidavit is still necessary). The affidavits must be intitled, "In the High Court of Justice, King's Bench Division" (Cr. Off. R. 1906, r. 6; the separate Crown Office Rules as to affidavits have mostly disappeared, and by R. S. C., Order LXVIII. r. 2, and Cr. Off. R. r. 5. Order XXXVIII. of the R. S. C. as to affidavits also applies to civil proceedings on the Crown side, and the rules of that order must be followed), and not in any cause or matter. If affidavits are objected to on showing cause for a defect of this kind the court would not generally allow them to be corrected and re-sworn (*Ex parte Evans*, (1842) 2 Dowl. N. S. 410; *R. v. Plymouth Rail. Co.*, (1889) 37 W. R. 334, *sed quære*). The affidavit must be drawn up in the first person, and divided into paragraphs, and every paragraph must be numbered consecutively, and as nearly as may be must be confined to a distinct portion of the subject. It must be written or printed bookwise (R. S. C., Order XXXVIII. r. 7). The application being, it is believed, in a sense interlocutory, the affidavit may contain statements as to the belief of the deponent as to facts deposed to, but the ground of belief must then be stated (R. S. C., Order XXXVIII. r. 3).

The affidavit must state clearly and distinctly the facts which show that the application ought to be granted, and should show affirmatively that the court has gone beyond its jurisdiction. So where the judge has jurisdiction to inquire into the objection it must be shown that it was substantiated (*Kimpton v. Willey*, (1850) 1 L. M. & P. 280; 19 L. J. C. P. 269; 82 R. R. 515, *per Wilde*, C.J.).

Hearing.—Except by order of a judge of the High Court, the county court judge is not required to appear or be heard on any of the proceedings, nor is he without such order liable to pay the costs of them. The application is to be proceeded with and heard as if it were an appeal (see sect. 128).

When a divisional court or a judge has refused a prohibition no other court or judge may grant it; but a second application may be made to the same court or judge on different grounds (see sect. 132).

When the writ is granted the grounds for granting it should appear in the writ (for form of prohibition, see R. S. C., Appendix J., No. 11). The whole matter is disposed of by order, and no declaration or other proceedings

in prohibition allowed (see sect. 128). Costs appear to be in the discretion of the court (*Wallace v. Allen*, (1875) L. R. 10 C. P. 607; 44 L. J. C. P. 351; *R. v. Justices of County of London* (C. A.), (1894) 1 Q. B. 453; 63 L. J. Q. B. 148).

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Appeal.—The order of a judge granting or refusing a prohibition may be appealed against in the ordinary way, by motion within eight days (*post*, sect. 132; see Annual Practice, notes to Order LIV. r. 24, R. S. C.). The appeal from a judge at chambers in prohibition proceedings is in the first instance to the divisional court (*Watson v. Petts*, (1899) 1 Q. B. 54 (C. A.); 67 L. J. Q. B. 971). An appeal lies from a divisional court to the Court of Appeal (Supreme Court of Judicature (Consolidation) Act, 1925, sect. 27; *The Recepta* (C. A.), (1893) P. 255; *Davis v. Flagstaff Co.*, (1877) 3 C. P. D. 228; 62 L. J. P. 118; 47 L. J. C. P. 503). The practice is regulated by Order LVIII., R. S. C. (see Cr. Off. Rules, r. 206). No leave is requisite even since the Act of 1888 (*Lister v. Wood* (C. A.), (1899) 23 Q. B. D. 229; 37 W. R. 738). From the Court of Appeal an appeal lies to the House of Lords (39 & 40 Vict. c. 59, s. 3). As to practice, see Annual Practice, notes to Appellate Jurisdiction Act, 1876, s. 3.

Setting aside Writ.—A writ of prohibition issued out of the Petty Bag Office in vacation on an *ex parte* affidavit, disclosing no sufficient ground of prohibition, could be set aside on motion in a divisional court or by a judge at chambers. It is no answer to such an application, that the solicitor of the applicant has not entered his name and address in a book at the Petty Bag Office as required by the 12 & 13 Vict. c. 109, s. 44. But a prohibition issued out of the Petty Bag Office, which upon its face appears to be regular, and which contains a good ground for prohibition, could not be set aside though issued *ex parte*.

The last part of s. 22 of the County Courts Act, 1850, enabling the court to set aside the writ, is not re-enacted in sect. 127 of the principal Act; the intention apparently being to require a dissatisfied party to appeal, not to apply to set aside the writ.

Effect of, on Proceedings in County Court.—The granting of an order *nisi* or summons for a prohibition will, if the court or a judge so direct, operate as a stay of proceedings in the action or matter until the determination of the order or summons, or until the court or judge otherwise orders, and the judge of the county court must adjourn the trial. If, however, a copy of the order or summons is not served by the party who obtained it on the opposite party, and on the registrar of the county court, two clear days before the day fixed for the trial, the judge of the county court may order the party who obtained it to pay the costs of the day or part of them, unless the High Court or judge has made some order respecting them (see sect. 129).

Where a writ of prohibition has been granted *ex parte*, and the party who obtained it does not lodge it with the registrar, and give notice to the opposite party that it has issued two clear days before the return day, the judge of the county court may order him to pay the costs of the day or part of them; unless the High Court or judge has made some order respecting them (see sect. 130).

Vexatious Actions.—Though not strictly prohibition, sect. 51 of the Supreme Court of Judicature (Consolidation) Act, 1925 (re-enacting the Vexatious Actions Act, 1896), may here be noticed. This section provides that if the Attorney-General satisfies the High Court that any person has habitually and persistently instituted vexatious legal proceedings without any reasonable ground, whether in the High Court or in an inferior court, and whether against the same or different persons, the High Court may, after hearing such person or giving him an opportunity of being heard, and after assigning counsel if through poverty the person is unable to retain counsel, order that no legal proceedings shall be instituted by that person in the High Court or any other court without leave of the High Court or a judge thereof. The

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Prohibition
finally dis-
posed of by
order.
19 & 20 Vict.
c. 108, s. 42.

order is to be published in the *London Gazette*. The section has no application to criminal proceedings (*In re Boaler*, (1915) 1 K. B. 21 ; 83 L. J. K. B. 1629).

128. When an application shall be made to the High Court or a judge thereof for a writ of prohibition addressed to any court, the matter shall be finally disposed of by order, and no declaration or further proceedings in prohibition shall be allowed. Upon any such application the judge of the court shall not be served with notice thereof, and shall not, except by the order of a judge of the High Court, be required to appear or be heard thereon, and shall not, except by such order, be liable to any order for the payment of the costs thereof; but the application shall be proceeded with and heard in the same manner in all respects as any case of an appeal duly brought from a decision of a judge; and notice thereof shall be given to or served upon the same parties as in any case of an order made or refused by a judge in a matter within his jurisdiction, as the case may be.

Order to
show cause
as to cer-
tiorari or
prohibition
a stay of
proceedings
if High Court
so direct.
19 & 20 Vict.
c. 108, s. 40.

129. The grant by the High Court, or by any judge thereof, of an order or summons to show cause why a writ of certiorari or prohibition should not issue to any court shall, if the High Court or a judge thereof so direct, operate as a stay of proceedings in the action or matter to which the same shall relate, until the determination of an order or summons, or until such High Court or judge thereof shall otherwise order; and the judge shall from time to time adjourn the trial of such action or matter to such day as he shall think fit, until such determination, or until such order be made; but if a copy of such order or summons shall not be served by the party who obtained it on the opposite party and on the registrar two clear days before the day fixed for the trial of the action or matter, the judge may, in his discretion, order the party who obtained the order or summons to pay all the costs of the day, or so much thereof as he may think fit, unless the High Court or a judge thereof shall have made some order respecting such costs.

Costs of
certiorari or
prohibition
if not sent
to registrar.
19 & 20 Vict.
c. 108, s. 41.

130. Where a writ of certiorari or of prohibition to a court shall have been granted by the High Court or a judge thereof on an ex parte application, and the party who obtained it shall not lodge it with the registrar, and give notice to the opposite party that it has issued, two clear days before the day fixed for the trial of the action or matter to which it shall relate, the judge may, in his discretion, order the party who obtained the writ to pay all the costs of the day, or so much thereof as he shall think fit, unless the High Court or a judge thereof shall have made some order respecting such costs.

131. No writ of mandamus shall issue to a judge or an officer of the court for refusing to do any act relating to the duties of his office, but any party requiring such act to be done may apply to the High Court, upon an affidavit of the facts, for an order or summons calling upon such judge or officer of the court, and also the party to be affected by such act, to show cause why such act should not be done; and if after the service of such order or summons good cause shall not be shown, the High Court may, by order, direct the act to be done, and the judge or officer of the court, upon being served with such order, shall obey the same on pain of attachment; and, in any event, the High Court may make such order with respect to costs as to it shall seem fit.

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Order in
lieu of
mandamus.
19 & 20 Vict.
c. 108, s. 43.
21 & 22 Vict.
c. 74, s. 4.

The proceedings by means of which the judge or the officers of a county court may be compelled to exercise their jurisdiction will now be explained. The common law remedy was by writ of mandamus, issued from the Court of King's Bench, ordering the performance of the neglected duty; but, so far as it applied to any judge or officer of a county court, a simpler proceeding by order has been substituted (sect. 131). The same principles, however, which governed the grant of a mandamus govern the grant of the order (*Irving v. Askew* (1), (1869) 20 L. T. 584). Still it would doubtless be granted to compel a judge to hear a plaint entered under the jurisdiction given to him in certain equity matters.

In considering the question whether the order will lie, the following considerations, applicable to the grant of a mandamus at common law, are, it is conceived, equally applicable to the grant of the order:—

1. *The writ is a high prerogative writ, and is not granted of right, ex debito justitiæ*: see Tapping on Mandamus, p. 4, note (a): "By the term 'prerogative writ' is meant either firstly, that the power to award it is not delegated by the Crown to the ordinary judges between party and party—that is, the justices of Common Bench—but is reserved for that court in which the Queen is supposed to be personally present; or, secondly, that such a writ is one of grace and favour granted according to discretion upon probable cause shown, and not a writ of right; that is, not such a writ as the subject has a right to call upon the court to issue under the clause of Magna Charta, by which the Queen is bound not to refuse or delay justice or right."

So, although the court will generally grant the order where there is a good ground for its interference, it will, nevertheless, exercise a discretion, and if the circumstances are such as to show a kind of equitable reason why the order should not go, it will refuse it. So, where a judge acted under a particular impression as to a point of law, in a case involving a small amount, and the effect of granting a rule would have been to give the party moving an indirect appeal, when the statute had forbidden a direct one, the rule was refused (*Brown v. Taylor*, (1868) 18 L. T. 657; see *Sharrock v. L. & N. W. Rail. Co.* (C. A.), (1876) 1 C. P. D. 70; *Clarke v. Roche* (3), (1877) 36 L. T. 727). So, where a motion by way of appeal was refused, on the ground that the point relied on had not been made at the trial in such a way as to cause the judge to make a note of it, and the appellant afterwards applied for a rule to the judge to state a case, the court refused it (*Rhodes v. Liverpool Investment Co.*, (1879) 4 C. P. D. 425). The effect of their granting it would, in fact, have been to give two appeals instead of one. And the court will not compel a judge or officer to do that which might bring him in peril of an action (see *per* Lord Campbell, C.J., *R. v. Dowling*, (1853) 2 E. & B. 196, 204; 22 L. J. Ch. 295). And it seems that the order will not be granted to compel an act to be done under circumstances in which prohibition would lie (*Brown v. L. & N. W.*

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Rail. Co., (1863) 32 L. J. Q. B. 318, 319, *per* Blackburn, J.). Nor will the order be granted unless applied for in a reasonable time; where more than twelve months had elapsed, the court refused a rule (*Coke v. Jones*, (1861) 4 L. T. 306; 9 W. R. 618).

2. Two circumstances must concur to justify the grant of the order—viz., a specific legal right to the performance of the act required to be done, and the absence of an effectual remedy (Com. Dig., Mandamus A; *R. v. Windham*, (1776) 1 Cowp. 377, *per* Lord Mansfield, C.J.; *R. v. Bristol Dock Co.*, (1810) 12 East, 429; 11 R. R. 440; *R. v. Nottingham Water Co.*, (1837) 6 A. & E. 355; 6 L. J. (N. S.) K. B. 89; 45 R. R. 484; *R. v. Garland*, (1870) L. R. 5 Q. B. 269, 272; 39 L. J. Q. B. 86).

Thus the courts have always refused to issue a mandamus where the ordinary remedy by action at law was adequate to enforce the legal right in question, though it was sometimes granted where an indictment might have been preferred, the test being whether mandamus or indictment was the more effectual remedy (*R. v. Hull Rail. Co.*, (1844) 6 Q. B. 70; 13 L. J. Q. B. 257; *R. v. Hopkins*, (1841) 1 Q. B. 161, 168; 10 L. J. Q. B. 63; 55 R. R. 235; *R. v. Severn Rail. Co.*, (1819) 2 B. & A. 646; 21 R. R. 433; *Ex parte Robins*, (1839) 3 Jur. 103; 54 R. R. 859). Nor was the writ granted where a statute prescribed another particular remedy for the non-performance of the act sought to be performed (*Stevens v. Evans*, (1761) Burr. 1157, *per* Dennison, J.; *R. v. Margate Pier Co.*, (1819) 3 B. & A. 220; 22 R. R. 356; *R. v. Reg. of Joint Stock Cos.*, (1888) 21 Q. B. D. 131; 57 L. J. Q. B. 433).

Hence it is apprehended that the order will be granted to the judge or officer of a county court to compel him to perform any act to which the person seeking the remedy is clearly by law entitled; but it is open to doubt whether, in those cases in which a particular remedy has been specified for neglect to do a particular act, the order will be granted. Thus particular provisions are made in case of the neglect of the bailiff of a foreign district to make a return to a summons sent to him for service, and of the neglect of a bailiff to levy execution. In such cases it is believed that the court would not grant the order, unless it could be shown that the applicant would not obtain an equivalent by the process specified. It will, however, lie to compel the judge to hear and determine an action to recover from a bailiff who has distrained for poor rates so much of his charge as is unreasonable, the remedy of the person aggrieved not being confined to an application to justices under sect. 2 of the Distress (Costs) Act, 1817 (*R. v. Philbrick*, (1905) 2 K. B. 108; 74 L. J. K. B. 464).

The court will not grant the order to compel a judge to hear a plaint over which he has no jurisdiction (*Brown v. L. & N. W. Rail. Co.*, (1863) 32 L. J. Q. B. 318; *Ex parte Payne*, (1849) 5 D. & L. 679; 18 L. J. Q. B. 197; 79 R. R. 892), nor will it interfere in a matter clearly within his discretion, if he has really exercised it (*Clifton v. Furley*, (1861) 7 H. & N. 783; 31 L. J. Ex. 170; 126 R. R. 703); but if he has acted in accordance with a general rule, made for the guidance of himself and his officers, and has not exercised his discretion otherwise than by applying that general rule, an order will lie (*R. v. Marylebone C. C.*, (1890) 34 S. J. 459). Where there is a clear right to the performance of an act the order will go, although the judge or officer has acted under a mistake of law, or a misapprehension of his duty; e.g., to compel a registrar to issue a summons under the "Bills of Exchange Act" (*R. v. Southampton C. C.* (2), (1892) 61 L. J. Q. B. 706; *Holborow v. Jones*, (1869) *per* Smith, J., L. R. 4 C. P. 14; 38 L. J. C. P. 22), and to issue execution under a judgment (*R. v. Fletcher*, (1853) 2 E. & B. 279; 21 L. J. Q. B. 310; 95 R. R. 544; S. C., *R. v. Surrey C. C.*, 21 L. J. Q. B. 310). Where a judge wrongly decides a preliminary question, and refuses to go into the merits, the order will be granted; as in interpleader issues which he refuses to hear, upon the erroneous ground that the particulars are insufficient (*R. v. Richards*, (1851) 2 L. M. & P. 263; 20 L. J. Q. B. 351;

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86 R. R. 898; *Churchward v. Coleman*, (1866) L. R. 2 Q. B. 18; 36 L. J. Q. B. 57; see also *R. v. Southampton C. C.*, (1891) 65 L. T. 320).

The order will lie to compel a judge to hear a cause sent for trial from the High Court (*Blades v. Lawrence*, (1874) L. R. 9 Q. B. 374; 43 L. J. Q. B. 133), and to try a cause by jury where there is a right to a jury, and due notice for it has been given (*R. v. Harwood*, (1853) 1 B. C. C. 144; 22 L. J. Q. B. 127; 94 R. R. 860). Where a judge refused to receive the verdict of a jury, a rule was granted to show cause why the verdict should not be received and entered (*Jardine v. Smith*, (1860) 8 W. R. 464).

Where, during the hearing of an action of trespass, the parties agreed to withdraw a juror, and to abide by the decision of the judge after viewing the premises, and before the judge delivered his decision the defendant withdrew his consent, a rule was granted ordering the judge to appoint a day for the rehearing of the cause, on the ground that the repudiation of the defendant was a repudiation of the whole agreement, and that the cause must be heard *de novo* (*Norburn v. Hilliam*, (1869) L. R. 5 C. P. 129; 39 L. J. C. P. 183).

3. *Though the writ will lie where that has not been done which a statute orders to be done, it will not be granted for the purpose of undoing what has been done* (*per Lord Campbell, C.J., Ex parte Nash*, (1850) 15 Q. B. 92, 95; 19 L. J. Q. B. 296, 297; 81 R. R. 520); *so it will not lie where an inferior court has decided in a particular case unjustly or improperly* (*R. v. Justices of Worcestershire*, (1854) 3 E. & B. 477; 23 L. J. M. C. 113; 97 R. R. 607; *Sturgis v. Joy* (1853) 2 E. & B. 739, 740).

If the judge of a county court abstains from entering upon the merits of a case, in consequence of wrongly deciding a preliminary point upon which his jurisdiction depends, he may be set right, as has been already shown above, by an order to hear the case; but if he enters upon the hearing of a case, and decides it, however erroneously, the order will not be granted (see *per Coleridge, J., R. v. Richards*, (1851) 20 L. J. Q. B. 352; 86 R. R. 898; and *per Erle, J., Ex parte Milner*, (1851) 15 Jur. 1037). He is then *functus officio*; and the remedy for his error is by appeal, or in some cases by prohibition. Where an insolvent (before the late Bankruptcy Acts) filed a petition in a county court, and obtained an order for protection until his last examination, and afterwards applied to withdraw the petition, but the judge refused to allow him to do so, and adjourned the examination *sine die*, the court held that it had no power to compel him by rule to remove the petition from the file, or dismiss it, or name a day for the examination (*In re Corbett*, (1859) 4 H. & N. 452; 28 L. J. Ex. 254; 118 R. R. 549). Where a judge refused to hear witnesses tendered by the plaintiff, and he in consequence elected to be nonsuited, the court refused the rule, holding that whilst the nonsuit stood it left the judge no case on which he could be compelled to act (*Fortescue v. Paton*, (1860) 3 L. T. 268). So, where a judge, after hearing the plaintiff's case, and during the examination of the defendant's witnesses, discharged the jury, and directed a nonsuit to be entered, the court, regretting they had not the power, held that they could not grant the rule (*Kershaw v. Chantler*, (1868) 26 L. T. 474). So a rule was refused to order a judge to review a taxation of costs, the court holding that it was within the judge's discretion, and could not be reviewed by rule (*Clifton v. Furlley*, (1861) 7 H. & N. 783; 31 L. J. Ex. 170; 126 R. R. 703). The decision may also be supported as being within the principle of the present rule, the refusal of the order to review being a decision upon the whole matter before the judge.

4. *A mandamus is never granted unless there has been a distinct demand for the performance of that which it is the object of the mandamus to enforce, and a direct refusal, either in terms or by circumstances which show an intention to withhold from doing the act required* (*R. v. Bristol Rail. Co.*, (1843) 4 Q. B. 162; 12 L. J. Q. B. 106; *R. v. Brecknock Co.*, (1835) 3 A. & E. 217; 4 L. J. M. C. 105).

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Hence, if the judge or officer of a county court absolutely refuses to do the duty to the performance of which the applicant is entitled, the court will grant the order (*Ex parte Furber*, (1858) 3 H. & N. 521; 27 L. J. Ex. 453; 117 R. R. 836); but a mere qualified and temporary refusal, as by suggesting an adjournment with a view to an arrangement, is an insufficient refusal (*Irving v. Askew* (1), (1869) 20 L. T. 584); so is an offer by the judge to deal with the case, though not in the form desired by the plaintiff (*Reg. v. Pontypool C. C. Judge*, (1894) 63 L. J. Q. B. 702).

5. *The remedy by mandamus cannot be extended to cases to which it does not by law extend, though the parties waive the objection* (see *per Lord Campbell, C.J., R. v. Lords of Treasury*, (1851) 16 Q. B. 357, 359; 20 L. J. Q. B. 305; 83 R. R. 495).

Practice.—The application for an order in the nature of a mandamus to a county court judge must be by *ex parte* motion for an order *nisi* (Cr. Off. Rules, 1906, rr. 49, 69) on affidavit of the facts (see sect. 131). The judge of the City of London Court is not exempt from these provisions (*Blades v. Lawrence*, (1874) L. R. 9 Q. B. 374; 43 L. J. Q. B. 133). Where the act to be done is not within the judge's "ordinary jurisdiction," it has been held that a mandamus is the proper remedy, not an order, under these provisions; as when by an Act of Parliament the judge was appointed to decide certain disputes, and he refused to do so (*Re Brighton Sewers Act*, (1882) 9 Q. B. D. 723).

The order is applied for during the sittings in a divisional court of the King's Bench Division, by motion for a rule *nisi*, and in the vacation where urgent by summons to a judge in chambers to show cause, and the proceedings are on the Crown side (see Cr. Off. Rules, rr. 49, 69). The order cannot be granted out of vacation by a single judge whether sitting in court or at chambers (see *Clarke v. Roche* (1), (1877) 35 L. T. 705; 25 W. R. 309). The application should be made in a reasonable time. When more than twelve months had elapsed the court refused a rule (*Coke v. Jones*, (1861) 4 L. T. 306; 9 W. R. 618).

Affidavit.—The affidavit upon which the order is moved should be intitled "In the High Court of Justice, King's Bench Division" (Cr. Off. Rules, r. 6, which see (with R. S. C., Order XXXVIII.) as to affidavits, and see *ante*, note on p. 164), but not in any action or matter. It should state such facts as show that the order ought to be granted; and, possibly, should also state, in compliance with Rule 65 of the Crown Office Rules, that the motion is made at the deponent's instance "as prosecutor" (see *Ex parte Young*, (1892) 37 S. J. 67). The order is not absolute in the first instance: It should call on the judge or officer of the county court, and the party affected to show cause. It should be served on the parties called on to show cause (see sect. 131). The party showing cause must take an office copy of the order and the affidavits on which it was moved, otherwise he cannot be heard. The affidavits used in showing cause should be intitled in the manner above described (Cr. Off. Rules, r. 6).

The want of the affidavit on the application for the order is an irregularity only; and it is too late for a judge, who fails to attend the argument, after the order has been made absolute and served, to object to the irregularity (*Ex parte Furber*, (1858) 3 H. & N. 521; 27 L. J. Ex. 453; 117 R. R. 836).

Costs.—Where the order is granted to correct the decision of the judge upon some preliminary matter, the courts differed as to their power to reverse the order of the county court as to costs, the Exchequer having held that they could deal with them (*Whitehead v. Proctor*, (1858) 3 H. & N. 532; 117 R. R. 843), the Queen's Bench that they could not (*Churchward v. Coleman*, (1866) L. R. 2 Q. B. 18; 36 L. J. Q. B. 57). The costs of the order are in the discretion of the court, and may be granted to the applicant if the court thinks fit, though not asked for in the order (sect. 131; *Norburn v. Hilliam*, (1869) L. R. 5 C. P. 129; 39 L. J. C. P. 183). No order as to costs can be made if the application for the order be made to a

court or judge having no jurisdiction to grant it (*Brown v. Shaw*, (1876) 1 Ex. D. 425). See further Cr. Off. Rules, rr. 66, 67.

Appeal.—An appeal lies to the Court of Appeal under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 27 (*Sharrock v. L. & N. W. Rail. Co.* (C. A.), (1876) 1 C. P. D. 70; *Morgan v. Rees* (C. A.), (1881) 6 Q. B. D. 508; 50 L. J. Q. B. 491; *Clarke v. Roche* (3), (1877) 36 L. T. 727; as to the practice, see Annual Practice, notes to Order LVIII. r. 1, R. S. C.). Where a party had failed to pay costs which he had been ordered to pay, the Court of Appeal ordered an appeal to be stayed until security for costs had been given (*Clarke v. Roche* (2), (1877) 46 L. J. Ch. 372; 36 L. T. 78).

An appeal lies from the Court of Appeal to the House of Lords (39 & 40 Vict. c. 59, s. 3; as to the practice, see Annual Practice, notes to Appellate Jurisdiction Act, 1876, s. 3).

How Order enforced.—If the order be made absolute, it should be drawn up and served. If not obeyed, it is enforced by attachment (sect. 131; *Ex parte Furber*, (1858) 3 H. & N. 521).

Attachment for Contempt of Court generally.—A trustee cannot be attached unless the money ordered to be paid has at some time been in his possession or control (*Middleton v. Chichester*, (1871) L. R. 6 Ch. 152; 40 L. J. Ch. 237); so if ordered to pay the difference between the value of securities sold by him and their market value he is not liable to attachment in case of default (*Re Walker*, (1891) 60 L. J. Ch. 25). If an ordinary common law judgment be obtained for misapplied trust moneys, and execution be levied, no order to attach can be made, even if the amount recovered be insufficient to satisfy the judgment (*Drewitt v. Edwards* (C. A.), (1877) 26 W. R. 122).

An order can be made against a trustee even if between the date of the order to pay and the date of the application to attach a receiving order is made against him (*Re Edye*, (1891) 39 W. R. 198; 63 L. T. 762; *Re Smith* (C. A.), (1893) 2 Ch. 1; 62 L. J. Ch. 336).

The person in default is liable to attachment, even though his official position may be at an end, when the order to pay is made (*Re Strong* (C. A.), (1886) 32 Ch. D. 342; 55 L. J. Ch. 553; *Re Gent*, (1889) 40 Ch. D. 190; 58 L. J. Ch. 162).

Under the second class of cases above mentioned it was held that default by a solicitor to pay the costs of an order to deliver up certain documents and to pay costs rendered the solicitor liable to attachment (*In re Freston* (C. A.), (1883) 11 Q. B. D. 545; 52 L. J. Q. B. 545); but where an order had been made against a solicitor for delivery and taxation of his bill of costs, and he unsuccessfully appealed, and was ordered to pay the costs of appeal, it was held that default in payment of such costs did not render him liable to attachment (*In re Hope*, (1872) L. R. 7 Ch. 523; 20 W. R. 694). He may be attached even if he has become bankrupt (*Re Edye*, (1891) 39 W. R. 198).

An interlocutory order for payment of money into court may, if the case be within sect. 4 of the Debtors Act, 1869, be enforced by attachment before the trial (*Hutchinson v. Hartmont*, W. N. (1877) 29 (M. R.)), subject, however, to the provisions of the Debtors Act, 1878, s. 1. See *post*, p. 27.

Practice.—To found an application for an attachment it is essential that a sealed copy of the order which gives rise to the application should first have been duly served (Order XXV. r. 58), and even after such service the attachment can be obtained by express order of the court only (*Abud v. Riches* (M. R.), (1870) 2 Ch. D. 528; 45 L. J. Ch. 649). The order requiring the act to be done must state the time, or the time after its service, within which the act is to be done (Order XXIII. r. 9).

The order sought to be enforced, if final, having been settled by the registrar and sealed and filed (Order XXIII. r. 4), or, if interlocutory, sealed and filed by the registrar (Order XII. r. 8) as already described, the party entitled to the benefit of it must apply to the registrar.

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must then issue for service to the bailiff a sealed copy of the order, indorsed with a notice in the prescribed form (Form 346). The copy and notice may, if the party desires it, by leave of the registrar, be issued for service to the solicitor of the party entitled, and may then be served by any person by whom a default summons may be served under Order VII. r. 33 (Order XXV. r. 58). When so issued for service to a solicitor it seems that he ought to make all necessary copies, and present them to be sealed to the registrar (Order LIV. r. 5). It is not clear whether the costs of service by solicitor will be allowed.

If no order to serve by solicitor be made, service must be by bailiff. Service must in all cases be personal, unless the judge makes an order for substituted service pursuant to Order VII. r. 40 (Order XXV. r. 58).

If the person bound by the order fails to obey it, application may be made to the registrar, not less than three days after service of the copy order and notice, or by leave of the judge at an earlier period, and the registrar must then issue for service a notice under the seal of the court (Form 347) requiring the person who has failed to obey the order to appear on a day named therein to show cause why he should not be committed for his contempt. This notice must be served personally, or under an order for substituted service in the same manner as the order and notice (Order XXV. r. 59).

On the day named in the notice, the judge, on proof of service of the copy order duly indorsed and of the notice mentioned in the last paragraph, and of the disobedience of the person in default, may order (Form 348) a warrant of attachment to issue, unconditionally or on terms. He may also make such order as to costs as he thinks fit. The warrant will then issue without further notice, but the order of the judge must be drawn up and a sealed copy served before or at the time of execution, unless the judge otherwise orders. No proof of service of the copy order or notice will be necessary if the party appears (Order XXV. rr. 60, 61; Form 349; as to the prison, see sect. 163, *post*, p. 221).

The order must set out the particular ground of committal, in order that the person committed may know exactly what he ought to do to purge his contempt (*R. v. Lambeth C. C.* (2), (1887) 36 W. R. 475). The warrant authorises the high bailiff to take the body of the person in default, and all constables and peace officers in their jurisdiction must aid in its execution, and the governor of the prison must receive and keep such prisoner until duly discharged (sect. 161, *post*, p. 219).

Arrest.—The officer charged with the execution of a writ of attachment for contempt may break open the outer door of the house in order to execute it (*Harvey v. Harvey*, (1884) 26 Ch. D. 644).

Discharge from Custody.—A person who has purged his contempt may apply to the registrar to be discharged, unless in the order for his committal it is directed that the application shall be made to the judge. He must give two clear days' notice to the other party of his intention to make the application, and must file an affidavit showing that he has cleared or is desirous of clearing his contempt (Order XXV. r. 63; Form 350). If application to the judge was directed, it must be made accordingly, the same practice being followed. The judge may hear the application at any place which he may appoint (Order XXV. r. 62; Form 351). On the return, the judge or registrar, as the case may be, can now, by virtue of the Debtors Act, 1878 (41 & 42 Vict. c. 54), s. 1, in case of failure to purge the contempt by paying money, inquire into the case, and exercise a judicial discretion in deciding whether or not the prisoner should be kept in custody. This was not the case before the Act just cited (*Ransom v. Boyd*, (1877) W. N. 236). In other cases of contempt not purged the discharge cannot generally be granted. An appeal would possibly lie from the registrar to the judge. If the judge or registrar declined to hear the application, an order in the nature of a mandamus would lie (*ante*, sect. 131); but if the case were decided on the merits and the discharge refused, there would appear to be no remedy except perhaps by *habeas corpus* from the High Court.

Injunctions (see Order XXIII. r. 15).]—The remedy for breach of an injunction, whether final or interlocutory, is in the High Court by attachment or sequestration (see *Spokes v. Banbury Board*, (1865) L. R. 1 Eq. 42; 35 L. J. Ch. 105); but although there seems to be no reason why a county court judge should not have jurisdiction to order a writ of sequestration, no provision has been made for it by the rules. The power of the county court judges to attach has been confirmed by express decision (*Martin v. Bannister* (C. A.), (1879) 4 Q. B. D. 491; 48 L. J. Q. B. 676).

Mandamus (see *supra*).]—Final and interlocutory orders of mandamus may, it is conceived, so long as they are not orders to pay money within the provisions of the Debtors Acts, be enforced by attachment.

Receivers (see Order XIII.).]—A receiver is, from his position as a quasi-officer of the court, directly under its control, and is, for the purpose of orders for payment of money, treated as a person in a fiduciary position (*Sprunt v. Pugh* (M. R.), (1878) 7 Ch. D. 567). Obedience to the orders of the court, subject to the Debtors Acts, may be enforced by attachment.

132. When the High Court or a judge thereof shall have refused to grant a writ of certiorari or prohibition to a court, or any such order as in the last preceding section mentioned, no other court or judge shall grant such writ or order; but nothing herein shall affect the right of appealing from the decision of the judge of the High Court to the High Court itself, or prevent a second application being made for such writ or order to the High Court or a judge thereof on grounds different from those on which the first application was founded.

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No judge to grant writ or order once refused.
19 & 20 Vict. c. 108, s. 44.

Second Application.]—When application for the order has been made, and refused, a second application may be made on grounds different from those on which the first application was founded (*supra*).

This section only applies to proceedings in the High Court, and prevents an application to another judge of the High Court or to another divisional court, when the first judge, or divisional court, has refused to grant the writ; it does not forbid an appeal to the Court of Appeal from the refusal of the High Court to grant a writ of prohibition (*The Recepta*, (1893) P. 255; 62 L. J. P. 118).

PART VI.

REPLEVIN; RECOVERY OF TENEMENTS.

133. All actions of replevin which shall be brought in the court shall be brought by plaint, and in every such action the plaint shall be entered in the court of the district where the goods were seized.

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Actions of replevin may be brought by plaint.

Nature of Action.]—Replevin is a re-delivery to the owner of cattle or goods which have been wrongfully distrained or taken from him, upon surety that he will pursue an action against him who distrained (Co. Lit. 145 b; Bac. Ab. "Replevin").

9 & 10 Viet c. 95, ss. 119, 120.

It lies in nearly every case of an alleged wrongful taking of cattle and goods (Com. Dig. "Replevin"; *George v. Chambers*, (1843) 11 M. & W. 149; 12 L. J. M. C. 94; 63 R. R. 554; *Allen v. Sharp*, (1848) 2 Exch. 352; 17 L. J. Ex. 209; 76 R. R. 621; *Mellor v. Leather*, (1853) 1 E. & B. 619; 22 L. J. M. C. 76; 93 R. R. 310). The taking is essential in replevin. Although trover or detinue will lie for the wrongful withholding of goods after a demand by the owner, replevin will not lie in such a case (*Mennie v.*

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Registrar
to grant
replevins.

19 & 20 Vict.
c. 108, s. 64.

Blake, (1856) 6 E. & B. 842; 25 L. J. Q. B. 399; 106 R. R. 822). See as to remedies for wrongful distress, *post*, p. 974.

Proceedings in the county court under the County Courts Act, 1856, could formerly be had only in the two most ordinary cases; viz., of distress for rent and damage feasant. Now, however, the court has exclusive jurisdiction in *all* cases of replevin, irrespective of amount and no matter what question of title is raised, unless the steps for removal of the plaint by *certiorari*, noticed presently, have been taken (*R. v. Raines*, (1853) 1 E. & B. 855; 22 L. J. Q. B. 223; 93 R. R. 442; *Fordham v. Akers*, (1864) 4 B. & S. 578; 33 L. J. Q. B. 67; 129 R. R. 860).

134. The sheriff shall have no powers and responsibilities with respect to replevin bonds and replevins; but the registrar of the court of the district in which any goods subject to replevin shall be taken, shall be empowered, subject to the regulations hereinafter contained, to approve of replevin bonds, and to grant replevins, and to issue all necessary process in relation thereto, and such process shall be executed by the bailiff. Such registrar shall, at the instance of the party whose goods shall have been seized, cause the same to be replevied to such party, on his giving one or other of such securities as are mentioned in the next two succeeding sections.

Proceedings before Plaintiff.—Formerly the sheriff was the proper officer to re-deliver goods sought to be replevied, and he, upon complaint made to him, was bound to replevy without writ (Stat. Marlebridge; 2 Inst. 139).

The registrar of the county court of the district in which any distress subject to replevin may be taken must now approve of replevin bonds, grant replevins, and issue all necessary process in relation to them; and the process must be executed by the bailiff (sect. 134, *supra*).

No ill consequences will arise to the registrar upon granting a replevin where the goods are not replevisable, except where the goods are distrained under a judgment of a court or a conviction before justices, in which cases the registrar would be liable to an attachment (Bull. N. P. c. 4, p. 53).

The person whose goods have been seized, in order to recover them, is bound to give security for the due prosecution of an action of replevin against the person who has distrained. The security may be by deposit of money or by bond (sects. 108, 109, *ante*, p. 129; Forms 287, 288); and upon the security being completed, the goods will be restored to the claimant. To effect this purpose, immediately after the distress has been put in, or at the latest, before sale, the claimant must give notice of his intention to replevy to the registrar of the county court of the district in which the cattle or goods have been seized. He must also state whether the action of replevin is to be commenced in a county or in the High Court, and must name the persons whom he proposes as his sureties (see Form 235), if he intends to give a bond, or state his willingness to deposit money, if he intends to give security in that way. The registrar then gives notice to the seizer (Form 286; replevin bonds now require to be stamped, as the exemption from duty is not continued by the Stamp Act, 1891). On the day named by the registrar in the notice, the security will be completed. The security thus required by bond or deposit will be for such an amount as the registrar may deem sufficient to cover the alleged rent or damage in respect of which the distress has been made, or if the goods have been seized otherwise than under a distress the value of the goods, and the probable costs of the action of replevin (ss. 135, 136).

If the plaintiff elect to sue in a county court, the condition of the bond or deposit will be to commence an action of replevin against the seizer in the county court of the above-named district within one month from the

date of the security, and to prosecute such action with effect and without delay and to make a return of the goods, if a return should be adjudged (sect. 136, *post*; Form 288).

If the plaintiff elect to sue in the High Court the condition will be to commence an action in the High Court within one week from the date of the security, and to prosecute such action with effect and without delay, and, unless judgment be obtained by default, to prove that he had good ground for believing that the title to some corporeal or incorporeal hereditament, the yearly rent or value of which exceeded 20*l.*, or to some toll, market, fair, or franchise was in question, or that such rent or damage or the value of the goods seized exceeded 20*l.*, and to make a return of the goods, if a return should be adjudged (see sect. 135; Form 287).

When the security has been completed, the registrar issues his warrant (see sect. 134; Form 289) to the high bailiff, directing him to replevy and deliver the goods to the claimant (called the replevisor), and the bailiff then delivers up the goods, and makes a return accordingly.

Security.—The general provisions in regard to the giving of security in county courts have already been explained; and it is conceived that the duty and responsibility of the registrar in regard to the taking of sufficient security is the same in regard to replevins as in other cases—*i.e.*, he must exercise “proper and vigilant discretion” (see the judgments in *Young v. Brompton Waterworks Co.*, (1862) 1 B. & S. 675; 31 L. J. Q. B. 14), but must not be held to warrant the sufficiency of the sureties. In other words, it is believed that the registrar could only be held responsible in damages for injury sustained by the party for whose benefit the security was taken, if he performed his duty negligently, and that negligence caused the damage (the sheriff was formerly under a heavier responsibility, but later cases seem to show that he is only bound to exercise reasonable diligence; see *Hindle v. Blades*, (1813) 5 Taunt. 225; *Sutton v. Waite*, (1823) 8 Moore, 27; *Scott v. Waithman*, (1822) 3 Stark. 168; *Plumer v. Briscoe*, (1847) 11 Q. B. 46; 17 L. J. Q. B. 158; *Jeffery v. Bastard*, (1836) 4 A. & E. 823).

The condition to prosecute the action with effect is not satisfied if the plaintiff in replevin fails in his suit (*Tunncliffe v. Wilmot*, (1847) 2 C. & K. 626; *Tummons v. Ogle*, (1856) 6 E. & B. 571; 25 L. J. Q. B. 403; 106 R. R. 714); he must prosecute his action “to a not unsuccessful determination” (*Jackson v. Hanson*, (1841) 8 M. & W. 477, 487; 10 L. J. Ex. 396; *Perreau v. Bevan*, (1826) 5 B. & C. 284; 4 L. J. (O. S.) K. B. 177). The condition to prosecute without delay is satisfied if a suit is commenced and carried regularly forward, according to the ordinary practice of the court (*Morris v. Matthews*, (1841) 2 Q. B. 293; 11 L. J. Q. B. 57), but want of due diligence may, if the defendant in replevin is prejudiced by the delay, constitute a breach of the condition (*Gent v. Cutts*, (1848) 11 Q. B. 288; 17 L. J. Q. B. 55; 75 R. R. 390; *Harrison v. Wardle*, (1833) 5 B. & Ad. 146). Where a replevisor had permitted two years to elapse without taking any steps in the replevin suit, it was held that the bond was forfeited, and that the obligee might recover, although he had not signed judgment of *non pros.* (*Axford v. Perratt*, (1828) 4 Bing. 586; 6 L. J. (O. S.) C. P. 116). If the plaintiff in replevin be hindered from prosecuting the suit with effect by the default of the defendant in replevin, the court will prevent the latter from proceeding on the bond (*Evans v. Bowen*, (1850) 19 L. J. Q. B. 8).

Proceedings in Replevin.—After the security has been completed and the goods replevied, the replevisor must proceed with his action of replevin either in a county or the High Court, according to the condition of the security.

Plaint and Summons.—The plaint must be entered in the court holden for the district wherein the goods were seized (sect. 133; and see *ante*, s. 76, as to the service of the summons). No other cause of action may be joined in the same summons (Order XXXIV. r. 1).

Particulars.—On entering the plaint, the plaintiff must in the ordinary

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manner deliver particulars (see Order VI. r. 1) specifying and describing the cattle, or the several goods and chattels taken and the distress or taking of which he complains (Order XXXIV. r. 2).

Payment into Court.]—It is believed that the plaintiff, in replevin, may pay money into court in satisfaction in accordance with the practice in the High Court. The ordinary practice in the county court applies (Order IX. r. 21).

Hearing.]—Actions of replevin in cases of rent in arrear or damage feaseance are tried like other actions, in a summary way (Order XXXIV. r. 3). Either party may demand a jury, subject to the Administration of Justice Act, 1925, s. 19, as in other cases (Order XXII. r. 3).

Title in Question.]—If the defendant takes no steps, under the provisions mentioned below, to remove the plaint into the High Court, the judge has jurisdiction to try the action, although the title to hereditaments of greater yearly rent or value than 50*l.* may be in question (*R. v. Raines*, (1853) 1 E. & B. 855; 22 L. J. Q. B. 223; 93 R. R. 442; *Fordham v. Akers*, (1864) 4 B. & S. 578; 33 L. J. Q. B. 67; 129 R. R. 860).

Defendant's Evidence.]—The defendant, or avowant, as he is commonly called, may show that the goods were not seized within the district of the court. He may also justify the seizure of the goods, by showing that they were properly distrained for rent or otherwise. In the case of distress for rent, he must show a demise at a fixed rent (*Hayward v. Haswell*, (1837) 6 A. & E. 265; 6 L. J. K. B. 116; *Knight v. Benett*, (1826) 3 Bing. 361; 4 L. J. C. P. 95; 28 R. R. 643); the amount of rent in arrear; and the value of the goods distrained (*Sheape v. Culpeper*, (1669) 1 Lev. 255). If the defendant be only bailiff, and his authority is denied, he must prove it; a recognition of his acts by the landlord will suffice, even if made after action (*Whitehead v. Taylor*, (1839) 10 A. & E. 210; 50 R. R. 385).

Where the defendant has taken the distress damage feasant, the same evidence is necessary as in trespass to real property.

Plaintiff's Evidence.]—The plaintiff may deny the tenancy, or that he holds at any rent certain (*Regnart v. Porter*, (1831) 7 Bing. 45; 9 L. J. C. P. 168; 33 R. R. 537), or show that he was holding over after notice to quit from the landlord (*Jenner v. Clegg*, (1832) 1 Moo. & R. 213; 42 R. R. 778). He may prove that the defendant's title expired before the rent became due (*Downs v. Cooper*, (1841) 2 Q. B. 256; 11 L. J. Q. B. 2; 57 R. R. 669); or that he has been evicted by his landlord or a third person claiming by title paramount (*Hopcraft v. Keys*, (1833) 9 Bing. 613; 35 R. R. 644); or that there is no rent in arrear; or that defendant's title has been barred by the Statute of Limitations (*Owen v. De Beauvoir*, (1847) 16 M. & W. 547; 82 R. R. 612); or that he has paid rent to the landlord, or under compulsion to a superior landlord, or to a mortgagee annuitant, claiming by prior title (*Taylor v. Zamira*, (1816) 6 Taunt. 524; 16 R. R. 668; *Johnson v. Jones*, (1839) 9 A. & E. 809; 8 L. J. (N. S.) Q. B. 124; 48 R. R. 714); or a tender of the amount due for rent.

Damages.]—In replevin, the jury may assess damages as in trespass (*Smith v. Enright*, (1894) 63 L. J. Q. B. 220).

Judgment.]—The judgment in replevin in ordinary cases, whether for plaintiff or defendant, is in the form prescribed (Order XXXIV. r. 3; Forms 151, 290, 291).

Assessment of Value of Goods.]—Where the distress has been for rent or for any other sum of money for which a distress may be lawfully taken, and the defendant succeeds in the action, if the defendant requires it, the judge, if the action be tried without a jury, and the jury, if the action be tried with a jury, must find the value of the goods distrained. If the value be less than the amount of rent or money in arrear, judgment must be given for the amount of such value; but if the amount of the rent or money in arrear be less than the value so found, judgment must be given for the amount of such rent or money, and it may be enforced in the same manner as any other judgment (Order XXXIV. r. 4; see Form 290).

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Assessment of Damage.]—Where the distress is for damage feasant, and the defendant is entitled to judgment for a return, if the plaintiff requires it, the amount of the damage sustained by the defendant must be found, and judgment will then be given in favour of the defendant, in the alternative, either for a return, or for the amount of the damage so found (Order XXXIV. r. 5; Form 291; see Bac. Ab. "Replevin").

Other Cases.]—In all cases of replevin other than those arising out of a seizure by way of distress, when the defendant justifies and succeeds, the judgment for the defendant will be for a return of the goods with or without costs (Order XXXIV. r. 6).

One who has replevied goods distrained, and obtained judgment in an action of replevin, cannot maintain an action for damages in respect of the taking of the goods (*Gibbs v. Cruikshank*, (1873) L. R. 8 C. P. 454; 42 L. J. C. P. 273).

Costs.]—The judge may, by special order, order costs to be taxed under columns A, B, or C of the scales; if he makes no special order they will be taxed under column B (Order LIII. r. 11).

Certiorari.]—Any action of replevin may be removed into the High Court by writ of *certiorari*, on the application of the defendant (see the practice as to the application for a *certiorari*, *ante*, sect. 126). The defendant must give security to be approved of by the master of the court, for such amount not exceeding 150*l.* as he may think fit, conditioned to defend the action with effect (see *Tummons v. Ogle*, (1856) 6 E. & B. 571; 25 L. J. Q. B. 403; 106 R. R. 714), and, unless the replevisor discontinues or does not prosecute the action or becomes nonsuit, to prove before the High Court that the defendant had good ground for believing either that the title to some corporeal or incorporeal hereditament the yearly rent or value of which exceeded 20*l.* or to some toll, market, fair or franchise was in question, or that the rent or damage in respect of which the distress was taken or the value of the goods seized exceeded 20*l.* (sect. 137, *infra*).

Appeal.]—An appeal is allowed in actions of replevin. The appeal lies as of right when the amount of rent or damage or value (see *Smith v. Enright*, (1894) 63 L. J. Q. B. 220) of the goods seized exceeds 20*l.*, and by leave of the judge in all other cases (sect. 120). The practice in regard to appeals is the same as in ordinary cases (see *ante*, sect. 120).

135. Where a replevisor shall wish to commence proceedings in the High Court he shall, at the time of replevying, give security, to be approved of by the registrar in the last preceding section mentioned, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods, and in either case the probable costs of the action in the High Court, conditioned to commence an action of replevin against the seisor in the High Court, within one week from the date thereof, and to prosecute such action with effect and without delay, and unless judgment thereon be obtained by default, to prove before the High Court that he had good ground for believing either that the title to some corporeal or incorporeal hereditament, the rent or value whereof exceeded twenty pounds by the year, or to some toll, market, fair, or franchise, was in question, or that such rent or damage, or the value of the goods seized, exceeded twenty pounds, and to make return of the goods if a return thereof shall be adjudged.

Condition of security to be given in cases of replevins commenced in High Court.
19 & 20 Vict. c. 108, s. 65.

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If the plaintiff fails in the action, the security is forfeited (*Tummons v. Ogle*, (1856) 6 E. & B. 571; 25 L. J. Q. B. 403; 106 R. R. 714).

Conditions of security to be given when replevin brought in county court. 19 & 20 Vict. c. 108, s. 66.

136. If a replevisor shall wish to commence proceedings in a county court, he shall at the time of replevying give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage in respect of which the distress shall have been made, or if the goods replevied have been seized otherwise than under colour of distress, the value of the goods, and in either case the probable costs of the action, conditioned to commence an action of replevin against the seisor in the court of the district in which the goods shall have been seized, within one month from the date of the security and to prosecute such action with effect and without delay, and to make a return of the goods if a return thereof shall be adjudged.

Replevins shall at instance of defendant be removed into High Court by certiorari in certain cases. 19 & 20 Vict. c. 108, s. 67.

137. Any action of replevin brought in the court shall be removed into the High Court by writ of certiorari, if the defendant shall apply to the High Court or to a judge thereof for such writ, and shall give security, to be approved of by a master of the Supreme Court, for such amount, not exceeding one hundred and fifty pounds, as such master shall think fit, conditioned to defend such action with effect, and unless the replevisor shall discontinue or shall not prosecute such action, or shall become nonsuit therein, to prove before the High Court that the defendant had good ground for believing, either that the title to some corporeal or incorporeal hereditament, the rent or value whereof exceeded twenty pounds by the year, or to some toll, market, fair, or franchise, was in question, or that the rent or damage in respect of which the distress shall have been taken or the value of the goods seized exceeded twenty pounds.

Possession of small tenements may be recovered in county court by landlords where term has expired or been determined by notice. 19 & 20 Vict. c. 108, ss. 50, 51.

138. When the term and interest of the tenant of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof shall have exceeded one hundred (a) pounds by the year, and upon which no fine or premium shall have been duly paid (b), shall have expired, or shall have been determined either by the landlord or the tenant by notice to quit, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may enter a plaint, at his option, either against such tenant, or against such person so neglecting or refusing, in the court of the district in which the premises lie, for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing; and if the defendant shall not at the time named in the summons, show good cause to

the contrary, then, on proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons, if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the judge shall think fit to name; and if such order be not obeyed, the registrar, whether such order can be proved to have been served or not, shall, at the instance of the plaintiff, issue a warrant authorising and requiring the bailiff of the court to give possession of such premises to the plaintiff. In any such plaint against a tenant, the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so as the same shall not exceed one hundred (a) pounds.

(a) Increased from £50—County Courts Act, 1903, s. 3.

(b) "Fine or premium." A tenant right valuation paid by the tenant upon entering upon the tenancy is not a fine or premium so as to deprive the county court of jurisdiction under this section (*Norfolk County Council v. Child*, (1918) 87 L. J. K. B. 1122, and see *King v. Cadogan*, (1915) 3 K. B. 485; 84 L. J. K. B. 2069).

Provision is now made by sect. 7 of the County Courts Act, 1924, for rules to be made providing that proceedings which have been brought under this sect. 138 or sect. 139, but which ought to have been brought under sect. 59, may be amended and continued under sect. 59, instead of being struck out as heretofore.

This rule has been made and appears in Order V. as r. 3A.

The powers given by the statute to the county court on this head do not oust the jurisdiction given by 1 & 2 Vict. c. 74, under which Act magistrates possess similar powers, in cases where the rent does not exceed 20*l*. See also, notes to "Increase of Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924," in "Emergency Legislation," Part VI.

The jurisdiction of the county courts in proceedings for the recovery of small tenements is of a two-fold character. It extends to cases where a tenant holds over after the legal determination of his tenancy; and also to those cases where a landlord has by law a right to re-enter and obtain possession on the ground of non-payment of rent. These proceedings, which are governed by sects. 138 and 139 of the Act, are now known as actions for the recovery of possession as distinguished from actions of ejectment under sect. 59 (Order V. r. 3). Proceedings should be taken for recovery of possession wherever practicable, under sects. 138 and 139, for where an action of ejectment is brought, and in the opinion of the judge an action should have been brought for the recovery of possession, the plaintiff is not entitled to any further relief or any further costs than he would have been in an action for the recovery of possession (Order V. r. 3).

Generally speaking, the practice in these cases is similar to the ordinary practice. See Form of Particulars in such an action on *post*, p. 904, Form 4.

On Determination of Tenancy.—Sect. 138. When the term and interest of the tenant of any corporeal hereditament where *neither* the value of the premises, *nor* the rent payable in respect of the tenancy shall have exceeded

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100*l.* by the year, and on which no fine or premium has been paid, has expired, or been duly determined by notice to quit; and the tenant, or any person holding or claiming by, through, or under him, neglects or refuses to deliver up possession of the premises, the landlord may, at his option, enter a plaint for their recovery, either against the tenant or the person so neglecting or refusing (sect. 138. *Fearon v. Norvall* (2), (1848) 5 D. & L. 445; 18 L. J. Q. B. 9; *Harrington v. Ramsay*, (1853) 2 E. & B. 669; 22 L. J. Q. B. 460).

The fact of the pendency of an action of ejectment is not a bar to the plaintiff's proceeding in the county court under this section (*Bissill v. Williamson*, (1861) 7 H. & N. 391; 31 L. J. Ex. 131; 126 R. R. 477).

"Any person holding or claiming by, through, or under him."—Where the house was let to a man who was serving in the war in France, and consequently the notice to quit was not served upon him, the wife was substituted as defendant in the county court under Order XIV. r. 2, and judgment given against her. A writ of prohibition to the county court was refused, the wife being held to be "a person holding or claiming by, through, or under" her husband (*Artizans, Labourers, &c., Dwellings Co. v. Clifford*, (1918) 2 K. B. 213; 87 L. J. K. B. 966).

Mesne Profits.—In the plaint under the above section, the plaintiff may also add a claim for rent or mesne profits, or for both, down to the day appointed for the hearing, or to any preceding day named in the plaint, so that the aggregate amount does not exceed 100*l.* (sect. 138). Where an order for possession has been made under this section against the tenant and his sub-tenant, and the sub-tenant has given up possession, the order of the county court is not in a subsequent action for mesne profits against the sub-tenant by the original landlord conclusive evidence of liability (*Campbell v. Loader*, (1864) 3 H. & C. 520; 34 L. J. Ex. 50; and see *Hodson v. Walker*, (1871) L. R. 7 Ex. 55; 41 L. J. Ex. 51).

Where Title is in Question.—These provisions do not overrule the provisions already explained by which the court is prevented from entertaining a question of title, if either the yearly rent or value of the premises exceeds 100*l.* (see *ante*, p. 43). The judge, however, may decide, in the case of leaseholds or freeholds, questions of title as to whether the landlord has a lawful right to the possession; that is, such questions as arise from a dispute as to whether the lease was determined or the like; but he may not decide questions as to whether the claimant has title as landlord if the limit of value or rent be exceeded (*Kerkin v. Kerkin*, (1854) 3 E. & B. 399; *Pearson v. Glazebrook*, (1868) L. R. 3 Ex. 27; 37 L. J. Ex. 15; 97 R. R. 553).

A *bonâ fide* claim of ownership by an alleged tenant will raise a question of title which will put an end to the jurisdiction, if the yearly rent or value exceed 100*l.* (*Pearson v. Glazebrook*, *supra*). The assertion by the defendant, an alleged tenant, that he has given up possession to a third party, who made a *bonâ fide* claim, will not necessarily put an end to the jurisdiction. It must be proved also and decided that he gave up possession, by compulsion; because if he gave it up voluntarily, he would be estopped from setting up the third person's title against his landlord's, and the court would have jurisdiction (*Emery v. Barnett*, (1858) 4 C. B. N. S. 423; 27 L. J. C. P. 216; 114 R. R. 793).

B. held, as tenant to C., two farms, C. being lessee of the one and owner in fee of the other. C. died, and A. proved a will under which he was devisee of all C.'s real estate, and also made executor. A. gave B. notice to quit. B. *bonâ fide* disputed the validity of the will: held, that title to the leasehold was not in question, as probate of the will was conclusive as to title of A.; but that title to the freehold did come in question (*Kerkin v. Kerkin*, *supra*).

Landlord and Tenant.—The landlord, within the meaning of the Act, is the person entitled to the immediate reversion of the lands, or in the case

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of joint tenancy, coparcenary, or tenancy in common, one of the persons entitled to such reversion (sect. 186, *post*).

The action only lies where the ordinary relation of landlord and tenant exists; therefore where the plaintiff claimed as mortgagee to recover possession from a person who had entered into occupation subsequently to the mortgage, and had not become tenant to him, it was held that the court had no jurisdiction (*Jones v. Owen*, (1848) 5 D. & L. 669; 18 L. J. Q. B. 8; 79 R. R. 888; and see *Marwood v. Waters*, (1854) 13 C. B. 820; 93 R. R. 749). So where the defendant had been let into possession under an agreement to purchase, one of the terms being that the rent should be deducted from the purchase-money, and it appeared that he had paid a sum which, together with a set-off, equalled the amount of the purchase-money, it was held that the county court had no jurisdiction (*Banks v. Rebbeck*, (1851) 2 L. M. & P. 452; 20 L. J. Q. B. 476; 86 R. R. 905).

A defendant was entitled to 500*l.* and interest, charged on Whiteacre, which belonged to A.; and it was orally agreed that the defendant should rent Blackacre from A., and should deduct the interest on the 500*l.* from the rent. Afterwards A. conveyed the reversion of Blackacre to the plaintiff: held, that the defendant was an ordinary tenant of Blackacre (*Jones v. Thomas*, (1861) 4 L. T. 210; 127 R. R. 915).

Rent or Value.—A defendant entered into a written agreement to take premises at a rent of 20*s.* a week; during the tenancy an oral agreement was made that the rent should be 16*s.* a week, and the defendant for several weeks paid the reduced amount, and on one occasion submitted to a distress: held, that there was no fresh demise, and that the original rent continued to be the rent payable for the premises (*Crowley v. Vitty*, (1852) 7 Ex. 319; 21 L. J. Ex. 135; 86 R. R. 664; and see further as to rent and value, *ante*, p. 39).

Due Determination of Tenancy.—The question whether the tenancy has been duly determined by notice to quit is one upon which the decision of the county court judge is conclusive between the parties (*Fearon v. Norvall* (1), (1848) 17 L. J. Q. B. 161; 5 D. & L. 431; 79 R. R. 865); but the section only applies to cases where a tenancy has been determined by ordinary notice to quit, and not to cases where there is a power of re-entry after notice for non-payment of rent or breach of covenant, and the notice to quit relied on is a notice to the tenant to leave the premises in consequence of a forfeiture (*Friend v. Shaw*, (1888) 20 Q. B. D. 374; 57 L. J. Q. B. 225). The words of the section under which this decision was given have been altered by the omission of the word “legal” in the phrase “legal notice to quit.” It is doubtful, therefore, whether the decision is now law.

Plaintiff's Evidence at the Trial.—If the landlord's title has accrued previous to the letting of the premises, the plaintiff need only prove as follows:—

Proof of Holding.—First, the tenancy or holding; if it be by lease, the lease, or a counterpart, must be produced, or an admission of its terms by the defendant (*Howard v. Smith*, (1841) 3 Scott, N. R. 574; 10 L. J. C. P. 245; 60 R. R. 506) must be proved. A demise from year to year may be proved by the payment and receipt of yearly rent (*Doe v. Horn*, (1838) 3 M. & W. 333; 7 L. J. Ex. 98; *Bishop v. Howard*, (1823) 2 B. & C. 100; 1 L. J. K. B. 243; 26 R. R. 291). Where the defendant has been let into possession under a lease void by the Statute of Frauds, payment and receipt of rent is evidence of a tenancy from year to year (*Doe v. Bell*, (1793) 5 T. R. 471; *Doe v. Amey*, (1840) 12 A. & E. 476). A general letting, without agreement as to the term, creates only a tenancy at will (*Richardson v. Langridge*, (1811) 4 Taunt. 128; 13 R. R. 570); which by the receipt of rent is converted into a tenancy from year to year. If the rent is reserved as a yearly rent, though received at shorter periods, it is a yearly tenancy (*R. v. Herstmonceaux*, (1827) 7 B. & C. 551; 6 L. J. (O. S.) M. C. 35); if determinable at three months' notice, it is a quarterly tenancy (*Kemp v. Derrett*, (1814) 3 Camp. 510; 14 R. R. 828). Since the Judicature Acts a person occupying under an executory agreement for a lease not under seal is to be

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treated in every court as holding on the terms of the agreement (*Walsh v. Lonsdale* (C. A.), (1883) 21 Ch. D. 9; 52 L. J. Ch. 2; *Furness v. Bond*, W. N. (1888) 78; 4 T. L. R. 457; but see *Foster v. Reeves* (C. A.), (1892) 2 Q. B. 255; 61 L. J. Q. B. 713). As to position of assignees of agreement for a lease not under seal, who have neither privity of contract nor privity of estate with the lessors, see *Purchase v. Lichfield Brewery Co.*, (1915) 1 K. B. 184; 84 L. J. K. B. 742.

Determination.—Secondly, the plaintiff must prove determination of the tenancy, with the time or manner thereof; as, if it be an estate at will, the death of the lessee, demand of possession, or other determination of the will on either side; if it be a holding for a time certain, the expiration of that time; and in cases of holding for a time certain, a disclaimer, surrender or forfeiture by the tenant, or that the tenancy has been determined by notice.

If the holding be from year to year, a mere denial by the tenant that he holds of his landlord, or other verbal repudiation, is sufficient to entitle the landlord to treat the tenancy as determined (*Doe v. Stanion*, (1836) 1 M. & W. 695; 5 L. J. (N. S.) Ex. 253; 46 R. R. 464). In the case of a definite term, it cannot be forfeited by mere words, some other act on the part of the tenant inconsistent with the existence of the relationship, must be proved (*Doe v. Wells*, (1839) 10 A. & E. 427; 8 L. J. (N. S.) Q. B. 265; 50 R. R. 473).

A surrender may be proved either by deed or by act of law, as where the tenant has been party to some act which would not be valid if his lease still existed, as the acceptance of a new lease (*Lyon v. Reed*, (1844) 13 M. & W. 285; 13 L. J. Ex. 377; 67 R. R. 593), or authorizing the landlord to let to another (*Nickells v. Atherstone*, (1847) 10 Q. B. 944; 16 L. J. Q. B. 371; 74 R. R. 556).

Notice to Quit.—A notice to quit may, in the absence of agreement, be by parol (*Doe v. Crick*, (1805) 5 Esp. 196; 8 R. R. 848) or in writing; but it must refer to some distinct time. If the tenancy is yearly, it must, in the absence of any special agreement, have been given six months, or, in the case of an agricultural holding, a year before the end of the year (*Right v. Darby*, (1786) 1 T. R. 159; Agricultural Holdings Act, 1923, s. 25; see notes to this section, *post*, Part V., "Statutes"); or, where six months are sufficient, where the rent is payable on the usual feast-days, on one feast-day, to quit on the next but one (*Roe v. Doe*, (1830) 6 Bing. 574). A notice to quit "at the earliest possible moment lawful" but accompanied by a statement that the notice will be withdrawn "if business improves" was held to be a good notice (*May v. Borup*, (1915) 1 K. B. 830; 84 L. J. K. B. 823). Also a notice "to terminate your tenancy at Michaelmas, unless we see sufficient reason in the meantime to change our opinion" (*Norfolk County Council v. Child*, (1918) 87 L. J. K. B. 1122). See, however, *Phipps v. Rogers*, (1925) 1 K. B. 14, where the notice was held bad because uncertain and confusing, and *May v. Borup* criticised, and where Atkin, L.J., declared his opinion that it should be overruled. If the holding be for less than a year, the notice should follow the period, though to determine a monthly tenancy all that is required is that reasonable notice must be given. Such a notice is not bad because it expires on a day other than the last day of a month calculated from the day the tenancy commenced. Probably the same may be said of a weekly tenancy (*Simmons v. Crossley*, (1922) 2 K. B. 95. See, however, *Queen's Club Garden Estates v. Bignell*, (1924) 1 K. B. 117; 93 L. J. K. B. 107 (where *Simmons v. Crossley* was disapproved and not followed), and *Precious v. Reedie*, (1924) 2 K. B. 149; 93 L. J. K. B. 890. In the case of a weekly tenancy, a calendar week's notice to expire on the day corresponding to that on which the tenancy commenced is sufficient (*Newman v. Slade*, (1926) 2 K. B. 328; 95 L. J. K. B. 894). A tenancy is taken to commence from the time of the tenant's entry (*Kemp v. Derrett*, (1814) 3 Camp. 510; 14 R. R. 828), unless there is evidence *contra* (*Doe v.*

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Johnson, (1806) 6 Esp. 10; 9 R. R. 800). Where a tenant, who has entered under a lease, holds over and pays rent, notice to quit must be given in accordance with its terms (*Doe v. Lines*, (1848) 11 Q. B. 402; 17 L. J. Q. B. 108; 75 R. R. 428). Where a defendant disclaims, and claims the property as his own, no notice to quit is necessary (*Doe d. Lansdell v. Gower*, (1851) 17 Q. B. 589; 21 L. J. Q. B. 57; 85 R. R. 581). See also *Mayo v. Joyce*, (1920) 1 K. B. 824; 89 L. J. K. B. 561.

"Month" in law means a lunar and not a calendar month (*Phipps v. Rogers* (*supra*)), but in all deeds, contracts, wills, orders and other instruments coming into force after January 1st, 1926, "month" means calendar month, unless the context otherwise requires (Law of Property Act, 1925, s. 61).

If the letting is for a year and a part of another year, and the tenant holds over and thus creates a new tenancy, the notice must be given to expire not on the anniversary of the commencement of the tenancy, but on an anniversary of the determination of the tenancy (*Croft v. Blay, Ltd.*, (1919) 2 Ch. 343; 88 L. J. Ch. 545).

The notice may be given by the landlord or his agent. One of several joint tenants may give notice for himself and other joint tenants (*Doe v. Summerset*, (1830) 1 B. & Ad. 135; 8 L. J. K. B. 369; 35 R. R. 250); and if an agent gives notice in the name of several joint tenants, it will inure for all although he have but the authority of one (*Doe v. Hughes*, (1840) 7 M. & W. 139; 10 L. J. Ex. 185; 56 R. R. 669).

Where Title has Accrued since Letting.—Where the title has accrued since the letting, the plaintiff must prove, in addition to the above facts, the right by which he claims possession (sect. 138); not that his title can come in issue, but because otherwise his character as landlord would not appear. This right may be evidenced by length of possession (*Doe v. Cooke*, (1831) 7 Bing. 346; 9 L. J. C. P. 118; 33 R. R. 503), by title, by act of law, as that of heir, or if it be a term of years, administrator, or by will or conveyance.

Title Expiring before Trial.—Where the title of the plaintiff appears to have existed as alleged in the summons at the time of the entry of the plaint, but to have expired before the return-day, the plaintiff will be entitled to judgment according to the fact that he was so entitled, and for his costs of the action, unless the judge otherwise orders (Order XXIII. r. 16).

Defendant's Evidence.—If the tenant *bonâ fide* disputes his landlord's title, and it really comes in question, or the yearly value or rent exceeds 100*l.*, the jurisdiction of the county court ceases, unless both parties agree to give it jurisdiction (*ante*, p. 180); therefore no defence which involves that need here be noticed. The same remark applies also to any other evidence which would exclude the jurisdiction, as showing that the rent is above 100*l.* a year. A tenant may, however, disprove the fact of tenancy, or deny that it has been ended; he may also contradict any facts which tend to prove a disclaimer, surrender or forfeiture, or may show that the forfeiture has been waived; as where the lease is voidable only and not void, by proving that the landlord has received rent, or has since otherwise recognised the tenancy (*Arnsby v. Woodward*, (1827) 6 B. & C. 519; 5 L. J. (O. S.) K. B. 199). This, however, is only evidence of a waiver, and the receipt of rent after a forfeiture which accrued due before it, or after the landlord has by some unequivocal act elected to determine the tenancy, will not revive it (*Jones v. Carter*, (1846) 15 M. & W. 718; 71 R. R. 800; *Wheeler v. Keeble*, (1920) 1 Ch. 57).

The defendant may deny either the fact or the sufficiency of the notice to quit (*Fearon v. Norvail*, (1848) 5 D. & L. 439; 17 L. J. Q. B. 161; 79 R. R. 865); as that it was bad in form, or was not given to the proper person; or he may show that it has been waived subsequently by the landlord's accepting rent after the expiration of the notice (*Goodright v. Cordwint*, (1795) 6 T. R. 219; 3 R. R. 161).

The pendency of an action of ejectment in the High Court is no answer

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to a plaint in a county court, by which it is sought to recover possession of the same premises (*Bissill v. Williamson*, (1861) 7 H. & N. 391; 31 L. J. Ex. 131; 126 R. R. 477; see, however, Order XXII. r. 11).

Order at the Trial.—If the tenant or occupier on service of the summons does not appear at the time and place appointed, and show good cause to the contrary, the landlord may give to the court proof of the neglect or refusal to deliver up possession of the premises and of the yearly value and rent thereof, and of the holding and of the expiration or other determination of the tenancy, with the time or manner thereof, and of the title of the landlord, if such title has accrued since the letting of the premises, and of the service of the summons, if defendant has not appeared, and the judge may order that possession be given by the defendant to the plaintiff, either forthwith, or on or before such day as the judge shall name (sect. 138; Form 250). The fact of the tenant appearing and showing cause does not oust the jurisdiction of the court to order possession; it is for the court to determine whether the cause shown is sufficient or not (*Fearon v. Norvall* (1), (1848) 5 D. & L. 439; 17 L. J. Q. B. 161; and see *per* Patteson, J., 18 L. J. Q. B. 9, 10). If the order be not obeyed, the registrar, whether service of the order can be proved or not, must at the instance of the plaintiff issue a warrant (Form 251) authorising and requiring the high bailiff to give possession to the plaintiff (sect. 138).

See Order XXV., r. 64. When executing such a warrant it is not now necessary to remove any goods or chattels from the premises (County Courts Act, 1919, s. 21).

Possession of small tenements may be recovered in the court by landlord for non-payment of rent.

19 & 20 Vict. c. 108, s. 52.

139. When the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect thereof exceeds one hundred (*a*) pounds by the year, shall for one half-year be in arrear, and the landlord shall have right by law (*b*) to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the court of the district in which the premises lie, for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry; and if the tenant shall, five clear days before the return day of such summons, pay into court all the rent in arrear and the costs, the action shall cease; but if he shall not make such payment, and shall not at the time named in the summons show good cause why the premises should not be recovered, then, on proof of the yearly value and rent of the premises, and of the fact that one half-year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order possession of the premises mentioned in the plaint to be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as the judge shall think fit to name, unless within that period all the rent in arrear and the costs are paid into court, and if such order be not

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obeyed, and such rent and costs are not so paid, the registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff, issue a warrant authorising and requiring the bailiff of the court to give possession of such premises to the plaintiff, and the plaintiff shall, from the time of the execution of such warrant, hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him, shall, so long as the order of the court remains unreversed, be barred from all relief.

NOTE.—(a) Increased from 50*l.* (see sect. 3 of County Courts Act, 1903).

NOTE.—(b) Before commencing any action for the recovery of tenements under this or the previous section, consider carefully the effect on the rights thereby given of the Emergency Legislation, viz., the Increase of Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923, and amending statutes. See "Emergency Legislation," *post*, Part VI.

Provision is now made by sect. 7 of the County Courts Act, 1924, for rules to be made providing that an action which has been brought under sect. 138 or 139, but which ought to have been brought under sect. 59, may be amended and continued under that section instead of being struck out as heretofore. This rule has been made and appears as Order V. r. 3A.

For Non-Payment of Rent.]—If the rent of any corporeal hereditament, where neither the value of the premises nor the rent payable in respect of them exceeds 100*l.* a year, is one half-year in arrear, and the landlord has by law a right to re-enter for the non-payment, he may, without any formal demand or re-entry, enter a plaint in the county court, and a summons will issue to the tenant. Service of such summons will stand in lieu of a demand and re-entry. Form of Particulars, *post*, p. 904 (4) (b).

If the tenant, five clear days before the return-day, pays into court all the rent in arrear, and the costs, the action will abate, but if he does not make such payment, and does not on the return-day show good cause why the premises should not be recovered, then on proof of the yearly value and rent, and of the fact that one half-year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to countervail such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of service of the summons, if the defendant does not appear—the judge may order (Form 250) that possession of the premises be given by the defendant to the plaintiff, on or before such day, not being less than four weeks from the trial, as the judge may name, unless within that period all the rent in arrear and the costs be paid into court (sect. 139).

In order to prove that "no sufficient distress was then to be found on the premises," so as to entitle the landlord to maintain an action for the recovery of possession, it is not necessary that a distress for the half-year's rent shall have been actually levied on the premises; the fact of no sufficient distress may be proved *aliunde* (*Rickett v. Green*, (1910) 1 K. B. 253; 79 L. J. K. B. 193).

There is a well-known rule of law and equity that where an action is brought for the sole purpose of obtaining judgment for the forfeiture of land for breach of covenant or other reason, the court will not make any order for discovery or interrogatories (*Mexborough (Earl) v. Whitwood Urban Council*, (1897) 2 Q. B. 111; 66 L. J. Q. B. 637. Followed in *Leddon v. Commercial Salt Co.*, (1925) 94 L. J. Ch. 225).

Enforcing Order.]—If such last order be not obeyed, and the rent and costs be not so paid, the registrar, whether service of the order can be proved or not, will, at the instance of the plaintiff, issue a warrant (Form 251)

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authorising and requiring the bailiff to give possession of the premises to the plaintiff. The plaintiff will from the time of the execution of such warrant, hold the premises discharged from the tenancy; and the defendant and all persons claiming by, through, or under him, will, so long as the order remains unreversed, be barred from all relief (sect. 139).

Plaintiff's Evidence.—The plaintiff must prove the yearly value and rent of the premises, that one half-year's rent was in arrear before the plaintiff was entered, and that no sufficient distress was then to be found on the premises to countervail such arrears. He must also prove his power to re-enter, and that the rent is still in arrear. He need not, however, prove any demand or re-entry, as the statute provides that the service of the summons shall stand in lieu of these. If the plaintiff's title has accrued since the letting of the premises, he must prove it. If the defendant does not appear, service of the summons must be proved (sect. 139).

Defendant's Evidence.—The defendant may disprove the fact that the rent was in arrear, or show that there was no right of re-entry, or he may show that there was sufficient distress on the premises (see sect. 139).

Proceedings Common to both Sections 133 and 139.—The plaintiff must be brought in the district in which the tenements are situate, and the summons must be in the prescribed form (see sect. 138; Forms 247, 248).

The summons may be served like ordinary summonses. If, however, the defendant cannot be found, and his place of dwelling is not known, or admission to it cannot be obtained for serving the summons, service may be effected by posting a copy on some conspicuous part of the premises sought to be recovered (sect. 141, *post*, p. 183).

Where a summons is served on or comes to the knowledge of a sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered, he must forthwith give notice thereof to his immediate landlord under penalty of forfeiting to such landlord three years' rack-rent of the premises held by such sub-tenant, to be recovered whatever the amount by action in the court from which the summons issued; and the landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question (see sect. 140).

Practice.—The provisions of Order IX. r. 7, as to confession of the plaintiff's title and of his right to possession apply to this action as well as to an action of ejectment, as do those of Order X. r. 4, as to allowing a defendant not named in the summons to appear and defend, and of Order X. r. 5, as to limiting defence to a part of the property (see *post*); but the following differences in practice must be observed: the affidavit of the applicant for leave to appear and defend required by rule 4 need only be filed in cases where neither rent nor value exceeds 50*l.* five (instead of twelve) clear days before the return-day, and in cases under the extended jurisdiction up to 100*l.* ten (instead of twenty) clear days before that day; the registrar's notice (Form 254) to the plaintiff of the leave to appear must in the former class of case be given three (instead of ten) clear days, and in the latter class of case eight (instead of eighteen) clear days, before that day (Order X. r. 4; Order XXIIA. r. 11); the defendant's notice limiting his defence must in the former class of case be filed five (instead of twelve) clear days, and in the latter class ten (instead of twenty) clear days at least, before the return-day (Form 255), and the copy of it is to be sent by the registrar to the plaintiff in the former class of case three (instead of ten), and in the latter eight (instead of eighteen) clear days at least before it (Order X. r. 5; Order XXIIA. r. 11).

Jury.—Either party may ask for the trial to be by jury, on giving notice in the ordinary way (Order XXII., r. 3); but subject to the Administration of Justice Act, 1925, *ante*, p. 119.

Costs.—The costs of a plaintiff or defendant will be taxed on the appropriate scale as set out in Order LIII. r. 13. These scales vary according to

the nature of the tenancy, the amount of the rent, and the sum claimed or recovered for rent or mesne profits.

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Possession Warrant.]—The warrant bears date the day next after the last day named by the judge in his order for possession to be given, and continues in force for three calendar months from its date, but no order for delivery of possession need be drawn up or served (sect. 143). The warrant justifies the bailiff in entering on the premises with such assistants as he deems necessary, and in giving possession accordingly (sect. 142; Order XXV. r. 64). By sect. 21 of the County Courts Act, 1919, when executing a warrant to give possession of any premises it is not necessary to remove any goods or chattels from those premises.

The warrant cannot be issued or executed when the lands are situated without the jurisdiction of the court, although both parties reside within it (*Ellis v. Peachey*, (1849) 18 L. J. Q. B. 137; 5 D. & L. 675). The order for possession does not affect the rights of third persons; so trespass may be maintained against the person obtaining the warrant of possession, and on whose behalf it is executed, by one whose rights are injuriously affected thereby: *quære*, whether the rights of the person against whom the order is obtained are affected thereby (*Hodson v. Walker*, (1871) L. R. 7 Ex. 55; 41 L. J. Ex. 51). Form 251.

When Executed.]—The entry must not be made at any time except between the hours of nine in the morning and four in the afternoon (s. 142, *post*).

Protection of Officers.]—The judge, registrar, bailiff, or other person executing the warrant, or affixing the summons, are protected from any action or prosecution for so doing, on account of the person suing out of the same not having lawful right to the possession of the premises (see sect. 141); the party, however, who sues out the warrant is not so protected, except against mere irregularities (see sect. 145; *Hodson v. Walker*, (1871) L. R. 7 Ex. 55).

Effect of Irregularity.]—Where the landlord at the time in applying for the warrant had lawful right to possession, neither he nor his agent may be deemed a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under authority of the Act; but the party aggrieved may bring an action, in which he must allege special damage, and may recover full compensation, with costs of action. If special damage be not proved, the defendant will be entitled to a verdict; if proved, but assessed by the jury at not more than 5s., the plaintiff will recover no more costs than damages, unless the judge certifies that in his opinion full costs ought to be allowed (see *post*, sect. 145).

Appeal.]—Where the yearly rent or value of the premises exceeds 20l., or in other cases, by leave of the judge, either party may appeal on the same grounds and subject to the same conditions as in other cases (sect. 120, *ante*, p. 143).

This procedure is applicable to the recovery of possession of a house by a local authority under the provisions of the Small Dwellings Acquisition Act, 1899 (62 & 63 Vict. c. 44, s. 5, sub-s. 5; see Part V.).

140. Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered, whatever the amount thereof, by such landlord, by action in the court from which such summons served with summons to recover possession must give notice to his immediate landlord, who may come in and defend.

19 & 20 Vict.
c. 108, s. 53.

Section 140. shall have issued, and such landlord, on the receipt of such notice, if not originally a defendant, may be added or substituted as a defendant to defend possession of the premises in question.

See also Law of Property Act, 1925, s. 145, *ante*, p. 40.

In plaints to recover possession of premises, how summonses may be served.
19 & 20 Vict. c. 108, s. 54.

Warrants to high bailiffs sufficient to justify them for entering on premises.
19 & 20 Vict. c. 108, s. 55.
Such warrants to be in force for three months from the day named for delivering possession.
19 & 20 Vict. c. 108, s. 66.

Judges, registrars, bailiffs, or other officers not liable to actions on account of proceedings taken.
9 & 10 Vict. c. 95, s. 124.

Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.
9 & 10 Vict. c. 95, s. 125.

141. A summons for the recovery of a tenement may be served like ordinary summonses to appear to plaints in the court, and if the defendant cannot be found, and his place of dwelling shall either not be known, or admission thereto cannot be obtained for serving any such summons, a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

142. Any warrant to a bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein, with such assistants as he shall deem necessary, and in giving possession accordingly; but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

143. Every such warrant shall, on whatever day it may be issued, bear date on the day next after the last day named by the judge in his order for the delivery of possession of the premises in question, and shall continue in force for three months from such date and no longer, but no order for delivery of possession need be drawn up or served.

See s. 4 (4) of Rent (Restrictions) Act, 1923, *post*, p. 2545.

144. It shall not be lawful to bring any action or prosecution against the judge or against the registrar of the court by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

See notes to sects. 52 and 54, *ante*, pp. 28, 29.

145. Where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but the party aggrieved may, if he think fit, bring an action for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage with costs of the action: Provided that if the

special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the judge before whom the trial shall have been held shall certify that in his opinion full costs ought to be allowed.

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PART VII.

EXECUTION ; COMMITMENT.

146. Whenever the court shall have given or made a judgment or order for the payment of money, the amount may be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such judgment or order shall be given or made; and the registrar, at the request of the party prosecuting such judgment or order, shall issue under the seal of the court a warrant of execution in the nature of a writ of *fiери facias* to the high bailiff of the court, who, by such warrant, shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels wheresoever they may be found within the district of the court, whether within liberties or without, such sum of money as shall be so ordered, and also the costs of the execution ; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant. The precise time when an application shall be made to a registrar to issue a warrant against the goods of a party shall be entered by him in the execution book and on the warrant ; and when more than one such warrant shall be delivered to the high bailiff to be executed, he shall execute them in the order of the times so entered.

Court may award execution against goods.
9 & 10 Vict. c. 95, s. 94.
19 & 20 Vict. c. 108, s. 46.
28 & 29 Vict. c. 99, s. 8.

See Order XXV. as to enforcement of judgments and orders.

Execution on Judgment or Order for Payment of Money.]—When a judgment has been obtained for debt or damages, or an order for the payment of money has been made, the amount is recoverable, in case of default, by execution against the goods (see sect. 146 ; Order XXV. r. 1).

Oral Examination.]—The party entitled to enforce the judgment or order, may also apply to the court for an order for the oral examination of the debtor, or in case the debtor be a corporation, or any of its officers, as to whether the debtor has any and what property or means of satisfying the judgment or order. And an order may be made for the attendance and examination of the debtor, or of any other person, and for the production of any books or documents (Order XXV. r. 71 (1)). The examination may be taken, if necessary, as prescribed by Order XVIII. r. 18. The order may be made for the examination of a married woman as to her separate estate (*Aylesford v. G. W. Rail. Co.*, (1892) 2 Q. B. 626).

Orders.]—Every order of the court in any action or matter may be enforced against all persons bound by it in the same manner as a judgment to the same effect (Order XXV. r. 2).

When Warrant may Issue.]—A person requiring a warrant of execution

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to be issued must produce the plaint note or summons issued in the action, or a duplicate, and furnish a præcipe containing the number of the plaint, and the full names and address of or otherwise sufficiently identifying every person against whom the warrant is to be issued (Order XXV. r. 7). Where execution is to be issued against a person under a description different from that given in the judgment, both descriptions are to be entered on the warrant (Order XXV. r. 7).

Where judgment is given for more than 20*l.* and costs and directs payment forthwith or within 14 clear days and costs to be taxed and paid forthwith or within 14 clear days after taxation, on default separate warrants may issue for the amount ordered to be paid and for the costs; but no second warrant (which can only be for costs) may be issued until the expiration of eight days from the issue of the first warrant (Order XXV. r. 9).

Execution may not issue after the expiration of twelve years from the date of the original judgment, unless there has been a part payment, or payment of interest, or an acknowledgment in writing given. If there has been such payment or acknowledgment, execution may not issue after twelve years from the date of such payment or acknowledgment, or if more than one, from the last (37 & 38 Vict. c. 57, s. 8; *Hebblethwaite v. Peever*, (1892) 1 Q. B. 124; *Jay v. Johnstone* (C. A.), (1893) 1 Q. B. 189; 62 L. J. Q. B. 128).

There is power, but no obligation to issue the warrant on any day on which the offices need not be open (Order LIV. r. 19; Order I. rr. 3, 5).

When Payment by Instalments.—Where a defendant has made default in payment of the whole amount awarded by the judgment or order or of an instalment thereof, execution may issue against his goods, without leave, for the whole amount of the judgment or order and costs then remaining unsatisfied, or in case of an order for payment by instalments for such portion thereof as the court shall order, either at the time of making the original order or at any subsequent time (Order XXV. r. 8).

When an order has been made to pay by instalments, execution cannot issue until default is made in payment of some instalment; execution or successive executions, under the seal of the court, may then issue for the whole sum and costs remaining unpaid, or for such portion as the court orders either when it makes the original order or subsequently (see sect. 149).

Where execution is issued for a portion only of the judgment and the amount is recovered under the warrant, such amount must be credited towards the instalments payable under the judgment and no further execution can issue until the judgment debtor is again in default according to the terms of the original order. It is, however, open to the judgment creditor to apply for a varied order under Order XXIII. r. 15 (2).

Part Payment to Judgment Creditor.—Where the judgment debtor has paid part of the judgment direct instead of into court as provided by sect. 105, the money so paid must be passed through the books of the court before execution can issue for the balance. If however the court has given a direction under sect. 18 (1) of the County Courts Act, 1919, for the amount to be paid to the judgment creditor without being paid into court, credit must be given on the præcipe for any payments received on account of the judgment.

Judgment for Married Woman.—When a married woman sued only in her own name, obtains judgment on the ground of coverture, and is awarded costs, she may enforce payment in her own name (Order XXV. r. 4).

Cross Judgments.—See County Courts Act, 1919, sect. 19 (substituted for sect. 150 of the principal Act), *post*, p. 206.

Partners.—Where a judgment or order is against a firm, execution may issue (1) against any property of the partnership; (2) against any property of any person who has admitted before the court in the particular proceedings that he was a partner at the time of the accruing of the cause of action, or who has been adjudged to be liable as a partner; (3) against any

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person who has been individually served with the summons as a partner or a person sought to be made liable and has failed to appear at the trial. If the judgment creditor claims to be entitled to issue execution against any other person as a member of the firm, he must apply for leave as explained below (Order XXV. r. 11). It seems that, instead of applying for leave, the creditor might bring an action on the judgment (*Clark v. Cullen*, (1882) 9 Q. B. D. 355).

The High Court may now, under sect. 3 of the County Courts Act, 1919, remit an application for leave to issue execution against a person, as being a member of a firm, to a county court, or may direct that any issue necessary to determine the matter may be tried in a county court, if the amount for which execution is sought does not exceed 100*l*.

It must be remembered that, except as against any property of the partnership, a judgment against a firm will not render liable, release, or otherwise affect any member thereof who was out of England and Wales when the summons was issued, unless he has been made a party under Order VII. r. 41, or has been served within England or Wales after the summons in the action was issued (Order XXV. r. 11). If leave to enter a plaint under this rule is required under sect. 74 of the Act, the court may grant it without requiring an affidavit under Order V. r. 13; in that case the order must state that leave is so granted, and a copy of the order must be annexed to the summons and served therewith (Order XXV. r. 11).

Execution may not issue against partnership property unless the judgment is against the firm. The court may, however, on the application of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require (Partnership Act, 1890, s. 23).

The application by a separate judgment creditor of a partner should be made to the court on notice. The notice must be served on the judgment debtor and such of his partners as are in England or Wales. If the partnership is a cost-book company it must be served on the judgment debtor and the purser of the company. All orders made on the application must be similarly served (Order XXV. r. 12).

The other partners will be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase it (Partnership Act, 1890, s. 23).

The application by a partner should be made to the court on notice. The notice must be served on the judgment creditor and on the judgment debtor, and on such of the partners as do not concur in the application and are in England or Wales. If the partnership is a cost-book company the notice must be served on the judgment creditor and judgment debtor and on the purser of the company. All orders made on the application must be similarly served (Order XXV. r. 13).

Execution by Post.—Where leave to issue execution is not required, it may be issued by post. Where the party desiring to issue execution does not reside or carry on business within the district of the court, he or his solicitor (if the latter has no office within the district) may transmit to the registrar by prepaid post (a) the plaint note or summons, or a duplicate; (b) a præcipe; (c) a money order for the fees payable upon the issue of the warrant; and (d) a stamped addressed envelope. The party may ask for and obtain from the registrar information to enable him to ascertain whether execution may be issued. The registrar may require the personal attendance at his office of the party or his solicitor where it is sought to

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issue execution or to obtain information in more than twenty actions at the same time (Order XXV. r. 10B).

Leave to issue Execution.—It is required in the following cases: (1) where no payment into court has been made for twenty-four months (Order XXV. r. 10); when (2) a party claims to issue execution, under a judgment against a firm, against a person as partner who has neither admitted that he is a partner, nor been adjudged to be one, nor been served with the summons (Order XXV. r. 11); when (3) there has been a change after judgment, by death, assignment, or otherwise, in the parties entitled or liable to execution; (4) where a husband is entitled or liable to proceedings upon a judgment or order against his wife; (5) where a party is entitled to execution against any of the shareholders of a joint-stock company upon a judgment against such company, or against a public officer or other person representing such company (Order XXV. r. 14; see Forms 158, 160); (6) where a judgment summons has been issued or an order of commitment has been made and is outstanding (Order XXV. r. 10A).

1. In the first of the above cases leave is obtained on application to the court, without notice to the debtor, and the leave must be expressed on the warrant (Order XXV. r. 10). 2. In the second two clear days' notice of intention to apply to the court must be given to the individual against whom execution is claimed. If he does not dispute liability, leave may be given by the court, but if liability be disputed the court may order the liability to be determined in an action to be commenced by plaintiff and summons in the ordinary way (Order XXV. r. 11). 3, 4 and 5. In these cases application for leave must be made to the court on affidavit, and the court, if satisfied that the party is entitled, may give the leave, or may order any issue or question necessary to determine the liability to be tried in an action, commenced by plaintiff and summons in the ordinary way, and may impose terms as to costs and otherwise (Order XXV. r. 14; Forms 158, 160). The order for leave must, in these cases, if *ex parte*, be drawn up and served, by post or otherwise, on the persons to be affected, and when the order is for leave, proceedings will not issue for six clear days at least after service (Order XXV. r. 15). Several actions or persons may be joined in one application, and one order only need be made on such application; in serving notice of any such order such part only as affects the person served need be set out (Order XXV. r. 16; Forms 159, 161). Service may be made by or upon the solicitor of a person who acts by solicitor (Order XXIII. r. 6).

If leave to enter a plaintiff under this rule is required under sect. 74 of the Act, the court may grant it without requiring an affidavit under Order V. r. 13; in that case the order must state that leave is so granted, and a copy of the order must be annexed to the summons and served therewith (Order XXV. r. 14).

Warrant of Execution.—The registrar, at the request of the party prosecuting the order, must prepare and issue forthwith under the seal of the court a warrant of execution to the high bailiff (see sect. 146; Order II. r. 4; Forms 162—165), together with a notice (Form 162) to be left with the debtor (Order XXV. r. 17; sect. 155). In the event of the high bailiff being himself the judgment debtor, the warrant may be issued to a bailiff specially appointed to execute it (*Bellamy v. Hoyle*, (1874) L. R. 10 Ex. 220; 44 L. J. Ex. 169).

The warrant bears date of the day on which it is issued, and, if unexecuted, continues in force for one year only from and exclusive of that date; but it may, at any time before its expiration and by leave of the court, be renewed by the party issuing it for one year from the date of renewal, and so on from time to time during the continuance of the renewed warrant. The fact of renewal must be indorsed on the warrant according to Form 163A, and a renewed warrant has effect and is entitled to priority according to the time of the application to the registrar for the original issue (Order XXV. r. 6; Form 163A). Fees payable on the renewal may be allowed as costs

of the execution; if allowed, the amount and the fact of the allowance are to be entered on the warrant (Order XXV. r. 6). The precise time when the warrant is applied for must be entered by the registrar in the warrant-book and on the warrant (see sect. 146). He must insert in or indorse on it the amount to be levied, and the fees for the execution of the warrant, distinguishing the amount adjudged to be paid and remaining due and the amount of the fee for issuing and executing the warrant (Order XXV. r. 17; sect. 155).

Warrants of execution may be issued concurrently in one or more districts; but the costs of more than one warrant will not be allowed against the execution debtor unless by order of the court (Order XXV. r. 18).

The fee must be paid into court prior to the issue of the warrant. For the amount of fee payable, see items 55 and 71 of C. C. Fees Order, 1925.

The warrant empowers the high bailiff to levy the judgment debt and costs by distress and sale of the goods and chattels of the debtor within the district of the court (see sect. 146). He does this with the aid of his bailiffs (see sect. 35). All constables and peace officers within their several jurisdictions must aid them in the execution of the warrants (see sect. 146).

The high bailiff or bailiff must execute the warrant as soon as possible, enter it in the proper book, and state from time to time therein what has been done under the warrant, and if the same be not executed within one calendar month from the day of the delivery to him, why it has not been executed. And the high bailiff must, at all reasonable times, give every information to a suitor, or his solicitor, as to the execution or non-execution of a warrant issued at his instance (Order II. r. 33).

Supersedeas by Payment.—If the party against whom execution is issued before sale pays or tenders to the registrar or to the bailiff the sum indorsed on the warrant and costs, or such part as the plaintiff agrees to accept in full for debt or damages and costs, together with the fees, the execution will be superseded, and defendant's goods discharged (see sect. 155; Receipt, Form 166).

Priority of Executions.—The bailiff should execute the writ within a reasonable time, and, if more than one warrant has been issued against the same person, he must execute them in the order of time in which they were entered by the registrar of the court in the district of which the levy is made; see *Birstall v. Daniels*, *post*, p. 198. A warrant renewed under Order XXV. r. 3, ranks in priority according to the original date of issue.

Where a writ has issued against the goods from the High Court, and a warrant has issued against the goods of the same party from the county court, the right to the goods is to be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application for the issue of the warrant from the county court; and the sheriff, on demand, is by writing signed by any clerk in the office of the under-sheriff to inform the high bailiff of the precise time of the delivery of the writ, and the bailiff is to show his warrant to the sheriff's officer; and such writing, or the indorsement on the warrant (see sect. 146), will respectively justify the high bailiff or sheriff in acting thereon (see sect. 152).

Withdrawal of Execution by Execution Creditor.—Where an execution creditor requests the high bailiff to withdraw from possession, unless it be in pursuance of an arrangement between the parties communicated to the high bailiff that the latter shall be at liberty to re-enter, the execution creditor will be deemed to have abandoned the execution, and the high bailiff must return the warrant as withdrawn by order of the execution creditor, and the latter will not be entitled to require the warrant to be re-issued. But this rule does not prejudice any right of the execution creditor to apply for a fresh warrant (Order XXV. r. 18A).

How and where Executed.—The warrant may be executed within five

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hundred yards of the boundary of the district of the court from which it issued by a bailiff of such court, or, by order of the judge, by the same bailiff within the district of any other court (see sect. 77). The execution may not take place on Sunday, Christmas Day, or Good Friday, or on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving. There is power, but no obligation, to execute the warrant on any day on which the offices of the courts need not be open (Order LIV. r. 19; Order I. r. 5; the only exception to the rule prohibiting service of process or execution of a warrant on Sunday, Christmas Day, or Good Friday, is in the case of a warrant of arrest in an Admiralty action. The warrant may be executed at any hour of the day or night (*Mackalley's Case*, (1612) 9 Rep. 66).

On levying, the bailiff must deliver to the debtor, or leave at the place where the levy is made, a notice (Form 162) informing the debtor of the amount for which the levy is to be made and the fees for the execution of the warrant, and that the goods will not be sold for five days, unless they are of a perishable nature, or he wishes it (Order XXV. r. 17). If the goods are removed the bailiff must leave a sufficient inventory of the goods so removed (Order XXV. r. 22).

Whenever any money is levied or paid to a bailiff under any execution or other process, the bailiff shall give a receipt for the same, and retain a carbon copy of such receipt according to Form 166 (Order XXV. r. 20A).

The bailiff may not break open any outer door or window of the defendant's dwelling-house to execute the writ (*Semayne's Case*, (1603) 5 Rep. 91; 1 Sm. L. C. 115 (12th ed.) and notes); but he may enter through the door or any other opening which is open, although no goods of the defendant are within, if there is reasonable ground for suspecting that they are there (*Semayne's Case*, (1603) 5 Rep. 91; *Cooke v. Birt*, (1814) 5 Taunt. 765; 15 R. R. 652, *per* Gibbs, C.J., and Dallas, J.). He may enter the house of a third person, if the defendant's goods are within (*Semayne's Case*, *supra*), but not otherwise (*Morrish v. Murray*, (1844) 13 M. & W. 52; 13 L. J. Ex. 261; 67 R. R. 505). Having once obtained peaceable possession, he may break open inner doors, closets, trunks, etc.; or if he be locked in, he may break open the outer door from the inside to get out or carry away goods; and if, having once entered, he is forcibly ejected, he may break open the door to re-enter (*Eagleton v. Gutteridge*, (1843) 11 M. & W. 465; 12 L. J. Ex. 357; 63 R. R. 655; followed in *Bannister v. Hyde* (1860) 29 L. J. Q. B. 141). If the house be that of a third person, to which the defendant has taken his goods to avoid the execution, the bailiff may, on demand and refusal, break open even the outer door (*Semayne's Case*). Outer doors of barns or outhouses, or workshops, or other buildings not being dwelling-houses or connected therewith, may be broken open (*Penton v. Brown*, (1665) 1 Sid. 186; *Hodder v. Williams*, (1895) 2 Q. B. 663; 65 L. J. Q. B. 70).

What may be Seized.]—The bailiff having entered with the warrant, and having seized the goods, should deposit them in a fit place, or put in possession a fit person, appointed by the high bailiff, or safeguard them in such other manner as the high bailiff directs (see sect. 154). If he seizes part in the name of the whole it is a sufficient seizure of the whole (*Cole v. Davies*, (1698) 1 Lord Raym. 724). He may seize any goods or chattels of the defendant (excepting the wearing apparel and bedding (which includes a bedstead used as part of the sleeping accommodation: *Davis v. Harris*, (1900) 1 Q. B. 729; 69 L. J. Q. B. 232) of himself or his family, and the tools and implements of his trade to the value of 5*l.*, which are to that extent protected); also money or bank notes, whether of the Bank of England or any other bank, cheques, bills of exchange, promissory notes, bonds, specialties or securities for money (see sect. 147). Where the only article on premises of a cab driver where a distress for rent had been levied was a cab worth considerably more than 5*l.*, the cab was held to be exempt from seizure as an "implement of trade" under sect. 147

of the County Courts Act, 1888 (*Lavell v. Ritchings*, (1906) 1 K. B. 480; 75 L. J. K. B. 287). A typewriting machine lent as a sample to an agent was held not to be an "implement of trade" (*Addison v. Shepherd*, (1908) 2 K. B. 118; 77 L. J. K. B. 534). But this was distress. See now Law of Distress Amendment Act, 1908, *post*; Part V. All the goods of the judgment debtor on the premises should be seized if necessary (see *Miller & Co. v. Solomon*, (1906) 2 K. B. 91; 75 L. J. K. B. 671).

The protection is limited to wearing apparel, bedding, tools and implements of trade to the value of 5*l.*; therefore, where wearing apparel and bedding to the value of 5*l.* were left on the premises, all the implements of trade were held liable to seizure (*Boyd, Ltd. v. Bilham*, (1909) 1 K. B. 14; 78 L. J. K. B. 50). Even if a piano can in any circumstances be regarded as an implement of trade, it is not exempt from distress at the instance of the Crown for default of paying income tax or house duty (*MacGregor v. Clamp*, (1914) 1 K. B. 288; 83 L. J. K. B. 240).

It is for the plaintiff who complains of an illegal execution to prove that goods to the value of 5*l.* were *not* left on the premises (*Gonsky v. Durrell*, (1918) 2 K. B. 228; 87 L. J. K. B. 836).

The high bailiff may hold any cheques, bills, or other securities for money, which have been seized in execution as security for the amount to be levied. The plaintiff may sue in the name of the defendant for the money secured thereby (see sect. 148).

"Money" means actual money of the defendant's, and not a mere debt to him; money, therefore, which a sheriff or bailiff has in his hands under a *fi. fa.*, issued by the defendant in another action (*Wood v. Wood*, (1843) 4 Q. B. 397; 12 L. J. (N. S.) Q. B. 141), or the surplus of a former execution against him, cannot be seized (*Harrison v. Paynter*, (1840) 6 M. & W. 387; 9 L. J. Ex. 169). It has been doubted whether money about the person of the defendant can be seized (*per Parke, B., Sunbolf v. Alford*, (1838) 3 M. & W. 248, 254; 7 L. J. (N. S.) Ch. 60; 49 R. R. 593).

As to the attachment of debts, see Order XXVI.

As to obtaining money deposited by the judgment debtor in the post office savings bank, see note to Order XXVI. r. 10.

The bailiff may seize chattel interests of the defendant in land, as leases or terms for years (Com. Dig. "Execution," C. 3), whether belonging to the defendant in his own right, or that of his wife (*per Buller, J., Farr v. Newman*, (1792) 4 T. R. 621, 638); he cannot, however, sell a mere equitable interest, as an equity of redemption, the legal estate being in the mortgagee (*Metcalf v. Scholey*, (1807) 2 N. R. Bos. & P. 461).

The bailiff cannot seize fixtures, as furnaces, ovens, doors, windows, hearths, chimney-pieces, etc., which go to the heir and not to the executor (Com. Dig. "Execution"; *Elwes v. Maw*, (1802) 3 East, 38; 6 R. R. 523; 2 Sm. L. C. 188 (12th ed.): see notes), even although the freehold belongs to the defendant (*Winn v. Ingilby*, (1822) 5 B. & A. 625; 24 R. R. 503). If the tenant unlawfully removes fixtures, they revert to the landlord and cannot be seized (*Farrant v. Thompson*, (1822) 5 B. & A. 826; 24 R. R. 571). The bailiff may seize and sell fixtures which the tenant may remove, as those fixed for the purposes of trade—as coppers, vats, etc. (*Poole's Case*, (1703) 1 Salk. 368).

Corn and other crops which are raised by the industry of man are emblements which go to the executor, and may be taken in execution; but things which yield no annual profit, or which are produced without the labour of man, are not emblements, but go to the heir, and cannot be seized (see judgment in *Evans v. Roberts*, (1826) 5 B. & C. 829; 4 L. J. K. B. 313; 29 R. R. 421). The sale of the produce of farms is regulated by the Sale of Farming Stock Act, 1816, 56 Geo. 3, c. 50. The substance of its provisions is as follows:—

The bailiff may not sell straw, straw of crops, chaff, colder, turnips, manure, compost, ashes, or seaweed (56 Geo. 3, c. 50, s. 1), nor clover, rye, or other artificial grasses which are newly sown, and growing under a

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crop of standing corn (56 Geo. 3, c. 50, s. 7); nor can he sell hay, grasses (natural or artificial), tares, vetches, roots or vegetables, where, by any covenant or written agreement made for the benefit of the owner or landlord, they ought not to be taken off from the land, or ought to be used thereon, if he has received a written notice thereof before sale (56 Geo. 3, c. 50, s. 1).

The tenant or occupier must give notice to the bailiff of such covenants or agreements, and the bailiff must postpone the sale until the latest day he lawfully can appoint (56 Geo. 3, c. 50, s. 2).

The bailiff may, where no such covenant or written agreement is shown, sell such crops by written agreement, in such manner as accords with the custom of the country. In cases where a covenant or written agreement is shown, then, according to such covenant or agreement. After sale the purchasers may use all necessary barns, etc. for the purpose of consuming such crops or produce as the bailiff allots to them, and which the tenant or occupier would have been entitled to use (56 Geo. 3, c. 50, s. 3); should the landlord or owner be aggrieved by breach of such agreement, the bailiff, being indemnified by him, must permit the landlord or owner to use his name for the recovery of damages (56 Geo. 3, c. 50, s. 4).

The bailiff, before selling, must make inquiry within the parish in which the lands are situate, as to the name and residence of the landlord or owner (56 Geo. 3, c. 50, s. 5).

The landlord may not, where such agreement for sale has been made, distrain on corn, hay, straw, or other produce, which at the time of such sale or agreement has been severed from the soil; nor on any turnips whether drawn or growing, nor on horses, sheep, cattle or beasts, nor on waggons, carts, or implements of husbandry, which the purchaser employs for thrashing, carrying, or consuming such produce (56 Geo. 3, c. 50, s. 6).

The Act does not extend to straw, turnips, or other articles which the tenant may remove consistently with some contract in writing (56 Geo. 3, c. 50, s. 8).

The bailiff is not liable for any breach or omission of the provisions of the Act, unless it be wilful (56 Geo. 3, c. 50, s. 9); and all persons acting under it are indemnified (56 Geo. 3, c. 50, s. 10).

The assignees of a bankrupt, etc. may not take produce, manure, etc. in any other way than the bankrupt, etc. would have been entitled to do (56 Geo. 3, c. 50, s. 11).

Whose Goods may be Seized.]—The bailiff must at his peril seize only the goods of the person named in the warrant; if he seize those of another he is liable to an action, though the goods are in the possession of, and apparently the defendant's (*Jarman v. Hooper*, (1843) 6 M. & G. 827; 7 Scott, N. R. 663; 13 L. J. C. P. 63; 64 R. R. 861; *Catteral v. Kenyon*, (1842) 3 Q. B. 310; 11 L. J. Q. B. 260; 61 R. R. 235. See now, however, sect. 15 of the Bankruptcy and Deeds of Arrangement Act, 1913 (*post*, Part V.), as to protection given to the bailiff where goods of another in possession of the debtor are sold before a claim has been made.

Hiring Agreements.—Goods held under a hiring agreement cannot be seized, as they are not the debtor's property whilst the agreement is in force, though they may possibly pass to his trustee in bankruptcy as being in his order and disposition under section 38 of the Bankruptcy Act, 1914, at all events if the bankrupt is not an hotel keeper (*Tabor, In re; The Trustee, Ex parte*, (1920) 1 K. B. 808; 89 L. J. K. B. 352). As to right cause of action where hirer refuses to accept the goods let on hire, see *National Cash Register Co. v. Stanley*, (1921) 3 K. B. 292; 90 L. J. K. B. 1220. If such goods are seized and sold and the money paid to a judgment creditor the owner of the goods can recover the money from him as money had and received to his use (*Jones Brothers v. Woodhouse*, (1923) 2 K. B. 117; 92 L. J. K. B. 638).

Other Cases.]—The goods of a testator or intestate cannot be seized for the

personal debt of the executor or administrator (*Farr v. Newman*, (1792) 4 T. R. 621), unless by using them he has made the goods his own (*Quick v. Staines*, (1798) 1 B. & P. 290; 4 R. R. 801), in which case he cannot deny that they are his property.

If judgment is obtained against an individual who has partners for his separate debt, the partnership property cannot be seized under a warrant under such judgment (Partnership Act, 1890, s. 23). The remedy in this case is described *ante*, p. 191. The procedure when the judgment is against a firm is also described *ante*, p. 190.

The goods of ambassadors and other ministers of foreign states and their domestics cannot be seized (7 Anne, c. 12, s. 3).

Goods which are in the custody of the law cannot be seized (Com. Dig., "Execution," C. 4).

The rule of law being that a bailiff may only seize that which he can sell, goods in the defendant's possession, and on which he has a mere lien, cannot be seized (*Legg v. Evans*, (1840) 6 M. & W. 36; 9 L. J. (N. S.) Ex. 102; 55 R. R. 490). Where, however, goods are let to the defendant for a term, the bailiff may seize them, and sell the defendant's interest in them (*Legg v. Evans*, *supra*). Goods of the defendant pawned or leased to another cannot be seized till the bailment or term is determined (*Rogers v. Kenney*, (1846) 9 Q. B. 592).

At common law the goods of the execution debtor were bound from the *teste* of the writ. The Statute of Frauds (29 Car. 2, c. 3, s. 15 (stats. revised)), sect. 15 (repealed by the Sale of Goods Act, 1893), altered this by providing that "no writ of *feri facias* or other writ of execution" should bind the goods until the delivery of the writ to the "sheriff, under-sheriff, or coroners;" but decided cases established that as against the debtor himself, the goods, notwithstanding the statute, were still bound from the *teste* of the writ, consequently, if the defendant after the delivery of the writ to the bailiff assigned his goods, even for a valuable consideration, except it were in market overt, no property passed to the assignee, and the bailiff might still seize and sell them (*Samuel v. Duke*, (1838) 3 M. & W. 622; 7 L. J. Ex. 177); so if the assignment were before the delivery of the writ, if it were made for the purpose of delaying, hindering, or defrauding creditors (13 Eliz. c. 5; 29 Eliz. c. 5; *Twyne's Case*, (1602) 3 Rep. 80; 1 Sm. L. C. 1 (12th ed.): see notes).

Now by the Sale of Goods Act, 1893, s. 26 (56 & 57 Vict. c. 71), a writ of *feri facias* or other writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ was delivered to the sheriff to be executed: and, for the better manifestation of such time, it is the duty of the sheriff, without fee, upon the receipt of any such writ to indorse upon the back thereof the hour, day, month, and year when he received the same. By the same section it is provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ, or any other writ by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff. In the said section the term "sheriff" includes any officer charged with the enforcement of a writ of execution (s. 26).

In deciding the question of priority between an execution creditor and the holder of a bill of sale, the period to be regarded, at any rate where the registrar and the high bailiff are the same person, is the time when the application for the warrant of execution is made by the execution creditor; consequently an execution creditor who makes the application at an earlier hour of the same day as that on which the debtor gives a bill of sale over his goods will not be prejudiced by the warrant of execution being stamped as being delivered to the bailiff on the following day (*Murgatroyd v. Wright*, (1907) 2 K. B. 333; 76 L. J. K. B. 747). And where the warrant of execution is sent to a foreign court under sect. 158 of the County Courts

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Act, 1888, the property in the judgment debtor's goods is bound from the time at which the warrant is issued by the registrar of the foreign court to the high bailiff of that court (*Birstall Candle Co. v. Daniels*, (1908) 2 K. B. 254; 77 L. J. K. B. 590).

Proceeds of Execution.—Every high bailiff levying or receiving any money by virtue of any process of the court of which he is bailiff, must forthwith enter in ink on the face of the process, at the foot or on the margin, the amount levied or received, and sign this entry, and subject to Rules 34a, 35 and 36 of Order II. (see *infra*), within twenty-four hours from its receipt, except where by statute he is required to retain the same, pay over the same to the registrar of his court, who must indorse upon the process a memorandum of having received it, and return the process to the high bailiff (Order II. r. 34).

Under the Bankruptcy Act, 1914, s. 40, an execution creditor is not entitled to retain the benefit of his execution, as against the trustee, unless the execution is completed by sale as well as by seizure before the date of the receiving order, and before notice of a bankruptcy petition against the debtor, or of the commission of any available act of bankruptcy by him. The section is printed, *post*, Part V.

If, after seizure of the goods and before sale or the completion of the execution by the receipt or recovery of the full amount of the levy (see *Ex parte Warren* (C. A.), (1885) 15 Q. B. D. 48; 54 L. J. Q. B. 320; *Bellyse v. M'Ginn*, (1891) 2 Q. B. 227), any money is seized or received in part satisfaction of the execution the following provisions apply:—

1. If before paying over the money the high bailiff receives notice of a receiving order being made against the debtor, he shall on request, after deducting the costs of the execution, pay over such money to the official receiver, in accordance with sub-section 1 of section 41 of the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59) and send notices to the registrar and the execution creditor that he has done this (see Order II. r. 36, *infra*), Order II. r. 34a (1).
2. If, after he has paid this money over to the registrar, he receives notice of a receiving order having been made he must give notice thereof to the registrar of his court, and also, if the warrant issued out of any other court, and the money, after deducting the costs of his execution, has been certified to the registrar of that court, pursuant to Order 28, r. 2, give a similar notice to such registrar. Order II. r. 34a (II.).
3. In any case mentioned in paragraph II. the amount paid to the registrar, after deducting costs of execution is to be paid over on request by that registrar, or any other registrar to whom the money has been certified, to the official receiver or trustee in bankruptcy—unless it has been paid out to the execution creditor, before notice of the receiving order. Order II. r. 34a (III.).
4. A registrar paying over money pursuant to the last paragraph shall be allowed by the treasurer of his court at the audit the money so paid: money received by one registrar and certified to any other court, must be accounted for and paid over by such registrar to the treasurer of his court. Order II. r. 34a (IV.).

A sale before notice is not illegal even if a receiving order has been made (*Woolford's Trustee v. Levy* (C. A.), (1892) 1 Q. B. 772; 61 L. J. Q. B. 546). If the sale take place and the receiving order be made on the same day, it is believed that the official receiver will be entitled to the proceeds, even if the completion of the sale be earlier in point of time (so held by Chalmers, J., in *Lever v. Shepherd*, (1891) 90 L. T. 339, following *Wright v. Mills*, (1859) 4 H. & N. 488; 28 L. J. Ex. 223; 118 R. R. 566; see also *Clarke v. Bradlaugh* (C. A.), (1881) 8 Q. B. D. 63; 51 L. J. Q. B. 1).

Where under an execution on a judgment for a sum exceeding 20l., goods are sold or money is paid to avoid sale (*aliter* to avoid seizure, *Bower v. Hett*

(C. A.), (1895) 2 Q. B. 337; 64 L. J. Q. B. 483, 772), and the high bailiff is by the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 41 (2), required to retain the balance of the proceeds of the sale, or money, after deducting the costs for fourteen days, he must, within twenty-four hours of the sale or receipt of the money give notice to the registrar, and to the execution creditor as provided in Form 171. Order II. r. 35

If within fourteen days notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor on it or any other petition of which the high bailiff has notice, he must pay the balance to the official receiver, or to the trustee, who may retain it as against the execution creditor (Bankruptcy Act, 1914, s. 41); see *In re Craig & Sons, Ex parte Hinchcliffe*, (1916) 2 K. B. 497, as to the meaning of "balance," and *Latter v. Jukes*, (1927) 1 K. B. 17, which decides that the words "or any other petition" are not limited to petitions of which notice has been received within the fourteen days. In ascertaining the 20*l.* it is the amount for which the warrant issues, not the amount of the judgment, which is material (*Howes v. Young*, (1876) 1 Ex. D. 146), and the costs of the high bailiff to the time of sale must be included (*Ex parte Sims*, (1877) 5 Ch. D. 375; 46 L. J. Bk. 103); but not the expenses of possession money, appraisement and sale, unless they have been actually incurred (*Willey v. Hucks*, (1909) 1 K. B. 760; 78 L. J. K. B. 513). See *post*, Part V., pp. 1760 and 1761.

This notice to be effective ought to be served on the high bailiff or at his office, and not on the bailiff in possession (*Ex parte Warren; Bellyse v. M'Ginn*, *ante*, p. 198).

An execution levied by seizure and sale is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the high bailiff acquires a good title against the trustee (Bankruptcy Act, 1914, s. 40 (3)).

Where the high bailiff withdraws from possession, or pays over to the official receiver or trustee in bankruptcy, the proceeds of the sale or the money received in consequence of a notice that a receiving order has been made against the debtor, he must within twenty-four hours of such withdrawal or payment send to the registrar, and to the execution creditor notice in accordance with Form 172. Order II. r. 36.

Payment of Taxes and Rent, and Priority of Landlord.—The King's taxes, due at the time of seizure, to the extent of one year's arrears, must be paid by the bailiff to the collector before sale or removal, except where the process is at the suit of the landlord for rent (Taxes Management Act, 1880, s. 88). This provision would, it is believed, also entitle the landlord to be paid in priority to taxes, in case he gave notice of his claim under the provisions mentioned in the next paragraph.

The statute 8 Anne, c. 14, s. 1, does not apply to executions under process of the county court; but the landlord of a tenement in which goods are taken in execution may claim the rent at any time within five clear days from the date of the taking, or before the removal of the goods, by delivering to the bailiff making the levy a writing signed by himself or his agent, stating the rent in arrear, and the time for which it is due. The bailiff in addition to the levy must distrain for the rent and costs, but may not, within five days next after the distress, sell any part of the goods taken unless they are of a perishable nature, or upon the request in writing of the party whose goods have been taken. The bailiff must afterwards sell enough to satisfy, first, the costs of and incident to the sale, next the claim of the landlord, not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where it is let for any other term less than a year, and the rent of one year in any other case, and lastly the amount for which the warrant issued. If any replevin is made of the goods, the bailiff must still sell enough to satisfy the costs of and incident to the sale under the execution, and the amount for which the warrant issued; and in either event, the overplus of the sale, if any, and

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the residue of the goods, must be returned to the defendant. The poundage of the high bailiff and broker for keeping possession, appraisalment and sale under the distress, will be the same as would have been payable if the distress had been an execution of the county court, and no other fees may be demanded or taken (see sect. 160); and the high bailiff is entitled to a separate set of possession fees in respect of each proceeding, viz., under the execution and under the distress (*In re Broster*, (1897) 2 Q. B. 529; 66 L. J. Q. B. 766. Section 160 of the County Courts Act, 1888, applies only to sect. 1 of 8 Anne, c. 14, see *Lewis v. G. Davies*, (1914) 83 L. J. K. B. 598).

If the bailiff wrongfully seizes goods of a stranger on the defendant's premises, the landlord is not entitled to require the bailiff under this section to levy upon them for rent (*Beard v. Knight*, (1858) 8 E. & B. 865; 27 L. J. Q. B. 359; 112 R. R. 810; *Foulger v. Taylor*, (1860) 5 H. & N. 202; 29 L. J. Ex. 154; 120 R. R. 542); but if he rightfully seizes the defendant's goods on the premises of another, the landlord of the premises is so entitled (*Hughes v. Smallwood*, (1890) 25 Q. B. D. 306; 59 L. J. Q. B. 503). It seems extremely doubtful whether the bailiff could sell for rent if the execution creditor instructed the bailiff to withdraw, and abandoned his execution.

Sale.—Until the sale, the goods must be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff, and put in possession by the bailiff (see sect. 154).

Where goods are removed for deposit, the high bailiff, at or immediately after the removal, must give to the execution debtor a sufficient inventory of the goods removed; and at least twenty-four hours before the time fixed for the sale, a notice in writing signed by the high bailiff of the time when, and the place where, such goods will be sold. The inventory and notice are to be given to the execution debtor personally or sent to him by post to his residence, if known; if not known, to him at the place from which the goods are removed (Order XXV. r. 22).

For keeping possession the bailiff is entitled to sixpence in the pound (not exceeding 10s. a day) for each day, not exceeding seven, calculated on the value of the goods seized; but if the execution is paid out at the time of the levy, or within half an hour thereof, no possession fee is chargeable (Order XXV. r. 20). Where execution is levied under several warrants, and the same goods are seized to satisfy all the warrants, only one possession fee can be charged; but if different goods are seized and appropriated to each warrant, a possession fee is chargeable under each warrant, although possession is held simultaneously under all the warrants by one person only (*In re Morgan, Ex parte Board of Trade*, (1904) 1 K. B. 68; 72 L. J. K. B. 948; see *Glasbrook v. David*, (1905) 1 K. B. 615; 74 L. J. K. B. 492, as to sheriff's right to possession money in High Court). The sale must not take place until after the end of five days at least next following the day on which the goods were taken, unless they are of a perishable nature, or on the request in writing of the party whose goods are taken. The goods must be sold or valued by sworn brokers and appraisers appointed by the high bailiff, who are entitled out of the produce to sixpence in the pound on their value for appraisalment, whether there be one broker or more, over and above stamp duty, and one shilling and sixpence in the pound on the net produce of the sale for advertisements, catalogues, sale, commission and delivery of goods (C. C. Fees Order, 1925, Fee No. 60). No appraisalment may take place until the fifth day of the bailiff's having possession, unless the goods are of a perishable nature, or are sold at the request of the debtor within four days, or are removed (Order XXV. r. 21).

The judge may, in writing, authorise any bailiffs appointed by the high bailiff to act as brokers or appraisers for the purpose of selling or valuing; and bailiffs so appointed may perform all the duties, and will be entitled to the same poundage, as sworn brokers or appraisers (see sect. 159).

The bailiff must not sell more than is necessary to satisfy the execution: if he does he is liable in trover (*Stead v. Gascoigne*, (1818) 8 Taunt. 527);

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nor when he has sold sufficient, may he sell more on the supposition that by some event for which he is not answerable the amount levied may become insufficient (*Aldred v. Constable*, (1844) 6 Q. B. 370; 66 R. R. 421).

By the Bankruptcy Act, 1883, s. 145, where the execution is for a sum exceeding 20*l.*, including legal incidental expenses, the sale must, unless the court from which the process issues otherwise orders, be made by public auction, and not by bill of sale or private contract, and must be publicly advertised on and during three days next preceding the day of sale. (Not repealed by the Bankruptcy Act, 1914. For text of sect. 145 of 1883 Act, see Part V., STATUTES).

An application for a sale otherwise than by auction must be made to the court on notice (Form 170), stating the grounds of application. The high bailiff must deliver to any applicant a list of the names and address of every person at whose instance any warrant or writ of execution has been lodged with him. This list must be produced to the court on the hearing. The notice must be served on every person named in the list except the applicant, four clear days at least before the return day of the notice (Order XXV. r. 24).

If the high bailiff has notice of another execution or executions the court may not consider an application to sell privately until notice has been given to the other execution creditors (Bankruptcy Act, 1890, s. 13). Every person on whom notice is served may attend the hearing and be heard. The court may order all or any part of the costs to be paid by any of the persons who attend (Order XXV. r. 24).

The high bailiff must, on the request of the execution debtor, furnish him with a detailed account in writing of the sale and of the application of the proceeds thereof (Order XXV. r. 23).

The following provisions apply where, after the issue of the warrant, but before sale, money is paid into the home court, or into a foreign court to which the warrant has been sent for execution under sect. 158 of the County Courts Act, 1888, or to the bailiff holding the warrant (Order XXV. r. 23A (1)). If payment is made into the home court and the warrant is to be executed in that district, the fact and amount of the payment must forthwith be notified by the registrar, if he is also high bailiff, to the bailiff holding the warrant; if he is not high bailiff, the notification must be made to the high bailiff, who must as soon as may be notify the bailiff holding the warrant (Order XXV. r. 23A (2)). Similar provisions apply where the payment is made into the foreign court to which the warrant has been sent for execution (Order XXV. r. 23A (4)). If payment is made into the home court after it has been sent for execution to a foreign court, the notification is to be made as soon as may be after receipt by post by the registrar of the home court to the high bailiff of the foreign court, who in his turn must as soon as may be make the same notification to the bailiff holding the warrant (Order XXV. r. 23A (3)). If any payment, or notice of any payment, is received by the bailiff holding the warrant, he must forthwith indorse on the warrant the amount of the payment and sign the indorsement; if the amount is not sufficient to satisfy the amount to be levied and the costs of execution incurred before payment or notice of payment is received, the execution, unless withdrawn by the plaintiff, is to proceed only for the balance of the original amount to be levied and the costs of execution calculated on that amount, less the amount so paid (Order XXV. r. 23A (5)). Where money is paid in part satisfaction of an execution or in order to avoid a sale, but is paid into court instead of to the high bailiff, it is deemed to have been received by the high bailiff. The following provisions then apply:—

- (a) Where, if it would have been his duty, if the money had been received by him, to pay it to the registrar of his court, or transmit it under Order XXVIII., the money is to be dealt with as if it had

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- been so received and paid over, or transmitted, and the provisions of Order II. r. 34a, paragraphs (II.) and (III.) shall apply.
- (b) Where, if he had received it, it would be his duty to retain it under section 41 of the Bankruptcy Act, 1914, the money shall be retained in court.
 - (c) Where the execution creditor becomes entitled to receive the amount so retained, the money in court shall be dealt with as if it had been received by the high bailiff and paid over by him to the registrar of his court, or transmitted in accordance with Order XXVIII.
 - (d) Where, if he had received it, it would be his duty to pay it, after deducting costs, to the official receiver or trustee in bankruptcy, he shall, after deducting the costs, pay it to the official receiver or trustee in bankruptcy, and the registrar of his court shall pay the amount in court to him (Order XXV. r. 23b).

Costs.]—Costs of warrants, whether executed, unexecuted, or unproductive, will be allowed against the execution debtor, unless the judge otherwise orders (Order XXV. r. 19); but costs of an abortive execution are not to be included for the purposes of a judgment summons or of an application for a fresh order for payment under Order XXIII. r. 14. Nor is money paid into court otherwise than under execution to be attributed to payment of such costs (Order XXV. r. 56).

Return of Warrant and Payment of Money levied.]—The mode in which the high bailiff must make a return of what he has done under warrants of execution and pay over to the registrar moneys he has received thereunder is dealt with by Order II. rr. 33, 34, 34a, 35 and 36. Where any process has been executed, satisfied, withdrawn or stopped, the high bailiff shall file such process and retain it, unless in case of a warrant of execution he is required to lodge same in court, or in case of a warrant of committal the same has been delivered to the gaoler (Order II. r. 36a). It should be noticed here, however, that the statement made by the bailiff to the registrar, of what has been done under the warrant, has not the same effect as the return of a writ issued from the High Court. In the latter case, when once the writ is returned by the sheriff it is exhausted, and no further levy can be made under it; but in the case of the county court warrant it remains in the hands of the bailiff, and if a portion only of the amount, for which the warrant issued, is realised by the first levy, he may at any time before the expiration of the warrant, namely, one year, or of the renewed warrant, if renewed, make further levies under the same writ, but not on the same goods (*Haddow v. Morton*, (1894) 1 Q. B. 565), until the judgment is satisfied (see Order XXV. r. 6, and *Jordan v. Binckes*, (1849) 13 Q. B. 757).

Execution out of Jurisdiction of Home Court.]—A writ of execution out of an inferior court could not at common law be executed out of the jurisdiction (Com. Dig. "Execution," I. 2); but by a special provision in the Act (sect. 158), where a warrant of execution has issued against the goods and chattels of any person, or an order for his commitment has been made, and he or his goods and chattels are out of the jurisdiction of the court, the warrant of execution may be sent by the high bailiff to the registrar of any other court within the jurisdiction of which the person or his goods and chattels may then be or be believed to be, with a warrant annexed, requiring execution of the same (Form 173). The warrant might, it is believed, be sent under those provisions for execution to the City of London Court. There are, however, express statutory provisions to that effect: London (City) Small Debts Extension Act, 1852, Part V. The registrar of the court to which it is sent must seal or stamp it with the seal of his court, enter it in a book (Order XXVIII. r. 1) and re-issue it to the high bailiff of his court, and thereupon the high bailiff is to act in all respects as if the original warrant of execution or order of commitment had been directed to him by his own court.

In all cases of executions issued into a foreign district, where money has been received by the bailiff of the foreign court, he must within twenty-four

hours from the receiving of it (unless an interpleader summons as to such money is pending, or he is required by sect. 41 of the Bankruptcy Act, 1914, to hold the proceeds for fourteen days), transmit the money to the high bailiff of the home court with a return in writing, and give notice to the execution creditor (Forms 175, 175A). On receipt of such money with the return, the high bailiff of the home court must deliver same to the registrar of his court (see sect. 158; Order XXVIII. r. 2).

If the warrant is not executed within one calendar month from the day of delivery, the high bailiff of the foreign court must make a return to the registrar of the home court within twenty-four hours, and send a copy thereof to the execution creditor, and where not executed whilst in force return the same within a like time and indorse on the warrant the reason why it could not be executed, and sign the same. He must also return the warrant, executed or not, to the home court whenever so directed by the registrar of the home court, and give all such information as may be required of him in regard to the warrant (Order II. r. 37; Form 174).

As to the procedure in cases of part payment after issue of the warrant of execution, see Order XXV. rr. 23A, 23B.

Execution in Scotland and Ireland.—Under the Inferior Courts Judgment Extension Act, 1882 (45 & 46 Vict. c. 31), see *post*, Part V., execution may be obtained under an unsatisfied judgment for debt, damages, or costs against the goods of the judgment debtor within the jurisdiction of any sheriff's court in Scotland, or any civil bill court in Northern Ireland (sects. 4, 5), so long as the amount of the judgment does not exceed the amount for which an action for the same cause might have been brought in such court (sect. 9). As to Irish Free State, see *Banfield v. Chester*, (1925) 133 L. T. 623.

The Act will not apply to a judgment obtained against a person domiciled in Scotland or Ireland at the time of the commencement of the action, unless the whole cause of action arose, or the obligation to which the judgment related ought to have been fulfilled within the county court district, and unless personal service of the summons has been made within the district (sect. 10). In the interpretation of the section it is presumed that the words "whole cause of action" will receive the narrower interpretation placed upon the words "cause of action" in the repealed sect. 60 of the County Courts Act, 1846 (9 & 10 Vict. c. 95, s. 60), rather than the wider one ultimately held to be the proper interpretation of the words in the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76, s. 13; *Vaughan v. Weldon*, (1874) L. R. 10 C. P. 47; 44 L. J. C. P. 64). In this view every material part of the cause of action must arise within the district (see *ante*, note to sect. 74). Whether the alternative words, *or the obligation to which the judgment relates ought to have been fulfilled*, give wider facilities must remain in doubt. The obligation to pay a debt due would be literally within these words; but they are intended probably to apply to express contracts to do certain things.

In order to obtain execution under the Act, when the judgment has become final and not subject to appeal, the judgment creditor must obtain a certificate of the unsatisfied judgment in accordance with the Act and the rules of practice (see 45 & 46 Vict. c. 31, s. 3; Order XLV. rr. 1, 3, 4, 5; Form 430).

The certificate will not be granted if an order has been made for payment by instalments and no instalment is in arrear, or for payment within a time which has not expired (Order XLV. r. 2).

When granted, no further proceeding can be had in the court in which the certificate is issued until the judge or registrar, on being satisfied that the execution issued under the certificate has been unproductive, shall so order (Order XLV. r. 5).

As to costs, see sect. 4 of the Act and Order XLV. rr. 6, 7.

The certificate when so obtained may be registered in any of the courts named above pursuant to the regulations of such courts (45 & 46 Vict. c. 31, ss. 4, 11); so long as the certificate be presented for registration not more

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than twelve months from the date of the judgment (45 & 46 Vict. c. 31, s. 4). Execution against such of the goods of the judgment debtor as are within the jurisdiction of the courts will then issue as on a judgment of such court (45 & 46 Vict. c. 31, s. 5). The courts will have the same control over the execution as over executions under any judgments of such courts (45 & 46 Vict. c. 31, s. 6). The court may cancel the registration on proof that the original judgment has been set aside or satisfied (45 & 46 Vict. c. 31, s. 7).

If instead of availing himself of the provisions of the Act the judgment creditor brings an action on the judgment, he will not be entitled to recover any costs without the order of the court in which the action is brought (45 & 46 Vict. c. 31, s. 8).

Enforcing Judgment or Orders of County Court in the High Court.]—If the judgment is for a sum exceeding 20*l.*, without costs, and there are no goods or chattels which can be conveniently taken to satisfy the judgment, a judge of the High Court may, on terms, order a writ of *certiorari* to issue to remove the judgment into the High Court; and when removed it will have the same force and effect as a judgment of the High Court, but no action may be brought upon it (sect. 151, *post*, p. 207). Now, by sect. 20 of the County Courts Act, 1919, sect. 151 of the principal Act applies to orders obtained in a county court in the same manner as to judgments. *Austin v. Mills*, (1854) 9 Ex. 288; 23 L. J. Ex. 40; 96 R. R. 717. It is only under these circumstances that the judgment can be removed into the High Court (*Moreton v. Holt*, (1855) 10 Ex. 707; 24 L. J. Ex. 169). When so removed, land may be extended to satisfy the judgment. As to the effect of the registration of a Writ of Elegit on the judgment debtors' land, see *Ashburton (Lord) v. Nocton*, (1915) 1 Ch. 274; 84 L. J. Ch. 193. The judgment of a county court will be aided against the equitable estate of the debtor (*Bennett v. Powell*, (1855) 3 Drew. 326; 24 L. J. Ch. 736).

Aiding the Judgments of other Courts.]—By statutes relating to the City of London Court, and local courts of record, power is given to the officers of those courts, under conditions, to send process for execution to a county court. The City of London Court being now a county court (see *ante*, p. 2), and subject to the general provisions applicable to county courts, it is believed that no provision in aid of that court is necessary. The provisions of the London (City) Small Debts Extension Act, 1852, are printed, *post*, Part V., in case of need. Provisions have been made for aiding Scotch and Irish judgments. The whole may conveniently be noticed here.

Local Courts of Record.]—Where final judgment has been obtained in an action brought in a borough or local court of record for not more than 20*l.*, exclusive of costs; or where a rule or order of the judge has been made for payment of money, or costs, charges or expenses, not exceeding 20*l.*, the court may send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant may possess any goods or chattels. The registrar must stamp or seal the writ or precept, and thereupon it must be executed by the high bailiff as if it had been issued out of the county court. The high bailiff must take all the usual and proper fees thereupon, and make a return of what he has done thereunder to the bailiff or serjeant-at-mace of the court. In all matters done under such writ or precept or in relation thereto, the high bailiff will be under the direction and control of the judge of the county court of which he is high bailiff, as if the writ or precept had issued out of the county court. The costs of more than one writ, precept, or warrant, will not be allowed against the execution debtor unless by order of the judge (the judge of the borough or other local court is probably intended, and not the judge of the county court, *sed qu.*) of the "said court" (Borough and Local Courts of Record Act, 1872). See note to Order XXV. r. 17.

Scotch and Irish inferior Courts.]—The certificates of unsatisfied judg-

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ments for debts, damages, or costs, of the sheriffs' courts of Scotland, and the civil bill courts of Northern Ireland, may, under the provisions of the Inferior Courts Judgment Extension Act, 1882 (sect. 4), be registered in county courts in the district of which the judgment debtor then has goods; and after registration execution will issue as on an ordinary judgment of the court. The provisions of the Act, as already explained in reference to the registration of county courts' judgments in Scotland and Ireland, apply equally to the cases now under consideration (*ante*). Provision is also made by the rules for the delivery of particulars of the place where the goods of the debtor are, and for the sealing of a copy of the certificate, and for the costs (see Order XLV. rr. 8, 9, 10). A special form of warrant of execution is provided (Form 431).

It has been held in the High Court that where a certificate of a decret of the Court of Session in Scotland has been registered in the High Court under the Judgments Extension Act, 1868, that court has the same jurisdiction to appoint a receiver by way of equitable execution as if the judgment had been originally obtained in the High Court (*Thompson v. Gill* (C. A.), (1903) 88 L. T. 714).

Suspension of Execution.]—The judge may, at any time, if satisfied that the defendant is unable from any cause to pay, suspend or stay any judgment, order, or execution for such time and on such terms as he thinks fit, and so from time to time, until it is proved that the temporary cause of disability has ceased (sect. 23 of County Courts Act, 1919). Mere inability to pay owing to want of means was held not to be a sufficient cause under sect. 153 of the Act of 1888, but this section is repealed by sect. 23 of the County Courts Act, 1919, which is in quite general terms (*Attenborough v. Henschel*, (1895) 1 Q. B. 833; 64 L. J. Q. B. 255).

Also, by sect. 102 of the National Health Insurance Act, 1924, in certain cases a person in receipt of sickness benefit under the Act may obtain protection against distress and execution. See *post*, Part V., STATUTES.

Interpleader on Execution.]—See sect. 157, *post*, p. 211.

147. Every bailiff or officer executing any process of execution issuing out of the court against the goods and chattels of any person may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of five pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

What goods may be taken in execution.
 9 & 10 Vict.
 c. 95, s. 96.

See notes to sect. 146.

148. The high bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been seized or taken under the last preceding section, as a security for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised, for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the

Securities seized to be held by high bailiff.
 9 & 10 Vict.
 c. 95, s. 97.

Section 148. recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

Execution after default in instalment may issue for whole sum.

9 & 10 Vict.
c. 95, s. 95.

149. If the court shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the court shall order, either at the time of making the original order or at any subsequent time.

150.—Repealed by the County Courts Act, 1919, the following section of that Act being substituted :—

Set-off in cases of cross-judgments in county courts and High Court.

19. The following section [of the County Courts Act, 1919] shall be substituted for section one hundred and fifty of the principal Act :—

(1) Where one person has obtained a judgment or an order in a county court against another person, and that other person has obtained a judgment or order against the first-mentioned person in the same or in another county court or in the High Court, either such person may, in accordance with rules of court, give notice in writing to the court or the several courts, as the case may be, and may apply to the court or any of the said courts in accordance with rules of court for leave to set off any sums, including costs, payable under the several judgments or orders.

(2) Upon any such application the set-off may be allowed in accordance with the practice for the time being in force in the High Court as to the allowance of set-off and in particular in relation to any solicitor's lien for costs.

(3) Where the cross-judgments or orders have not been obtained in the same court, a copy of the order made on any such application shall be sent by the proper officer of the court to which the application is made to the proper officer of the other court.

This section considerably extends the cases where a set-off of cross-judgments is allowed.

Now a judgment or order obtained by one party can be set off against a judgment or order obtained by another party, in the same or any other county court, or in the High Court. Either party may in accordance with county court rules (see these rules, Order XXIII. r. 12c) give notice in writing to the court, or the several courts, as the case may be, and apply to the court, or any of the said courts, in accordance with rules, for leave to set off any sums, including costs, payable under the judgments or orders.

On such application the set-off may be allowed in accordance with the practice in force for the time being in the High Court, as to allowance of set-off, and in particular in relation to any solicitor's lien for costs. *Ward v. Hadrill*, (1904) 1 K. B. 399; 73 L. J. K. B. 277, was decided under the repealed section.

Where the cross-judgments or orders have not been obtained in the same court, a copy of the order made on the application must be sent by the proper officer of the court to which the application is made to the proper officer of the other court. See sect. 19, *supra*. Order XXIII. r. 12c, deals fully with the manner in which an application to set off cross-judgments or orders shall be made, and proceedings consequent thereon, (1) where the judgments or orders have been obtained in the same county court; (2) where they have been obtained in different county courts; (3) as to staying execution on such judgments or orders, or retaining money already recovered on the judgments or orders; (4) that the order made on the application shall direct how money in either of the county courts shall be dealt with, and that the order is to be communicated to the other registrar; (5) how satisfaction is to be entered and execution or other process only allowed for the balance due after the set-off; (6) that the application to set off, where one judgment or order has been obtained in the High Court, shall be made to the High Court in manner prescribed by rules of the Supreme Court; (7) that the applicant to the High Court gives notice to the registrar of the county court to enable him to stay execution and retain money; (8) that a copy of the order of the High Court made on the application be sent to the registrar of the county court, who must deal with money in court in accordance with the order, and set off any sums ordered to be set off; (9) providing how money in different courts is to be dealt with.

For Rules of the Supreme Court made under this section, see *post*, p. 244.

Section 19,
C. C. Act,
1919,
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151. If a judge of the High Court shall be satisfied that a party Judgment against whom *judgment* for an amount exceeding twenty pounds, exclusive of costs, has been obtained in a county court, has no goods or chattels which can be conveniently taken to satisfy such judgment, he may, if he shall think fit, and on such terms as to costs as he may direct, order a writ of *certiorari* to issue to remove the *judgment* of the county court into the High Court, and when removed it shall have the same force and effect, and the same proceedings may be had thereon, as in the case of a judgment of the High Court; but no action shall be brought upon such judgment. may be removed into the High Court if there are no goods to be taken under it. 19 & 20 Vict. c. 108, s. 49.

Order of a County Court for a Sum exceeding 20*l.* may now be removed in same Way as a Judgment.—By sect. 20 of the County Courts Act, 1919, an order of a county court for a sum exceeding 20*l.* exclusive of costs, where the party against whom such order is made has no goods or chattels which can be taken conveniently to satisfy the order, may be removed into the High Court in the same way as a judgment. See *post*, p. 242.

These are the only circumstances under which a judgment or order can be removed into the High Court (*Moreton v. Holt*, (1855) 10 Ex. 707; 24 L. J. Ex. 169).

When so removed land may be extended to satisfy the judgment (*Bennett v. Powell*, (1855) 3 Drew. 326; 24 L. J. Ch. 736). This is really the object of the removal. See note, *ante*, p. 204.

152. When a writ against the goods of a party has issued from the High Court, and a warrant against the goods of the same party has issued from a county court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the application to the registrar for the issue of the warrant to be executed; and the Priority of executions issued out of High Court and county court. 19 & 20 Vict. c. 108, s. 47.

Section 152. sheriff, on demand, shall, by writing signed by any clerk in the office of the under-sheriff, inform the high bailiff of the precise time of such delivery of the writ, and the bailiff, on demand, shall show his warrant to any sheriff's officer, and such writing purporting to be so signed, and the endorsement on the warrant, shall respectively be sufficient justification to any high bailiff or sheriff acting thereon.

153. Repealed by the County Courts Act, 1919, the following section of that Act being substituted :—

Power to
judge to
suspend exe-
cution or
order dis-
charge.

23. [County Courts Act, 1919.] The following provision shall be substituted for section one hundred and fifty-three of the principal Act, viz. :—

“ If at any time it appears to the satisfaction of the judge that any party to an action or matter is unable from any cause to pay and discharge any debt, damages, costs, or other sum recovered against him, or any instalment thereof, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action or matter, for such time and on such terms as the judge shall think fit, and so from time to time until it shall appear that the cause of inability has ceased, or to order, upon such terms (including liability to re-arrest if the terms are not complied with) as the judge may think fit, the discharge of any debtor arrested or confined in prison by order of the court who ought in the opinion of the judge to be discharged.”

This section, substituted for sect. 153 of the principal Act, considerably extends the powers of the judge to suspend execution, or order the discharge of a debtor.

Whereas the former section only applied to a defendant, the present one applies to *any party* to an action or matter.

In the former section the judge could only act in case of sickness or other sufficient cause, and it was decided in the case of *Attenborough v. Henschel*, (1895) 1 Q. B. 833 ; 64 L. J. Q. B. 255, that inability to pay owing to want of means was not a “ sufficient cause.” Now he may exercise his powers when he is satisfied that *for any cause* it is right to do so. Again, by the former section he could only act when it was a question of defendant's inability to pay the debt, damages, or any instalment thereof. Now he may, in addition, exercise his powers when there is inability to pay *costs* or other sum recovered against him. The conditions of discharge from custody may now include liability to re-arrest if such conditions are not complied with. Now the debtor need not be confined in prison before the judge has power to act, if he has been arrested.

Except as above, and the provisions in sect. 93 as to staying execution pending an application for a new trial, the County Court Acts contain no express power to stay proceedings. A stay of proceedings may, however, be obtained under R. S. C., Order LIX. r. 14, pending an appeal. See *ante* p. 147.

Regulating
the sale of

154. No sale of any goods which shall be taken in execution shall be made until after the end of the five days at least next

following the day on which such goods shall have been so taken; unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff to be put in possession by the bailiff, *or may be safeguarded in such other manner as the high bailiff directs*; and it shall be lawful for the high bailiff from time to time, as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression, and the judge or high bailiff may dismiss any person, broker, or appraiser so appointed; and no goods taken in execution under this Act shall be sold for the purpose of satisfying the warrant of execution except by one of the brokers or appraisers so appointed.

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goods taken
in execution.
9 & 10 Vict.
c. 95, s. 106.

Words in italics added by Administration of Justice Act, 1928, sect. 17.

The remainder of the section is repealed by the County Courts Act, 1924 (14 & 15 Geo. 5, c. 17), and in place thereof are substituted the words of sect. 9 (2) of the County Courts Act, 1924, which are as follows:—

(2) There shall be payable to brokers and appraisers in respect of the matters mentioned in section one hundred and fifty-four of the principal Act (which regulates the sale of goods taken in execution) out of the produce of goods distrained or sold such fees as may with the consent of the Treasury be prescribed instead of the poundage mentioned in that section.

See Fees, Nos. 59 and 60 of the C. C. Fees Order, 1925, *post*, p. 1123.

Where goods are removed for deposit, the high bailiff, at or immediately after the removal, must give to the execution debtor a sufficient inventory of the goods removed; and at least twenty-four hours before the time fixed for the sale, a notice in writing signed by the high bailiff of the time when, and the place where, such goods will be sold. The inventory and notice are to be given to the execution debtor personally, or sent to him by post to his residence, if known; if not known, to him at the place from which the goods are removed (see Order XXV. r. 22).

155. In or upon every warrant of execution issued against the goods and chattels of any person whomsoever, the registrar of the court shall cause to be inserted or indorsed the sum of money and costs adjudged and the fees for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the registrar of the court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid,

Execution to
be super-
seded on pay-
ment of debt
and costs.
9 & 10 Vict.
c. 95, s. 109.

Section 155. or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees inserted or indorsed as aforesaid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

For form of receipt, see Form 166.

Claimant of goods taken in execution must deposit their values or pay costs of keeping possession, otherwise goods shall be sold.
19 & 20 Vict.
c. 108, s. 72.

156. Where any claim shall be made to or in respect of any goods taken in execution under the process of the court, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be affixed by appraisement in case of dispute, to be by such bailiff paid into court, to abide the decision of the judge upon such claim, or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained, or may give to the bailiff in the prescribed manner security for the value of the goods claimed, and in default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale to abide the decision of the judge.

High bailiff may interplead where claims as to goods taken in execution are made.
30 & 31 Vict.
c. 142, s. 31.

157. If any claim shall be made to or in respect of any goods or chattels taken in execution, or in respect of the proceeds or value thereof, by any person, it shall be lawful for the registrar upon application of the high bailiff, as well before as after any action brought against him, to issue a summons calling before the court as well the party issuing such process as the party making such claim, and the judge shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as he shall think fit, and shall also adjudicate between such parties, or either of them, and the high bailiff, with respect to any damage, or claim of or to damages, arising or capable of arising out of the execution of such process by the high bailiff, and make such order in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such orders shall be enforced in like manner as any order in any action brought in such court, and shall be final and conclusive as between the parties, and as between them or either of them and the high bailiff, unless the decision of the court shall be in either case appealed from; and upon the issue of the summons any action which shall have been brought in any court in respect of such claim, or of any damage arising out of the execution of such process, shall be stayed.

Interpleader.—Under sect. 204 of the Supreme Court of Judicature (Consolidation) Act, 1925 (*post*, Part V.), the High Court may remit to a county court any proceedings in interpleader pending before the High Court

where the amount or value of the matter in dispute does not exceed 500*l*. As to practice then to be followed, see Order XXXIII., rr. 9—19. Formerly on a remitted interpleader issue no damages could be claimed against the execution creditor, but this can now be done if not forbidden in the order of the High Court under which the issue is remitted (Order XXXIII. r. 11).

Interpleader in County Court Actions.—When any claim is made by any person to or in respect of any goods or chattels taken in execution, or their proceeds or value, the high bailiff, by means of the following provisions, may, whether any action has been brought against him or not, relieve himself from the claim by applying to the registrar for an interpleader summons (see sect. 157; Order XXVII. rr. 1, 3, 4).

Where a claim, which must be in writing, is made, the high bailiff must forthwith send notice to the execution creditor (Form 203A), and to the claimant, requiring him to make deposit or give security in accordance with sect. 156 (Form 205); if the execution creditor admits the title of the claimant to the goods or chattels, and gives notice (Form 204A) to the high bailiff of such admission within four days after receipt of the high bailiff's notice, or if within the same time he requests the high bailiff to withdraw from possession, he will only be liable to the high bailiff for any fees for possession or expenses incurred by him prior to the receipt of such notice; and the judge may order the payment of such fees or expenses, on application in writing intitled in the matter of the execution, of which three clear days' notice in writing must be given by the high bailiff to the execution creditor (Order XXVII. r. 1). This rule enables the judge to order payment of the fees and expenses which *Thomas v. Peek*, (1888) 20 Q. B. D. 727; 57 L. J. Q. B. 497, decided he had power to award. Where the execution creditor does not in due time admit the title of the claimant, and the claimant persists in his claim, the high bailiff must apply for an interpleader summons (Order XXVII. r. 3).

A solicitor retained merely to bring an action has no implied authority, after judgment, to engage in interpleader proceedings (*James v. Ricknell*, (1887) 20 Q. B. D. 164; 57 L. J. Q. B. 113).

Where any claim is made, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be fixed by appraisalment in case of dispute (this does not mean a dispute between the bailiff and the claimant, but between parties interested, e.g., the claimant and the execution creditor: *Miller & Co. v. Solomon*, (1906) 2 K. B. 91; 74 L. J. K. B. 671), to be by the bailiff paid into court, to abide the decision of the judge upon the claim, or the sum which the bailiff is allowed to charge as costs for keeping possession of the goods until the decision can be obtained, or may give security for the value of the goods; and in default of the claimant so doing, the bailiff must sell the goods as if no claim had been made, and pay into court the proceeds to abide the decision (see sect. 156); the bailiff so selling gives the purchaser a good title to the goods, although they were the property of the claimant at the time of the seizure (*Goodlock v. Cousins* (C. A.), (1897) 1 Q. B. 558; 66 L. J. Q. B. 360). This decision was before sect. 15 of the Bankruptcy Act, 1913, referred to *infra*, and, it is thought, cannot now be regarded as an authority. Formerly, where the bailiff sold goods in possession of the debtor to which no claim had been made under sect. 157, and which turned out not to have been the property of the execution debtor at the time of the seizure or sale, the purchaser acquired no title to them as against the true owner (*Crane v. Ormerod*, (1903) 2 K. B. 37; 72 L. J. K. B. 507), and if the true owner had the right to retake possession of the goods at the date of the sale, such sale was an act of conversion in respect of which the sheriff or bailiff was liable. Now, by sect. 15 of the Bankruptcy Act, 1913, *post*, Part V., the purchaser in such a case does acquire a good title to the goods, and the bailiff cannot be sued in respect of such seizure unless he knew, or by reasonable inquiry might have known, that the goods were not the property of the judgment debtor. The bailiff will be entitled to sell without

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applying for an interpleader summons under sect. 157, and will not be responsible in damages, if the goods be sold for less than their real value, although the claimant may establish his title to them (*Cramer v. Matthews*, (1881) 7 Q. B. D. 425; S. C., *Davies v. Wise*, 50 L. J. Q. B. 651). The bailiff may, nevertheless, if no deposit has been made or security given, delay the sale until the claim has been adjudicated upon (Order XXVII. r. 7). When the bailiff pays into court the sum of money deposited with him by the claimant, he must be deemed to have taken it on the assumption that it represented the value of the goods, and he has therefore no right to remain in possession, or to possession fees, after the date of the deposit (*Newsum, Sons & Co. v. James*, (1909) 2 K. B. 384; 78 L. J. K. B. 761). Where a creditor, who has assigned a debt together with all securities for the same, subsequently recovers judgment against his debtor in the county court, and the goods of the judgment debtor are taken in execution, the assignee of the debt cannot claim the proceeds of sale under sects. 156 and 157 of the Act (*Plant v. Collins* (C. A.), (1913) 1 K. B. 242; 82 L. J. K. B. 467).

The claimant may, at any time before the return-day of the summons, file notice that he withdraws his claim, at the same time giving notice of withdrawal to the execution creditor, and the execution creditor, if he has not admitted the claim as above mentioned, may at any time before the return-day file an admission of the title of the claimant, and give notice (Form 204A) to him of such admission; the goods and chattels seized or the proceeds of their sale, or the money paid into court (as the case may be), will be dealt with as if the claim had not been made or the execution had been withdrawn; in either case the claimant or execution creditor (as the case may be) will be liable to be ordered to pay such costs, fees, charges, and expenses as the judge may think just (Order XXVII. r. 3). The high bailiff can get protection where the execution creditor abandons before interpleader; the application must be made in writing, and three clear days' notice in writing given to the claimant, who may attend the hearing (Order XXVII. r. 2).

Security for Costs when Claimant out of the Jurisdiction.—When the claimant does not reside in England or Wales, either the execution creditor or the high bailiff may apply to the court on notice in writing for an order for security for costs. If the order is made, and security not given within the time limited, the claimant is debarred from appearing in support of his claim, unless the judge otherwise orders. An undertaking by the claimant's solicitor to be responsible for the costs is sufficient (Order XXVII. r. 3A).

Summons.—Upon the application of the high bailiff, the registrar must issue a summons, without fee or leave of the judge, calling before the court the party who issued the process under which the goods were seized, and also the claimant (sect. 157; Order XXVII. r. 11; Forms 206—210). The summons must be issued from, and the execution creditor and claimant summoned to, the court of the district in which the levy was made (Order XXVII. rr. 11, 12). It must be served like an ordinary summons, except that if a party acts by solicitor service must be made on him. The claimant is deemed to be the plaintiff, and the execution creditor the defendant, but where the claimant has not made deposit or given security under sect. 156 (*supra*), the time of service may, if the high bailiff so desires, by leave of the judge or registrar, be such as will obtain a speedy decision of the claim (Order XXVII. rr. 4, 11).

The bailiff is not required by the mere fact of the issue of the summons to withdraw from possession (*Ex parte Summers*, (1852) 18 Jur. 522).

Upon the issue of the summons any action which has been brought in any court in respect of the claim or of any damage arising out of the execution of the process must be stayed (see sect. 157); but these provisions apply only as between the execution creditor, the claimant, and the high bailiff, or one of them. So an action brought against a person who has purchased

goods from the high bailiff cannot be stayed (*Hills v. Renny* (C. A.), (1880) 5 Ex. D 313; 49 L. J. Ex. 710).

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Particulars.]—The claimant, five clear days at least before the return-day, must deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or, in case of a claim for rent, of the amount thereof, and for what period and in respect of what premises it is claimed to be due; and the name, description, and address of the claimant must also be fully set forth in the particulars; and any money paid into court under the execution must be retained by the registrar until the claim is adjudicated on. The high bailiff must forthwith send one of the copies of the particulars by post to the execution creditor or his solicitor. By consent an interpleader claim may be tried, although this rule has not been complied with (Order XXVII. r. 5; Forms 211, 212; see as to an infant claimant, Order V. r. 16). The particulars ought to state how and by what right the claimant asserts his title; and where a notice stated only that the goods were the property of the claimant, but omitted to state any grounds of claim, it was held insufficient (*R. v. Chilton*, (1850) 15 Q. B. 220; S. C., *Ex parte Tanner*, 19 L. J. Q. B. 318; 81 R. R. 564). Where, however, the particulars stated that the goods were assigned to the claimant by an indenture (giving the date and the parties), but without specifying them in a schedule, it was held sufficient (*R. v. Richards*, (1851) 2 L. M. & P. 263; 20 L. J. Q. B. 351; 86 R. R. 898). It is not necessary that the claim should specify the goods or set them forth in the schedule (*Heslop v. M'George*, (1851) 18 L. T. O. S. 109). The court was equally divided as to whether particulars describing the goods, etc., seized, as "the goods and money seized by virtue of the warrant," were sufficient or not (*Richardson v. Wright*, (1875) L. R. 10 Ex. 367; 44 L. J. Ex. 230). Where the address of the claimant was stated as "Elizabeth Street," instead of "Terrace, Islington," it was held that, not being calculated to mislead, it was sufficient (*Ex parte M'Fee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700).

In all cases the judge is bound to adjudicate at some time upon a claim, although the particulars delivered by the claimant are insufficient, or have not been delivered in time. In such a case the judge should amend the particulars, or, if the particulars have not been delivered in time, order a new summons to issue, so that he may decide the case on the merits (*Beswick v. Boffey*, (1855) 9 Ex. 315; 23 L. J. Ex. 89; *R. v. Stapylton*, (1851) 2 L. M. & P. 603; 21 L. J. Q. B. 8; *Fraser v. Fothergill*, (1854) 14 C. B. 298; 23 L. J. C. P. 53). Still the insufficiency justifies the judge in refusing to hear it in its then form (*R. v. Chilton, supra*).

Where a judge of a county court, upon an interpleader summons, erroneously decides against a claimant, on the ground that the notice of claim is insufficient, the High Court may direct him to hear and adjudicate upon the claim (*Churchward v. Coleman*, (1866) L. R. 2 Q. B. 18; 36 L. J. Q. B. 57).

So the High Court may in such a case, by writ of prohibition, prohibit him from proceeding on the original plaint until the interpleader has been determined (*Ex parte M'Fee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700).

Claim for Damages.]—Where the claimant claims damages from the execution creditor or the high bailiff for or in respect of the seizure, he must state in his particulars the amount he claims for damages, and the grounds upon which he claims them (Order XXVII. r. 8 (1)). If he has not claimed damages before the issue of the interpleader summons, but claims them in his particulars of claim, he may be ordered to pay the costs of any adjournment necessary to enable the execution creditor or high bailiff to prepare his defence to the claim so made (Order XXVII. r. 8 (2)). If the claimant does not claim damages in the interpleader proceedings, he can maintain no subsequent action in respect of them (*Death v. Harrison*, (1871) L. R. 6 Ex. 15; 40 L. J. Ex. 26).

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Where the execution creditor claims damages against a high bailiff, he must deliver to him, five clear days at least before the return-day, a notice of the claim, stating the amount and grounds thereof; he may apply to the judge at the hearing of the interpleader summons to adjudicate upon his claim, which, for the purpose of fees and costs, will be deemed to be a claim in an interpleader (Order XXVII. r. 9. For orders, see Forms 223—225; and warrant of execution, Form 221).

Though the seizure was made in good faith and there was no misconduct, the high bailiff may be liable in damages (*L. C. and D. Rail. Co. v. Cable*, (1899) 80 L. T. 119). See, however, sect. 15 of Bankruptcy Act, 1913 (*post*, Part V.), which, it is thought, overrules this decision.

Either the high bailiff or the execution creditor may pay money into court in satisfaction, as if an action had been brought, and the high bailiff may pay money into court in satisfaction of a claim made against him by an execution creditor (Order XXVII. r. 10).

Money in Court.]—Money in court under the execution must be retained until the claim is adjudicated upon (Order XXVII. r. 5), when the court should order to whom it is to be paid (Forms 213, 214).

Hearing and Order.]—The hearing in cases of interpleader is the same as in ordinary actions, the claimant being considered as plaintiff, and the execution creditor as defendant (Order XXVII. r. 4); at the instance of either party, a jury may be asked for subject to the same qualification as in other cases (Order XXII. r. 3).

If there is no jury, the judge must adjudicate upon the claim, and make such order between the parties, and as to the costs, as to him seems fit. He must also adjudicate between the execution creditor and the claimant, or either of them, and the high bailiff, with respect to any damage or claim of or to damages, arising or capable of arising out of the execution of the process by the high bailiff, and make such order in respect thereof, and of the costs of the proceedings as to him seems fit; and subject to the right of appeal mentioned below, the order will be final and conclusive between the execution creditor, the claimant, and the high bailiff (sect. 157; Forms 213—221, 223—225). The order must contain directions as to how any money paid into court in the proceeding is to be disposed of. A minute of the order is entered in the minute book, but the order need not be drawn up, unless required by one of the parties or ordered by the court; if drawn up, it must be in accordance with the prescribed form (Order XXVII. r. 14). And, as between the execution creditor, the claimant, and the high bailiff, the order will not only dispose of claims actually brought forward, but will also bar claims which might have been brought forward and adjudicated upon (*Death v. Harrison*, (1871) L. R. 6 Ex. 15; 40 L. J. Ex. 26; *Hills v. Renny*, (1880) 5 Ex. D. 313; 49 L. J. Ex. 710), whether they exceed 50l. or not, the judge's jurisdiction as to them being unlimited (*Smith v. Benskin*, (1893) 94 L. T. (Journal) 285).

Where the execution creditor is successful, he will be entitled to the whole sum deposited by the claimant with the bailiff and paid into court by the latter, although some of the goods seized may admittedly be the property of another and subsequent claimant (*Wells v. Hughes*, (1907) 2 K. B. 845; 76 L. J. K. B. 1125).

In *Flude v. Goldberg*, (1916) 85 L. J. K. B. 219, it was decided that a claimant who claimed the goods as his absolute property but only satisfied the jury that they belonged to a partnership of which he was a member was not entitled to succeed against the execution creditor. But in *Peake v. Carter*, (1916) 1 K. B. 652; 85 L. J. K. B. 761, *Flude v. Goldberg* was explained as a case depending upon the particular issues insisted upon by the parties at the trial, and the absence of any amendment of the particulars of demand. The decision in *Peake v. Carter* was that the rule upon the trial of an interpleader issue is, that where a claimant claims under a

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title which he fails to prove, he is not thereby precluded from relying on the title in fact found to exist.

Goods were claimed by a claimant who paid their value (25*l.*) into Court. In an interpleader the judge found for the execution creditor and the 25*l.* was paid to him. He levied on the same goods again for a balance. The claimant again claimed and paid 25*l.* The judge again found for the execution creditor. Held on appeal that the execution creditor was estopped from denying that the goods were the property of the claimant (*Haddow v. Morton* (C. A.), (1894) 1 Q. B. 565; 63 L. J. Q. B. 431).

But by payment into court a claimant acquires no absolute property in the goods, and if they are again seized by a different creditor must again pay the full value into court as the condition of an interpleader issue (*Kotchie v. Golden Sovereigns, Ltd.*, (1898) 2 Q. B. 164; 67 L. J. Q. B. 722).

Costs of Bailiff.]—The judge must also adjudicate upon any claim of the high bailiff for the fees, and he may, if he think fit, order the same, or such part thereof as he may think just, to be paid by the claimant or by the execution creditor (Order XXVII. r. 6, and *Goodman v. Blake*, (1887) 19 Q. B. D. 77; 56 L. J. Q. B. 441).

It was formerly held that if the bailiff neglected to retain his costs, he could not, after paying over the proceeds, recover them from the execution creditor (*Bloor v. Huston*, (1854) 15 C. B. 266; 24 L. J. C. P. 26).

The order of the judge may be enforced in the same manner as any order in an action in the court, (sect. 157; Forms 213—221, 223—225).

Costs.]—To ascertain the scale upon which costs are to be taxed, the “subject matter” in an interpleader means, (1) in the case of a claimant, the value of the goods to which he establishes his claim, plus damages, if any (Order LIII. r. 15). The value of the goods is the value as found by the judge, not the amount of deposit made to avoid a sale (*Studham v. Stanbridge*, (1895) 1 Q. B. 870; 64 L. J. Q. B. 473), nor necessarily the sum of money which may have been ordered to be paid into court as representing the value of the goods (*Tarry v. Witt*, (1915) 84 L. J. K. B. 950). (2) In the case of an execution creditor, the value of the goods seized, plus the damages claimed; (3) in the case of a high bailiff, the damages claimed (Order LIII. r. 15).

Order for Sale.]—Where it appears that the claim is founded on a bill of sale, or otherwise, by way of security for a debt, the judge may order a sale of the whole or part of the goods or chattels, and may direct the proceeds of the sale to be applied in such manner and upon such terms as may be just (Order XXVII. r. 13). The order will be according to Form 212*a*, with such modifications as may be necessary and as the judge shall direct and the costs of the application for sale are borne as between the parties as the judge may direct (Order XXVII. r. 13). The order may be made although the execution creditor cannot contest the title of the bill of sale holder (*Miller & Co. v. Solomon*, (1906) 2 K. B. 91; 75 L. J. K. B. 671).

This provision is intended to prevent an execution from being defeated by a claimant under a bill of sale by way of security for a sum less than the value of the goods. In *Scarlett v. Hanson*, (1884) 12 Q. B. D. 213; 53 L. J. Q. B. 62, the Court of Appeal held that the *sheriff* in such a case could withdraw and make a return of *nulla bona*. It is submitted that in the county court the position is different, and that, having regard to the express provision of sect. 156 that “the bailiff shall sell” and to the fact that the first three rules of Order XXVII. are in general terms, it is the duty of the high bailiff either to remain in possession, or sell, or interplead. If he interpleads the order for sale may be made on the hearing of the interpleader summons.

Where a sale is directed, a duplicate of the order is given by the registrar to the high bailiff, who must forthwith sell the goods or chattels, and after deducting the expenses pay the balance into court, and such balance will be applied by the registrar in accordance with the order (Order XXVII.

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r. 13). A secured claimant is not entitled to receive out of the balance any sum not included in his particulars or mentioned in the order (*Hockey v. Evans* (C. A.), (1887) 18 Q. B. D. 390; 56 L. J. Q. B. 253).

Appeal.—An appeal lies on the same grounds as in other cases where the money claimed, or the value of the goods claimed, or of the proceeds thereof, exceeds 20*l*. If it does not exceed 20*l*., there may still be an appeal by leave of the judge (sec sect. 120). An appeal lies against an order under Order XXVII. r. 1 (2), on an application by the high bailiff for possession fees (*A. W., Ltd. v. Cooper & Hall, Ltd.*, (1925) 2 K. B. 816).

If the goods are appraised and a deposit made in accordance with the appraisement, the appraised value is the value for the purpose of appeal (*White v. Milne*, (1888) 58 L. T. 225), but see *Tarry v. Witt*, *supra*. If the value exceeds 20*l*., an appeal lies, although the claim in the original plaint is below 20*l* (*Vallance v. Nash*, (1858) 2 H. & N. 712; 27 L. J. Ex. 142; 115 R. R. 759). If the value does not exceed 20*l*., there can be no appeal, without leave, even though damages may be claimed exceeding 20*l*. (*Lumb v. Teal*, (1889) 22 Q. B. D. 675; 58 L. J. Q. B. 298).

The claimant or the execution creditor, or a landlord who appears on the summons (*Foulger v. Taylor*, (1860) 1 H. & N. 202; 29 L. J. Ex. 154; sects. 120, 186), may appeal if his rights are prejudiced.

If the court reverse the judgment and order a new trial, the order of the county court for costs will be also reversed (*Gage v. Collins*, (1867) L. R. 2 C. P. 381; 36 L. J. C. P. 144).

How execution may be had out of the jurisdiction of the court.

9 & 10 Vict.
c. 95, s. 104.

158. In all cases where a warrant of execution shall have issued against the goods and chattels of any person or an order for his commitment shall have been made, and such person, or his goods and chattels, shall be out of the jurisdiction of the court, it shall be lawful for the high bailiff of the court to send the warrant of execution or order of commitment to the registrar of any other court within the jurisdiction of which such person, or his goods and chattels, shall then be or be believed to be, with a warrant thereon endorsed or thereto annexed, under the seal of the court from which the original warrant or order issued, requiring execution of the same, and the registrar of the court to which the same shall be sent shall seal or stamp the same with the seal of his court and issue the same, to the high bailiff of his court; and thereupon such last-mentioned high bailiff shall be authorised and required to act in all respects as if the original warrant of execution or order of commitment had been directed to him by the court of which he is the high bailiff, and shall, within such time as shall be prescribed, return to the high bailiff of the court from which the same originally issued what he shall have done in the execution of such process, and shall, within such time as shall be prescribed, pay over all moneys received in pursuance of the warrant or order; and where any order of commitment shall have been made and the person apprehended, he shall be forthwith conveyed, in custody of the bailiff or officer apprehending him, to the prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the order of commitment, unless sooner discharged by law; and all

constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such order of commitment. Section 158
Notes.

NOTE.—The warrant addressed to the registrar of the foreign court requiring him to levy the execution need not be signed by the high bailiff of the home court, the above section having been amended by Administration of Justice Act, 1928, Sched. I. (2).

Execution out of Jurisdiction in England and Wales.—A writ of execution out of an inferior court could not at common law be executed out of the jurisdiction (Com. Dig. "Execution," I. 2). By the section (*supra*), where a warrant has issued against the goods and chattels of any person, or an order for his commitment has been made, and he or his goods and chattels are out of the jurisdiction, the warrant may be sent by the high bailiff to the registrar of any other court within the jurisdiction of which the person or his goods and chattels may then be or be believed to be, with a warrant endorsed or annexed, under the seal of the court from which the original warrant or order issued, requiring execution of the same (Form 173); and the registrar of the court to which it is sent must seal or stamp it with the seal of his court, enter it in a book (Order XXVIII. r. 1), and re-issue it to the high bailiff of his court. When the warrant is against goods, the high bailiff of the court from which it issues must annex to the notice to be left with the debtor (pursuant to Order XXV. r. 17) a notice under his hand and seal, that all payments under the warrant should be made, and all notices or claims in respect of the execution or the goods, should be given or sent to the high bailiff of the court of the district in which the levy is made, and not to the high bailiff of the court out of which the warrant originally issued. Order XXVIII. r. 1 (2); Form 173A. Thereupon the high bailiff is to act in all respects as if the original warrant of execution or order of commitment had been directed to him by his own court (sect. 158). This procedure includes City of London Court: London (City) Small Debts Extension Act, 1852, see Part V., STATUTES.

Transmission of Money Levied.—Subject to Order II., Rules 34A, 35 and 36, where by virtue of any warrant against goods sent to a foreign district any money has been received by the bailiff of the foreign court, he must within twenty-four hours, unless an interpleader summons as to such money is pending, transmit the amount to the high bailiff of the home court with a return in writing according to Form 175; he must also give notice of such return to the execution creditor (Form 175A) (Order XXVIII. r. 2 (1)).

Where the bailiff is by the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59, s. 41 (2)), required to hold the proceeds of sale, or the money paid in order to avoid sale for fourteen days, he must proceed in accordance with Order II. r. 35 and not under Order XXVIII. r. 2 (1) until the fourteen days have expired. Order XXVIII. r. 2 (2).

Where an interpleader as to the amount received is pending, the high bailiff postpones the return required by Order XXVIII. r. 2 (1) until it is disposed of and then shall make a return showing how the money received is to be disposed of, and the amount (if any) payable to the execution creditor, and the amount payable to the execution creditor dealt with as provided in Order XXVIII. r. 2 (1); Order XXVIII. r. 2 (3).

If the warrant is not executed within one calendar month from the day of delivery, the high bailiff of the foreign court must make a return to the registrar of the home court within twenty-four hours, and send a copy thereof to the execution creditor, and where not executed whilst in force return the same within a like time, and indorse on the warrant the reason why it could not be executed, and sign the same. He must also return the warrant, executed or not, to the home court whenever so directed by the registrar of the home court, and give all such information as may be required of him in regard to the warrant (Order II. r. 37; Form 174).

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Notes.

As to the procedure in cases of part payment after issue of the warrant of execution, see Order XXV. r. 23A.

Judge may
authorise
bailiffs to
act as
brokers.

12 & 13 Vict.
c. 101, s. 10.

159. It shall be lawful for the judge, by any writing under his hand, to authorise any of the bailiffs appointed by the high bailiff to act as brokers or appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act ; and the bailiffs so authorised by the judge may, without other licence in this behalf, do and perform all the duties and shall be entitled to the poundage which sworn brokers or appraisers may do and perform and are entitled to under this Act.

When goods
seized under
process of
the court
landlord
may claim
certain rent
in arrear.

19 & 20 Vict.
c. 108, s. 75.

160. Section one of the Act of the eighth year of the reign of Queen Anne, chapter fourteen, shall not apply to goods taken in execution under the warrant of the court, but the landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking, or before the removal of the goods, by delivering to the bailiff or officer making the levy any writing signed by himself or his agent, which shall state the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due ; and if such claim be made, the bailiff or officer making the levy shall, in addition thereto, distrain for the rent so claimed and the costs of such distress, and shall not within five days next after such distress sell any part of the goods taken unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken ; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of and incident to the sale, next the claim of such landlord, not exceeding the rent of four weeks where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and lastly, the amount for which the warrant was issued ; and if any replevin be made of the goods so taken, the bailiff shall, notwithstanding, sell such portion thereof as will satisfy the costs of and incident to the sale under the execution, and the amount for which the warrant issued ; and in either event the overplus of the sale, if any, and the residue of the goods, shall be returned to the defendant, and the poundage of the high bailiff and broker for keeping possession, appraisalment, and sale under such distress shall be the same as would have been payable if the distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

The provisions of this section do not extend to ss. 6 and 7 of 8 Anne, c. 14, but are confined to s. 1 of that statute ; therefore where the goods of a former tenant who has surrendered are taken in execution, the landlord cannot claim arrears of rent as against the execution creditor. Neither in such

circumstances does sect. 160 (*supra*) apply, as this section is a substitute alone for sect. 1 of 8 Anne, c. 14 which is only applicable where the relation of landlord and tenant is a subsisting one: *Lewis v. Davies*, (1914) 2 K. B. 469; 83 L. J. K. B. 598.

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The high bailiff is entitled to a separate set of possession fees in respect of each proceeding, viz., under the execution and under the distress (*In re Broster*, (1897) 2 Q. B. 529; 66 L. J. Q. B. 766).

If the bailiff wrongfully seizes goods of a stranger on the defendant's premises, the landlord is not entitled to require the bailiff under this section to levy upon them for rent, the bailiff can only sell for rent under this section such goods as he can sell under the execution (*Beard v. Knight*, (1858) 8 E. & B. 865; 27 L. J. Q. B. 359; 112 R. R. 810; *Foulger v. Taylor*, (1860) 5 H. & N. 202; 29 L. J. Ex. 154); but if he rightfully seizes the defendant's goods on the premises of another, the landlord of the premises is so entitled (*Hughes v. Smallwood*, (1890) 25 Q. B. D. 306; 59 L. J. Q. B. 503). It seems extremely doubtful whether the bailiff could sell for rent if the execution creditor instructed the bailiff to withdraw, and abandoned his execution. Although there may be goods on the premises which the landlord could distrain, they may in fact be exempt when the bailiff levies.

161. Whenever any order of commitment under the Debtors Act, 1869, shall have been made, or any warrant of attachment shall have been ordered to be issued, such order or warrant, under the seal of the court, shall be directed to the high bailiff of any court, who by such order or warrant shall be empowered to take the body of the person against whom such order shall be made or warrant issued; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such order or warrant; and the governor of every prison mentioned in any such order or warrant shall be bound to receive and keep the person therein mentioned until discharged under the provisions of this Act or otherwise by due course of law.

Mode of
issuing and
executing
orders of
commitment.
9 & 10 Vict.
c. 95, s. 102.

See Debtors Act, 1869, s. 5 (*post*, p. 268) and Order II. r. 4.

The judge may refuse to make the order, or may make a fresh order for payment at a specified time or by instalments (Order XXV. r. 46 (1)). The execution of an order of commitment may be suspended by direction of the judge, notice of any such direction being given to the judgment debtor (Order XXV. r. 46 (2); Form 191A). Subject to the provisions of Order XXV. rr. 48 and 49, all payments under a fresh order or order of commitment must be paid into court (Order XXV. r. 46 (3)).

On the making of the order by the judge, the registrar makes a minute of it. The court will not grant a prohibition on the ground that the minute does not show the ground on which the order is made (*Harris v. Slater*, (1888) 21 Q. B. D. 359; 57 L. J. Q. B. 539).

Execution of Order.—The order of commitment authorises the high bailiff and his bailiffs to arrest the judgment debtor, and lodge him in gaol (Order XXV. r. 46A; see Form 187). The Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 14, does not prevent an immediate taking to prison (*Mitchell v. Simpson* (C. A.), (1890) 25 Q. B. D. 183; 59 L. J. Q. B. 355). The ordinary rules as to the mode and place of execution apply (see sect. 77; Order LIV. r. 19). All constables and other peace officers must aid in executing the order, and the governor of the prison mentioned in it must receive and keep the debtor until discharged by due course of law (sect. 161). The extreme term of imprisonment is six weeks (Debtors Act, 1869, s. 5), computed from the date of lodging in prison (*Ex parte Foulkes*, (1846) 15 M. & W. 612).

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Notes.

If the plaintiff directs the execution of the order against a person not named in it, he is liable in trespass (*Walley v. M'Connell*, (1849) 13 Q. B. 903; 19 L. J. Q. B. 162; 78 R. R. 552).

The bailiff is not entitled to enter and search premises unless the debtor is in fact there, otherwise he will be liable in trespass (*Morrish v. Murray*, (1844) 13 L. J. Ex. 261).

The order must set out the particular ground of committal, in order that the person committed may know exactly what he ought to do to purge his contempt (*R. v. Lambeth C. C.* (2), (1887) 36 W. R. 475).

See further as to orders of commitment notes to Debtors Act, 1869, *post*, pp. 268 *et seq.*

Privilege from Arrest.—See *post*, p. 279.

Power of
committal
for contempt.
9 & 10 Vict.
c. 95, s. 113.

162. If any person shall wilfully insult the judge, or any juror or witness, or any registrar, bailiff, or officer of the court for the time being during his sitting or attendance in court, or in going to or returning from the court, or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the court, to commit any such offender to any prison to which he has power to commit offenders for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

See Order LII. r. 8; Forms, of order, 365; of warrant of commitment, 366; of warrant of commitment in default of payment of fine, 367.

Where a fine, or an instalment of a fine made payable by instalments, is not paid in accordance with the order, the registrar must forthwith report the matter to the judge, and act on any orders given for the enforcement of such fine (Order LII. rr. 9, 10). Payment of the fine may be enforced in the same manner as a judgment debt, or in the same manner as money adjudged to be paid under the Summary Jurisdiction Acts (see these statutes, *post*, pp. 909—911). Though a limited company cannot be committed for contempt of court on a return to a writ of attachment an appropriate penalty other than imprisonment may be inflicted (*Rex v. J. G. Hammond & Co., Ltd.*, (1914) 2 K. B. 866; 83 L. J. K. B. 1221). The section confines the power to commit for contempts committed in court and to the particular cases therein specified. The judge has no power to proceed under this section, or by virtue of his authority as a judge, against a person for contemptuous and insulting writing published out of court (*R. v. Lefroy*, (1873) L. R. 8 Q. B. 134; S. C. *Ex parte Jolliffe*, 42 L. J. Q. B. 121); nor can he commit a person for contempt in practising as a solicitor without being duly qualified (*R. v. Brompton C. C.* (2), (1893) 2 Q. B. 195; 62 L. J. Q. B. 604).

A county court judge could possibly exercise this authority when exercising under sect. 67 of the County Courts Act, 1888, the powers of a Chancery judge.

The judge has jurisdiction to decide conclusively whether any particular act amounts to an insult, interruption or misbehaviour, if there be any evidence on which he could reasonably hold it to be so; nor need the warrant

of commitment state more than that the judge has been wilfully insulted. To say to a judge, in reference to an observation in his judgment, "that is a most unjust remark," is a wilful insult within the section (*Reg. v. Jordan* (C. A.), (1888) 57 L. J. Q. B. 483). The recital that the plaintiff had insulted the judge is a sufficient adjudication of the offence in the warrant of committal. It is not necessary that it should go further and describe the nature of the insults (*Levy v. Moylan*, (1850) 1 L. M. & P. 307; 10 C. B. 189; 19 L. J. C. P. 308; 84 R. R. 524; and see *Ex parte Pater*, (1864) 5 B. & S. 299; 33 L. J. M. C. 142; 136 R. R. 538).

Various contempts, punishable by attachment, will hereafter be mentioned, *e.g.*, under Order XVI. r. 21. The above provisions do not extend to them.

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163. If a judge orders any person to be committed to prison either for contempt or in pursuance of the Debtors Act, 1869, he shall order such person to be committed to a prison which shall from time to time, by order of one of Her Majesty's principal Secretaries of State, be allowed as a place of imprisonment for persons committed by the judge of such court: Provided that, until such order of a Secretary of State has been made, the person may be committed to any prison to which the judge now has power to commit him.

To what prisons commitments may be made.
12 & 13 Vict. c. 101, ss. 1, 2, 3.
19 & 20 Vict. c. 108, s. 74.

To what Prison.]—The debtor against whom an order of commitment is made, must be committed to the particular prison designated by various orders of the Home Secretary. The orders apply to all commitments whatsoever, and will be found in Appendix C, *post*, p. 932.

PART VIII.

RULES; FEES; FINES; UNCLAIMED MONEY IN COURT.

164. The Lord Chancellor may appoint *five judges* (a) and from time to time fill up any vacancies in their number, to frame rules and orders for regulating the practice of the courts and forms of proceedings therein, and scales of costs to be paid to counsel and solicitors, and from time to time to amend such rules, orders, forms, and scales; and such rules, orders, forms, and scales, or amended rules, orders, forms, and scales, certified under the hands of such judges, or any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow, or alter the same; and the rules, orders, forms, and scales, or amended rules, orders, forms, and scales, so allowed or altered, subject to the concurrence of the authority for making rules of the Supreme Court, as in the Supreme Court of Judicature Act, 1884, provided, shall, from a day to be named by the Lord Chancellor, be in force in every court. Such power of making rules and orders shall extend to all matters of procedure or practice, or relating to or concerning the effect or operation in law of any procedure or practice, in any case within the cognizance of county courts, as to which rules of the Supreme Court have been or might law-

Rules, etc., and forms of proceedings and scale of costs to be framed by judges appointed by Lord Chancellor.
19 & 20 Vict. c. 108, ss. 5, 32.
28 & 29 Vict. c. 99, ss. 16, 17.
30 & 31 Vict. c. 142, ss. 15, 27.

Section 164. fully be made for cases within the cognizances of the High Court. The rules, orders, forms, and scales of costs in force at the commencement of this Act shall continue to be in force unless and until otherwise provided. In any case not expressly by this Act or in pursuance thereof provided for the general principles of practice (b) in the High Court may be adopted and applied to actions and matters.

38 & 39 Vict.
c. 50, s. 8.

44 & 45 Vict.
c. 68, s. 27.

9 & 10 Vict.
c. 95, s. 78.

(a) By sect. 24 (1) of the County Courts Act, 1919 (*post*, p. 243), three other persons are to be appointed by the Lord Chancellor, in addition to the five judges mentioned in the above section, to frame county court rules and orders.

Of these three persons one shall be a barrister, one a registrar of a county court, and one a solicitor.

The power of making rules under the above section is to extend to making rules—

(1) For carrying into effect the County Courts Act, 1919.

(2) For requiring each party to an action, where the debt, demand, or damage claimed or counterclaimed exceeds 20*l.*, or such greater amount as the rules may provide, to state the nature of his claim, or defence in writing in sufficient time before the trial, in the form of particulars or otherwise (sect. 24 (2)). The rules made under this section now appear as Order X. rr. 9A 9B, 10. See notes to sect. 82 of principal Act, *ante*, p. 90.

(b) See *McCreagh v. Frearson*, (1922) 91 L. J. K. B. 365, as to meaning of "principles of practice."

Rules must not be ultra vires.—It seems that rules of practice must not be inconsistent with or repugnant to the provisions of the Act of Parliament under which they are framed. The rules made under the County Courts Act, 1849, were to have the same force and effect as if enacted by Parliament, but it was nevertheless held that a rule providing that seven days' notice should be given of an intended application for a new trial did not take away the discretion which the County Courts Act, 1846, gave the judge to grant a new trial, and that he might grant it though the rule had not been complied with (*In re Carter*, (1855) 4 E. & B. 696; 24 L. J. Q. B. 141; 99 R. R. 699). So a rule under the County Courts Act, 1856, which provided that an appeal case should be presented for signature at the first court held after twelve clear days from the date of the judgment, was held not to take away the appellant's right to have the case signed at a later day (*Hacking v. Lee*, (1860) 2 E. & E. 906; 29 L. J. Q. B. 204). In *Irving v. Askew* (1870) L. R. 5 Q. B. 208, 211; 39 L. J. Q. B. 118), Hannen, J., delivering the judgment of the court, said: "If the rule were really repugnant to the provisions of the Act of Parliament, I should think that the rule, though made under the powers of the Act, would not override its enactments." So a rule similar to Order II. r. 1, of the present rules was doubted by the judges, and an opinion expressed that it was *ultra vires* (*Wetherfield v. Nelson*, (1869) L. R. 4 C. P. 571; 38 L. J. C. P. 220; see also an example of an invalid rule of quarter sessions, *R v. Pawlett*, (1873) L. R. 8 Q. B. 491; 42 L. J. M. C. 157. See *A.-G. v. Sillem*, (1864) 10 H. L. C. 704; 33 L. J. Ex. 92, 209; 138 R. R. 382).

Forms.—All proceedings and documents must be in form similar to the prescribed forms, where they are applicable; and in cases where the forms are not applicable or no forms are provided, parties must frame the proceedings or documents, using as guides those contained in the Appendix to the Rules (Order LIV. r. 22). By a recent rule provision is made for the printing and supply by the Treasury of forms which are marked as "not to be printed," but which experience has shown to be in common use (Order LIV. r. 22A).

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Notes.

Practice.—No practice may prevail in any court which is inconsistent with the rules, nor may any matter be added to or taken from any form in the Appendix, whereby any obligation is imposed upon any suitor or any officer of the court to which he is not liable under statute or the rules or otherwise by law (Order LIV. r. 23). In many cases the rules leave the determination of particular matters in the discretion of the judge, and he is not permitted to prescribe for his own guidance, or that of the officers of the court, general rules to be applied to cases as they arise, instead of exercising his discretion in the particular case. Thus, where a judge made a general rule that solicitors' costs should not be allowed in certain cases, and refused them in a particular case in obedience to his general rule, it was held that he had not exercised his discretion, and he was ordered to hear and determine the application (*R. v. Marylebone C. C.*, (1890) 34 S. J. 459; see also *The Cashmere*, (1890) 15 P. D. 121; 59 L. J. P. 57).

The general practice of the court prescribed by the rules, applies to all proceedings whatsoever authorised by any existing or future Act to be commenced or taken in any county court, except and so far as such practice may be inconsistent with the provisions of any such Act or of any rules made as to the procedure under such Act (Order L. r. 36).

The last words of section 164 were held to empower the judge to allow a pauper plaintiff to sue *in formâ pauperis*; see *Chinn v. Bullen*, (1849) 8 C. B. 447; 19 L. J. C. P. 42; 79 R. R. 566, but this decision is overruled by *Cook v. Imperial Tobacco Co.*, (1922) 2 K. B. 158, and it is now settled, notwithstanding what was said by Phillimore, L.J., in *Perry v. London General Omnibus Co.*, (1916) 2 K. B. p. 346, that a county court judge has not the power to allow a person to sue *in formâ pauperis* in his court. They do, however, give power to a judge to dismiss a case as being frivolous and vexatious (*Norman v. Matthews*, (1916; 35 L. J. K. B. 857). See also County Courts Act, 1924, s. 8, *post*, p. 250.

Where proceedings in the High Court in which one of the parties has been admitted as a poor person are transferred to the county court, the rules of the Supreme Court relating to proceedings by and against poor persons continue to apply to such proceedings, subject to certain modifications; see Order XXXIII. r. 20.

165. The Lord Chancellor from time to time, with the concurrence of the Treasury, may make orders as to the fees to be paid on any proceedings which are now or shall hereafter be authorised to be taken in the courts, whether any fee is now payable thereon or not: Provided always, that every such order shall be notified to both houses of Parliament within ten days from the commencement of the session next after the making thereof.

As amended by the County Courts Act, 1924 (14 & 15 Geo. 5, c. 17), Sched. II.

How regulated.—The fees now taken on proceedings in the courts are regulated by the County Court Fees Order, 1925.

A table of all fees must be posted in some conspicuous place in every court house and in every registrar's office (see sect. 166).

Payment of fees may be enforced by order of the judge in like manner as a judgment debt (sect. 166).

See Part II., "Costs and Court Fees."

166. The fees payable on the proceedings in the courts shall, except in interpleaders, or where such fees shall be payable in respect of keeping possession, appraising or selling goods seized,

Order as to fees.
19 & 20 Vict.
c. 108, s. 79.
28 & 29 Vict.
c. 99, s. 13.

Fees: how payable, and where to be exhibited.

Section 166. be paid in the first instance by the party on whose behalf any such proceeding is to be taken before such proceeding is taken; and in default of the payment of any fees, payment thereof shall, by order of the judge, be enforced in like manner as payment of any debt adjudged by the court to be paid; and a table of all fees shall be posted in some conspicuous place in every court house and registrar's office.

19 & 20 Vict.
c. 108, s. 78.

Court Fees.]—The costs which a successful plaintiff incurs necessarily include court fees, which are always in the first instance payable by the party on whose behalf any proceeding is taken, except in interpleaders, or where fees are payable in respect of keeping possession, appraising, or selling goods seized (see sect. 166). In all cases in which costs abide the event (*i.e.*, in default of an order by the judge), or where the judge makes an order for costs generally, a successful plaintiff will be entitled to recover from the defendant, as part of his costs, the court fees which he has paid, subject, however, to this proviso, that if the plaintiff or defendant recovers less than the amount of his claim or counterclaim, so as to reduce the amount of court fees recoverable by him, he will have to pay the difference himself (Order LIII. r. 19).

Fines, how to
be enforced.

9 & 10 Vict.
c. 95, s. 87.

167. Payment of any fine imposed by any court under the authority of this Act may be enforced upon the order of the judge, in like manner as payment of any debt adjudged by the court to be paid, or in such manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Summary Jurisdiction Acts.

Where a fine, or an instalment of a fine made payable by instalments, is not paid in accordance with the order imposing such fine, the registrar must forthwith report the matter to the judge, and act on any orders given for the enforcement of such fine (Order LII. rr. 9, 10; Forms 355, 356). Payment of the fine may also be enforced in the same manner as a judgment debt, or in the same manner as money adjudged to be paid under the Summary Jurisdiction Acts (*post*, pp. 909—911).

Penalties to
be paid to
registrar and
accounted to
treasurer.

9 & 10 Vict.
c. 95, s. 133.

168. The moneys arising from any penalties, forfeitures, and fines inflicted or authorised to be imposed by this Act, when paid and levied, shall (if not by this Act directed to be otherwise applied) be from time to time paid to the registrar of the court, and accounted for by him to the treasurer.

Account of
fees and fines.
9 & 10 Vict.
c. 95, s. 41.
15 & 16 Vict.
c. 54, s. 89.

169. The registrar of every court from time to time, as often as he is required by the Lord Chancellor, with the concurrence of the Treasury, so to do, and in such form as the Lord Chancellor, with the like concurrence, shall require, shall deliver to the treasurer a full account in writing of the fees received in that court under the authority of this Act, and a like account of all fines levied by the court, and of the expenses of levying the same.

As amended by the County Courts Act, 1924, Sched. II.

170. Repealed by Administration of Justice Act, 1928.

171. The treasurer of every court shall from time to time audit and settle the accounts of the registrar and other officers of the court, and shall receive the balance of the various moneys which such registrar and other officers shall have received under this Act; and the registrar shall pay over to the treasurer of the court, at such times as may be directed by the Lord Chancellor, the moneys received by him as a registrar. **Section 171.**
Audit of registrar's accounts.
9 & 10 Vict. c. 95, s. 42.

As amended by the County Courts Act, 1924, Sched. II.

In *Burridge v. Nicholetts*, (1861) 6 H. & N. 383; 30 L. J. Ex. 145; 123 R. R. 582, it was held that where a registrar, to whom notice of the treasurer's intention to audit the books had been given, locked up his office and left at the time for closing appointed by the then 6th Rule of Practice, the treasurer was justified in breaking open the office to get at the books.

The books of the court, including the bankers' book and cash book, must be at all times open to his inspection (Order II. r. 12).

172. The Lord Chancellor, with the concurrence of the Treasury, shall from time to time make such rules as they shall think fit for securing the balances and other sums of money in the hands of any officers of every court, and for the due accounting for and application of all such balances and other sums of money. Rules as to balances.
9 & 10 Vict. c. 95, s. 44.
29 & 30 Vict. c. 14, s. 5.

As amended by the County Courts Act, 1924, Sched. II.

173. The registrar of every court shall, in the month of March in each year, make out a correct list of all sums of money belonging to suitors in the court which shall have been paid into court, and which shall have remained unclaimed for five years before the first day of January then last past, specifying the names of the parties for whom or on whose account the same were so paid into court; and a copy of such list shall be put up and remain during court hours in some conspicuous part of the court house, and at all times in the registrar's office, and all sums of money which shall have been paid into any such court to the use of any suitors thereof, and which shall have remained unclaimed for the period of six years on the first day of January next after the said list shall have been put up as aforesaid, shall be accounted for by the registrar to the treasurer, and no person shall be entitled to claim any sum which shall have remained so unclaimed; but no time during which the person entitled to claim such sum shall have been an infant or feme covert, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years. Suitors' money unclaimed in six years to be forfeited.
9 & 10 Vict. c. 95, s. 112.

PART IX.

MISCELLANEOUS PROVISIONS.

174. Any Order in Council made for the purposes of this Act shall be published in the *London Gazette*. Publication of Orders in Council.
9 & 10 Vict. c. 95, s. 8.

Section 175. **175.** No privilege, except as hereinafter excepted, shall be allowed to any solicitor or other person to exempt him from the jurisdiction of the court.

No privilege allowed.

9 & 10 Vict.
c. 95, s. 67.
12 & 13 Vict.
c. 101, s. 18.

Privilege.—No privilege, except as stated below, is allowed to any solicitor or other person to exempt him from the jurisdiction of the court (see sect. 175; see *per Jervis, C.J., Borradaile v. Nelson*, (1854) 14 C. B. 655; 23 L. J. C. P. 159; and see *Blair v. Eisler*, (1888) 57 L. J. Q. B. 512; 21 Q. B. D. 185, where it was held that s. 5 of the County Courts Act, 1867, which deprived plaintiffs in actions commenced in the High Court of costs if less than £20 in contract, or £10 in tort, was recovered, applied to an action in which a solicitor was plaintiff). But a privileged person, as a Queen's priest, cannot be arrested under process issued from a county court (*Ex parte Dakins*, (1855) 16 C. B. 77; 24 L. J. C. P. 131; 100 R. R. 620).

Universities.—The jurisdiction of the courts of the chancellors or vice-chancellors of Oxford and Cambridge is not affected by the County Courts Act, and the chancellors, masters and scholars of those universities enjoy an absolute immunity from county court proceedings in cases within their privileged jurisdiction (see sect. 176).

Justices.—Justices of the peace have, in certain cases, a power to oust the jurisdiction of the county courts, on giving notice of objection in a specified manner (11 & 12 Vict. c. 44, s. 10). See *ante*, note to sect. 62.

Defendants.—Where a claim in a personal action exceeds a certain sum, a defendant may generally object to the jurisdiction, and obtain the removal of the cause into the High Court (see sect. 62). In these cases the county courts have, therefore, jurisdiction, unless the defendant determines it in the proper manner (*ante*, p. 47).

Stannaries Court.—This court has since January 1st, 1897, ceased to exist (59 & 60 Vict. c. 45). Jurisdiction transferred to County Courts of Cornwall. See Stannaries Courts Abolition Act, and rules thereunder, *post*, Part V.

Saving for universities of Oxford or Cambridge.
9 & 10 Vict.
c. 95, s. 140.

176. Nothing in this Act contained shall be construed to alter or affect the rights or privileges of the chancellor, masters, and scholars of the universities of Oxford or Cambridge respectively as by law possessed, or the jurisdiction of the courts of the chancellors or vice-chancellors of the said universities as holden under the respective charters of the said universities or otherwise.

Saving for court of vice-warden of Stannaries.
9 & 10 Vict.
c. 95, s. 141.
28 & 29 Vict.
c. 99, s. 6.

177. Nothing in this Act contained shall be construed to affect the court of the vice-warden of the Stannaries; but this provision shall not be deemed to prevent the establishment of any court under this Act within the Stannaries, or to limit or affect the jurisdiction of any court so established under this Act: Provided that no judge shall have authority to entertain jurisdiction in any case to which the equitable jurisdiction of the said court of the vice-warden of the Stannaries at present extends.

See note, *supra*.

When treasurer's clerk to be deemed a civil servant.
29 & 30 Vict.
c. 14, s. 5.

178 If the Treasury shall think fit to employ in the examination of the accounts of the courts any person whom they may think it desirable so to employ on account of knowledge acquired by him as clerk to any treasurer of a court, such clerk shall, if after one year the Treasury shall continue to employ him, be deemed a

servant in the permanent civil service of the State, and be entitled to superannuation. Section 178.

179. In every town or place where there shall be a court the townhall, court house, or other public building belonging to any county, city, borough, town, or place, or vested in any public body, shall, with all necessary rooms, furniture, and fittings in any such public building, be used for the purposes of holding the court, without any charge for rent or other payment save and except the reasonable and necessary charges for lighting, warming, and cleaning, when such public building is used for the purpose of the court: Provided always, that the necessary arrangements shall be made so that the sittings of the court shall not interfere with the business of the county, city, borough, or town usually transacted in such townhall, court house, or other public building, or with any purposes for which such townhall, court house, or other public building may be used by virtue of any local act in that behalf: Provided also, that this enactment shall not apply to any city, borough, or town in which a building shall have been heretofore erected for the purposes of holding the court, and for the business connected with such court.

Townhalls
used for
sittings.
13 & 14 Vict.
c. 61, s. 24.

See County Courts (Buildings) Act, 1870, *post*, p. 261, as to the provision of offices, etc.

180. For every court there shall be a seal of the court, and all summonses issuing out of the said court and all such other documents so issuing as may be prescribed shall be sealed or stamped with the seal of the court, and all such summonses and such other documents purporting to be so sealed shall in England be received in evidence without further proof thereof; and every person who shall deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process or authority of the said court, shall be guilty of felony.

Process of
the court to
be under
seal.
9 & 10 Vict.
c. 95, s. 5.

As amended by the Forgery Act, 1913, and the County Courts Act, 1924, s. 9 (3).

Documents requiring the seal of the court are set out in Part V. of the Appendix to the Act, *post*, p. 912. See Order LIV. r. 14.

As to penalty for forging the seal of the court, see Forgery Act, 1913 (3 & 4 Geo. V. c. 27), sect. 5.

A., a creditor of J. R., sent a letter, purporting to have been signed by the clerk of a county court, demanding payment, and in default threatening proceedings in a county court; J. R.'s wife then went to A., and he told her that he had ordered the county court to send the letter. She then paid him the amount, and he then demanded, but did not receive, 1s. 3d. for the county court expenses: it was held, on these facts, that A. was guilty of a felony under the latter part of the section (*R. v. Evans*, (1857) 1 Dears. & B. C. C. 236; 26 L. J. M. C. 92). So was a person who filled up a blank form of application for a summons, and signed it "W. G., registrar

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Incidental
expense.

19 & 20 Vict.
c. 108, s. 85.
50 & 51 Vict.
c. 3, s. 3.

No action for
beer, etc.,
consumed on
the premises
to be brought.
30 & 31 Vict.
c. 142, s. 4.

Register of
judgments.

15 & 16 Vict.
c. 54, s. 18.
28 & 29 Vict.
c. 99, s. 15.

of the Taunton Court," and indorsed a notice on the back of it stating that execution would be issued unless the amount were immediately paid, and signed it "W. G." (*R. v. Richmond*, (1859) 1 Bell, C. C. 142; 28 L. J. M. C. 188). But where a notice to produce documents at the hearing of a cause in a county court was sent by post to the prosecutor, no plaint having been entered, it was held that the paper was only a notice to produce and did not purport to be a process of the court (*R. v. Castle*, (1857) 1 Dears. & B. C. C. 363; 27 L. J. M. C. 70).

181. The expense of supplying the courts and offices with law and office books and stationery, and of postage stamps, and the disbursements of the high bailiffs, in conveying to prison persons committed by the courts, and all other expenses arising out of any jurisdiction now or hereafter conferred on such courts or any officer thereof, shall be paid by the Treasury out of any moneys to be from time to time provided by Parliament for such purposes.

182. No action shall be brought or be maintainable in any county or other court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry.

The 24 Geo. II. c. 40, s. 12, as amended by 25 & 26 Vict. c. 38, prevents the recovery of sums under 20s. for spirituous liquors, unless delivered at the purchaser's residence in reputed quart bottles.

183. A register of every judgment entered in the courts for the sum of ten pounds and upwards, and of every such other judgment or order (a) as may be prescribed, shall be kept in such manner in such place, and under such regulations as the Lord Chancellor shall prescribe, and for the inspection of the said register when formed such fees shall be charged to persons desirous of inspecting the same as shall be fixed by the Lord Chancellor with the concurrence of the Treasury, and the proceeds of such fees shall be applied, in such manner as the Treasury shall appoint, in paying the expenses incurred in maintaining the said register; and the surplus of such fees, after providing for the payment of such expenses, shall be paid over to the credit of the consolidated fund.

As amended by the County Courts Act, 1924, Sched. II.

(a) By sect. 18 (2) of the County Courts Act, 1919, the judgment, where the money is ordered to be paid by one party to the other party or his solicitor, instead of being paid into court, is not to be registered, if within twenty-one clear days from the judgment proof is given to the registrar in the prescribed form that the judgment has been satisfied. See *post*, p. 241.

The prescribed form is by affidavit or otherwise as the registrar may direct (Order XXXVI. r. 3).

Persons in the country may obtain information through the registrar of the court in the district where they reside, or by writing to the registry. In these cases the fee is 1s. for each name. When a judgment has been satisfied, the name of the defendant may be removed from the registry on payment to the registrar of the court of a fee of 1s.

A return of every judgment entered in the City of London Court for 10l. or upwards has to be transmitted to the registry of county courts judgments (Order XXXVI. r. 1), and also of Admiralty judgments and orders, and judgments and orders in actions or matters commenced under the equitable jurisdiction of the court (Order XXXVI. r. 2).

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Notes.

The publication of extracts from the register of judgments is privileged *Searles v. Scarlett* (C. A.), (1892) 2 Q. B. 56; 61 L. J. Q. B. 573).

184. Repealed by the Law of Property (Amendment) Act, 1924 (15 Geo. V. c. 5). The section related to acknowledgments by married women which are rendered unnecessary by Sect. 167 of the Law of Property Act, 1925.

185. The courts held by virtue of the London (City) Small Debts Extension Act, 1852, shall be held by the name of the City of London Court and shall be a court of record, and its decisions shall be subject to appeal in the same way and on the same conditions as the decisions of a county court are subject for the time being. The judge and officers of the City of London Court shall respectively have and exercise the like jurisdiction, power, and authority in all respects, except the power of appointing officers, as are for the time being possessed and exercised by the judge and officers respectively of a county court. The rules and orders in force for the time being for regulating the practice of and costs in the county courts, and forms of proceedings therein, shall be in force in the said City of London Court, to the exclusion of any other rules and orders; and the same fees shall be taken for proceedings in which jurisdiction is hereby given to the court as upon similar proceedings in the county courts, and such fees shall be applied in the same manner as the fees taken under the provisions of the said London (City) Small Debts Extension Act, 1852; provided that nothing in this Act shall take away, lessen, or diminish any of the powers, rights, or privileges of the judge of the said court, or the authority of the mayor, aldermen, and commons of the city of London in common council assembled in relation to such court, or to the judge or officers thereof, or to the fees taken therein, as such powers or authority heretofore existed.

City of
London
Court.
28 & 29 Vict.
c. 99, s. 4.
30 & 31 Vict.
c. 142, s. 35.

15 & 16 Vict.
c. lxxvii.

City of London Court.—The City of London Court is substantially a county court, and is subject to the same provisions as other county courts; nothing in the County Courts Act is, however, to take away or diminish any of the powers, rights, or privileges of the judge, or the authority of the mayor, aldermen, and commons of the city of London in council assembled in relation to such court, or to the judge or officers thereof, or to the fees taken therein, as such powers or authority previously existed (see sect. 185). The powers, rights, and privileges reserved by this proviso appear to have reference to salary, fees, and compensation only, though the meaning is obscure; and the proviso does not, at any rate, operate to exempt the judge from the provisions of sect. 131 (*mandamus*); and if he refuses to perform his duty, a rule to compel him to do so will lie under the last-mentioned section (*Blades v. Lawrence*, (1874) L. R. 9 Q. B. 374; 43 L. J. Q. B. 133). The power to remove the registrar is reserved to the common

Section 185
Notes.

council, and is not vested in the Lord Chancellor, as in other cases (*Osgood v. Nelson*, (1871) L. R. 5 H. L. 636; 41 L. J. Q. B. 239).

Sect. 39 of the London (City) Small Debts Extension Act, 1852 (15 & 16 Vict. c. lxxvii.), is not repealed by sect. 74 of the principal Act, hence the City of London Court has jurisdiction if the defendant has "employment" within the City (*Kutner v. Phillips*, (1891) 2 Q. B. 267; 60 L. J. Q. B. 505), and without leave of judge or registrar, where the cause of action wholly or in part arose therein (*Felton v. Bower*, (1900) 1 Q. B. 598; 69 L. J. Q. B. 351).

For express provisions as to the service of process from the City of London Court, see sect. 41, London (City) Small Debts Extension Act, 1852 (*post*, Part V.). This section seems obsolete since sects. 84, 185, 186 of the principal Act.

The City of London Court is now in effect a county court, and subject to the general provisions applicable to county courts, but the appeal in an original Mayor's Court action must still be brought within two days under sect. 8 of the Mayor's Court of London Procedure Act, 1857. The Mayor's and City of London Court Act, 1920, and rules thereunder have not enlarged the right of appeal (*Newman v. Klausner*, (1922) 1 K. B. 228; 91 L. J. K. B. 125). The provisions of sect. 94 of the London (City) Small Debts Extension Act, 1852, are printed in Part V.

SUPPLEMENTARY.

Interpreta-
tion of Act.
9 & 10 Vict.
c. 95, s. 142.
30 & 31 Vict.
c. 142, s. 5.

186. In construing this Act or any future Act relating to county courts, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meanings following:

- "Lord Chancellor" shall include Lord Keeper or the first commissioner for the custody of the Great Seal; and
- "Treasurer" shall include any person appointed by the Treasury to supervise the persons appointed to examine the accounts of the registrars and other officers of the court; and
- "Person" shall include a body corporate or politic; and
- "Landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be holden in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion; and
- "Judge" shall mean judge of county courts; and
- "Registrar" shall mean registrar of a county court, or where there are joint registrars either of such registrars; and
- "Bailliff" shall include high bailiff and any registrar performing the duties of high bailiff; and
- "Order" shall include rule; and
- "Action" shall include suit, and shall mean every proceeding in the court which may be commenced as prescribed by plaint; and
- "Matter" shall mean every proceeding in the court which may be commenced as prescribed otherwise than by plaint; and

“Prescribed” shall mean prescribed by the county court rules for the time being; and Section 186.

“Court” or “county court” shall mean and include any court held under this Act, and also the City of London Court, and shall include and mean the judge or registrar of the court.

“Return-day” shall mean the day appointed in any summons or proceeding for the appearance of the defendant, or any other day fixed for the trial or hearing of any action or matter.

“Party” shall include every person served with notice of, or attending any proceeding, although not named as a party to such proceeding.

187. Repealed by the Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo. V., c. 49. Construction of Acts referring to county courts.

“Inferior court” under that Act, includes a county court as well as any other inferior court (sect. 225).

188. (1) Any Order in Council or order now in force, whether made under any enactment hereby repealed or not, shall continue in force until otherwise provided; and Repeal.

(2) Any judge or officer appointed under any enactment hereby repealed shall continue and be deemed to have been duly appointed under this Act; and

(3) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act.

NOTE.—The remainder of this section and the schedule repealed by the Statute Law Revision Act, 1908.

Construction of Acts and Rules.—Any reference in any Act passed since 1846 to a county court must be construed as referring to a court under the Act of 1888, unless a contrary intention appears (52 & 53 Vict. c. 63, s. 6). The County Courts Act of 1888, 1903, 1919 and 1924 are to be construed as one Act (sect. 11 (1), County Courts Act, 1924).

Before the Act of 1888 there was an appeal in Admiralty actions, by virtue of sect. 10 of the County Courts Act, 1875, without leave, if the divisional court altered the judgment of the county court, notwithstanding the provisions of sect. 45 of the Judicature Act, 1873 (*The Lydia* (C. A.), (1888) 14 P. D. 1; 58 L. J. Adm. 37); and it has been held that although sect. 10 of the Act of 1875 is repealed by the Act of 1888, the provision in it that the repeal of the Acts repealed by it shall not revive any enactment not in force at the commencement of the Act (see sect. 188), prevents the application of sect. 45 of the Judicature Act to such appeals, and continues the right of appeal without leave (*The Dart* (C. A.), (1893) P. 33; 62 L. J. P. 32). See, however, sect. 31 (1) (f) of the Supreme Court of Judicature (Consolidation) Act, 1925.

Unless a contrary intention appears, all words importing the masculine gender must be construed to include females, the singular to include the plural, and the plural the singular (52 & 53 Vict. c. 63, s. 1). Month means calendar month, although in the registrar’s minute of the order upon a judgment summons it means a lunar month (*Saunders v. Swansea Finance Co.*, (1905) 21 T. L. R. 317). Land includes messuages, tenements and hereditaments, houses and buildings of any tenure. Oath and affidavit,

in the case of persons allowed to affirm or declare instead of swearing, include affirmation and declaration, and swear includes, in the like case, affirm and declare (52 & 53 Vict. c. 63, s. 3).

The meaning of various particular words defined by the principal Act will be found in sect. 186.

The same words when used in the rules have the same meaning as in the Act, unless there is something in the subject or context repugnant to such meaning (see Order LV.).

The meaning of other particular words in the rules will be found in Order LV.

THE COUNTY COURTS ACT, 1903.

[3 EDW. VII. c. 42.]

AN ACT TO EXTEND THE JURISDICTION OF THE COUNTY COURTS.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the County Courts Act, 1903.

2. Repealed by Statute Law Revision Act, 1927.

Extension of jurisdiction of court.

51 & 52 Vict. c. 43.

3. The portions of the fifty-sixth, fifty-seventh, fifty-eighth, fifty-ninth, sixtieth, eighty-first, ninety-sixth, one hundred and sixteenth, one hundred and thirty-eighth, and one hundred and thirty-ninth sections of the County Courts Act, 1888, containing the words " fifty pounds " are hereby repealed, and in lieu thereof there shall be substituted the words " one hundred pounds."

Juries.

4. Repealed by the County Courts Act, 1919.

Transference of actions in which the plaintiff claims more than fifty pounds by virtue of this Act.

5. It shall be lawful for His Majesty by Order in Council to provide that the actions in which the plaintiff claims a sum exceeding fifty pounds by virtue of this Act shall be tried in any court, where His Majesty is satisfied that due provision has been made for carrying on the business of the court without interference with the ordinary jurisdiction of the court, and of which the judge of the court in which such actions may be commenced is the judge (a), and that the court to which such actions may be transferred for trial shall have the same jurisdiction in such actions as it would have had in case they had been commenced therein, and that the judgment of the court in which such actions are tried shall have the same effect as if the judgment therein had been the judgment of the court in which they were commenced.

NOTE.—(a) See Order in Council, *post*, p. 254.

Where actions are so transferred for trial under Order in Council, the special procedure prescribed by Order XXIIA. rr. 22—26, must be followed.

Registrars.

6. Repealed by the County Courts Act, 1924.

7. The power to make rules of court in accordance with the one hundred and sixty-fourth section of the County Courts Act, 1888, shall extend to making rules for carrying this Act into effect. (See these Rules contained in Order XXIIA.)

Section 7r
Rules.

8. This Act and the County Courts Act, 1888, shall be construed as one Act.

COUNTY COURTS ACT, 1919.

[9 & 10 GEO. V. c. 73.]

(This Act came into operation on April 1st, 1920.)

AN ACT TO AMEND THE LAW RELATING TO COUNTY COURTS AND TO MAKE FURTHER PROVISION WITH RESPECT TO THE POWERS OF THOSE COURTS.

[23rd December, 1919.]

Be it enacted, etc.

1. The following section shall be substituted for section sixty-five of the County Courts Act, 1888 (hereinafter referred to as

51 & 52 Vict.
c. 43.

“the principal Act”):—

“In any action commenced in the High Court where—

“(1) the plaintiff's claim is founded either on contract or on tort and the amount claimed or remaining in dispute in respect thereof does not exceed one hundred pounds, whether the action could or could not have been commenced in a county court, and whether the defendant does or does not set up or intend to rely on a counterclaim, and whether the counterclaim (if any) is founded on contract or on tort, and whether the amount claimed on the counterclaim exceeds or does not exceed one hundred pounds; or

Transfer of actions of contract, of tort, and for recovery of land from High Court to county court.

“(2) the only matter remaining to be tried between the parties is a counterclaim, whether founded on contract or on tort, and whether the counterclaim if it had been an action could or could not have been commenced in a county court, and the amount claimed or remaining in dispute in respect of the counterclaim does not exceed one hundred pounds; or

“(3) the plaintiff's claim is for recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant or any person holding or claiming by, through, or under a tenant, whose term has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent, and the action could have been commenced in a county court;

Section 1. — either party may at any time apply to the court or a judge for an order that the claim and counterclaim (if any) or, if the only matter remaining to be tried is a counterclaim, the counterclaim shall be transferred—

“(a) to any county court in which the action might have been commenced if the subject matter and the amount thereof had been within the jurisdiction of the court; or

“(b) if the only matter remaining to be tried is a counterclaim, to any county court in which the counterclaim might have been commenced if it had been an action and the subject matter thereof had been within the jurisdiction of the court; or

“(c) to any county court which the court or judge may deem the most convenient to the parties;

and the court or a judge may thereupon, if the court or judge thinks fit, order the same to be so transferred accordingly.”

See notes to sect. 65 of principal Act, *ante*, p. 50.

Transfer of actions of tort where plaintiff is without visible means of paying costs.

2. The following section shall be substituted for section sixty-six of the principal Act :—

“In any action founded on tort commenced in the High Court the defendant may, on an affidavit made by himself or by any person on his behalf showing that the plaintiff has no visible means of paying the costs of the defendant should a verdict not be found for the plaintiff, apply to the court or a judge for an order to transfer the action to a county court; and thereupon the court or judge, unless the plaintiff satisfies the court or judge that he has such means, may, if the court or judge having regard to all the circumstances of the case thinks fit so to do, make an order that unless the plaintiff within a time to be limited in the order gives security for the defendant's costs to the satisfaction of the court or a judge the action shall be transferred to such county court to be named in the order as the court or judge may deem the most convenient to the parties.”

See notes to sect. 66 of principal Act, *ante*, p. 56.

The order may be made though the plaintiff has been admitted to sue in the High Court *in forma pauperis* (*Cook v. Imperial Tobacco Co.*, (1922) 2 K. B. 158; 91 L. J. K. B. 771).

Transfer, etc. of applications to attach debts or levy execution against member of firm

3. Where an application is made to the High Court for the attachment of any debt to answer a judgment or order, or for leave to issue execution against a person as being a member of a firm against which a judgment or order has been obtained, and the amount of the debt sought to be attached, or for which execution is sought to be levied, as the case may be, does not

exceed one hundred pounds, the court or a judge may make an order either— Section 3.

- (1) transferring the matter to ; or
- (2) directing that any issue necessary for determining the matter shall be tried in,

such county court to be named in the order as the court or judge may deem the most convenient to the parties.

See notes to sect. 65 of principal Act, and Order XXXIII. rr. 1, 4A, 4B, 4C, and next section, *infra*.

4.—(1) Where, under any of the provisions of the principal Act or this Act, an action or counterclaim or matter is ordered to be transferred from the High Court to a county court, any party may lodge with the registrar of the county court named in the order, or cause to be lodged with him, the order and the writ or copies thereof and such other documents (if any) as the court or judge may direct, and the proper officer of the Supreme Court shall, on the application of such party and on production of the order and the filing of a copy thereof, send by post to the registrar of the county court all pleadings, affidavits and other documents filed in the High Court relating to the action, counterclaim or matter.

Procedure on transfer of cases from High Court and trial of transferred cases.

On the documents aforesaid being so lodged or sent, the action and counterclaim (if any), or the counterclaim or matter, shall be transferred to the said county court, and, subject to county court rules, all further proceedings therein shall be taken and tried as if the action, counterclaim, or matter had been originally commenced in that county court, and the county court shall have jurisdiction to deal with the same, any enactment to the contrary notwithstanding :

Provided that the transfer shall not affect any right of appeal in the High Court or to the Court of Appeal from the order directing the transfer, or the right to enforce in the High Court any judgment signed or order made in that court before the transfer.

(2) Where, under the foregoing provisions of this Act, an order is made directing an issue to be tried in a county court, the order shall define the issue to be tried, and any party may lodge or cause to be lodged the order, together with the affidavits (if any) filed in matter, and such other documents (if any) as the court or judge may direct, with the registrar of the county court named in the order, and on the documents aforesaid being so lodged the issue shall, subject to county court rules, be tried in that county court, and the judge of that county court, after the same has been so tried, shall certify the result of the trial and send his certificate to the High Court, together with the documents

Section 4. aforesaid and any report which he may think fit to make as to costs or otherwise.

See notes to sects. 65, 66 and 69 of principal Act, and Order XXXIII.

**Jurisdiction
of registrar.**

5.—(1) Subject to county court rules, a registrar may, on the application of the parties and by leave of the judge, hear and determine any case in which the sum claimed or the amount involved does not exceed five pounds.

(2) Where a defendant gives notice in the prescribed manner that he admits his liability for the whole or any part of a claim, but desires the decision of the court as to the time and mode of payment thereof and offers to pay the same, the registrar shall, subject to county court rules, on such notice to the plaintiff as may be prescribed, and unless, where the defendant admits less than the full amount claimed, the plaintiff objects in the prescribed manner to accept the amount admitted and the offer of payment in satisfaction of his claim, have power to enter up judgment and, for this purpose, to decide any question as to time and mode of payment.

(3) Where the plaintiff and defendant enter into an agreement in the prescribed manner as to the amount payable in respect of the whole or any part of a claim and the terms and conditions upon which the same is to be paid and satisfied, the registrar shall, subject to county court rules, have power to enter up judgment for the amount so agreed upon and for a payment thereof upon the terms and conditions sanctioned in the agreement.

(4) In any case where the registrar has power under the principal Act or this Act to hear and determine a case or to enter up judgment he shall have power to make such order as to payment by instalments as the judge might have made, and to exercise any other power which the judge might have exercised, and, subject to the provisions of this Act with respect to appeals, any judgment entered up by the registrar in pursuance of the principal Act or this Act shall, to all intents and purposes, have the same effect and shall be enforced and enforceable in the same manner as if it had been a judgment of the judge of the same court.

See notes to sect. 92 of principal Act, "Jurisdiction of Registrar," *ante*, p. 108; also notes to sect. 98, *ante*, p. 116.

**Power to
refer matters
for inquiry
and report.**

6.—(1) Subject to county court rules, the judge may in any case, with the consent of the parties, refer any action or matter or any question arising therein to the registrar or a referee for inquiry and report, and may direct how such reference shall be conducted, and may remit any report for further inquiry and report, and on consideration of any report or further report the

judge may give such judgment or make such order in the action or matter as may be just, without prejudice to any right of appeal.

Section 6
Note.

(2) The powers conferred by this section shall be in addition to the powers to refer matters of account to the registrar and to refer matters to arbitration conferred by sections ninety-two and one hundred and four of the principal Act.

See notes to sect. 104 of principal Act, "Power to Refer Matters for Inquiry and Report."

7. Any judgment or order of a registrar, and any execution thereon (except where all parties have consented to the terms of the judgment or order), may, on application made within such time and in such manner as may be prescribed, be set aside by the judge of the county court, and the judge may give such judgment or make such order in substitution therefor as he thinks fit, or may grant a new trial on such terms (if any), as he may think fit.

Appeals
from
registrar.

See notes to sect. 92 of principal Act, *ante*, p. 108, and Order XXXI. r. 4.

8. The following section shall be substituted for section eighty-six of the principal Act:—

Default
summons;

"(1) County court rules may provide for the issue, under the prescribed conditions, of a default summons, in the prescribed form or to the prescribed effect, in any action for a debt or liquidated demand in money, and may provide for the manner in which such a summons is to be served and the conditions (if any) under which the defendant is to be entitled to defend the action; and, where such conditions are not complied with, it shall be lawful for the registrar to enter up judgment summarily for the plaintiff in manner prescribed by the rules.

"(2) The rules may provide for different procedure and different conditions according to the amount of the claim or the nature thereof or the position or occupation of the defendant, for the exclusion of any actions from the procedure by default summons, and for the amendments to be allowed in the case of a default summons, and the procedure consequent on any such amendment."

See notes to sect. 86 of principal Act, "Default Summons and Special Default Summons," *ante*, p. 93.

9.—(1) A judge may, and, if so required by the Lord Chancellor, shall, appoint additional courts to be held, and, subject to county court rules, it shall be lawful for the registrar at any such additional court, notwithstanding that the judge is not present, to enter up any judgment and exercise any other jurisdiction which he is by the principal Act or this Act authorised to enter up or exercise, and to adjourn any such court.

Additional
courts and
power of
registrar
when judge
not present

(2) Any such additional court may be appointed to be held

Section 9. at any place within the district at which an office is kept open by the registrar.

See notes to sect. 92 of principal Act, "Registrars' Courts," *ante*, p. 109.

Power of judge where action commenced in the wrong court.

10.—(1) Where an action or matter is commenced in a county court, which ought to have been commenced in some other county court, the judge may, if he thinks fit, and upon such terms as to costs and otherwise as he thinks fit, instead of ordering it to be struck out in accordance with section one hundred and fourteen of the principal Act, either transfer the action or matter to the county court in which it ought to have been commenced or proceed to hear and determine the case in the court in which it was commenced, and in the latter case that court shall have jurisdiction in like manner as if it had been the court in which the action or matter ought to have commenced.

(2) Where an action or matter is transferred from one county court to another under this section, the provisions of section eighty-five of the principal Act relating to procedure on transfer and to the trial or hearing of a transferred action or matter shall apply in like manner as if the action or matter had been transferred under that section.

See notes to sect. 114 of principal Act, *ante*, p. 135.

See *Fringley v. Hales*, (1925) 1 K. B. 573; 94 L. J. K. B. 458.

Costs of actions commenced in High Court which could have been commenced in county court.

11. The following section shall be substituted for section one hundred and sixteen of the principal Act :—

"(1) Where an action is brought in the High Court which could have been commenced in a county court, then, if the plaintiff recovers a sum less, in the case of an action founded on a contract, than forty pounds, or in the case of an action founded on tort than ten pounds, he shall not be entitled to any costs of the action, and if he recovers, in the case of an action founded on contract a sum of forty pounds or upwards but less than one hundred pounds, or in the case of an action founded on tort a sum of ten pounds or upwards but less than fifty pounds, he shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a county court, and where a plaintiff is entitled to costs on a county court scale only the taxing master shall have the same power of directing on what county court scale and under what column in the scale costs are to be allowed and of allowing any items of costs as the judge would have had if the action had been brought in a county court :

" Provided that—

" (i.) in any such action, whether founded on contract or tort, the court or a judge, or where the action is

Section 11.

tried before a referee or officer of the Supreme Court, that referee or officer, if satisfied that there was sufficient reason for bringing the action in the High Court or that the defendant or one of the defendants objected to the transfer of the action to a county court, may make an order, allowing the costs or any part of the costs thereof on the High Court scale or on such one of the county court scales and under such one of the columns in the scale as he may direct; and

“(ii.) if in any action the claim is for a debt or liquidated demand only for a sum of twenty pounds or upwards and—

(a) the defendant pays the amount claimed or a sum of not less than twenty pounds within the time limited in that behalf by the endorsement made on the writ in accordance with the rules of the Supreme Court; or

(b) the plaintiff, within twenty-eight days after the service of the writ or within such further time as may be allowed by the court or a judge, obtains judgment in default of appearance or of defence for a sum of twenty pounds or upwards; or

(c) the plaintiff, within twenty-eight days after the service of the writ or within such further time as may be allowed by the court or a judge, obtains under any rule of the Supreme Court providing for summary judgment without trial an order empowering him to sign judgment for a sum of twenty pounds or upwards, either unconditionally or unless that sum is paid into court or to the plaintiff's solicitor:

the plaintiff shall, unless otherwise ordered by the court or a judge, be entitled to costs on such scale as may be prescribed by rules of court.”

“(2) This section applies only to the costs of the proceedings in the High Court.”

See *Jenkins & Co. v. Simon*, (1926) 1 K. B. 111, and notes, *ante*, p. 137.

Proviso (ii.), *supra*, was substituted for the proviso in the Act of 1919 by the Administration of Justice Act, 1925, sect. 20.

12. Where an action, counterclaim, or matter is transferred Costs in or removed from the High Court to a county court, or from cases trans- a county court to the High Court, or from one county court toferred from one court to another county court, the costs of the whole proceedings, both another.

Section 12. before and after the transfer or removal shall, subject to any order made by the court which ordered the transfer or removal, be in the discretion of the court to which the matter is transferred or removed, and that court shall have power to make orders with respect thereto and as to the scales or columns on or under which the costs of the several parts of the proceedings are to be taxed, and the costs of the whole proceedings shall be taxed in that court :

Provided that, as regards so much of the proceedings in any action transferred from the High Court to a county court as take place in the High Court before the transfer, the costs thereof shall be subject to the provisions of the last foregoing section of this Act, and the powers of the court or a judge under that section to make an order allowing costs on the High Court scale or on or under any county court scale or column shall, subject to any order of the court or judge by whom the transfer was ordered, be exerciseable by the judge of the county court.

The county court judge, having once exercised his discretion and awarded costs in an action in which, in the absence of such order the plaintiff under sect. 11 would have been deprived of costs, cannot rescind his own order (*Hawkins v. Miln*, (1921) 3 K. B. 683; (1922) 91 L. J. K. B. 15).

Notwithstanding the general words of this section it has been held in *Davies v. Davies*, (1927) 96 L. J. K. B. 1066, that the county court judge's discretion is limited, and he can only award costs on a higher scale than the amount recovered if he can give a certificate under the proviso to sect. 119 of the principal Act.

See notes to sect. 116 of principal Act, *ante*, p. 133.

Commence-
ment of pro-
ceedings in
Admiralty
causes.

31 & 32 Vict.
c. 71.

13. Section twenty-one of the County Courts Admiralty Jurisdiction Act, 1868 (which prescribes the county courts in which Admiralty proceedings are to be commenced), shall cease to have effect, and provision may be made by county court rules as to the courts in which proceedings may be commenced in cases which by virtue of that Act, or any Act amending that Act, may be brought in a county court.

See Order XXXIX. r. 3A, *post*, Part III. "Admiralty."

Continuance
of ex-judges
in commis-
sion of the
peace.

14. Where, in pursuance of section seventeen of the principal Act, the judge for the time being of a county court is included in any commission of the peace, every person holding the office of judge of that court shall, on ceasing to hold the office, continue to be included in the commission as if he had been personally named therein.

See notes to sect. 17 of principal Act, *ante*, p. 1.

Place of
residence of
registrars

15. The registrar of a court may, with the consent of the Lord Chancellor and subject to such conditions as the Lord Chancellor may impose, reside outside the district of which he is the registrar.

The remainder of sect. 15, *supra*, is repealed by County Courts Act, 1924 (14 & 15 Geo. 5, c. 19), Sched. III. The Lord Chancellor, who now appoints all registrars, may appoint a person to be registrar of two or more courts. See County Courts Act, 1924, s. 1 (3). **Section 15.**

See notes to sect. 25 of principal Act, *ante*, p. 15.

16. So much of section thirty-one of the principal Act as relates to the appointment of deputy registrars shall apply to the appointment of deputy high bailiffs, with the substitution of the words "high bailiff" for the word "registrar."

See notes to sect. 31 of principal Act, *ante*, p. 17.

17. The High Court shall, on application made in manner prescribed by rules of the Supreme Court, have the same power to issue a commission, request, or order, to examine witnesses abroad for the purposes of an action or matter in a county court as it has for the purposes of an action or matter in the High Court; but on an application being made for the issue of such a commission, request, or order, the High Court may, if it thinks fit, make an order for the transfer of the action or matter to the High Court. **Examination of witnesses abroad.**

These rules are dated May 12th, 1920. They are printed immediately after this Act, p. 251. See notes to sect. 100 of principal Act, *ante*, p. 118.

18.—(1) Where a judgment or order has been obtained in a county court for a sum of money and no order is made as to payment by instalments, the money shall, if the court so directs, be paid by one party to the other party or his solicitor, subject to the lien, if any, of that solicitor, instead of being paid into court as required by section one hundred and five of the principal Act. **Payment of judgment debts.**

See notes to sect. 105 of principal Act, *ante*, p. 126, and *In re (Debtor)* (16 of 1922), (1923) 92 L. J. Ch. 410.

(2) Where money is directed to be so paid under a judgment, the judgment shall not be registered pursuant to section one hundred and eighty-three of the principal Act, if, before the expiration of twenty-one clear days from the entry of the judgment, or such other time as may be prescribed, proof is given to the registrar in the prescribed form that the judgment has been satisfied.

See notes to sect. 183 of principal Act, *ante*, p. 228.

19. The following section shall be substituted for section one hundred and fifty of the principal Act:— **Set-off in cases of cross-judgments in county courts and High Court.**

"(1) Where one person has obtained a judgment or an order in a county court against another person, and that other person has obtained a judgment or order against the first-mentioned person in the same or in another county court or in the High Court, either such person may, in accordance with rules of court,

Section 19. — give notice in writing to the court or the several courts, as the case may be, and may apply to the court or any of the said courts in accordance with rules of court for leave to set off any sums, including costs, payable under the several judgments or orders.

“(2) Upon any such application the set-off may be allowed in accordance with the practice for the time being in force in the High Court as to the allowance of set-off and in particular in relation to any solicitor’s lien for costs.

“(3) Where the cross-judgments or orders have not been obtained in the same court, a copy of the order made on any such application shall be sent by the proper officer of the court to which the application is made to the proper officer of the other court.”

See notes to sect. 150 of the principal Act, *ante*, p. 206, and Order XXIII. ¶ 12c. For High Court rules under this section, see *post*, p. 251.

Extension of
51 & 52 Vict.
c. 43, s. 151,
to orders as
well as
judgments.

20. Section one hundred and fifty-one of the principal Act (which relates to the removal of judgments for sums exceeding twenty pounds from the county court to the High Court) shall apply to orders obtained in a county court in the same manner as to judgments so obtained.

See notes to sect. 151 of principal Act, *ante*, p. 207.

Execution of
warrants of
possession.

21. For the purpose of executing a warrant to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.

Juries.

22.—(1) The number of jurymen to be empanelled and sworn for the trial of any action in a county court shall be eight, and the amount to be paid to the registrar for payment of the jury shall be eight shillings.

(2) The amount which a jurymen may be ordered to forfeit in default of attendance shall not be more than five pounds.

(3) The list of persons qualified and liable to serve as jurors in a court shall not be delivered by the sheriff or high bailiff to the registrar of the court unless and until a demand is made by the registrar in that behalf.

(4) Sections one hundred and one and one hundred and two of the principal Act shall have effect subject to the provisions of this section.

See notes to sect. 102 of principal Act, also Administration of Justice Act, 1925, s. 19, *ante*, p. 119.

Power to
judge to
suspend exe-
cution or
order dis-
charge.

23. The following provision shall be substituted for section one hundred and fifty-three of the principal Act, viz.:—

“If at any time it appears to the satisfaction of the judge that any party to an action or matter is unable from any cause to pay and discharge any debt, damages, costs, or other sum

recovered against him, or any instalment thereof, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action or matter, for such time and on such terms as the judge shall think fit, and so from time to time until it shall appear that the cause of inability has ceased, or to order, upon such terms (including liability to re-arrest if the terms are not complied with) as the judge may think fit, the discharge of any debtor arrested or confined in prison by order of the court who ought in the opinion of the judge to be discharged."

Section 23.

See notes to sect. 153 of principal Act, *ante*, p. 208.

24.—(1) The persons in whom the power of making rules under section one hundred and sixty-four of the principal Act is vested shall, in addition to the five judges appointed by the Lord Chancellor under that section, include three persons appointed by the Lord Chancellor, of whom one shall be a barrister, one a registrar of a county court, and one a solicitor.

County court rules.
51 & 52 Vict.
c. 43, s. 164.

(2) The power of making rules under section one hundred and sixty-four of the principal Act shall extend to making rules—

(a) for carrying this Act into effect :

(b) for requiring each party in any action where the debt, demand, or damage claimed or counterclaimed exceeds twenty pounds, or such greater amount as may be provided by the rules, to state the nature of his claim or defence in writing in sufficient time before the trial in the form of particulars or otherwise ;

and the provisions of the principal Act as to the procedure and practice in actions in the county court shall have effect subject to such modifications therein as may be made by any rules made in pursuance of the powers given by this section.

See notes to sect. 164 of principal Act.

25. Repealed and re-enacted by the Workmen's Compensation Act, 1925. See Sched. I. (6) of that Act (*post*, p. 1378), and W. C. Rules, r. 29.

26. Repealed and re-enacted by the Workmen's Compensation Act, 1925. See Sched. II. (2) of that Act (*post*, p. 1379), and W. C. Rules, r. 64A.

27.—(1) This Act may be cited as the County Courts Act, 1919, and this Act, except so far as it amends the Workmen's Compensation Act, 1906, shall be construed as one with the principal Act ; and the principal Act and the County Courts Act, 1903, and this Act may be cited together as the County Courts Act, 1888 to 1919.

NOTE.—The rest of this section and the schedule are repealed by the Statute Law Revision Act, 1927.

THE RULES OF THE SUPREME COURT (COUNTY COURTS ACT), 1920. DATED MAY 12, 1920.

(As to Commissions to take evidence abroad, under sect. 17 of County Courts Act, 1919.)

ORDER LIV.

12A. A Master of the Supreme Court may exercise all the jurisdiction and powers conferred upon the Court or a judge by the Arbitration Act, 1889, or the County Courts Act, 1919.

12c. An application under section 17 of the County Courts Act, 1919, for the issue of a commission, request or order to examine witnesses abroad for the purposes of an action or matter in a county court may be made to a Master at Chambers in the King's Bench Division by summons. Such summons shall be intituled "In the High Court of Justice, King's Bench Division" and "In the matter of an action (or matter) depending in the county court of.....(*naming the district*) holden at.....(*naming the place*) between.....plaintiff and.....defendant (or as the case may be)."

12E. Any order made on an application made under either of the two preceding rules shall be subject to the same right of appeal as any other order made in an action, cause, or matter.

For procedure see Order XVIII. r. 33.

THE RULES OF THE SUPREME COURT (COUNTY COURTS ACT), 1920. DATED MAY 12, 1920.

(MADE UNDER SECT. 19 OF THE COUNTY COURTS ACT, 1919.)

WHERE THERE ARE CROSS-JUDGMENTS OR ORDERS.

ORDER LIV.

12D. (i.) Where one person has obtained a judgment or an order in a county court against another person and that other person has obtained a judgment or order against the first mentioned person in the High Court, any application under section 19 of the County Courts Act, 1919, for leave to set off any sums or costs payable under the several judgments or orders shall be made to a Master in Chambers by a summons intituled "In the High Court of Justice.....(*naming the Division*) Division" and "In the matter of.....(*naming the several courts and the actions or matters in which the judgments or orders were obtained or made*)."

(ii.) The applicant shall give notice in writing of his intended

application to the registrar of the county court in which the judgment or order of the county court sought to be set off or against which the set off is sought was obtained or made. Such notice may be given by being sent by a pre-paid post letter addressed to the registrar of the county court.

(iii.) The registrar of the county court shall, on notice of the application being received by him, stay execution on the judgment or order obtained in the county court, and retain any money paid into court under any execution or order in either of the actions or matters to abide the event of the application.

(iv.) The order made on the application shall direct how any money paid into either court is to be dealt with, and a copy of the order shall be sent by post by the head clerk of the Summons and Order Department to the registrar of the county court in which the judgment or order was obtained, who shall deal with the judgment or order obtained in that court and with any money paid into that court in accordance with the directions contained in the order.

(v.) Where any sums are ordered to be set off satisfaction shall be entered for the same, and execution or other process shall issue only in respect of the balance (if any) remaining payable from the court under the judgment or order of which the balance is payable.

12E. Any order made on an application made under either of the two preceding rules shall be subject to the same right of appeal as any other order made in an action, cause, or matter.

See notes to sect. 150, *ante*, p. 206.

COUNTY COURTS ACT, 1924.

[14 & 15 GEO. V. c. 17.]

AN ACT TO AMEND THE LAW RELATING TO OFFICERS OF COUNTY COURTS IN ENGLAND AND OF DISTRICT REGISTRIES OF THE HIGH COURT IN ENGLAND, AND TO MAKE FURTHER PROVISION WITH RESPECT TO SUCH COUNTY COURTS AND PROCEEDINGS THEREIN, AND FOR PURPOSES CONNECTED THEREWITH.

[14th July, 1924.]

Be it enacted, etc.

1.—(1) From and after the commencement of this Act there shall, subject to the provisions of this section, be a registrar for every court who shall be appointed by the Lord Chancellor. Appoint-
ment, quali-
fication, etc.,
of registrars
of county
courts and

(2) No person shall be qualified to be appointed a registrar unless he is a solicitor of not less than seven years' standing.

Section 1.

provision as
to high
bailiffs.

(3) The Lord Chancellor may, if he thinks fit, appoint a person to be registrar of two or more courts.

(4) The Lord Chancellor may, if he thinks fit, in the case of a court in a populous district appoint two persons to execute jointly the office of registrar of the court, and may, in any case where joint registrars are appointed, give directions with respect to the division between them of the duties of the office, and may, as he thinks fit, on the death, resignation or removal of a joint registrar, either appoint another person to be joint registrar in his place, or give directions that the continuing registrar shall act as sole registrar.

(5) Where after the commencement of this Act a vacancy occurs in the office of high-bailiff of a court, no person shall be appointed to that office, and thereafter the registrar of that court shall, by virtue of his office, be the high-bailiff of the court.

(6) Notice of a vacancy occurring in the office of registrar or high-bailiff of a court shall be forthwith given to the Lord Chancellor by the judge of the court.

(7) If in any case the Lord Chancellor thinks it expedient so to do, having regard to the amount of business to be performed by the registrar of any court as such together with the business (if any) to be performed by him as high-bailiff of the court or as district registrar of the High Court, he may, with the concurrence of the Treasury, direct that the registrar shall not, directly or indirectly, engage in practice as a solicitor or carry on any employment of such a nature as will, in the opinion of the Lord Chancellor, prevent him from properly performing his duties as registrar.

A registrar in whose case a direction is given under this subsection is in this Act referred to as "a whole-time registrar."

(8) The Lord Chancellor shall, before giving any direction under which a person will on appointment as registrar be, or under which a person holding the office of registrar will become, a whole-time registrar, take steps to satisfy himself that the health of the person concerned is satisfactory.

(9) Nothing in this section shall disqualify a registrar appointed before the commencement of this Act from continuing to hold his office.

See notes to sects. 24, 25, 26, 27 and 28 of principal Act.

Payment of
registrars
and high-
bailiffs.

2. Every registrar and every high-bailiff of a court shall be paid such salary, to be either exclusive of the remuneration of any officers of the court and of any other expenses of his office or not, as the Lord Chancellor may from time to time with the consent of the Treasury direct and, where the salary is inclusive of any such remuneration or expenses as aforesaid, the Lord Chancellor

may, if he thinks fit and subject to the consent of the Treasury, specify what part of that salary is applicable to the payment of the said remuneration or expenses. **Section 2.**

3.—(1) Subject as hereinafter provided, the Lord Chancellor may, with the concurrence of the Treasury as to numbers and salaries, appoint in connection with any court such assistant registrars, clerks, bailiffs, ushers and messengers, and in connection with any district registry of the High Court such clerks, as he may consider necessary for carrying out the work of the court or of the district registry, respectively, and may from time to time direct what duties shall be performed by those officers respectively, and may, if he thinks fit, remove any such officer from his office.

Appoint-
ment of
assistant
registrars,
clerks, and
other officers
of county
courts.

(2) No person shall be qualified to be appointed an assistant registrar unless he is a solicitor of not less than seven years' standing.

(3) Where there is an assistant registrar, the Lord Chancellor may direct which of the powers and duties of the registrar are to be exercised and performed by the assistant registrar, and the assistant registrar shall, when exercising the powers or performing the duties specified in the direction, be deemed to be the registrar.

(4) Where a registrar or a high-bailiff is paid a salary inclusive of the remuneration of any officers, whether the part of the salary applicable to the payment of that remuneration is specified under the last preceding section of this Act or not, those officers shall, notwithstanding anything in this section, be appointed and be removable by the registrar.

(5) The Lord Chancellor may, subject to the consent of the Treasury as to numbers and salary, appoint as officers in his department such examiners and other officers as he may consider necessary for the purpose of controlling the accounts of county courts.

4.—(1) A registrar to whom this section applies shall vacate his office at the end of the completed year of service in the course of which he attains the age of seventy-two years :

Retirement
and pensions
of registrars.

Provided that, where the Lord Chancellor considers it desirable in the public interest to retain any registrar in his office after he attains the age of seventy-two years, he may, with the approval of the Treasury, from time to time authorise his continuance in office up to such later age, not exceeding seventy-five years, as he thinks fit.

(2) The provisions of the Superannuation Acts, 1834 to 1919 (in this Act referred to as "the Superannuation Acts"), shall apply to registrars to whom this section applies, subject to the following modifications :—

(a) The superannuation allowance on retirement shall be in

Section 4.

accordance with the provisions of the First Schedule to this Act instead of in accordance with the provisions of the Superannuation Acts :

- 9 Edw. 7,
c. 10.
4 & 5 Geo. 5,
c. 86.
- (b) Section two of the Superannuation Act, 1909 (which authorises the grant of a gratuity in case of death), as amended by section two of the Superannuation Act, 1914, section three of the Superannuation Act, 1909 (which provides for the application of the Act to existing male civil servants), and subsection (2) of section six of the Superannuation Act, 1909 (which relates to compensation on abolition of office), shall not apply ;
- 22 Vict. c. 26. (c) Section ten of the Superannuation Act, 1859, (which prohibits the grant of superannuation allowance to a person under the age of sixty years except upon evidence of infirmity), shall not apply, but a superannuation allowance shall not be granted under this section to a person who is under the age of seventy-two years, unless the Treasury are satisfied on a medical certificate that he is incapable from infirmity of mind or body of discharging the duties of his office, and that the infirmity is likely to be permanent, or unless he has served fifteen years as a registrar and has attained the age of sixty-five years :
- (d) A registrar shall, for the purposes of the Superannuation Acts, be deemed to have served in the permanent civil service of the State notwithstanding that he has not been admitted to office with a certificate from the Civil Service Commissioners.
- (3) This section shall apply to any registrar—
- (a) who is a whole-time registrar within the meaning of this Act ; or
- (b) to whom a salary has been assigned under section forty-five of the principal Act and who gives notice in the prescribed form and within the prescribed period of his desire to accept the provisions of this Act relating to retirement and pensions :

Provided that, if a registrar who was, immediately before his appointment as registrar, an assistant registrar or a civil servant, gives notice in the prescribed form within the prescribed period of his desire to continue, in the case of an assistant registrar, subject to the provisions of this Act relating to the pensions of persons in court service, or in the case of a civil servant subject to the statutory provisions relating to the pensions of civil servants, he shall, for the purposes of pension, be deemed not to be a registrar to whom this section applies, but to be a person employed in court service or a civil servant, as the case may be.

Section 4.

(4) For the purposes of subsection (2) of this section, the period of service shall be reckoned, in the case of a whole-time registrar, as from the date on which he becomes a whole-time registrar, and, in the case of any other registrar, as from the date on which the order, by virtue of which the salary was assigned to him, came into operation.

(5) The provisions of this section shall apply to the registrars of the district registries of the High Court at Liverpool and Manchester as they apply to registrars of county courts, but in the case of any such district registrar who holds office at the commencement of this Act only if he gives notice in the prescribed form and within the prescribed period of his desire to accept the provisions of this section.

NOTE.—The proviso to sub-sect. (3), *supra*, is substituted for the original proviso by sect. 18 of the Administration of Justice Act, 1928 (18 & 19 Geo. 5, c. 26).

5.—(1) Subject to the provisions of this section, employment in court service shall, in the case of a person as respects whom a direction in that behalf is given by the Lord Chancellor with the concurrence of the Treasury, and whether the employment commenced before or after the commencement of this Act, be deemed to be for all purposes employment in the civil service of the State, and if a certificate has been issued to him by the Civil Service Commissioners, allowances may be granted in his case accordingly under the Superannuation Acts : Court service to be pensionable.

Provided that, except in so far as the Treasury may in any case direct, no account shall be taken for the purposes of this section of court service before the issue of the certificate.

(2) Employment in court service shall, in relation to a person in whose case a direction has been given under this section, be deemed to be employment in a public department within the meaning of section four of the Superannuation Act, 1887, as amended by section three of the Superannuation Act, 1914. 50 & 51 Vict. c. 67.

(3) In the case of a person employed in court service who was appointed to his office before the commencement of this Act, any salary or remuneration received by him from any source whatsoever in respect of that office during any period of which account may be taken for the purpose of this section shall, for the purpose of authorising the grant of an allowance or a gratuity under this section, be deemed to have been paid out of moneys provided by Parliament.

(4) Where a person who was employed at the commencement of this Act in court service and in whose case a direction has been given under this section is in consequence of the provisions of this section required, by reason only of his having attained any age, to

Section 5. retire from court service, the Treasury may, if he has been required to devote his whole time to employment in court service and if he had attained the age of fifty-five years on or before the twelfth day of May, nineteen hundred and twenty-three, grant to him by way of compensation such gratuity, not exceeding twice the amount of the salary and emoluments received by him from whatsoever source during his last year of employment, as may seem to them just.

The decision of the Treasury on any question which arises as to the application of this subsection to any person or as to the amount of any gratuity thereunder shall be final.

(5) The provisions of this section shall have effect notwithstanding anything in any contract made between a registrar, a high bailiff, or a district registrar and any other person.

Fees in work-
men's com-
pensation
proceedings.
6 Edw. 7,
s. 58.
Amendment
to s. 59 of
principal
Act.

6. Repealed. See now Sched. I. (12) of the Workmen's Compensation Act, 1925.

7.—(1) Section fifty-nine of the principal Act (which relates to ejectment actions) shall have effect as if for the words "one month from the day of service of the summons" there were substituted the words "such time as may be described by rules of court," and as if the following subsection were added thereto—

"(2) The rules of court prescribing the procedure under this section may make provision for authorising any proceedings which have been brought under section one hundred and thirty-eight or one hundred and thirty-nine of this Act, but which ought to have been brought under this section, to be amended and to be continued under this section, and for the procedure on any such amendment."

(2) This section shall come into operation on the first day of October, nineteen hundred and twenty-four.

See these rules, Order V. rr. 3A and 3B, and notes, *ante*, p. 39.

Provisions
as to
striking out
plaint, &c.

8. A registrar on the application of the defendant, of the hearing of which application seven clear days' notice shall be given by the defendant to the plaintiff, may order a plaint or other proceeding to be struck out on the ground that it discloses no reasonable cause of action, and shall make such order as to costs as he may think proper.

From the decision of the registrar an appeal shall lie to the county court judge in chambers.

Minor
amend-
ments of
principal
Act.

9.—(1) Section four of the principal Act (which provides for the alteration of county court districts) shall be amended as follows:—

(a) The powers conferred by the section shall be exercised by the Lord Chancellor by order instead of by His Majesty by Order in Council:

Section 9.

(b) Where an order is made under the section for the discontinuance of the holding of a court, there shall be power to make provision in the order with respect to proceedings which may have been commenced in that court :

(c) An order made under the section (including any Order in Council made thereunder before the commencement of this Act) may be varied or revoked by a subsequent order made thereunder.

(2) There shall be payable to brokers and appraisers in respect of the matters mentioned in section one hundred and fifty-four of the principal Act (which regulates the sale of goods taken in execution) out of the produce of goods distrained or sold such fees as may with the consent of the Treasury be prescribed instead of the poundage mentioned in that section.

(3) Section one hundred and eighty of the principal Act (which requires all summonses and other process issuing out of a county court to be under the seal of the court) shall have effect as though for the words "all summonses and other process issuing out of the said court" there were substituted the words "all summonses issuing out of the said court and all such other documents so issuing as may be prescribed," and as though for the words "other process purporting" there were substituted the words "such other documents purporting."

See Order LIV. r. 14, as to documents which shall be sealed with the seal of the court, and Part V. of Appendix, *post*, p. 912.

(4) Where a deputy has been appointed in the case of the illness or unavoidable absence of any registrar to whom the provisions of this Act relating to the retirement and pension of registrars apply, the Lord Chancellor may, with the consent of the Treasury, allow to the registrar such sums in respect of the remuneration and expenses of the deputy as he shall think fit.

(5) The sections of the principal Act specified in the first column of the Second Schedule to this Act, being enactments under which powers in relation to various matters are vested in the Treasury, shall be amended in the manner shown in the second column of that Schedule.

10. All salaries, allowances and other sums payable under this Expenses. Act shall be paid out of moneys provided by Parliament.

11.—(1) This Act may be cited as the County Courts Act, 1924, and shall, except in so far as it amends the Workmen's Compensation Acts, 1906 to 1923, be construed as one with the County Courts Acts, 1888 to 1919, and this Act and the last-mentioned Acts may be cited together as the County Courts Acts, 1888 to 1924. Short title,
interpretation,
extent
and repeal.

(2) In this Act, unless the context otherwise requires, the

Section 11. following expressions have the meanings hereby assigned to them respectively, that is to say :—

“ Court ” means county court :

“ Court service ” means employment as an assistant registrar, or as a clerk, bailiff, usher or messenger in the service of a court, or employment as a clerk in the service of a district registry of the High Court, and includes employment in those capacities simultaneously :

“ Registrar ” means registrar of a court :

51 & 52 Vict.
c. 43.

“ The principal Act ” means the County Courts Act, 1888 :

“ Solicitor ” means solicitor of the Supreme Court :

“ Prescribed ” means prescribed by order made by the Lord Chancellor.

(3) Nothing in this Act shall affect any of the powers, rights, or privileges of the judges of the Mayor's and City of London Court, or the authority of the Mayor, Aldermen and Commons of the City of London in Common Council assembled in relation to that court, or to the judges or officers thereof, or to the fees taken therein, as the said powers, rights, privileges, and authority existed immediately before the commencement of this Act.

(4) This Act extends only to England.

(5) The enactments set out in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

SCHEDULES.

FIRST SCHEDULE.

SCALE OF REGISTRARS' SUPERANNUATION ALLOWANCES.

1. An annual allowance not exceeding one-ninth of the last annual salary may be granted after the completion of a period of service of five years.

2. Where the period of service completed exceeds five years, there may be granted an annual allowance not exceeding one-ninth of the last annual salary with an addition of one-thirty-sixth of that salary for each completed years' service in excess of five.

3. The maximum allowance shall be two-thirds of the last annual salary.

4. For the purpose of this Schedule, the annual salary of a registrar who is also a district registrar of the High Court shall include any salary payable in respect of his service as such district registrar.

Section 4.

SECOND SCHEDULE.

AMENDMENTS WITH RESPECT TO POWERS VESTED IN THE TREASURY UNDER PRINCIPAL ACT.

S. 165 (Power to make orders as to court fees).

For the words “ the Treasury from time to time with the concurrence of the Lord Chancellor may make orders ” there shall be substituted the words “ the Lord Chancellor from time to time with the concurrence of the Treasury may make orders.”

- S. 169 (Account of fees and fines). For the words "as often as he shall be required so to do by the Treasury and in such form as the Treasury shall require" there shall be substituted the words "as often as he is required by the Lord Chancellor with the concurrence of the Treasury so to do and in such form as the Lord Chancellor with the like concurrence shall require."
- S. 171 (Audit of registrars' accounts). For the words "at such times as he may be directed by the Treasury" there shall be substituted the words "at such times as he may be directed by the Lord Chancellor."
- S. 172 (Rules as to balances). For the words "the Treasury shall from time to time make such rules" there shall be substituted the words "the Lord Chancellor with the concurrence of the Treasury shall from time to time make such rules."
- S. 183 (Registry of judgments). For the words "under such regulations as the Treasury shall appoint" there shall be substituted the words "under such regulations as the Lord Chancellor shall prescribe," and for the words "such fees shall be charged to persons desirous of inspecting the same as shall be appointed by the Treasury" there shall be substituted the words "such fees shall be charged to persons desirous of inspecting the same as shall be fixed by the Lord Chancellor with the concurrence of the Treasury."

THIRD SCHEDULE.

Section 11.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict. c. 71.	The County Courts Admiralty Jurisdiction Act, 1868.	Section seventeen.
46 & 47 Vict. c. 52.	The Bankruptcy Act, 1883.	Subsection (14) of section one hundred and twenty-two.
51 & 52 Vict. c. 43.	The County Courts Act, 1888.	Sections twenty-five, twenty-nine, and thirty, in section thirty-one the words from "Provided that" to the end of the section, in section thirty-three the words "whom the judge shall be empowered to appoint and" and the word from "provided that" to the words "dismissed by the judge," in section thirty-four the words "by the successor of the "high-bailiff or by the judge" and the words from "and such wages" to the end of the section, sections thirty-six, thirty-seven, thirty-eight and forty-four to forty-seven, and in section one hundred and fifty-four the words from "and the brokers" to the end of the section.

THIRD SCHEDULE—*continued*.

Session and Chapter.	Short Title.	Extent of Repeal.
3 Edw. 7, c. 42.	The County Courts Act, 1903.	Section six.
9 & 10 Geo. 5, c. 73.	The County Courts Act, 1919.	Section fifteen from the beginning to the words "court and."

COUNTY COURTS ORDER IN COUNCIL, 1924.

COUNTY COURTS ACT, 1903.

[3 EDW. VII. c. 42.]

At the Court at Buckingham Palace, the 17th day of December, 1924.

PRESENT,

The King's Most Excellent Majesty in Council.

Pursuant to section 5 of the County Courts Act, 1903, His Majesty is pleased by and with the advice of his Privy Council to order and it is hereby ordered as follows :—

1. This order may be cited as the County Courts Order in Council, 1924, and shall come into operation on the 1st day of January, 1925.

2. The County Courts Order in Council, 1904 (S.R. & O., 1904, No. 1784), and the County Courts Extended Jurisdiction (Amendment) Orders, 1919 to 1924 (S.R. & O., 1919, No. 2039. S.R. & O., 1920, No. 823. S. R. & O., 1921, No. 1800. S.R. & O., 1922, No. 1351. S.R. & O., 1923, No. 231. S. R. & O., 1923, No. 1512. S.R. & O., 1924, No. 663), shall be revoked.

3. Actions in which the plaintiff claims a sum exceeding 50*l.* by virtue of the said Act, commenced in the County Courts named in the third column of the Schedule to this Order, shall be tried in the County Courts named in the second column of that Schedule.

M. P. A. HANKEY.

SCHEDULE.

(As amended by Orders dated 22nd March, 1927, and 6th February, 1928.)

1st Column.	2nd Column.	3rd Column.
County Court Circuits.	Courts in which Actions are to be tried.	Courts from which Actions are to be transferred for trial.
Circuit No. 1.	Newcastle-upon-Tyne	Blyth. Gateshead. Morpeth. North Shields.
Circuit No. 17.	Great Grimsby.	Barton-on-Humber.
Circuit No. 19.	Derby and Long Eaton.	Ashbourne.
Circuit No. 23.	Northampton	Daventry.
Circuit No. 26.	Hanley and Stoke-upon-Trent.	Burslem. Leek. Newcastle-under-Lyme. Stone. Uttoxeter.
Circuit No. 36.	Oxford.	Thame. Witney.
Circuit No. 38.	Romford.	Grays Thurrock.
Circuit No. 50.	Chichester.	Arundel.
	Brighton.	Haywards Heath.
Circuit No. 51.	Southampton.	Bishop's Waltham. Romsey.

SCHEDULE—continued.

1st Column.	2nd Column.	3rd Column.
County Court Circuits.	Courts in which Actions are to be tried.	Courts from which Actions are to be transferred for trial.
Circuit No. 52	Bath.	Calne. Chippenham.
Circuit No. 58.	Exeter.	Okehampton.
Circuit No. 59.	Redruth.	Helston.

COUNTY COURTS WITH BANKRUPTCY JURISDICTION

CIRCUIT AND COURT.

30—Aberdare and Mountain Ash.
 31—Aberystwyth.
 10—Ashton-under-Lyne and Staly-
 bridge.
 36—Aylesbury.
 23—Banbury.
 29—Bangor.
 38—Barnet.
 13—Barnsley.
 57—Barnstable.
 3—Barrow-in-Furness and Ulvers-
 ton.
 52—Bath.
 20—Bedford.
 7—Birkenhead.
 21—Birmingham.
 4—Blackburn & Clitheroe.
 4—Blackpool.
 5—Bolton.
 17—Boston.
 12—Bradford (Yorks).
 46—Brentford.
 30—Bridgend.
 57—Bridgwater.
 50—Brighton and Lewes.
 54—Bristol.
 10—Burnley.
 19—Burton-on-Trent.
 33—Bury St. Edmunds.
 35—Cambridge.
 49—Canterbury.
 24—Cardiff.
 3—Carlisle.

CIRCUIT AND COURT.

31—Carmarthen, Llandilofawr and
 Ammanford.
 33—Chelmsford.
 53—Cheltenham.
 7—Chester.
 19—Chesterfield.
 33—Colchester, Clacton and Hal-
 stead.
 23—Coventry.
 45—Croydon.
 19—Derby and Long Eaton.
 14—Dewsbury.
 55—Dorchester.
 25—Dudley.
 2—Durham.
 50—Eastbourne.
 38—Edmonton.
 58—Exeter.
 52—Frome
 53—Gloucester.
 17—Great Grimsby.
 32—Great Yarmouth.
 47—Grenwich and Woolwich.
 45—Guildford.
 12—Halifax.
 26—Hanley and Stoke upon-Trent.
 15—Harrogate.
 50—Hastings.
 22—Hereford.
 38—Hertford.
 12—Huddersfield.
 33—Ipswich.
 3—Kendal.

CIRCUIT AND COURT.

22—Kidderminster.
 32—King's Lynn.
 16—Kingston-upon-Hull.
 45—Kingston (Surrey).
 14—Leeds.
 20—Leicester.
 22—Leominster.
 17—Lincoln and Horncastle.
 6—Liverpool.
 35—Luton.
 10—Macclesfield.
 48—Maidstone.
 8—Manchester.
 30—Merthyr Tydfil.
 15—Middlesbrough.
 7—Nantwich and Crewe.
 31—Neath and Port Talbot.
 52—Newbury.
 1—Newcastle-upon-Tyne.
 51—Newport (I.W.).
 24—Newport (Mon.).
 28—Newtown.
 15—Northallerton.
 23—Northampton.
 32—Norwich.
 18—Nottingham.
 5—Oldham.
 36—Oxford.
 31—Pembroke Dock, Narberth and
 Haverfordwest.
 35—Peterborough.
 59—Plymouth.
 30—Pontypridd, Ystradyfodwg and
 Porth.
 55—Poole and Bournemouth.
 29—Portmadoc & Festiniog.
 51—Portsmouth.
 4—Preston.
 36—Reading.

CIRCUIT AND COURT.

5—Rochdale.
 49—Rochester.
 37—Saint Albans.
 5—Salford.
 55—Salisbury.
 16—Scarborough.
 13—Sheffield.
 28—Shrewsbury.
 51—Southampton.
 38—Southend.
 26—Stafford.
 10—Stockport.
 2—Stockton-on-Tees.
 22—Stourbridge.
 2—Sunderland.
 30—Swansea.
 52—Swindon.
 57—Taunton.
 24—Tredegar, Abertillery and Bar-
 goed.
 59—Truro.
 48—Tunbridge Wells.
 14—Wakefield.
 25—Walsall.
 45—Wandsworth.
 7—Warrington.
 23—Warwick.
 54—Wells (Somerset).
 25—West Bromwich.
 3—Whitehaven and Millom.
 6—Wigan.
 51—Winchester.
 36—Windsor.
 25—Wolverhampton.
 22—Worcester.
 3—Workington and Cockermouth.
 29—Wrexham.
 58—Yeovil.
 15—York.

Note.—For table showing the courts which are excluded from Bankruptcy jurisdiction and the courts to which the districts of the excluded courts are attached, see *post*, Part V., p. 1976.

DISTRICT REGISTRIES OF THE HIGH COURT OF JUSTICE.

CIRCUIT AND DISTRICT REGISTRY.

31—Aberystwyth.
 29—Bangor.
 13—Barnsley.
 57—Barnstaple.
 3—Barrow-in-Furness.
 52—Bath.
 20—Bedford.
 7—Birkenhead.†
 21—Birmingham.†
 4—Blackburn.†
 17—Boston.
 55—Bournemouth.
 12—Bradford.
 57—Bridgwater.
 50—Brighton.†
 54—Bristol.†
 33—Bury St. Edmunds.
 35—Cambridge.
 24—Cardiff.†
 3—Carlisle.†
 31—Carmarthen.
 29—Carnarvon.
 53—Cheltenham.
 7—Chester.
 33—Colchester.
 23—Coventry.
 19—Derby.†
 14—Dewsbury.
 55—Dorchester.
 49—Dover.
 25—Dudley.
 2—Durham.†
 58—Exeter.†
 53—Gloucester.
 17—Great Grimsby.
 32—Great Yarmouth.
 12—Halifax.
 26—Hanley.
 50—Hastings.
 31—Haverfordwest.
 22—Hereford.
 12—Huddersfield.
 33—*Ipswich.†
 3—Kendal.
 32—King's Lynn.

CIRCUIT AND DISTRICT REGISTRY.

16—Kingston-upon-Hull.
 14—Leeds.†
 20—Leicester.†
 17—Lincoln.
 6—*Liverpool.†
 32—Lowestoft.
 48—Maidstone.
 8—*Manchester.†
 1—Newcastle-upon-Tyne.†
 51—Newport (I.W.).
 24—Newport (Mon.).
 28—Newtown.
 23—Northampton.
 32—Norwich.†
 18—Nottingham.†
 36—Oxford.
 35—Peterborough.
 59—Plymouth.
 51—Portsmouth.†
 4—*Preston.
 49—Ramsgate.
 36—Reading.
 49—Rochester.
 13—Sheffield.†
 28—Shrewsbury.
 51—Southampton.†
 1—South Shields.
 10—Stockport.
 2—Stockton-on-Tees.
 2—Sunderland.
 30—Swansea.†
 57—Taunton.
 58—Torquay.
 59—Truro.
 14—Wakefield.
 25—Walsall.
 25—West Bromwich.
 2—West Hartlepool.
 3—Whitehaven.
 51—Winchester.
 25—Wolverhampton.
 22—Worcester.
 29—Wrexham.
 15—York.†

* Not the County Court Office.

† Proceedings can be taken in these District Registries by Poor Persons under the Matrimonial Causes Acts. R. S. C. Order XXXVa.

COUNTY COURT JUDGES (RETIREMENT PENSIONS AND DEPUTIES) ACT, 1919.

[9 & 10 GEO. V. c. 70.]

AN ACT TO MAKE FURTHER PROVISION WITH RESPECT TO THE RETIREMENT AND PENSIONS OF COUNTY COURT JUDGES AND THE EMPLOYMENT OF DEPUTY JUDGES, AND FOR PURPOSES IN CONNECTION THEREWITH. (23RD DECEMBER, 1919.)

Be it enacted by etc.:

1. The office of county court judge shall be vacated at the end of the completed year of service in the course of which the holder of the office attains the age of seventy-two : Compulsory retirement of judges.

Provided that the Lord Chancellor may extend that age from time to time up to such later age (not exceeding seventy-five) as he thinks fit in the case of any county court judge who has attained the age of seventy-two, if he considers that the retention of his services would be desirable in the public interest.

2.—(1) It shall be lawful for the Lord Chancellor from time to time to recommend to the Treasury that there shall be paid to any county court judge— Pensions of county court judges.

(a) if his office is vacated in pursuance of this Act ; or

(b) if the Lord Chancellor is satisfied by means of a medical certificate that he is incapable, from infirmity of mind or body, to discharge the duties of his office, and that such incapacity is likely to be permanent ; or

(c) if he retires after fifteen years' service, and at the time of retirement had attained the age of sixty-five years,

an annual sum by way of pension calculated in accordance with the scale contained in the schedule to this Act, and such sum shall be charged on and paid out of the consolidated fund of the United Kingdom, or the growing produce thereof, and shall be paid quarterly or otherwise in every year as the Treasury may direct.

(2) A person to whom a pension has been granted under this Act before he has attained the age of seventy-two years, in consequence of the incapacity in this section mentioned, shall, until he has attained that age, be liable to be called upon by the Lord Chancellor to resume the duties of a county court judge with the salary attached thereto, and, if (being in a competent state of health) he declines when so called upon to resume such duties or declines or neglects to execute such duties satisfactorily, he shall forfeit his right to the pension which has been granted to him.

Section 2.

(3) Whenever a person has resumed his duties as aforesaid, the payment of the pension which has been granted to him shall be suspended during his period of resumed service, but at the end of that period his pension shall again be payable and be recalculated in accordance with the said scale, and for that purpose the period of his resumed service shall be added to his former period of service.

51 & 52 Vict.
c. 43.

(4) In the exercise of his powers under section eight of the County Courts Act, 1888, the Lord Chancellor shall, before appointing a person to be a county court judge, take steps to satisfy himself that that person's state of health is satisfactory.

(5) The decision of the Treasury on any question which arises as to the application of any provision of this Act to any person, or as to the amount of any pension under this Act, or as to the reckoning of any service for such a pension, shall be final.

Application
to existing
judges.

Remunera-
tion and
qualification
of deputy
judges.

3. Repealed by Statute Law Revision Act, 1927.

4.—(1) Where a deputy has been appointed in the case of the illness of any judge, the Treasury may, on the recommendation of the Lord Chancellor, allow the deputy such remuneration as they think fit, and the remuneration so allowed shall be paid out of money provided by Parliament.

(2) It is hereby declared that amongst the persons qualified to be appointed as deputy judge under section eighteen of the principal Act there is included a former judge of county courts.

Repeal,
construction,
and citation.

3 Edw. 7,
c. 42.

5.—(1) Repealed by Statute Law Revision Act, 1927.

(2) This Act shall be construed as one with the County Courts Act, 1888, and the Acts amending the same, and the County Courts Act, 1888, the County Courts Act, 1903, and this Act may be cited together as the County Courts Acts, 1888 to 1919; and this Act may be cited separately as the County Court Judges (Retirement Pensions and Deputies) Act, 1919.

Schedule.

SCHEDULE.

SCALE OF PENSIONS.

When the number of completed years of service in the office of county court judge is:—

Less than 5, . . .	the annual pension . .	six-thirtieths of the last annual salary.
5, ...	" "	ten-thirtieths " " "
6, ...	" "	eleven-thirtieths " " "
7, ...	" "	twelve-thirtieths " " "
8, ...	" "	thirteen-thirtieths " " "
9, ...	" "	fourteen-thirtieths " " "
10, ...	" "	fifteen-thirtieths " " "
11, ...	" "	sixteen-thirtieths " " "
12, ...	" "	seventeen-thirtieths " " "
13, ...	" "	eighteen-thirtieths " " "
14, ...	" "	nineteen-thirtieths " " "
15 or more, . .	" "	twenty-thirtieths " " "

THE COUNTY COURTS (BUILDINGS) ACT, 1870.

[33 & 34 VICT. c. 15.]

1. This Act may be cited as "The County Courts (Buildings) Act, 1870." Short title.

* * * * *

3. All property, real and personal (other than money and securities for money, books, papers, and records), belonging to any county court of or to which the treasurer of any county court or any other person is seised, possessed, or entitled in trust for a county court, under the sections of the Acts mentioned in the schedule to this Act, shall, . . . pass to and be vested in the Commissioners of Works, for the same estate and interest, and subject to the same covenants, conditions, agreements, and liabilities, for and subject to which the same were held by the said treasurer or other person.

Transfer of property from treasurers to commissioners.

4. The Commissioners of Works, with the approval of the Treasury, shall from time to time build, purchase, hire, or otherwise provide such court-house, offices, and buildings as may be necessary for carrying on the business of any county court, and cause the same to be furnished, cleaned, lighted, and warmed, and give such directions to the registrar of each court with regard to the hiring and dismissing of servants as shall seem fit.

As to providing courts, offices, etc.

For the purposes of any such purchase, "The Lands Clauses Consolidation Act, 1845," and the Acts amending the same (except so much thereof as relates to the purchase of land otherwise than by agreement), are hereby incorporated with this Act, and in construing those Acts for the purposes of this Act the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to be the Commissioners of Works.

Repealed except as above, 56 & 57 Vict. c. 54 (Statute Law Revision Act).

A building which was leased by a treasurer of a county court for the purposes of the court was held not to be rateable to the relief of the poor; since there was no beneficial occupier of it, nor were any profits derived from this occupation (*R. v. Overseers of Manchester*, (1854) 18 Jur. 267; 23 L. J. M. C. 48; 97 R. R. 511).

Town Halls and Public Buildings.—A greater facility for obtaining court-houses is afforded by a provision that in every town or place where a county court is held, and no court has been already erected, the town-hall, court-house, or other public building belonging to the county, city, borough, town, or place, or vested in any public body, may, with all necessary rooms, furniture, and fittings in such public building, be used for the purposes of holding the courts, without any charge for rent or other payment except reasonable charges for lighting, warming and cleaning when the building is used for the purposes of the courts: arrangements must, however, be made, so that the sittings of the courts shall not interfere with the business of the county, etc., usually transacted in the building used, or with any purposes for which it may be used by virtue of any local Act (see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 179).

COUNTY COURTS (INVESTMENT) ACT, 1900.

[63 & 64 VICT. c. 47.]

AN ACT TO AMEND THE LAW WITH REGARD TO THE INVESTMENT OF MONEY PAID INTO A COUNTY COURT.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

Extension of
51 & 52 Vict.
c. 43, s. 71,
to all pro-
ceedings.

1.—(1) The provisions of section seventy-one of the County Courts Act, 1888, shall extend to all money paid into a county court (whether before or after the passing of this Act) in any proceeding, and ordered by the judge to be invested for the benefit of any infant or person of unsound mind.

For the practice as to orders for the investment of moneys awarded to infants, etc., see Order IX. r. 24.

See also War Loan (Trustees) Act, 1915 (5 & 6 Geo. V. c. 56), s. 2, *infra*.

(2) Nothing in this Act shall affect the provisions of the Workmen's Compensation Act, 1897, with regard to the investment of money agreed or ordered to be invested under that Act in the name of the registrar.

For the provisions of the Workmen's Compensation Act, 1925, as to the investment of money, see Schedule II. of that Act and Rules 60, 65 and 65A of the Rules made under the Act.

Short title.

2. This Act may be cited as the County Courts (Investment) Act, 1900.

WAR LOAN (TRUSTEES) ACT, 1915.

[5 & 6 GEO. 5, c. 56.]

This Act gives the county courts power to order sums of money paid into court, or already in court, or under the control of the court to be invested in War Loan securities.

Section 2 is as follows :—

Section 2.

Investment
of sums in
court.

2. It is hereby declared that any sum paid into any court, or otherwise under the control of any court, may, without prejudice to any other mode of investment, be invested in securities created under the War Loan Act, 1915 ; and any sums paid into court, or otherwise under the control of the court, before the passing of this Act may, in pursuance of any order of the court, or in accordance with rules of court, be realised and re-invested in those securities.

APPEALS FROM COUNTY COURTS.

RULES OF THE SUPREME COURT.

APPEALS TO COURT OF APPEAL UNDER WORKMEN'S COMPENSATION ACT, AND AGRICULTURAL HOLDINGS ACT.

ORDER LVIII. RULE 20.

(As amended, 26 July, 1926).

The following provisions shall apply to appeals to the Court of Appeal from decisions of judges of the county courts on questions of law under the Workmen's Compensation Act, 1925, and appeals under the Agricultural Holdings Act, 1923 :—

- (a) Every such appeal shall be by notice of motion in accordance with Order LIX. Rule 10; and such notice of motion shall be served and the appeal set down under Order LVIII. Rule 8, within the time limited by Order LIX. Rule 12.

The time for giving the notice of motion runs from the date of the signing of the award, and not from the date on which the decision of the tribunal was pronounced (*Clayton v. Jones' Sewing Machine Co.*, (1908) W. N. 253).

- (b) It shall be the duty of the party appealing to apply to the judge of the county court for a signed copy of the note made by him of any question of law raised before him, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision on the question or matter submitted to him, and to furnish such copy for the use of the Court of Appeal; and such copy shall be used and received at the hearing of the appeal. If such notes are not produced the Court of Appeal shall have power to hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the county court which the Court of Appeal may deem sufficient.

Security for Costs of Appeal.—It has been held, under the Act of 1897, that the ordinary rule of practice of the Court of Appeal as to ordering security for the costs of an appeal is applicable to appeals under the Workmen's Compensation Act (*Hall v. Snowden, Hubbard & Co.*, (1899) 1 Q. B. 593; 68 L. J. Q. B. 363); if the county court judge invite an appeal, *e.g.*, by staying execution pending an appeal, the case may be treated as exceptional (*Hubball v. Everitt & Sons*, (1900) 16 T. L. R. 168), although in a proper case security will still be ordered (*Shea v. Drolenvaux*, (1903) 88 L. T. 679). Application for security ought first to be made to the appellant before it is made to the court (*Stanland v. North Eastern Steel Co.*, (1906) 23 T. L. R. 1). A workman may appear *in formâ pauperis* as respondent to an appeal upon filing the usual affidavit, without the addition of a case and opinion of counsel.

- (c) Order LIX. Rules 14 and 16, shall apply to any such appeals

Rule 20.

with the substitution of the Court of Appeal for the High Court.

- (d) Subject to the foregoing provisions, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals under the said Act to the Court of Appeal.

RULES OF THE SUPREME COURT.**ORDER LIX.**

(As amended, July 26th, 1926, and March 19th, 1928.)

APPEALS TO DIVISIONAL COURT FROM COUNTY COURTS.

Appeals
from
inferior
courts.

4. Every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior courts, under section 24 of the Act (a). All such appeals (except Probate and Admiralty appeals from inferior courts, and from justices, which shall be to a divisional court of the Probate, Divorce and Admiralty Division, and appeals to a divisional court or a judge of the Chancery Division) shall be entered in one list by the officers of the Crown Office Department of the Central Office, and shall be heard by such divisional court of the King's Bench Division as the Lord Chief Justice of England shall from time to time direct.

(a) *I.e.*, Judicature Act, 1925 (15 & 16 Geo. 5, c. 49).

7. On any motion by way of appeal from an inferior court, the court to which any such appeal may be brought shall have power to draw all inferences of fact which might have been drawn in the court below, and to give any judgment and make any order which ought to have been made. No such motion shall succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless in the opinion of the court, substantial wrong or miscarriage has been thereby occasioned in the court below.

Misdirection means not only misdirection of a jury, but includes the case of a judge sitting without a jury and misdirecting himself (*I. Tullis & Son, Ltd. v. North Pole Ice Co.*, 32 L. T. 114).

8. On any motion by way of appeal from an inferior court, the court to which any such appeal may be brought shall have power, if the notes of the judge of such inferior court are not produced, to hear and determine such appeal upon any other evidence or statement of what occurred before such judge which the court may deem sufficient.

Rule 9.

9. The following rules (10 to 17) of this order shall apply to appeals to the King's Bench Division from county courts and other inferior courts of record of civil jurisdiction in all proceedings other than proceedings in bankruptcy.

10. Every such appeal shall be by notice of motion, and no rule nisi or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice, and shall be served on every party directly affected by the appeal entered, and on the registrar of the court from which the appeal is brought.

11. Every appeal shall be entered at the Crown Office Department of the Central Office, and the entry shall be made by lodging a copy of the notice.

12. The notice of motion shall be served and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of; such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given.

Rule 13 is superseded by sect. 121 of County Courts Act, 1888. See *ante*, p. 151.

14. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the inferior court shall so order, or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction of such inferior court for a sum to be fixed by the said court, not exceeding the amount of the money or the value of the property affected by the judgment (a), order, or finding appealed from.

NOTE.—(a) This includes costs (*Grimshaw v. Parker*, (1910) 2 K. B. 161).

15. Every appeal from an inferior court shall be entered in the proper list for hearing on such days as the Lord Chief Justice of England may direct, and shall come on to be heard in its order, unless the High Court shall otherwise direct.

16. The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the court shall think just, to insure the determination on the merits of the real questions in controversy between the parties.

The extension of time is not granted as a matter of course, or indeed, unless weighty reasons can be advanced why it should be granted. The fact that the decision of a higher court makes it arguable that the decision was wrong is not in itself a sufficient reason for extending the time (see *In re Wigfull & Sons, Ltd., Trade Mark*, (1919) 88 L. J. Ch. 30).

Rule 17.

17. Subject to these rules, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals from county courts and other inferior courts of record of civil jurisdiction to the High Court.

18. Appeals from inferior courts shall in the construction of Order LIX. include every appeal, motion, or application to set aside or vary any verdict or judgment in or of any county court, or for a new trial in action in the High Court remitted to such county court for trial or otherwise.

THE DEBTORS ACT, 1869.

[32 & 33 VICT. C. 62. AUGUST 9, 1869.]

ABOLITION OF IMPRISONMENT FOR DEBT.

Abolition of imprisonment for debt, with exceptions.

4. With the exceptions hereinafter mentioned, no person shall, . . . be arrested or imprisoned for making default in payment of a sum of money (a).

NOTE.—(a) Amended, 56 & 57 Vict. c. 54.

There shall be excepted from the operation of the above enactment :

1. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract :
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace :
3. Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control :
4. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order :
5. Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorized to make an order :
6. Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made :

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and, secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money.

Section 4.

The above section has been amended, as follows, by the Debtors Act, 1878 (41 & 42 Vict. c. 54):—

1. In any case coming within the exceptions numbered 3 and 4 in the fourth section of the Debtors Act, 1869, and in the fifth section of the Debtors Act (Ireland), 1872, respectively, or within either of those exceptions, any court or judge, making the order for payment, or having jurisdiction in the action or proceeding in which the order for payment is made, may inquire into the case, and (subject to the provisos contained in the said sections respectively) may grant or refuse, either absolutely or upon terms, any application for a writ of attachment, or other process or order of arrest or imprisonment, and any application to stay the operation of any such writ, process, or order, or for discharge from arrest or imprisonment thereunder.

Court or judge to have discretion in cases within exceptions 3 and 4 in 32 & 33 Vict. c. 62, s. 4, and 35 & 36 Vict. c. 57, s. 5, respectively.

Non-payment of Money.—Where the order or judgment is for payment of money, the court may, in the cases to be presently mentioned, attach the person making default, and commit him to prison for a period not exceeding a year. The creditor may, however, pursue his ordinary remedies if he pleases, and is not bound to apply for an attachment (Order XXV. r. 1; *Sykes v. Dyson*, (1870) L. R. 9 Eq. 228; 39 L. J. Ch. 288; see *Drewitt v. Edwards*, (1877) 26 W. R. 122). A member of Parliament is not privileged from attachment under this head (*Re Gent*, (1889) 40 Ch. D. 190; 58 L. J. Ch. 162). See *post*, p. 279, “Privilege from Arrest.”

The cases referred to, where under sect. 1 of the Debtors Act, 1878 (*supra*), the court or judge is given an absolute judicial discretion to grant or refuse the writ of attachment either absolutely or upon terms, are (1) default by a trustee or person acting in a fiduciary capacity and ordered to pay any sum in his possession or control; (2) default by a solicitor in payment of costs, when ordered to pay them for misconduct as a solicitor, or in payment of any sum of money when ordered to pay the same in his character of an officer of the court making the order.

Generally the power to attach in cases under sect. 4 is not limited, as it is under sect. 5, to those cases in which means to pay are proved: the attachment has a double object—to enforce payment, and to punish (*In re Smith* (C. A.), (1893) 2 Ch. 1; 62 L. J. Ch. 336; *Crowther v. Elgood* (C. A.), (1887) 34 Ch. D. 691; 56 L. J. Ch. 416). The judge must inquire into the facts and exercise a judicial discretion in granting or refusing the attachment (Debtors Act, 1878, s. 1). Mere default in payment will not necessarily subject the defaulter to attachment (*Aylesford v. Poulett*, (1892) 2 Ch. 60; 61 L. J. Ch. 406; *Holroyde v. Garnett*, (1882) 20 Ch. D. 532; 51 L. J. Ch. 663); misconduct, dishonesty and fraud are the main grounds which justify an attachment when means to pay are absent (*In re Smith* (C. A.), (1893) 2 Ch. 1; 62 L. J. Ch. 336; *Crowther v. Elgood* (C. A.), (1887) 34 Ch. D. 691; 56 L. J. Ch. 416).

The first class of cases above referred to includes that of a son, who after the death of his father, failed to pay, under the order of a court, moneys received by him in his father's life as manager of his father's estate (*Marris*

Section 4 Notes.

v. *Ingram*, (1879) 13 Ch. D. 338; 49 L. J. Ch. 123); also of an auctioneer who receives the proceeds of property entrusted to him for sale (*Crowther v. Elgood*, *supra*); also that of a borrower of money who in an action by the lender submits to an order that he shall thereafter hold the money lent on certain trusts (*Preston v. Etherington* (C. A.), (1887) 37 Ch. D. 104; 57 L. J. Ch. 176); also that of a London agent who receives money on behalf of a country solicitor (*Litchfield v. Jones*, (1888) 36 Ch. D. 530; 57 L. J. Ch. 100); also that of a receiver who receives money in his capacity of receiver (*Re Gent*, (1889) 40 Ch. D. 190; 58 L. J. Ch. 162). A judgment creditor who, in interpleader proceedings, gives an undertaking to make good any deficiency on the sale of goods seized under an execution cannot be attached under sect. 4 (*Buckley v. Crawford*, (1893) 1 Q. B. 105; 62 L. J. Q. B. 87), nor can a partner who receives partnership money, and fails to pay it to a receiver, under an order of the court (*Piddocke v. Burt*, (1894) 1 Ch. 343; 63 L. J. Ch. 246).

Corporations.—A judgment or order against a corporation wilfully disobeyed may, by leave of the judge, be enforced against the directors or other officers (Order XXV. r. 3).

Saving of
power of
committal
for small
debts.

5. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court: Provided—

1. That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions; that is to say,—
 - (a) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued.
 - (b) [*Be exercised only as respects a judgment of a superior court of law or equity, when such judgment does not exceed fifty pounds, exclusive of costs.*]

Repealed by sect. 169 (1) of the Bankruptcy Act, 1883.

- (c) Be exercised only as respects a judgment of a county court by a county court judge or his deputy.
2. That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Any jurisdiction by this section given to the superior courts may be exercised by a judge sitting in chambers, or otherwise, in the prescribed manner.

Section 5.

For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by a superior court may be committed to the prison in which they would have been confined if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed and executed in the like manner as such writ.

This section, as far as it relates to any county court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the County Courts Act, 1846, and that Act and the Acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court other than a county court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned together with the prescribed costs (if any).

Jurisdiction to commit under Debtors Act.—By sect. 5 of the Debtors Act, 1869, the court has power to commit to prison for a period not exceeding six weeks any judgment debtor who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that, or of any other competent court, whether superior or inferior. The jurisdiction to commit is unlimited as to amount in all cases. If the judgment is in a court other than a county court, the application must be made in the court of the district in which the debtor resides or carries on business or is employed (Order XXV. r. 30), and leave to issue is not required although no payment has been made for over four months (*ib.*). If, however, the judgment is against a firm the provisions of Order XXV. r. 27, requiring an affidavit to be filed, apply (*ib.*). As regards judgments of county courts, this section of the Debtors Act enables the court in which judgment was obtained to commit whether the debtor does or does not dwell or carry on business within the district at the date of the judgment summons, but the provisions of Order XXV. r. 26, must be complied with.

Order for payment by instalments.—The court may, instead of committing, make an order for payment by instalments, and may from time to time rescind or vary such order. (An application for an order to pay by instal-

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ments ought now to be made under Order XXIII. r. 14; Order XXV. r. 55.) But the county court cannot rescind or vary an order for payment by instalments made by a judge of the High Court on a judgment of the latter (*Washer v. Elliott*, (1876) 1 C. P. D. 169; 45 L. J. C. P. 144; *Re Ives*, (1886) 16 Q. B. D. 665; 55 L. J. Q. B. 246).

After obtaining in a county court an order for payment by instalments upon a judgment of the High Court, the creditor cannot, so long as that order is in force, issue execution upon his judgment in the High Court (*Jones v. Jenner*, (1856) 25 L. J. Ex. 319; 105 R. R. 353; *Montgomery v. De Bulmes*, (1898) 2 Q. B. 420; 67 L. J. Q. B. 768), and it may be that he can only obtain the assistance of the High Court in the manner already described in the note to sect. 146, *ante*, p. 204.

The power of the county court to commit, when the judgment has been obtained in the High Court, and an order for instalments made in the county court is upon the order for instalments, and the judge must be satisfied that the debtor had at the date the instalments order was made, or has since had, the means wherewith to pay the instalments (*Nesom v. Metcalfe*, (1921) 1 K. B. 400; 90 L. J. K. B. 273).

Receiving Order.]—Instead of committing, the court may, if it has jurisdiction in bankruptcy, make a receiving order. Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 107. See, *post*, p. 281, "Receiving Order."

Administration Order.]—Again, instead of committing the court, if it appears that the total liabilities of the judgment debtor do not exceed £50, may make an administration order under s. 122 of the Bankruptcy Act, 1883 (not repealed by Bankruptcy Act, 1914). See Bankruptcy Rules, 1886, r. 358 (not repealed by Bankruptcy Rules of 1915), and Bankruptcy (Administration Order) Rules, 1902, as amended by rules dated April 4, 1914, *post*, p. 291.

Means to pay.]—The jurisdiction to commit can only be exercised where it is proved that the debtor has or has had since the date of the order or judgment the means to pay the sum as to which he is in default. (In *Ex parte Fryer* (C. A.), (1886) 17 Q. B. D. 718; 55 L. J. Q. B. 478, it is said that the power to commit for a particular sum in default arises if it be shown that the debtor has had means to pay *part* of it only; but as the court itself made an order for payment by instalments only it is clear that it did not consider that the power ought to be exercised under such circumstances.) An order to pay by instalments may be made without proof of means (*Dillon v. Cunningham*, (1873) L. R. 8 Ex. 23; 42 L. J. Ex. 11). On failure to pay any instalment, a committal may be applied for, and proof of means will then be requisite.

An order for the payment of costs merely is within this enactment (*Hewitson v. Sherwin*, (1870) L. R. 10 Eq. 53), as is an order of the Probate and Divorce Division for payment of alimony; but a commitment can be made only in respect of arrears (*Linton v. Linton* (C. A.), (1885) 15 Q. B. D. 239; 54 L. J. Q. B. 529).

Married Women.]—Married women are subject to the Debtors Act, and may be committed on a judgment obtained against them personally, and not made enforceable against separate estate, in respect of contracts made before marriage, or of torts committed during marriage (*Dillon v. Cunningham*, (1873) L. R. 8 Ex. 23; 42 L. J. Ex. 11; *Scott v. Morley* (C. A.), (1887) 20 Q. B. D. 120; 57 L. J. Q. B. 43). Nevertheless in such cases proof of means to pay will be necessary, and if the woman's only property be separate property which she is restrained from anticipating, no part of the income of which has accrued due since the judgment, no order can be made (*Meager v. Peilew* (C. A.), (1885) 14 Q. B. D. 973). If the judgment be drawn up, and limited as enforceable against her separate estate only, no order under the Debtors Act can be made (*Draycott v. Harrison* (C. A.), (1886) 17 Q. B. D. 147).

A married woman is not subject to the Debtors Act in respect of contracts made during marriage for breach of which her separate property is made

liable by the Married Women's Property Act, 1882 (*Scott v. Morley* (C. A.), (1887) 20 Q. B. D. 120).

Soldiers.]—Under the proviso to sect. 144 of the Army Act, 1881 (44 & 45 Vict. c. 58, s. 144), a judgment creditor cannot have execution against the person of a soldier of the regular forces unless the debt exceeds £30 without costs. This does not apply to officers.

Seamen.]—Under sect. 97 of the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), no petty officer or seaman, non-commissioned officer or marine belonging to any of Her Majesty's ships can be arrested for any debt contracted after he entered the service of the Crown. As to position when he has left the service and an order or decree of maintenance has been made, see Naval Discipline Act, 1922 (12 & 13 Geo. 5, c. 5), s. 7.

Judgment summons, when and how issued.]—A judgment creditor who desires to have this jurisdiction exercised against his debtor must proceed by judgment summons, which must be personally served (Order XXV. r. 25 (1); Forms 178, 181), after filing a præcipe in the proper form (Order XXV. r. 25 (2); Form 176). The præcipe must state the full names and address of, or otherwise identify, every person against whom the judgment summons is to be issued, and where the judgment summons is to be issued against a person under a description different from that given in the judgment, both descriptions must be inserted in the judgment summons and in the order of commitment (if any) made upon it (Order XXV. r. 25 (2); Form 176). A judgment summons may issue against all or any one or more of joint defendants (*ibid.*, r. 25 (3)). On a county court judgment a summons may issue from the court in which the judgment was obtained, if leave is granted, though the debtor does not reside or carry on business within its district (*ibid.*, r. 26 (2)). If on a judgment of a court other than a county court, it must issue in the court of the district in which the judgment debtor resides or carries on business or is employed (*ibid.* r. 30).

A judgment summons may be issued by post, but only where leave to issue a judgment summons or payment of or an undertaking to pay travelling expenses for the debtor's attendance is not required. The plaintiff or his solicitor (if the latter has no office within the district) must transmit to the registrar (a) the plaint note or summons, or a duplicate; (b) a præcipe in accordance with Order XXV. r. 25 (2); (c) in cases within Order XXV. rr. 27, 29, 30, the affidavit and copy, certified copy, or office copy and affidavit, required by those rules respectively; (d) a money order for the fees payable on issue of the judgment summons; and (e) a stamped addressed envelope. The registrar must, on written request, forward to the party or his solicitor information to enable him to ascertain whether a judgment summons may be issued, and personal attendance of the party or his solicitor may be required by the registrar where judgment summonses are desired, or information is asked for, in more than twenty actions at the same time. The districts of the Metropolitan courts are considered *inter se* as one district for this purpose (Order XXV. r. 30A).

When obtained without leave.]—When applied for in the court in which judgment has been obtained, no leave will be required if the debtor then resides or carries on business or is employed in the district of that court (Order XXV. r. 26 (1)), and it appears that the summons may issue without leave, no matter where the judgment has been obtained, so long as the debtor resides or carries on business or is employed in the district of the court in which the summons is applied for at the date of the application (Order XXV. r. 26 (1)). So if the judgment be in one of the metropolitan courts, and the debtor reside or carry on business in the district of another of such courts, the summons will be issued if applied for in the court in which judgment was obtained, in the same manner, without leave (Order XXV. r. 26 (2); County Courts Act, 1888, s. 84).

When leave required.]—Leave is required if the application be made to the court in which judgment was obtained, and the debtor does not (except in the Metropolitan courts above mentioned) then reside or carry on business

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or is not employed in the district of the court (Order XXV. r. 26 (2)). The application for leave must be made to the judge upon affidavit (Form 177); that affidavit must strictly follow the form, and is insufficient unless it states where a business is being carried on by the debtor, circumstances showing that the business was profitable, also whether the debtor is unmarried or a married man with children (*McIntosh v. Simpkins* (C. A.), (1901) 1 K. B. 487; 70 L. J. K. B. 268), and the debtor cannot waive the objection to the sufficiency of the affidavit (*Alderson v. Palliser* (C. A.), (1901) 2 K. B. 833; 70 L. J. K. B. 935). Leave must not be granted unless the judge is satisfied that the evidence before him, if uncontradicted, would justify a commitment. If the leave be granted a copy of the affidavit must be lodged with the registrar and annexed to the summons and served with it (Order XXV. r. 26 (2); Forms 177, 178, 179).

No affidavit or leave is required if the person requiring the judgment summons deposits or undertakes to pay or tender a sum reasonably sufficient to cover the travelling expenses of the debtor in attending the court, the amount to be fixed by the registrar. Where the summons is to be served by a bailiff, the money will be deposited with the registrar to be paid or tendered to the judgment debtor with the summons; when it is to be otherwise served, an undertaking in writing must be given to pay or tender the amount to the judgment debtor with the summons (Order XXV. r. 26 (3); Form 178A). The sum tendered must be sufficient to cover the debtor's travelling expenses both to and from the court (*Ward v. Neild*, (1917) 2 K. B. 882).

A judgment summons, not being a successive summons, cannot be issued after the expiration of twenty four months from the date on which the last payment into court, if any, under the judgment or order was made, or if there has been no payment into court, then from the date on which default was made, unless (a) the delay has been caused by an attempt to levy execution or, (b) leave of the court for the issue of the summons is obtained (Order XXV., r. 28 (1)). The application for leave is to the registrar upon an affidavit stating the date of the judgment or order, the date the last payment, if any, was made, or on which default was made, the debtor's place of residence, and place of business or employment, and any facts known to the deponent, showing the means the debtor has, or has had, since the date of the judgment or order to pay, or to have paid, the debt or instalment due (*ib.* (2)).

If the registrar is not satisfied that the statements in the affidavit would, if uncontradicted, justify the making of the commitment order, or if no payment has been made within six years before the date of the application, he must refuse to issue the summons, and refer the applicant to the judge, who may make such order, and on such terms as to costs or otherwise as he may think fit (*ib.* (3)). If leave is granted a copy of the affidavit is left with the registrar, and annexed to the judgment summons, and served therewith (*ib.* (4)). Paragraph 3 of Rule 26 of this Order (Order XXV.) (which provides that no leave is required if the judgment creditor pays or undertakes to pay a sum of money reasonably sufficient to cover the travelling expenses of the debtor to the court) does not apply to cases within the provisions of the above Rule 28 requiring leave before the judgment summons is issued (*ib.* (5)).

A minute of any leave granted by the judge in any of the cases above mentioned ought, it is believed, to be taken by the registrar and duly recorded (County Courts Act, 1888, s. 23). No notice to the debtor of the application for leave is necessary. No order will be drawn up or served unless it is so ordered (Order XXIII. r. 5).

Change of plaintiff after judgment.—Where the interest of the plaintiff has passed either by death, assignment or otherwise to another person after judgment, and such other person wishes to enforce the judgment by judgment summons, he must apply to the judge or registrar, on affidavit, pursuant to Order XXV. r. 14 for leave to issue the judgment summons (*East*

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End Building Society v. Slack, (1891) 60 L. J. Q. B. 359). The title of the action ought, it is believed, to be altered in accordance with the fact.

Judgments against firms, etc.]—If the original judgment has been obtained against a firm, or against a person who is carrying on business in a name other than his own, in such name, the plaintiff may proceed by judgment summons (Form 184) against each or any of the individuals whom he alleges to be liable, on filing an affidavit in the prescribed form (Order XXV. r. 27; Forms 182, 183) and serving a copy thereof with the judgment summons. Even where one of two or more persons jointly and severally liable has, subject to suspension, been committed, the plaintiff may so proceed against the other person or persons liable on the judgment (*Rex v. Birmingham C. C. Judge*, (1902) 2 K. B. 283; 71 L. J. K. B. 881). The forms must be strictly followed; thus, par. 2 of Forms 182 and 183 requiring a statement of the plaintiff's sources of information and belief (*Lumley v. Osborne*, (1901) 1 K. B. 532; 70 L. J. K. B. 416), and par. 4 of Form 183 of facts showing that the business is profitable (*McIntosh v. Simpkins*, (1901) 1 K. B. 487; 70 L. J. K. B. 268), are essential parts of the forms. As against each individual a separate affidavit should be made and filed, and a separate summons issued (note to Form 184). If the individual said to be liable is within the jurisdiction no leave is required; but if he neither resides nor carries on business within the jurisdiction, the leave of the judge must be obtained, in accordance with Order XXV. r. 26 (2) mentioned above (unless the provision as to travelling expenses is complied with), and a special form of affidavit must be made (Form 183). A copy of the affidavit must, in any case, be annexed to the summons and served with it (Order XXV. r. 27; Form 184).

Where the summons is applied for to a county court other than that in which the judgment or order was obtained, the applicant must obtain from the registrar of the court in which the judgment or order was obtained a certified copy of the judgment or order (Form 155), and file it with his application; the copy must state the date on which the last payment into court (if any) was made, or if no payment has been made, the date of default. The issue of such judgment summons is subject to the provisions, as the case may be, of Rules 27 and 28 of Order XXV. (Order XXV. r. 29; see also Order XXIII. r. 10). The registrar issuing the copy must make a minute of it, and no execution or summons on the judgment or order may then issue from his court, nor may any fresh order for payment by instalments be made unless it be shown that no order has been made in any other court upon such copy. The bailiff of the court issuing the certified copy must lodge in court any warrant of execution, judgment summons or order of commitment issued by the court upon the judgment or order, and no such warrant, summons or order may be re-issued unless it be shown, as above, that no order has been made in any other court upon such copy (Order XXV. r. 39).

If the summons is applied for on a judgment or order of any competent court other than a county court the applicant must obtain from such other court an office copy of the judgment or order, and file it, together with an affidavit (Form 180) of the sum then due, with the registrar of the court of the district in which the debtor resides or carries on business or is employed, and the registrar will thereupon issue a judgment summons, the issue of which will be subject to the provisions of Rule 27 of Order XXV., *ante*, in cases to which that rule applies (Order XXV. r. 30). Where more persons than one are liable under the judgment or order, the office copy may be filed with the registrar of the court of the district in which any one of such persons resides or carries on business or is employed. A judgment summons must not be issued in that court against a person who does not reside or carry on business or who is not employed in the district unless the leave of the judge is obtained in accordance with Order XXV. r. 26, or the proviso to that rule is complied with (Order XXV. r. 30 (2)).

Where a judgment summons is heard in a county court on a judgment

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or order of any competent court other than a county court, a memorandum of the result of the hearing must be sent by the registrar to the registrar or other proper officer of the court in which the judgment or order was obtained. If on such hearing an order of commitment or an order altering the terms of the judgment or order is made, then until such order is discharged, all payments, whether under the order of commitment or under the new order, must be made into, and execution or other process for enforcing either the order of commitment or the new order may be issued by, the court making the order of commitment or the new order. The office copy of the judgment or order filed in the court pursuant to Order XXV. r. 30, is deemed to be a judgment or order of the court in which the judgment summons is heard; and if the judgment creditor subsequently desires to apply for a judgment summons to another court pursuant to Order XXV. r. 29, he must obtain from the registrar of the court in which the order of commitment or new order was made a copy, certified by the registrar to be a correct copy, of the office copy of the judgment or order filed in that court pursuant to Order XXV. r. 30, and a certified copy of the order made on the hearing of the judgment summons, containing the particulars required by Order XXV. r. 29, according to Form 155 in the Appendix, and must file the same with his application (Order XXV. r. 40a).

A judgment summons will not issue on the judgment of an Irish court, even if duly registered under the Judgments Extension Act, 1868 (*Johnston v. Watson* (C. A.), (1893) 1 Q. B. 21; 62 L. J. Q. B. 85).

Every judgment summons must be in the prescribed form, and be issued not less than ten clear days before the day on which the judgment debtor is required to appear, except in the case about to be mentioned (Order XXV. r. 31 (1); Forms 178, 181, 184). Where the person applying for the judgment summons states to the registrar that the judgment debtor is about to remove from his residence or place of business, or is keeping out of the way to avoid service, then the judgment summons may be issued and served at any time before the hearing. But the court cannot act upon such a summons in the absence of the judgment debtor, unless at the hearing the judge is satisfied, by evidence on oath, that at the time of the application for the summons the debtor was about to remove from his dwelling or place of business, or was keeping out of the way to avoid service (Order XXV. r. 32).

The amount for which a judgment summons may issue should not include any amount, remaining due on the judgment, for non-payment of which the defendant has already been imprisoned (Order XXV. r. 55); nor should it include costs incurred in endeavouring to enforce a judgment or order by way of execution against goods and not recovered under such execution (Order XXV. r. 56).

When and how served.]—The summons must be served personally (Order XXV. r. 25 (1)), not less than five clear days before the day on which the party is required to appear (Order XXV. r. 31 (1); Forms 178A, 181, 184), unless service is made under the provisions just mentioned. It may be served in accordance with the provisions of Order VII. r. 33, as to the service of default summonses, the words “on the filing of the præcipe” being substituted for “on the entry of the plaint under Order V. r. 9.” If served otherwise than by the bailiff, an affidavit of service must be lodged with the registrar before the return-day (Order XXV. r. 31 (2); Form 185). A judgment summons is deemed to be a summons to a witness within sect. 111 of the Act of 1888, and where at the time of service payment or tender of payment of his expenses is made to the judgment debtor, a notice according to the prescribed form is to be printed at the foot of or annexed to the summons (Order XXV. r. 31 (3A); Forms 124, 178B). Although personal service of the judgment summons is required, it is not necessary that the order of the court for payment shall be served personally on the judgment debtor (*Haydon v. Haydon*, (1911) 2 K. B. 191; 80 L. J. K. B. 672).

If a summons requiring service in the home district has not been served, the high bailiff must give notice to the plaintiff forthwith (Order II. r. 24;

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Form 30). If a summons requires service in a foreign district, the high bailiff of the foreign court must, three clear days at least before the return-day, transmit the copy summons to the registrar of the home court duly indorsed and signed by the bailiff (who must name the court of which he is bailiff), and also the summons itself when not served (Order II. r. 28; as to the penalty for non-observance of this rule, see Order II. r. 29).

Where service has not been made in due time a successive summons may be issued at any time within three months without fee, and it may be served by any person the court may direct. If this latter summons is not served in due time no further summons is to issue without payment of a fee. When not served by bailiff, an affidavit of service (Form 185), by the person who actually effected it must be lodged with the registrar before the return-day (Order XXV. r. 33).

On the issue of the summons by the court in which the judgment or order was obtained, the bailiff is to lodge in court any warrant against the goods issued in the action, whether executed or not; if not fully executed, any such warrant may be re-issued by leave of the judge (Order XXV. r. 38). Where a judgment summons or order of commitment is outstanding, a warrant of execution may not be issued in the same action without the leave of the judge (Order XXV. r. 10A).

Hearing.]—The order must be made in open court by the judge or his deputy. When the judge sits in a room apart from the court it is not open court, even if he hears other cases there and the public and reporters are admitted (*Debtors Act*, 1869, s. 5; *Kenyon v. Eastwood*, (1888) 57 L. J. Q. B. 455). If the debtor does not appear on the return-day, an order to commit may be made against him if proof of means be given (*Davies v. Fletcher*, (1853) 2 E. & B. 271; 22 L. J. Q. B. 429; 95 R. R. 538). If he appears, he may be examined upon oath touching the means he has, or since the date of the judgment has had, of paying the debt; and witnesses may also be examined on oath to prove the means of the debtor. Witnesses may be summoned in the same way as in the case of ordinary complaints, and the expenses of any person examined by the judge, whether summoned or not, may be allowed by the judge. If the judgment debtor does not appear at the hearing, or pays into court the amount in payment of which he is in default, expenses paid to him with the judgment summons or with a summons to appear as a witness may be allowed if the judge so directs, as expenses of a witness; if he does appear, such expenses may, if the judge directs, be allowed as expenses of a witness in any case in which the costs of witnesses may be allowed under the rules (see Order XXV. r. 35). The name of every witness who has been examined as to the means of the debtor must be entered in a book, and whenever an order of commitment has been made there must also be entered in the column "order" of the said book a note or minute showing whether such order has been made on account of the past or the present ability of the debtor to obey the order of the court (Order XXV. r. 36).

It is utterly immaterial how the debtor obtains, or has obtained, the means to pay, whether by gift, charity, or otherwise. Mere proof of an allowance of 5l. per week did not, however, satisfy the Court of Appeal that a debtor had had means to pay a judgment debt (*Ex parte Koster* (C. A.), (1885) 14 Q. B. D. 597; 54 L. J. Q. B. 389); but here the debt was probably a large one. Much smaller evidence of means is daily accepted in county courts as sufficient to justify a commitment. Nor was the same court satisfied as to the existence of means where a debtor was living with his wife in a quiet way on her separate estate (*Chard v. Jervis* (C. A.), (1882) 9 Q. B. D. 178; 51 L. J. Q. B. 442); but where the establishment was a large one, and horses, carriages, and men-servants were kept, it was held that a commitment was right, although the debtor swore that the whole was kept up by his wife out of her separate property (*Harper v. Scrimgeour*, (1879) 5 C. P. D. 366. In *Dunn v. Rigby*, (1871) 15 S. J. 492 *Judges* Pitt-Taylor

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held that refusal to produce her marriage settlement was evidence of means against a married woman. *Sed quere.*

Where a judgment creditor at whose instance a judgment summons is issued, or the judgment debtor, does not reside within the district of the court in which the summons is to be heard, he may forward to the registrar of the court from which the summons issued an affidavit setting forth any facts which he may wish to be before the court prior to any order being made on the summons. The judge may, if he think fit, on the hearing of the judgment summons, admit the affidavit as the evidence of the person by whom the same is made. Notice of this rule must be printed at the foot of, or annexed to, every judgment summons issued pursuant to leave granted under Order XXV. r. 26 (Order XXV. r. 37; Form 179).

If the judgment debtor appears on the return-day, but the creditor does not, the judge may award costs to the former (Order XXV. r. 52).

By leave of the judge the hearing of the summons may be adjourned from time to time (Order XXV. r. 34). As to married women, see, *supra*, p. 270.

As to the effect of bankruptcy, etc., see, *infra*, p. 280.

Where the special form of judgment summons (Form 184), hereinbefore mentioned, has been issued under a judgment against a firm or a person carrying on business in a name other than his own, if the person summoned does not appear and deny it, he will be deemed to admit his liability as a partner in or sole member of the firm, or as the person carrying on business under such other name, to pay the debt. But if he does appear and deny his liability the judge may decide the question on the evidence before him, or order it to be determined in an action to be commenced by plaint and summons in the ordinary way (Order XXV. r. 27). Where the person neither resides nor carries on business within the district the summons can only be issued by leave of the judge under Order XXV. r. 26, unless a sum to cover his travelling expenses is deposited, or an undertaking given to pay or tender them (Order XXV. r. 26 (3)).

Order.—If the judge is satisfied by the evidence adduced before him that the debtor either then has, or since the date of the order or judgment has had, the means to pay the sum in respect of which the commitment is applied for, and that he has refused or neglected or refuses or neglects to pay it, he may make an order committing the debtor to prison for any term not exceeding six weeks (Debtors Act, 1869, s. 5; County Courts Act, 1888, s. 161; Order II. r. 4; no warrant is prepared. The order is the authority under which the high bailiff acts).

If he is of opinion that an order of commitment ought not to be made, the judge may refuse to make it, or may make a fresh order for payment at a specified time or by instalments (Order XXV. r. 46 (1)). The execution of an order of commitment may be suspended by direction of the judge, notice of any such direction being given to the judgment debtor (Order XXV. r. 46 (2); Form 191A). Subject to the provisions of Order XXV. rr. 48 and 49, all payments under a fresh order or order of commitment must be paid into court (Order XXV. r. 46 (3)).

On the making of the order by the judge, the registrar makes a minute of it in the minute-book, and the court will not grant a prohibition to restrain further proceedings merely on the ground that the minute does not show the ground on which the order of commitment is made (*Harris v. Slater*, (1888) 21 Q. B. D. 359; 57 L. J. Q. B. 539).

As already explained, the court may, if it sees fit, direct the amount due to be paid by instalments; but it cannot add to an order to pay by instalments, which it makes instead of committing, a direction that in default of payment the debtor do stand committed; it may, however, make an order of commitment, and direct that it shall not issue for a certain time, or at all, if the debtor pays the debt by certain instalments (*R. v. Brompton C. C. (C. A.)*, (1887) 18 Q. B. D. 213; 56 L. J. Q. B. 49. This judgment was reversed on the facts in the House of Lords, but the decision of the

Lords confirms the propositions above stated (*Stonor v. Fowle*, (1888) 13 App. Cas. 20; 57 L. J. Q. B. 387).

Where there is a judgment or order for payment by instalments, and an order of commitment is made in respect of the non-payment of an instalment before the whole have become due, then, if the judge orders the execution of the order of commitment to be suspended to enable the debtor to pay the amount in respect of which it is made, he may also order that the judgment or order for payment by instalments shall also be suspended as long as the execution of the order of commitment is suspended or for any less period. If he makes such last-mentioned order, he may at any subsequent time order that the suspension of the judgment or order for payment of instalments shall cease; and if the plaintiff withdraws or abandons the order of commitment, the suspension of the judgment or order for payment of instalments will thereupon cease (Order XXV. r. 47).

Where in lieu of an order of commitment a fresh order is made for payment of the amount due or for payment by instalments under Order XXIII. r. 14, there is to be included in the amount payable otherwise than by way of judgment summons the amount in respect of which an order of commitment has been made and the debtor has been imprisoned, but so that the debtor shall not be liable to be imprisoned a second time for non-payment of the last-mentioned amount. On any subsequent judgment summons in default of payment of an instalment the amount in respect of which the debtor has been imprisoned is to be deducted on the face of the summons from the amount payable under the order, but in calculating for the purposes of the summons the amount in respect of which the debtor has made default, the instalments payable under the order are to be attributed in the first instance to the discharge of the amount payable under the order other than the amount in respect of which the debtor has been imprisoned, and the summons may be issued for the full amount of the instalments in arrear if that amount does not exceed the balance remaining payable under the order after deducting the amount in respect of which the debtor has been imprisoned, or if the instalments in arrear exceed such balance, then for the amount of such balance (Order XXV. r. 55).

If the summons is heard in a different court from that in which the order or judgment was obtained, a memorandum of the result of the hearing must be sent by the registrar of the former to the registrar of the latter court, and entered by the last-named registrar on the minute of the judgment or order (Order XXV. r. 40 (1)). If on the hearing an order of commitment or an order altering the terms of the judgment or order is made, the proceedings are thereby transferred to the court making such order; and all payments, whether under the order of commitment or under the original judgment or order, are to be made into the court making the order of commitment or new order, and execution or other process for enforcing either the order of commitment or the original judgment or order or the new order, must be issued by the same court (Order XXV. r. 40 (2); Form 186). In any such case the certified copy of the judgment or order filed in the court pursuant to Order XXV. r. 29, is for all purposes deemed to be a judgment or order of the court in which the judgment summons is heard; and if the judgment creditor subsequently desires to apply for a judgment summons to another court pursuant to that rule, he must obtain from the registrar of the court in which the order of commitment or new order was made a copy, certified by the registrar to be a correct copy, of the certified copy of the judgment or order filed in that court pursuant to that rule, and a certified copy of the order made on the hearing of the judgment summons, containing the particulars required by the said rule, according to Form 155 in the Appendix, and must file the same with his application (Order XXV. r. 40 (3)). If no order is made on the hearing, the judgment or order remains in the court in which it was obtained, and the certified copy is returned to that court; subsequent payments thereunder, and subsequent proceedings for its enforcement, may be taken in that court (Order XXV. r. 40 (4).) If the

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judgment or order has been made in any other court, not being a county court, the provisions of Order XXV. r. 40A apply.

A judgment debt is now barred in twelve years, unless some payment has been made, or some acknowledgment in writing given (*Hebblethwaite v. Peever*, (1892) 1 Q. B. 124).

The registrar draws up the order. It will not be issued until applied for (Order II. r. 4), and the court fees paid. The order must be issued for execution to the high bailiff, under seal of the court (sect. 161), and must be in the prescribed form (Forms 187, 189, and 191). It must show on its face the ground on which it is issued, and, on whatever day it may be issued, must bear the date on which the order was made by the judge (Order XXV. r. 46; see Form 187). The order itself is the high bailiff's authority, there is no warrant. If unexecuted, the order remains in force for one year only from and exclusive of its date; but this time may be extended for not more than a year by an order of the judge made either before or after the expiration of the year, and so on from time to time; the order of extension may be made either before or after the commitment order is issued. The fact of any such order must be indorsed on the order of commitment (Order XXV. r. 46; see Form 187; and see sect. 161 of County Courts Act, *ante*, p. 219).

Fees payable on renewal of an order of commitment may be allowed as costs of the order, and, if allowed, their amount and the fact of the allowance must be entered on the order (Order XXV. r. 46B).

Orders of commitment may issue by post. The party or his solicitor (if the latter has no office within the district) must transmit to the registrar
a) a præcipe containing the number of the plaint, and stating the full names and address of or otherwise sufficiently identifying every person against whom the order is to be issued; (b) a money order for the fees payable upon the issue of the order; and (c) a stamped addressed envelope. Order XXV. r. 30A, applies to the issue of orders of commitment under this rule (Order XXV. r. 47A).

Execution of Order.]—The order of commitment authorises the high bailiff and his bailiffs to arrest the judgment debtor and lodge him in gaol (Order XXV. r. 46; see Form 187, and County Courts Act, 1888, s. 161). The Sheriffs Act, 1887 (50 & 51 Vict. c. 55, s. 14), does not prevent an immediate taking to prison (*Mitchell v. Simpson* (C. A.), (1890) 25 Q. B. D. 183; 59 L. J. Q. B. 355). The ordinary rules as to the mode and place of execution apply (County Courts Act, 1888, s. 77; Order LIV. r. 19; Order I. r. 5). All constables and other peace officers must aid in executing the order, and the governor of the prison mentioned in it must receive and keep the debtor until discharged by due course of law (*ibid.*, sect. 161). The extreme term of imprisonment is six weeks (Debtors Act, 1869, s. 5), computed from the date of lodging in prison (*Ex parte Foulkes*, (1846) 15 M. & W. 612; 15 L. J. (N. S.) Ex. 300).

Care must be taken to execute the order against the right person; if the plaintiff directs its execution against a person not named in it, he is liable in trespass (*Walley v. McConnell*, (1849) 3 Q. B. 903; 19 L. J. Q. B. 162; 78 R. R. 552).

The bailiff is not entitled to enter and search premises unless the debtor is in fact there, otherwise he will be liable in trespass (*Morrish v. Murray*, (1844) 13 L. J. Ex. 261).

The high bailiff must make returns as in case of execution against goods, and pay over moneys and give information to suitors (see Order II. rr. 33, 34, 37).

Effect of Order.]—It has been shown above that an order of commitment remains in force for a year only; and it was held under a similar provision that if the order were executed within a year from the date of it the debtor might be imprisoned for the full term for which he was committed, although it might expire at a time beyond a year from the date of the order (*Hayes v. Keene*, (1852) 12 C. B. 233; 21 L. J. C. P. 204; 92 R. R. 707; and see

Ex parte O'Neill, (1850) 10 C. B. 57; 20 L. J. C. P. 69). So long as the order remains in force there is no power to make a fresh order. Where a debtor was arrested, and, after imprisonment for seven days, was discharged, on the ground of privilege, the court restrained by prohibition proceedings on a new judgment summons obtained by the creditor (*Horsnail v. Bruce*, (1873) L. R. 8 C. P. 378; 42 L. J. C. P. 140). As long as the order stands, an action does not lie by the judgment debtor against the high bailiff for not having served him with the judgment summons (*Turley v. Daw*, (1906) 94 L. T. 216).

Where a debtor has once been imprisoned, although for a period of less than six weeks, no second order of commitment can be made against him in respect of the same debt (Order XXV. r. 55). But if the order or judgment be for payment by instalments a power of committal arises on default of payment for each instalment (*Evans v. Wills*, (1876) 1 C. P. D. 229; 45 L. J. C. P. 420; and *Horsnail v. Bruce*, *supra*, per Bovill, C.J., and Brett, J.). If the creditor waits, however, until after the date for payment of all the instalments, the debtor can then doubtless be committed for one term only. If the order of commitment has never been executed, and by reason of lapse of time the order is inoperative, it seems that a fresh commitment may be made (*R. v. Stonor* (1), (1888) 57 L. J. Q. B. 510).

Imprisonment under the order does not operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned in the same manner as if there had been no imprisonment (Debtors Act, 1869, s. 5).

A commitment has been said to be a qualified execution, and not a punishment for contempt (*Ex parte Dakins*, (1855) 16 C. B. 77; 24 L. J. C. P. 131; 100 R. R. 620; *Evans v. Wills*, (1876) 1 C. P. D. 229; *Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420; see, however, *Mitchell v. Simpson*, (1889) 23 Q. B. D. 373; 59 L. J. Q. B. 355, per Charles, J.); hence, on a receiving order in bankruptcy, or an administration order being made, the creditor's remedy will be suspended (*Re Ryley*, *supra*). So, if the creditors accept a composition binding on the judgment creditor, his remedy under these provisions will be suspended; but on the debtor's failure to pay the composition, the creditor will be remitted to his original position, and may obtain a commitment for the original debt or instalment (*Newell v. Van Praagh*, (1874) L. R. 9 C. P. 96; 43 L. J. C. P. 94).

Suspension of Order.—The judge may at any time, if satisfied that the judgment debtor is unable from any cause to pay the sum recovered against him or any instalment thereof, suspend or stay any judgment or order upon such terms as the judge may think fit. He may also order the discharge of any debtor arrested or confined in prison by order of the court who ought in the opinion of the judge to be discharged, and may impose such terms (including liability to re-arrest if the terms are not complied with) as he may think fit. See County Courts Act, 1919, s. 23, *ante*, p. 208.

Privilege from Arrest.—There is no privilege from arrest where attachment is granted for an offence of a criminal nature; but where an attachment is granted for enforcing judgments in civil cases (*e.g.*, a committal order on a judgment summons) the following persons (*inter alios*) may successfully claim privilege:—

- (i.) Ambassadors and their servants.
- (ii.) Peers and Members of Parliament (see *Anglo-French Co-operative Society*, (1880) 14 Ch. D. 533).
- (iii.) Members of the Royal Household.
- (iv.) Soldiers and seamen, in certain circumstances (see *ante*, p. 271).
- (v.) Barristers and solicitors going to or returning from professional attendance at court, including a police court (see *Re Freston*, (1883) 11 Q. B. D. 545).

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(vi.) Parties to a suit and their witnesses, whether compelled to attend by process or not, are privileged *eundo morando et redeundo* provided they come *bonâ fide* (see *Young v. Young*, (1896) 12 T. L. R. 503).

For further information on this subject of privilege, see "Oswald on Contempt," 3rd edition.

The Post Office Act, 1908 (8 Ed. VII. c. 48, s. 67 (1)), makes it an offence, punishable by a fine not exceeding 40s., if any person wilfully obstructs or incites anyone to obstruct, an officer of the post office in the execution of his duty. This provision does not, it is thought, prevent the arrest under an order of commitment of a postman or other post official whilst on duty. Care should however be exercised to see that public business is interfered with as little as possible.

Bankruptcy Acts.—The court, on proof that a bankruptcy petition has been presented by or against the debtor, although no receiving order or adjudication has been made, may either stay proceedings or allow them to continue on such terms as it may think just (Bankruptcy Act, 1914, sect. 9 (1)).

Where the debtor, on the return-day, satisfies the judge that a receiving order has been made, or that he has been adjudicated bankrupt, and that the debt was provable in the bankruptcy, no order of commitment may be made (Order XXV. r. 42; see *Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420); nor can any order be made for payment by instalments (*Re Nuthall* (C. A.), (1891) 64 L. T. 241). A copy of the *Gazette* containing the order is sufficient evidence (Bankruptcy Act, 1914, sect. 137).

Where, after the making of an order of commitment, the debtor files an affidavit in the prescribed form, stating that a receiving order has been made, or that he has been adjudicated bankrupt, and that the debt was provable in the bankruptcy, and forthwith gives notice of the filing of the affidavit to the judgment creditor, the order of commitment will not be issued, and if issued but not executed it will be recalled (Order XXV. r. 43; Form 192). Where it has been sent to another court for re-issue the registrar must give notice to the registrar of the foreign court (Order XXV. r. 43).

If he has been arrested, the debtor may file a similar affidavit in the court within the district of which he is in custody, and he must thereupon be discharged out of custody upon the certificate of the registrar, who must forthwith give notice of his discharge to the judgment creditor (Order XXV. r. 44; Forms 192, 194).

Where the debtor, on the return-day, satisfies the judge that an administration order has been made under sect. 122 of the Bankruptcy Act, 1883, and that the debt in respect of which the summons issued has been notified to the court in which the order was made, no order can be made on the judgment summons except on proof that the creditor has obtained leave to proceed from the court in which the administration order was made and in accordance with the terms (if any) imposed by the court (Order XXV. r. 45).

Where a judgment debtor after the making of an order of commitment files an affidavit in the prescribed form stating that an administration order has been made, that the debt in respect of which the order of commitment was made has been notified to the court in which the administration order was made, and that the judgment creditor has not obtained leave to proceed from that court, and annexes to the affidavit a certificate of the registrar of the court in which the order was made, and gives notice to the judgment creditor of the filing of the affidavit, the order of commitment will not be issued, and if issued but not executed, will be recalled. Notice of the affidavit must be given by the registrar of the court in which it is filed to the registrar of a foreign court where the order has been issued to a foreign district (Order XXV. r. 45A; Forms 192A, 193).

If the judgment debtor is arrested, he may file in the court of the district in which he is in custody a similar affidavit, and will thereupon be discharged out of custody upon the certificate of the registrar of that court, who must

forthwith give notice of the discharge to the judgment creditor (Order XXV. r. 45c; Forms 192B, 193A, 194).

For the purposes of Order XXV. rr. 45, 45A, and 45B, the registrar of the court in which an administration order has been made must issue to the debtor, upon his application, a certificate in the prescribed form (Order XXV. r. 45c; Form 193A).

In cases coming within Order XXV. rr. 45A, 45B, or where proceedings under a judgment summons or order of commitment are stayed under sect. 122 of the Bankruptcy Act, 1883, or rules, any money received thereunder will be dealt with as provided by Order XXV. r. 24c, with respect to money received under an execution (Order XXV. r. 45d).

If in any such case the costs of the judgment summons or order of commitment incurred by the creditor are not allowed out of the money received the creditor will be liable for them; but they may be allowed as against the debtor and (on application) added to the debt (Order XXV. r. 45d).

Where the debt is not provable, such as alimony ordered to be paid by the Probate Division, on proof of means the order may still be made (*Kerr v. Kerr*, (1897) 2 Q. B. 439; 66 L. J. Q. B. 838).

Receiving Order.]—Where the application for a commitment is made to a court having bankruptcy jurisdiction, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, may make a receiving order against the debtor. The debtor will then be deemed to have committed an act of bankruptcy at the time the order is made (Bankruptcy Act, 1914, s. 107, sub-s. 4). The creditor will have to pay the same fee and deposit as are required on a bankruptcy petition, and if he does not consent to pay them, the court may dismiss the application or adjourn it on such terms as may be just (Bankruptcy Rules, 1915, r. 376, *post*, Part V.). The receiving order cannot be made if there is no evidence of means before the county court judge (*In re a Debtor, Ex p. the Debtor*, (1905) 1 K. B. 375; 74 L. J. K. B. 362; and see *In re Clark* (C. A.), (1898) 1 Q. B. 20; 66 L. J. Q. B. 875), though it has been held that the absence of means is immaterial in a case where the debtor had made an assignment of the whole of his property on the morning of the day when judgment was given against him (*R. v. Sussex C. C.*, (1888) 59 L. T. 32).

If the court has bankruptcy jurisdiction, but still is not the court to which a bankruptcy petition against the debtor could be properly presented, the court may make the order, but must then transfer the proceedings to the court to which a petition would be properly presented. The registrar must then transmit the proceedings and a sealed copy of the order of transfer to the registrar of the other court (Bankruptcy Rules, 1915, r. 378, *post*, Part V.).

Where the application is made to a court not having bankruptcy jurisdiction, if the judge is of opinion that a receiving order should be made in lieu of a commitment, he may order the matter to be transferred to the court to which a bankruptcy petition against the debtor might be presented. The registrar must then transmit by post to the court to which the matter is transferred the proceedings in the matter, together with a copy of the order of transfer (Bankruptcy Rules, 1915, r. 377, *post*, Part V.).

Notice of the order and of the subsequent proceedings must be served on the judgment debtor. The court to which the proceedings are transferred does not appear to be bound by the opinion of the court which transfers, but must decide on the merits (*Re Andrews*, (1885) 15 Q. B. D. 335; 4 L. J. Q. B. 572). The order of transfer suspends the operation of any commitment previously made (*Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420).

The court may also, as before stated, make an administration order, if the total liabilities of the debtor do not exceed 50*l.*, and the court thinks that an order of commitment ought not to be made (sect. 122, Bankruptcy Act, 1883, Bankruptcy Rules, 1886, r. 358, *post*, p. 291).

To What Prison.]—The debtor against whom an order of commitment is

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made must be committed to the particular prison designated by various orders of the Home Secretary made under sect. 163 of the Act of 1888. The orders apply to all commitments whatsoever, and will be found *post*, p. 932.

Discharge from Custody.—The debtor may, at any time before he is delivered into the custody of the gaoler, pay to the bailiff the amount indorsed on the order as that on the payment of which he may be discharged; and on receiving it the bailiff must discharge the defendant, and must within twenty-four hours pay over the money to the registrar (Order XXV. r. 48). As to payment after, see Order XXV. rr. 48A, 49; Forms 188A, 195.

The sum indorsed on the order may be paid to the registrar of the court from which the commitment order was issued, or to the gaoler in whose custody the prisoner is, or into the foreign court to which the order has been sent for execution. Where it is paid to the registrar he must sign and seal a certificate (Order XXV. r. 51; Form 195) of payment, and upon receiving such certificate, by post or otherwise, the gaoler in whose custody the prisoner is, must forthwith discharge the prisoner. And where it is paid to the gaoler, he must, upon payment with costs sufficient to pay for transmitting the amount to the registrar of the court under the order of which the prisoner was committed, by post-office order, sign a certificate of payment and discharge the prisoner, and such costs of transmission are part of the prescribed costs (Debtors Act, 1869, s. 5; Order XXV. r. 49). Upon the judgment creditor lodging with the registrar a request in writing (Form 196) that the judgment debtor may be discharged from custody, the registrar must issue a certificate (Form 197), and transmit it by post to the gaoler; and the gaoler upon receipt of it must forthwith discharge the prisoner (Order XXV. r. 50).

In order to obtain a judgment debtor's discharge by payment the above mode of proceeding must be strictly followed; for where a judgment debtor paid the debt and costs to the execution creditor, but no application was made to the court, and he was subsequently arrested by the bailiff of the court under the warrant of commitment, it was held that the arrest was legal (*Davies v. Fletcher*, (1853) 2 E. & B. 271; 22 L. J. Q. B. 429; 95 R. R. 538).

The procedure for discharge on filing an affidavit as to bankruptcy or administration order has already been mentioned *supra* (and see Order XXV. rr. 44, 45, 45A, 45B, and 45C; Forms 192A, 192B, 193, 193A, 194). It would seem that the filing of the affidavit (Form 192) is a condition precedent to the discharge (*Re Edgcome*, (1902) 2 K. B. 403; 71 L. J. K. B. 722; see *per* Vaughan Williams, L.J.). If the certificate authorising the discharge (Form 194) were refused by the registrar, application might possibly be made to the judge by way of appeal from the order of the registrar (Order XII. r. 11), or to the High Court, to compel the registrar to grant the certificate, or in bankruptcy under sect. 9 of the Bankruptcy Act, 1914, or to the High Court for a *habeas corpus* (see *Ex parte Kinning*, (1847) 16 L. J. Q. B. 257; but see *Ex parte Somers*, (1855) 24 L. J. C. P. 185; 24 L. J. Ex. 247).

There can be no doubt that an order which has the effect of discharging a debtor from his debts takes away the power to commit on a judgment summons for a debt so discharged. A prohibition would lie at any stage of the proceedings (*Copeman v. Rose*, (1857) 7 E. & B. 679; 26 L. J. Q. B. 251, overruling *Abley v. Dale*, (1851) 11 C. B. 378; 20 L. J. C. P. 233; 87 R. R. 697. An unconditional order of discharge in bankruptcy dates from the day upon which it is granted (*Ex parte Bell*, (1863) 32 L. J. Bk. 50)).

Part Payment.—The following provisions apply where after the issue of an order of commitment for non-payment of money, but before the body of the debtor is delivered into the custody of the gaoler, money is paid into the court out of which the order issued, or into a foreign court to which the order has been sent for re-issue under sect. 153 of the County Courts Act, 1888, or to the bailiff holding the order (Order XXV. r. 48A (1)). If payment is made into the court in the district of which the order is to be executed, the fact and amount of the payment is to be forthwith notified by

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the registrar, if he is also high bailiff, to the bailiff holding the order; if he is not high bailiff, to the high bailiff, who must as soon as may be notify the bailiff holding the order (Order XXV. r. 48A (2)). If the payment is made into the court out of which the order issued (the home court) after the order has been sent for re-issue to any foreign court, the notification is to be as soon as may be after receipt made by post by the registrar of the home court to the high bailiff of the foreign court, who in his turn must as soon as may be notify it to the bailiff holding the order (Order XXV. r. 48A (3)). If the bailiff holding the order receives any payment or notice of any payment, he must forthwith indorse on the order the amount of the payment and deduct it from the amount indorsed on the order as that on payment of which the debtor may be discharged, and must sign the indorsement; the order of commitment, unless withdrawn by the plaintiff, will thenceforth operate as an order of commitment for non-payment of the amount remaining due after such deduction (Order XXV. r. 48A (4)).

Similar rules have been made for cases where payment or part payment is made after the debtor has been lodged in gaol. After the prisoner has been delivered into the gaoler's custody, the sum indorsed on the warrant of commitment as that upon payment of which he may be discharged may be paid either into the home court or into the foreign court or to the gaoler (Order XXV. r. 49 (1)). If paid into the foreign court, the registrar must sign and seal a certificate of the payment and send it by post or otherwise to the gaoler, who upon its receipt must forthwith discharge the prisoner (Order XXV. r. 49 (2)). If payment is made into the home court after the order has been sent for re-issue to a foreign court, the registrar of the home court must forthwith notify the fact of the payment by post to the registrar, who then sends his certificate to the gaoler (Order XXV. r. 49 (3)). If payment is made to the gaoler, he must on payment of the amount indorsed on the order of commitment, together with costs sufficient to pay for transmitting the amount, transmit it forthwith by post-office order to the registrar of the court under the order of which the prisoner was committed, and must sign a certificate of the payment and discharge the prisoner; the costs of transmission are part of the prescribed costs (Order XXV. r. 49 (4)).

Where the amount paid into the foreign court is less than that indorsed upon the order of commitment as that upon payment of which the prisoner may be discharged, the fact and amount of the payment are to be notified as soon as may be after receipt by post or otherwise by the registrar to the gaoler (Order XXV. r. 49A (1), (2)). Where such a payment is made into the home court after the order has been sent for re-issue to a foreign court, the notification is to be made as soon as may be after receipt by post by the registrar of the home court to the registrar of the foreign court, who is to notify the payment by post or otherwise to the gaoler as soon as may be after receiving such notification (Order XXV. r. 49A (1), (3)). Upon payment to the gaoler of the balance, with costs sufficient to pay for transmission, the gaoler is to transmit it forthwith by post-office order to the registrar of the court under the order of which the prisoner was committed, to sign a certificate of the payment, and discharge the prisoner; the costs of transmission are to be part of the prescribed costs (Order XXV. r. 49A (4)).

Execution out of Jurisdiction.]—Where the debtor is out of the jurisdiction, the order must be sent by the high bailiff of the home court with a sealed warrant under his hand to the registrar of the court within the jurisdiction of which the debtor is, in the same manner as a warrant of execution against goods (County Courts Act, 1888, s. 158; Form 173). The registrar of the foreign court on receiving it must make an entry of the receipt in "The Foreign Executions Re-issued Book" (Order XXVIII. r. 1), and indorse a notice (Form 188) on the order addressed to the governor of the prison used by the court, and seal the order, and issue it to the high bailiff (Order XXV. r. 41).

Every high bailiff must (except where by statute he is required to retain

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the same) pay over any monies received by him within twenty-four hours to his registrar (Order II. r. 34).

Where under an order of commitment to be executed in a foreign district money has been paid into the court of such district, the registrar shall transmit a certificate (Form 175) to the registrar of the home court of the amount so paid in, and account for and pay over the same to the treasurer of his court at such time as the treasurer may require, and the registrar of the home court shall file the certificate and thereupon pay out of any money in his hands to the judgment creditor the amount so certified to have been received by the foreign court, and shall enter in a book the amount so certified, and be allowed by the treasurer of his court the amount so paid (Order XXVIII. r. 3).

If the debtor is apprehended, he must be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the court within the jurisdiction of which he was apprehended, and kept therein for the time mentioned in the order of commitment, unless sooner discharged by law; and all constables and other peace officers must aid and assist within their respective districts in the execution of the order (*ibid.*, sect. 158).

As to the procedure in cases of part payment after issue of order of commitment, see *ante*, p. 282.

Costs.—Except as otherwise provided by the rules (Order XXV. rr. 53—56), all costs incurred by the plaintiff in endeavouring to procure or enforce an order or judgment will be deemed to be due in pursuance of such order or judgment under these provisions unless the judge otherwise orders, hence they will be included in the amount required to be paid by the judgment debtor.

No solicitor's costs will be allowed for attending on the hearing of a judgment summons, unless the party for whom he appears resides out of the district of the court, or unless the summons is on a judgment or order of a court other than a county court, in either of which cases the judge may allow (i.) if the amount for which the summons is issued exceeds 10*l.*, the fee specified in the scale (see Item 64) for attending in court on an interlocutory application, or (ii.) where the amount is less than 10*l.*, a fee not exceeding 5*s.* (Order XXV. r. 53).

Where the judge, instead of making an order to commit, makes a fresh order for payment of the amount remaining due and unpaid under the judgment or order, no costs for fees or witnesses will be allowed to the creditor, unless the court is satisfied that the debtor has made default, and has had since the date of the original judgment or order the means to pay the sum in payment of which he has made default. If the court is so satisfied, a minute must be made in the book prescribed (Order XXV. r. 54).

Appeal.—The order to commit is not, it is believed, subject to appeal (see *Rackham v. Blowers*, (1849) 15 Jur. 758; *Ex parte Watkins*, (1886) 3 Morrell, 146; but consult *Draycott v. Harrison*, (1886) 17 Q. B. D. 147; 34 W. R. 546). Even if there were an appeal the High Court could not interfere if there were any evidence of means, as it would be a decision on a question of fact (*Esdaille v. Visser* (C. A.), (1880) 13 Ch. D. 421). If the judge makes a commitment without evidence, or misapprehending or misapplying some rule of law, the remedy by prohibition is available, as the order is then in fact without jurisdiction (*Evans v. Wills*, (1876) 1 C. P. D. 229; 45 L. J. C. P. 420).

CHAPTER II.

ADMINISTRATION ORDERS UNDER BANKRUPTCY
ACT, 1883, AND RULES.

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THE BANKRUPTCY ACT, 1883.

[46 & 47 VICT. c. 52.]

PART VII.

SMALL BANKRUPTCIES (ADMINISTRATIONS).

122.—(1) Where a judgment has been obtained in a county court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the county court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the county court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the court may think just.

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Power for county court to make administration order instead of order for payment by instalments.

This section is preserved by Sched. 6 of the Bankruptcy Act, 1914.

It is thought that the judge alone has jurisdiction to make the order.

The order is a "composition" or "arrangement with creditors," and as such operates to disqualify the debtor for certain public offices (*Bradfield v. Cheltenham Guardians*, (1906) 2 Ch. 371; 75 L. J. Ch. 618).

How obtained.—Proceedings to obtain the order are commenced by filing a request and statement at any time before satisfaction of the judgment debt (Rule 2, *post*, p. 291).

Conditions necessary.—There appear to be three conditions precedent to the power to make the order—(1) judgment in a county court, (2) inability of the debtor to pay the amount forthwith, (3) an *allegation* by the debtor that his whole indebtedness does not exceed 50*l.*, including the debt (*qu.* and costs), for which judgment has been obtained (see sect. 122, sub-s. 1). Even if the *allegation* be found to be untrue, the order will not necessarily be invalid. The court may, however, set it aside (see sect. 122, sub-s. 2).

Request for Order.—The first step towards obtaining the order must be taken by the debtor, by filing a request and statement (Form 1). If he is illiterate and unable to fill it up the registrar or his clerk may fill it up for him (Rule 2). See Bankruptcy (Administration Order) Rules and Forms, *post*, and notes thereon, *infra*.

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Contents of Request.]—The debtor must state in his request whether he proposes to pay his creditors in full, or to pay a composition. He must also state the amount of the monthly or other instalments which he proposes to pay. If he proposes a composition he must also state the amount in the pound which he proposes to pay (Rule 3 (1); Form 1); but the court has power to make an order providing for the payment of the debts to a greater or less extent; or by greater or smaller instalments (Rule 3, 1A). He must also set out in a list attached to his request the names, addresses and descriptions of all his creditors, including all secured creditors, and all creditors having power to distrain, such as creditors for rent, rates and taxes. Where a creditor is secured or any person besides the debtor is liable for any debt, the particulars and estimated value of the security and the name and address of the other person liable shall be stated. Although other persons may be also liable the debt is still one of the judgment debtor's debts. Where judgment has been obtained or proceedings are pending in any county court or inferior court in respect of any debt scheduled, such fact shall be stated and the order or summons must be produced to the registrar (Rule 3 (2)). After the request is filed all proceedings on any judgment or order of the court or on any judgment or order of any other court sent for execution to the court in which the request is filed, may be stayed by the judge or registrar (Rule 6; Form 4A). Other courts in which a judgment or order has been obtained or sent for execution against the debtor may also stay all proceedings thereon. Rule 6A deals with the application of money received under execution, judgment summons or order of commitment where proceedings are stayed. The debtor must also attach an affidavit that to the best of his knowledge, information and belief, the names of all his creditors, and the true amounts of the debts due from him to them, are set out in the list, and that the statements made in his request and statement are true (Rule 3 (3)).

Second Request.]—If the court refuses the order, or if an order made be afterwards rescinded, no other request may be filed by the debtor in any court without leave of the court refusing the order (Rule 18).

Notice to Creditors.]—When the request is filed the registrar must send by post ten clear days' notice at least (Form 3) to all the creditors mentioned in the list, and also to the debtor (Form 2), stating the time for the hearing of the request (Rule 4; Form 2). Where from the request it appears that the debtor or a majority of the creditors reside in the district of another county court, the registrar may, before appointing a day for hearing the request, refer the matter to the judge; and the judge may either direct that the request proceed or may order the request and a certificate of the judgment to be forwarded to the county court of such above-mentioned district, and the latter court must proceed as if the request had originally been filed therein. Before making such an order the judge may direct the debtor to attend and show cause why the order should not be made; a copy of the order must be sent by post by the registrar to the debtor (Rule 4; Form 4). Creditors objecting to debts scheduled by the debtor, or to the amount of composition, or the instalments which the debtor proposes to pay, must give notice of objection not less than five clear days before the hearing, but the judge may hear an objection without (Rule 5). At any time between the filing and hearing of a request the court in which the request is filed may stay proceedings on any execution, judgment summons or commitment issued against the property or person of the debtor in respect of any scheduled debt, whether issued by that court or by any other county or inferior court, sent for execution to the court in which the request is filed. Costs of any such execution, judgment summons, or order of commitment incurred before the stay may be allowed (Rule 6; Form 4A).

Hearing.]—The debtor must attend in person unless the court otherwise directs. Any creditor whether he has received notice or not may attend the hearing and prove his debt, and subject to Rule 5, object to any debt or

to the amount of the composition or to the instalments which the debtor proposes to pay. All debts set out in the list will be taken as proved unless objected to by a creditor (Rule 7, (1), (2), (3)).

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Notes.

Proof of Debts.]—All creditors whose debts are objected to either by the debtor or any creditor must prove their debts as on the hearing of an “ordinary summons,” but the court may direct the proof of any debt to be adjourned, upon terms, and may either adjourn the further consideration of the application or proceed to determine it, in which latter case such debt, if and when proved, will be added to the schedule of proved debts (Rule 7 (4)).

The debtor must answer all questions put or allowed by the judge (Rule 7 (5)).

Landlord.]—The limited right of the landlord to distrain for rent accrued before or after the commencement of the bankruptcy now contained in sect. 35 (1) of the Bankruptcy Act, 1914, is still reserved to him (apparently to the same extent only) where an order for administration is asked for under sect. 122 of the Bankruptcy Act, 1883 (see sect. 42 (2) of the Bankruptcy Act, 1883, and Schedule 6 of the Bankruptcy Act, 1914), but he will be bound by the order when made.

Who may be Heard.]—Any creditor, and by leave any creditor the proof of whose debt has been adjourned, or any other person on behalf of any such creditor, will be entitled to be heard and to adduce evidence (Rule 7 (6)).

The judge may refuse to make an administration order when facts are proved, on proof of which a bankruptcy court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt (Rule 7 (7)).

No administration order is to be made under which the payment of instalments would, without default, extend over more than six years (Rule 7 (8)). Where the judge is of opinion that it would be inconvenient that the court should administer the estate, he may order the request and a certificate of the judgment to be forwarded to the court of the district in which the debtor or a majority of his creditors reside (Rule 7 (9); Form 4).

Order.]—The administration order is in the form in the Appendix (Form 5; Rule 8). A copy shall be sent by post to the debtor, to each creditor whose debt has been admitted or proved, to every other county court or inferior court in which to the knowledge of the registrar judgment has been obtained or proceedings are pending in respect of any scheduled debt (Rule 8; Form 6), and to the registrar of county court judgments, and notice of the order must be posted up in the office of the county court of the district in which the debtor resides (sect. 122, sub-s. 9; Form 19).

Notice shall be printed on the order of the cases in which it may be set aside or rescinded (Rule 8A; Form 5A).

The court may order payment in full, or by such composition as appears practicable (sect. 122, sub-s. 1; Form 5).

Instalments.]—The amount of the debts or the composition may be ordered to be paid by instalments, the instalments being paid into court and distributed by the registrar (sect. 122, sub-s. 1; Form 5, Rule 22).

Objections to Order made.]—No creditor to whom notice has been duly sent under Rule 4 shall be entitled to object to any debt scheduled or to the manner in which payment is to be made unless within two months from the date of the order he satisfies the court that the notice did not reach him and that he has not otherwise received notice of the proceedings. The application to allow the objection must in the first instance be heard *ex parte*, the judge may dismiss the application or direct it to be renewed upon notice to such persons and on such terms as to security for costs as to the judge seems fit, and before the *ex parte* application notice of the objection and of the grounds thereof must be given to the registrar, who shall appoint a day for the hearing of the objection (Rule 9).

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(2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the county court may, if it thinks fit, set aside the order.

(3) Where, in the opinion of the county court in which the judgment is obtained, it would be inconvenient that that court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the county court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter county court shall have all the powers which it would have under this section, had the judgment been obtained in it.

(4) Where it appears to the registrar of the county court that property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure.

(5) When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a county court, except with the leave of that county court, and on such terms as that court may impose; and any county court or inferior court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

Notified Debt]—By “notified” in the section is probably meant a debt set out in the debtor's list, or such debts as have been proved under the proceedings.

It was decided in the case of *Pearson v. Wilcock*, (1906) 2 K. B. 440; 75 L. J. K. B. 717, that the above sub-section (*sub-s. 5*) applies to subsequent creditors as well as to creditors before the date of the order. Therefore a creditor whose debt has been incurred after, and without notice of, the administration order, is only entitled to be scheduled under the order, unless the court in its discretion allows the proceedings to continue, or the order has been set aside or rescinded. See C.C. Rules, Order XXV. rr. 24, as to 24d and rr. 45 to 45b as to procedure where execution or a judgment summons has been issued against a debtor in respect of whose estate an administration order has been made.

The court has no power under sub-sect. (5), *supra*, to give leave to issue execution in respect of a notified debt whilst the administration order remains in force (*In re Frank*, (1894) 1 Q. B. 9).

An administration order debtor must at once give notice to the registrar of any change of address (Rule 27).

(6) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the

date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same. Section 122.

(7) The order shall be carried into effect in such manner as may be prescribed by general rules. (See Rule 13.)

(8) Money paid into the court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts) and then in liquidation of debts in accordance with the order.

Rescission.]—The order may (but need not) be rescinded if it is found at any time that the debts exceed £50 (sect. 122 (2)). It may also be rescinded at any time for any of the reasons set out in Rule 15, *post*; Forms 13, 14, 15, 16, 16A.

On an application for rescission the court may make any such order as is provided for in Rule 17A; Form 16A.

The registrar is directed to keep accounts in such manner as may be directed by the Treasury (Rule 25).

The Treasury directions were issued in December, 1883, and are as follows :

1. All moneys received and payments made in pursuance of an order of administration made under sect. 122 of the Bankruptcy Act, 1883, shall be passed through the cash book of the court, and shall from thence be posted into a ledger, the form of which is hereto annexed.

2. When a creditor is scheduled in respect of a debt incurred subsequent to the making of the order of administration under sub-s. 12 of the 122nd section of the Act, a note shall be made in the ledger of the fact in the column provided for that purpose.

3. When all the creditors scheduled in respect of debts incurred prior to the making of the order of administration shall have been paid, in accordance with the said order, all subsequent receipts and payments shall be entered in a fresh folio in the ledger and the names of the creditors scheduled under sub-s. 12, and the amounts of their proved debts shall be brought forward from the folio in which they have been noted, as previously directed.

4. As it is provided that the receipts are to be appropriated,—

1st. To the payment of the costs of the plaintiff ;

2nd. In payment of the costs of the order of administration ;

3rd. In payment of the debts in accordance with the order ;

(a) Notice should be sent to the plaintiff that he may receive such costs so soon as the receipts shall be sufficient to pay them.

(b) Before a dividend is paid credit must be taken for the costs of administration calculated upon the debts of the creditors *then* scheduled in respect of debts incurred prior to the making of the order of administration.

(c) Where creditors in respect of any *such* debts are scheduled subsequent to the making of a dividend, credit must be taken for the costs of the administration calculated upon such further ascertained debts, and for payment of the dividend thereon, before any other dividend is made.

5. Credit must not be taken for the costs of the administration calculated upon the debts scheduled under sub-s. 12 until the creditors scheduled in respect of debts incurred previous to the order of administration shall have had dividends made in their favour equal to the amount ordered to be paid.

6. In order to simplify the accounts the dividend should always be an aliquot part of a pound, excluding such of those parts as when divided by four give a fraction of a penny ; a dividend must not be calculated upon any fraction of five shillings of a debt, but such fraction must be added to and paid with the final dividend.

For example :—1s. 3d. is the 16th part of a pound, but is not to be taken for the purpose of calculating a dividend. Further, in examining debts for dividend, sums which are under 5s., or are under 5s. beyond any multiple of

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5s., are to be excluded until the final dividend comes to be paid. Thus, A. B.'s debt is 2l. 14s. 9d., a dividend is made of 1s. 4d. in the £; the dividend to be paid to A. B. on 2l. 14s. 9d. is 3s. 4d., being calculated on 2l. 10s. The balance due on the debt after payment of fourteen further dividends of 1s. 4d. in the £, will be 4s. 9d.; and no part of this balance must be paid until the instalments received admit of its discharge in full by a single payment.

7. A separate file must be kept for the requests, and another for the orders of administration, which latter should be numbered in consecutive order, and any subsequent documents relating to any order, which it is thought desirable to file, should bear the number of the order to which they relate.

8. The number of orders of administration upon which credit has been taken for any part of their costs in any quarter shall be entered in Form A., and the total amount of such sums brought to credit.

9. The sums so brought to credit in a quarter shall be entered, in detail, in a book according to the form annexed, for which sums the treasurer or examiner of accounts, as the case may be, shall, after audit thereof by reference to the ledger, give his receipt. The said sums shall also be entered in Form B.

10. The administration ledger itself is prepared in *triplicate* in the first part of each opening, for receipts, and in *duplicate* in the second part of each opening, for dividends, of which there will be fewer entries. The triple and double columns are to be filled up, one after the other, as if they were separate books.

(9) Notice of the order shall be sent to the registrar of county court judgments, and be posted in the office of the county court of the district in which the debtor resides, and sent to every creditor notified by the debtor, or who has proved.

See Form 19.

(10) Any creditor of the debtor, on proof of his debt before the registrar, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

This provision probably contemplates proof both at and after the hearing; but see Rule 7 (4), *post*, p. 295.

(11) Any creditor may in the prescribed manner object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.

(12) Any person who after the date of the order becomes a creditor of the debtor, shall, on proof of his debt before the registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

See Rule 21. See *Pearson v. Wilcock*, *ante*, p. 288.

(13) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

(14) Repealed by County Courts Act, 1924.

THE BANKRUPTCY RULES, 1886.

358. Where an application to commit is made to a county court, and it appears to the court that the total liabilities of the judgment debtor do not exceed fifty pounds, the court may, if it thinks that an order for committal ought not to be made, make an administration order under section 122 of the Act in lieu of making a receiving order.

Administration order in lieu of receiving order.

THE BANKRUPTCY (ADMINISTRATION ORDER)
RULES, 1902, DATED JULY 10, 1902, AS AMENDED
BY RULES, DATED APRIL 4, 1914.

It is ordered as follows :—

1. The rules made on 21st December, 1888, under the provisions of section 122 of the Bankruptcy Act, 1883 (hereinafter called the Act), are hereby annulled as from the twenty-fourth day of October, 1902, and the following rules shall thereafter stand in lieu thereof, and shall apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken under administration orders or requests for orders in force or pending on that day. They may be cited as the Bankruptcy (Administration Order) Rules, 1902. (Amended by Rules of 1914.)

Former rules annulled.
Short title and application of rules.

2. A debtor against whom a judgment has been obtained in a county court, and who desires to obtain an administration order under section 122 of the Act, shall file with the registrar of the court a request and statement in writing in the form No. 1 in the Appendix.

Request for order.
Form 1.

When the debtor is illiterate and unable to fill up the request and statement, the registrar or his clerk shall fill them up from the information given by the debtor.

The judge may also make an administration order under a judgment summons instead of committing (Bankruptcy Rules, 1886, r. 358).

3.—(1) The debtor shall state in his request whether he proposes to pay his creditors in full, or whether he proposes to pay a composition. In the latter case he shall further state the amount in the pound which he proposes to pay, and in either case he shall state the amount of the monthly or other instalments by which he proposes to pay.

Contents of request.
Form 1.

See Form 1.

(1A) The debtor's proposal shall be without prejudice to the power of the court to make on the hearing of the request an order providing for the payment of his debts to a greater or less extent,

Rule 3. or by greater or smaller instalments, as appears practicable to the court under the circumstances of the case.

(Rule 2 of 1914.)

(2) The debtor shall set out in a list attached to his request the names, addresses, and descriptions of all his creditors, including all secured creditors, and all creditors having power to distrain, such as creditors for rent, rates and taxes. Where a creditor is secured, or any person in addition to the debtor is liable for any debt, the particulars and estimated value of the security, or the name and address of such other person, shall be stated. Where judgment has been obtained or proceedings are pending in any county court or inferior court in respect of any debt scheduled that fact shall be stated, and the order or summons in each case must be produced to the registrar.

(3) The debtor shall attach to his request and statement an affidavit deposing that, to the best of his knowledge, information, and belief, the names of all his creditors, and the true amounts of the debts due from him to them, are set out in the list attached to the request, and that the statements made by him in his request and statement are true.

Notice of request.

Form 3.

4. Upon a request being filed the registrar shall appoint a day for the hearing, and shall as soon as may be send in the form No. 3 in the Appendix a notice to all the creditors mentioned in the list of the day and hour when the request will be heard. The notice shall be sent by post not less than ten clear days before the day appointed for hearing the request.

Form 2.

The registrar shall also in like manner send a notice to the debtor in the form No. 2 in the Appendix.

Form 4.

Provided, that where on the filing of a request it appears that the debtor or a majority of the creditors resides or reside in the district of another county court, the registrar may before appointing a day for the hearing refer the matter to the judge; and thereupon the judge may either direct that the request shall proceed, or may, if he is of opinion that it would be inconvenient that the court should administer the estate, order the request and a certificate of the judgment to be forwarded to the county court in the district of which the debtor or a majority of the creditors resides or reside, and thereupon the latter court shall proceed as if the request had originally been filed therein. Before making such order as last mentioned the judge may, if he thinks fit, direct notice to be given to the debtor to attend at the court on a day to be named in the notice, and to show cause why such order should not be made. If such order is made, a copy thereof shall be sent by post by the registrar to the debtor.

See Form 4.

Rule 5.

Objection to debts scheduled by debtor, or composition or instalments offered.

5. Any creditor to whom notice of the hearing of a request has been sent, and who desires to object to any debt scheduled by the debtor, or to the amount of the composition or the instalments which the debtor proposes to pay, shall send written notice of his objection, by post or otherwise, to the registrar and to the debtor, and in the case of objection to a debt to the creditor whose debt is objected to, not less than five clear days before the day appointed for the hearing of the request, and he shall state in the notice the grounds of his objection. Provided that by leave of the judge an objection may be heard although such notice has not been given.

Stay of proceedings between filing and hearing of request.

6.—(1) At any time between the filing and the hearing of a request the judge or registrar of the court in which the request is filed may stay proceedings on any judgment or order of that court against the debtor, or on any execution, judgment summons, or order of commitment issued against the property or person of the debtor in respect of any debt scheduled to the request, whether issued by the court in which the request is filed, or issued by any other county court or inferior court and sent for execution to the court in which the request is filed.

(2) And any other court in which a judgment or an order has been obtained against the debtor, or from which an execution, judgment summons, or order of commitment has issued against the debtor, or to which an execution, judgment summons, or order of commitment issued by any other county court or inferior court has been sent for execution, may in like manner, on proof that a request for an administration order has been filed by the debtor, stay proceedings on such judgment, order, execution, judgment summons, or order of commitment.

Order for bailiff to withdraw.

(3) If in any such case the bailiff is in possession under a warrant of execution, the judge or registrar may on application made in accordance with the county court rules as to interlocutory applications order the bailiff to withdraw from possession until after the hearing of the request.

Costs already incurred may be allowed.

(4) Where proceedings are stayed under this rule, the judge or registrar may allow costs already incurred by the creditor, and such costs, if and so far as they are not allowed pursuant to Rule 6A out of any money received under the execution, judgment summons, or order of commitment, may on application be added to the debt scheduled.

(5) An order staying proceedings may be according to the Form No. 4A in the Appendix.

Form of order.
Form 4A.

(6) For the purposes of any application under this rule to a court other than that in which the request is filed, the registrar of the court in which the request is filed shall on the application

Certificate that request has been filed.
Form 4B.

Rule 6. of the debtor issue to him a certificate in the Form No. 4B in the Appendix.

Application of money received under execution, &c., where proceedings stayed under Rule 6 or s. 122 (5).

6A. Where proceedings are stayed under the preceding rule, or under section 122 of the Act, any money received under the execution, judgment summons, or order of commitment shall, when received by the registrar of the court out of which the warrant issued from the high bailiff of that court, or, in the case of a warrant issued to a foreign court, when certified to the registrar of the home court under Order XXVIII. Rule 2, of the County Court Rules, be dealt with as follows, viz. :—

(a) if an administration order is made in or the proceedings are stayed by the court out of which the warrant issued, such money shall be dealt with as the judge of that court shall direct ; and

(b) if an administration order is made in or the proceedings are stayed by any other court, such money shall be certified in accordance with Order XXVIII. Rule 2, of the County Court Rules, by the registrar of the court out of which the warrant issued to the registrar of the court in which the administration order is made or by which the proceedings are stayed, and the amount certified shall be paid over by the registrar of the court certifying the same to the treasurer, as the treasurer shall require ; and the registrar of the court in which the administration order was made or by which the proceedings were stayed shall out of any moneys in his hands pay the amount so certified as the judge of that court shall direct, and shall be allowed by the treasurer of his court, at his audit, the amount so paid.

Costs.

Where in any such case the costs of the execution, judgment summons, or order of commitment incurred by the creditor are not allowed out of the money received, the creditor shall be liable for such costs ; but if they are allowed as against the debtor, they may on application be added to the debt.

Order for possession fees.

6B. In any such case as in the last preceding rule mentioned the judge may, if he thinks fit, on application by the high bailiff made in accordance with Order XXVII. Rule 1, of the County Court Rules, make an order for payment by the execution creditor to the high bailiff of any fees or expenses incurred by the high bailiff which are not allowed under the last preceding rule out of the money (if any) received under the execution.

Proceedings on hearing request.

7. Upon the request coming on for hearing the course of proceedings shall be as follows :—

Rule 7.

- (1) The debtor shall attend in person unless the court otherwise directs.
- (2) Any creditor, whether he has received a notice of the request or not, may attend the hearing thereof and prove his debt, and, subject to the provisions of Rule 5, object to any debt, or to the amount of the composition or the instalments which the debtor proposes to pay.
- (3) All debts set out in the list attached to the request shall be taken to be proved unless objected to by a creditor or disallowed by the judge.
- (4) All creditors whose debts are objected to either by the debtor or any other creditor shall prove their debts in like manner as upon the hearing of an ordinary summons, provided that the judge may in his discretion direct the proof of any debt to be adjourned upon any terms that he may think fit, and may thereupon either adjourn the further consideration of the application or proceed to determine the same, in which latter case such debt, if and when proved, shall be added to the schedule of proved debts.
- (5) The debtor shall answer all questions put or allowed by the judge.
- (6) Any creditor whose debt is admitted or who has proved, and by leave of the judge any creditor the proof of whose debt has been adjourned, and with the like leave any other person on behalf of any such creditor, shall be entitled to be heard and to adduce evidence.
- (7) Where any facts are proved on proof of which the court exercising jurisdiction in bankruptcy would be required either to refuse, suspend, or attach conditions to the debtor's discharge if he were adjudged bankrupt, the judge may refuse to make an administration order.
- (8) No administration order shall be made under which the payment of instalments, if kept up without default, would extend over a period of more than six years from the date of the order.
- (9) Where the judge is of opinion that it would be inconvenient that the court should administer the estate, he may order the request and a certificate of the judgment to be forwarded to the county court in the district of which the debtor or a majority of the creditors resides or reside, and thereupon the latter court shall proceed as if the request had originally been filed therein. If such order is made, a copy thereof shall be sent by post by the registrar to the debtor. Form 4.

Rule 8.

Proceedings
when order
made.

Form 5.

Notice of
cases in
which order
may be set
aside to be
printed
thereon.

Form 5A.

Form 6.

8. An administration order shall be in the form No. 5 in the Appendix, and when made a copy thereof shall be sent by post by the registrar to the debtor, but it shall not be necessary to prove the receipt thereof by the debtor before taking any proceedings upon the order.

8A. Notice shall be printed on the order of the cases in which the order may be set aside or rescinded, in the form No. 5A in the Appendix.

Notice of the order having been made shall be sent to each creditor whose debt has been admitted or who has proved; the notice shall be sent by post and shall be in the form No. 6 in the Appendix.

Notice of the order having been made shall also be sent by post in the same form (with the necessary modifications) to every other county court or inferior court in which, to the knowledge of the registrar, judgment has been obtained or proceedings are pending against the debtor in respect of any debt scheduled to the order.

Objections
under sub-
section 11.

9. After an administration order has been made, any creditor entitled to object under sub-section 11 of section 122 of the Act to any debt scheduled, or to the manner in which payment is directed to be made, must give notice in writing, by post or otherwise, to the registrar of his objection and of the grounds thereof, and the registrar shall thereupon name a day when the objection will be heard. An application to allow the objection shall be heard *ex parte* in the first instance by the judge, who may dismiss the application, or may direct it to be renewed upon notice being given to such persons and upon such terms as to security for costs and otherwise as he may think fit.

Objections
after time.

Provided that no creditor to whom notice of hearing of the request has been duly sent under Rule 4, shall be entitled to object to any debt scheduled, or to the manner in which payment is directed to be made unless within two months from the date of the order he proves to the satisfaction of the court that the notice did not reach him and that he has not received reasonable notice of the proceedings in any other manner.

Proof by
creditor
omitted
from
schedule, or
of subse-
quent debt
under sub-
section (12);
Form 10.

10. Any creditor of the debtor in respect of a debt due before the hearing of the request which has not been scheduled by the debtor, who desires to prove his debt, or any person who after the date of the order becomes a creditor of the debtor and desires to prove his debt under sub-section (12) of section 122 of the Act, shall send in his claim in writing, by post or otherwise, to the registrar, who shall thereupon send notice of the claim to the debtor, by post or otherwise, in the form No. 10 in the Appendix.

11. If the debtor does not within the period allowed by the notice give notice that he disputes the claim the claim shall be deemed to be proved, and shall be added to the schedule to the order accordingly, and notice of the addition shall be sent, by post or otherwise, to the creditor, in the form No. 11 in the Appendix. Rule 11.
Proceedings if claim not disputed.
Form 11.

12. If the debtor within the period allowed gives notice of his objection, by post or otherwise, in the form No. 10 in the Appendix, the registrar shall appoint a day for the hearing of the objection, and give notice of the time for hearing to both parties, by post or otherwise, in the form No. 12 in the Appendix; and the judge on the hearing may either disallow the claim, or allow the same in whole or in part, in which latter case the debt allowed shall be added to the schedule, subject to the provisions of subsection 12 of section 122 of the Act, and to Rule 21. Proceedings if claim disputed.
Form 12.

13. The judge shall appoint some person to have the conduct of the order and may at any time afterwards remove him, and appoint any other person in his place. Conduct of order.

It shall be the duty of any person so appointed to take all proper proceedings for enforcing the terms of the order; but in case of his neglect to proceed, or of urgency, any creditor scheduled to the order may, by leave of the court, take such proceedings. Duties of persons having conduct of order.

In particular, it shall be the duty of the person so appointed—

(i.) if default is made in payment of any instalment payable in pursuance of the order,

(a) to apply for the issue of a judgment summons under the next following rule; or,

(b) if it appears that the debtor is unable to pay by reason of illness or other unavoidable misfortune, to apply to the judge or registrar under Rule 17.

(ii.) if any facts become known to such person on which the order might be set aside or rescinded under Rule 15, to bring such facts to the attention of the judge, who may thereupon, if he thinks fit, direct notice to be given to the debtor, by post or otherwise, in the form No. 13 in the Appendix to attend at the court on a day to be named in the notice, and to show cause why the order should not be set aside or rescinded, or may make such order or give such directions in the matter as he may think fit. Form 13.

14. If default is made in payment of any instalment payable in pursuance of the order, a judgment summons may, on the application of any person entitled to take proceedings under Rule 13, be issued without fee. A judgment summons shall be in the form No. 8 in the Appendix, and shall be served personally five Judgment summons to enforce order.
Form 8.

Rule 14. — clear days before the return day thereof, and all proceedings thereon shall be taken in like manner as if it were a judgment summons issued in an action in the county court, except that (as provided by the Act) the debtor shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default, and to have refused or neglected to pay the same ; and the judge, if satisfied that the debtor has not had the means to pay the sum in respect of which he has made default, may direct that the administration order shall be deemed to have been suspended during the period covered by the default, or make a new order for payment of the amount remaining due under the order by instalments. An order of commitment shall be in the form No. 9 in the Appendix.

Form 9.

Rescission of order.

Form 14.

15.—(1) Where an administration order has at any time heretofore been or shall hereafter be made, such order may at any time be set aside or rescinded by the judge in any of the following cases ; namely,

- (1) Where two or more of the instalments ordered to be paid are in arrear.
- (2) Where the debtor has wilfully inserted in the list attached to his request the wrong name or address of any of his creditors, or has wilfully omitted therefrom the name of any creditor.
- (3) Where the debtor subsequent to the date of the order has obtained credit to the extent of 2*l.* or upwards without informing the creditor that he has an administration order.
- (4) Where the order has been obtained by fraud or misrepresentation.
- (5) Where a receiving order has since the date of the administration order been made against the debtor.
- (2) An administration order may be set aside or rescinded under this rule—

- (1) on the hearing of a judgment summons ; or,
- (2) on the application of any person entitled to take proceedings under Rule 13, or of any creditor not scheduled to the order whose debt has been notified to the court, in which case notice shall be given to the debtor, by post or otherwise, in the form No. 13 in the Appendix to attend at the court on a day to be named in the notice, and to show cause why the order should not be set aside or rescinded ; but such notice need not be given when the application is made on the ground of a receiving order having been made against the debtor.

Form 13.

16.—(1) Where an administration order is set aside or rescinded under the last preceding rule, it shall be without prejudice to anything already done or suffered under the order. **Rule 16.**
Effect of
rescission.

(2) Any money paid into court under the order may be dealt with as if the order had not been set aside or rescinded.

(3) Notice that the order has been set aside or rescinded shall be sent by the registrar to the debtor and to every creditor named in the schedule, and to every creditor not scheduled whose debt has been notified to the court, and to every other county court or inferior court in which, to the knowledge of the registrar, judgment had been obtained or proceedings were pending against the debtor at the time when the order was made, in respect of any debts scheduled to the order. Such notice shall be sent by post, and shall be in the form No. 15 in the Appendix. **Form 15.**

17. Where it appears that the debtor is unable to pay any instalment, by reason of illness or other unavoidable misfortune, the registrar may from time to time suspend the operation of the order until the next sitting of the court, and the judge may from time to time suspend the operation of the order for such time as he shall direct, or make a new order for payment by instalments. **Suspension of
order.**
Form 16.

17A. Where notice is given to the debtor in the form No. 13 in the Appendix to attend and to show cause why the administration order should not be set aside or rescinded, the judge may on the day named in the notice either— **What order
may be made
on applica-
tion for
rescission.**

(a) set aside or rescind the order pursuant to Rule 15; or

(b) suspend the order or make a new order for payment by instalments pursuant to Rule 17; or

(c) make an order in the form No. 16A in the Appendix, directing that the administration order shall be set aside or rescinded unless the debtor pays the sum in payment of which he has made default, either within a specified time, or by instalments to be specified in the order. **Form 16A.**

If the judge makes an order pursuant to paragraph (c) of this Rule, then—

(i.) the administration order shall be suspended during the time allowed to the debtor for payment of the sum in payment of which he has made default; and

(ii.) if the debtor fails to pay such sum within the time so allowed, the administration order shall on such failure be rescinded without further notice to him: and in that case the provisions of Rule 16 shall apply.

18. Where a debtor has filed a request for an administration order, and the judge has refused to make the order, or when an **Second
request
after refusal
or rescission
of order.**

- Rule 18.** — — order has been rescinded, the debtor shall not be allowed to file another request in the same or any other court without first obtaining the leave of the judge of the court first mentioned.
- Suspension of order pending commitment.** **19.** When an order of commitment is made upon the hearing of any judgment summons, and the execution of the order is suspended for a specified time to enable the debtor to pay the amount in respect of the non-payment of which the order is made, the administration order shall be also suspended during that time.
- Calculation of arrears.** **20.** In calculating the amount in arrear under an administration any instalments accruing due during the period for which such order has been suspended shall not be reckoned in that amount.
- Payment *pari passu* of debts scheduled under sub-section 12.** **21.** All persons scheduled as creditors under sub-section 12 of section 122 of the Act before the administration order is superseded under sub-section 13 of the Act shall rank *pari passu inter se*, subject to the priority given by sub-section 12 to those creditors who are scheduled as having been creditors before the date of the administration order, but no payment made to any such creditor by way of dividend or otherwise shall be disturbed by reason of any subsequent proof by any other creditor under sub-section 12.
- Payment into court and appropriation of moneys paid under order.** **22.** All moneys paid or levied under an administration order shall be paid into court and appropriated in accordance with sub-section 8 of section 122 of the Act.
- Notice and payment out of costs and dividends.** **23.** After payments of costs, dividends shall from time to time be declared and distributed among the creditors entitled thereto.
- Form 17.** **24.—(1)** The registrar shall send notice to the plaintiff in the action when a sum sufficient to satisfy his costs has been paid into court, and when a dividend is declared he shall send notice to each creditor entitled to share therein. Such notices shall be sent by post, and shall be in the form No. 17 in the Appendix.
- Registrar's accounts.** **(2)** Such sum and dividends shall be paid to the persons entitled thereto in accordance with the County Court Rules as to payment out of court of money paid in under a judgment, the notice in the preceding paragraph mentioned being for the purpose of those rules considered as a plaint-note.
- Unclaimed dividends.** **25.** The registrar shall keep accounts of the money received and payments made under any administration order in such manner as may be from time to time directed by the Treasury.
- 26.—(1)** The registrar shall in the month of March in each year make out a list of all dividends and other sums payable under administration orders which have remained unclaimed for five years before the first day of January then last past, with the names of the parties entitled thereto ; and a copy of such list shall be posted in some conspicuous place in the court house on the days when the court is sitting, and at all times in the registrar's

Rule 26.

office; and all such dividends and other sums which shall have remained unclaimed for six years on the first day of January next after such list is so put up as aforesaid shall be accounted for by the registrar to the Treasury. The list to be made out and posted in the month of March one thousand nine hundred and three shall include all such dividends and other sums as shall have remained unclaimed for five years or upwards before the first day of January one thousand nine hundred and three under any administration orders made since the Act came into operation.

(2) Any person claiming to be entitled to any such dividend or other sum after the same has been accounted for to the Treasury may apply to the judge to order the same to be paid to him; and the judge, if satisfied that the person claiming is entitled, may make an order accordingly; and thereupon the registrar shall pay the sum so ordered to be paid out of any money in his hands, and shall be allowed by the Treasury, at his audit, the amount so paid.

27. Where a debtor against whom an administration order has been made changes his address, he shall at once give notice to the registrar of his new address.

Notice by
debtor of
change of
address.

28. The forms in the Appendix hereto, with such variations as circumstances may require, shall be used for the purposes of these rules and of section 122 of the Act.

Use of
forms.

29. In the construction of these rules, unless there is anything in the subject or context repugnant thereto, words shall have the same meaning as in the County Courts Act, 1888, and the Rules and Orders made thereunder.

Construc-
tion of rules.

APPENDIX. FORMS.

I.

Request for an Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at

No of Plaintiff

Between plaintiff,
and

defendant.

I, A. B., of, &c., the above-named defendant, state that a judgment was obtained against me in this action on the day of 19 , for the sum of £ , and that I am unable to pay the amount forthwith.

I am indebted to the several persons, including the plaintiff in this action, mentioned in the list hereto in the sums set opposite their names, not exceeding in the whole 50%, and I am indebted to the best of my knowledge, information, and belief to no other person whatsoever.

I hereby request that an order may be made for the administration of my estate under the 122nd section of the Bankruptcy Act, 1883, and the payment of my debts in full [or to the extent of shillings in the pound], by instalments of pounds and shillings for every days.

NOTE.—The judgment debt must be inserted as well as all other debts.

LIST OF CREDITORS.

Name of Creditor.	Address.	Description.	Amount of Debt.

NOTE.—If any of the above creditors, in addition to the judgment creditor, have sued the defendant in any court, the summons or order in each case must be produced to the registrar.

If any creditor is secured or entitled to distrain, or any person in addition to the debtor is liable for any debt, this fact must be stated, with the particulars and estimated value of the security, or the name and address of such other person.

STATEMENT.

¹ Here state what you are.

² Here state name and address and description of employer.

³ Here state amount received weekly or otherwise.

⁴ Here insert the work done by wife, and the wages she earns.

⁵ Here insert names and ages of children.

⁶ Here state reason.

I state
That I am years of age, and am¹
That I am employed at²
That my wages are³
That I have [or have not] a wife.
That my wife earns by⁴
That I have the following children living with me :—
 ⁵1. aged years.
 2. aged years.
 3. aged years.
 &c. aged years.
That numbers earn money as follows:—
 Number 1 £ s. d. a week.
 " 2
 and so on.

That the reason why I am unable to pay my debts is⁶
That I have goods, household or otherwise, at to the value of ;
and other property, to wit (*specifying the same*), to the value of [or
and no other property].

I, A. B., aforesaid, make oath and say that to the best of my knowledge, information, and belief, the names of all my creditors, and the debts due from me to them are truly set forth in the above list of my creditors, and that the particulars contained in my request and the above statement are true.

Sworn at, &c.

A. B.

2.

Notice to Debtor.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)
In the matter of a request for an administration order against
of, &c., debtor.

TAKE NOTICE, that your request for an administration order under section 122 of the Bankruptcy Act, 1883 [*add, if so*, which has been forwarded to this court from the county court of holden at], will be heard at the court house at in the county of , on the day of 19 , at the hour of in the noon.

You must bring with you to the court all your books of account, invoices, papers, summonses, or other documents relating to any debts owing by you.

Dated

Registrar.

To A. B.,
of

Notice to Creditors.

In the county court of holden at (Seal.)
In the matter of a request for an administration order against
of, &c., debtor.

This is to give you notice that the court will proceed to hear the said request at a court to be holden at the county court house at _____ on the _____ day of _____ 19____, at the hour of _____ in the _____ noon.

A list of creditors, with the amounts stated to be respectively owing to them, can be inspected on application at the registrar's office.

If you claim more than the amount stated to be due to you, you should bring with you to the court on the day above-mentioned any witnesses, books, &c., necessary to prove your claim.

Dated, &c.

Registrar.

To C. D.,
of

Order directing Request to be forwarded to another Court.

In the county court of holden at No. of Plaintiff

Between , plaintiff,
and
 , defendant.

WHEREAS a judgment was obtained against the above-named defendant in this action on the day of 19 :

And whereas the defendant has filed a request in this court for an order for the administration of his estate under the 122nd section of the Bankruptcy Act, 1883 :

And whereas in the opinion of the court it would be inconvenient that this court should administer the estate :

It is ordered that the said request and a certificate of the said judgment be forwarded to the county court of holden at , in the district of which court the said debtor [or a majority of the creditors of the said debtor] resides [or reside].

Dated this day of 19 .

By the court,

Registrar.

4A.

Order staying Proceedings on Judgment, Order, Execution, Judgment Summons, or Order of Commitment.

BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)

Between

A.B. plaintiff,

and

C.D. defendant.

No. of Plaintiff.

No. of Execution,

Judgment Summons, or

Order of Commitment.

and

In the matter of a request for an administration order against the above-named C.D.

Upon the application of the above-named defendant, and it appearing that the said defendant has filed in this court [or in the county court of] a request for an administration order under section 122 of the Bankruptcy Act, 1883,

And the defendant undertaking not to dispose of or remove any of his goods or chattels which are liable to be seized under warrant of execution until after the hearing of the said request,

IT IS ORDERED that proceedings under the judgment [or order] obtained against the defendant in this action [or the warrant of execution [or judgment summons or order of commitment] issued in this action against the defendant] be stayed until after the hearing of the said request on the day of 19 .

[If the bailiff is in possession under a warrant of execution, and is ordered to withdraw, add

And it is ordered that the bailiff do withdraw from possession of the goods and chattels seized under the said warrant until after the hearing of the said request.]

[If costs allowed, add

And it is ordered that the costs of the said warrant of execution [or judgment summons or order of commitment] incurred by the above-named plaintiff be allowed, and that such costs, if and so far as they are not allowed out of any money received under the warrant of execution [or judgment summons or order of commitment], may on the application of the plaintiff be added to the debt due to him from the said defendant and scheduled to the said request.]

Dated this day of 19 .

Registrar.

4B.

Certificate that Request has been filed.

BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of _____ holden at _____ (Seal.)

In the matter of a request for an administration order against A.B.
of _____ debtor.

I hereby certify that a request for an order for the administration of the estate of A.B. of _____

(here insert address and description of debtor)

under the provisions of section 122 of the Bankruptcy Act, 1883, has been filed in this court, and will be heard on the _____ day of _____ 19____, and that a debt of £ _____ has not been paid by the said A.B. to this court as being due from him to _____

(here insert name, address and description of the creditor whose name the debtor wishes to be inserted)

under a judgment [or an order] of the _____

(here insert name of court in which the judgment or order was obtained).

Dated this _____ day of _____ 19____.

Registrar.

5.

Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of _____ holden at _____ (Seal.)

No. of administration order.

In the matter of an administration order against A. B., of, &c.,
debtor.

The _____ day of _____ 19____.

It is this day ordered that the above-named debtor do pay the several debts in the schedule hereto, and all others now due and which may hereafter be duly proved under this order in respect of debts now incurred, in full [or to the extent of _____ s. in the £].

And it is ordered that the said debtor do pay to the registrar of the court _____ s. for every _____ days until such debts shall be paid in full [or to the extent of _____ s. in the £], together with the costs of this administration, and the costs of C. D. [the plaintiff in the action upon the judgment in which administration order was made], the first of such payments to be made on the _____ day of _____ 19____; and it is directed that E. F., of, &c., have the conduct of this order.

By the court, &c.

[Here follows the schedule of debts.]

N.B.—On the copy sent to the debtor the following must be added :

Take notice that if you change your address you must at once give notice to the registrar of your new address.

5A.

Notice to be printed on Administration Order of Cases in which it may be rescinded.

This order may at any time be set aside or rescinded by the judge in any of the following cases; namely,

- (1) Where two or more of the instalments ordered to be paid are in arrear.
- (2) Where the debtor has wilfully inserted in the list attached to his request the wrong name or address of any of his creditors, or has wilfully omitted therefrom the name of any creditor.

- (3) Where the debtor subsequent to the date of the order has obtained credit to the extent of £2 or upwards without informing the creditor that he has an administration order.
- (4) Where the order has been obtained by fraud or misrepresentation.
- (5) Where a receiving order has since the date of the administration order been made against the debtor.

6.

Notice to Creditors and other Courts.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at (Seal.)
No. of administration order.

In the matter, &c. debtor.

TAKE NOTICE, that the court has this day made an administration order providing for the payment of the debts of the above named debtor in full [or to the extent of s. in the £] by instalments of s. every days, and has directed that E. F., of, &c., shall have the conduct of the order.

Dated, &c.

Registrar.

Bring this notice with you when you apply for a dividend or attend at the office of the registrar for any purpose whatsoever.

[Where notice of the order is sent to another court, substitute for these words:]

A debt amounting to _____ due to _____, in respect of which it is stated that a judgment has been obtained or proceedings are pending in the county court of _____ holden at _____ [or as the case may be], is scheduled to the order.

Hours, &c.

7.

Warrant of Execution.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.
No. of execution.

In the matter of, &c., debtor.

WHEREAS an administration order was made against the above-named debtor on the day of , 19 :

And whereas it has been made to appear to the judge [or registrar] of the court that the property of the debtor exceeds in value 10 pounds:

You are therefore required and ordered forthwith to make and levy by distress and sale of the goods and chattels of the debtor, wheresoever they may be found within the district of this court (except the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade, to the value in the aggregate of 20 pounds), the sum stated at the foot of this warrant, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the debtor which may there be found, or such part, or so much thereof as may be sufficient to satisfy this execution, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of , 19

To the high bailiff of the court, and others the bailiffs thereof

Amount to be levied * . . .	£	s.	d.	
				By the court,
				Registrar.
£				

* The amount to be levied will be—1st, the costs of the plaintiff; 2nd, the costs of the administration, i.e., 2s. in the £ on the amount of debts then ascertained; and, 3rdly, the total amount of the debts scheduled, or so much thereof as the court may have ordered to be paid, less the amount (if any) already paid.

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the debtor.

8.

Judgment Summons.

THE BANKRUPTCY ACT, 1883, SECT. 122, and THE DEBTORS ACT, 1869.

In the county court of . . . , holden at . . . (Seal.)
 No. of administration order.
 No. of judgment summons.

In the matter of, &c., . . . debtor.

WHEREAS an administration order was made against you, the above-named debtor in this court, on the . . . day of . . . 19 . . . , for the payment of your debts in full [or to the extent of . . . in the £], by instalments of . . . shillings for every . . . days:

And whereas you have made default in payment of the sum of . . . payable in pursuance of the said order:

You are therefore hereby summoned to appear personally in this court, at . . . , on the . . . day of . . . 19 . . . , at the hour of . . . in the . . . noon, to be examined on oath by the court touching the means you have or have had since the date of the order to satisfy the sum payable in pursuance of the said order, and also to show cause why you should not be committed to prison for such default; and you are hereby warned that unless the contrary is proved you will under the act be deemed to have had since the date of the order the means to pay the sum in respect of which you have made default, and to have refused or neglected to pay the same.

Dated this . . . day of . . . , 19 . . .

Registrar.

£ s. d.

Amount paid under administration order . . .
 Amount of instalments due and upon payment of which no further proceedings will be had until default in payment of the next instalment . . .

9.

Order of Commitment.

THE BANKRUPTCY ACT, 1883, SECT. 122, and THE DEBTORS ACT, 1869

In the [title of court ordering committal].

(Seal.)

No. of administration order.
 No. of judgment summons.
 No. of order.

In the matter of, &c., debtor.

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and to the governor or keeper of the [prison used by the court, if the debtor is resident within the jurisdiction; if not, no name of prison to be inserted].

WHEREAS an administration order was made against the above-named debtor on the day of for the payment of his debts in full [or to the extent of in the £], by instalments of shillings for every days :

And whereas the debtor has made default in payment of payable in pursuance of the said order :

And whereas a summons was duly issued out of this court, by which the debtor was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the order to satisfy the sum then due and payable in pursuance of the order, and to show cause why he should not be committed to prison for such default, which summons has been proved to this court to have been duly and personally served on the debtor :

And whereas at the hearing of the said summons it has not been proved to the satisfaction of the court that the debtor has not [or has not had] since the date of the order the means to pay the sum then due and payable in pursuance of the order :

And whereas the debtor has refused [or neglected] to pay the same, and has shown no cause why he should not be committed to prison :

Now therefore it is ordered that, for such default as aforesaid, the debtor shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged.

These are therefore to require you, the said high bailiff, bailiffs and others to take the debtor, and to deliver him to the governor or keeper of the , and you the said governor or keeper to receive the debtor, and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of this [insert date of order] day of 19 .

By the court,

Registrar.

	£	s.	d.
Total amount of instalments due at time of issue of judgment summons			
Deduct amount paid into court since issue of judgment summons			
Sum on payment of which the debtor is to be discharged			

N.B.—Where this order is sent to a foreign court under s. 158 of the County Courts Act, 1888, the registrar of that court shall insert the name of the prison used by the foreign court.

10.

Notice to Debtor of Creditor's Claim under sub-section 12.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of _____ holden at _____ (Seal.)
 _____ No. of administration order.

In the matter, &c., _____ debtor.

TAKE NOTICE, that E. F., of, &c., states that you owe him the sum of
 £ _____ for _____, and claims to be scheduled as a creditor for that sum;

And further take notice, that if you wish to dispute such claim you must
 within seven days from this date sign and return the notice at the foot
 hereof to the registrar of the court.

If you do not return the notice as above-mentioned the said claim will be
 taken to be admitted by you, and will be added to the schedule accordingly.

To A. B., &c.

NOTICE.

No. of administration order.

I object to the claim of E. F., of _____ against me.
 _____ (Signed) A. B., debtor.

To the registrar of the county court at _____

11.

Notice to Creditor that his Claim is not objected to.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of _____ holden at _____ (Seal.)
 _____ No. of administration order.

In the matter of, &c., _____ debtor.

TAKE NOTICE, that the debtor has not given notice of his intention to
 dispute your claim, and that the same has been added to the schedule of
 debts proved.

To E. F., &c.

You must retain this notice and produce it when you come to the office to
 receive dividends or for any other purpose.

12.

Notice of Hearing of Objection to Claim.

THE BANKRUPTCY ACT, 1883, SECT. 122

In the county court of _____ holden at _____ (Seal.)
 _____ No. of administration order.

In the matter of, &c., _____ debtor.

YOU [or the debtor] having given notice of your [or his] intention to
 dispute the claim of E. F. _____ of _____ against you [or your claim against
 him],

Take notice that the objection will be heard at the court house at
 in the county of _____ on the _____ day of _____ at the hour of _____ in the
 noon.

You should bring with you to the court on the day above-mentioned any
 witnesses, books, &c., necessary to defeat [or prove] the claim.

Dated, &c.

Registrar.

To, &c.

A. B. [the debtor] and

E. F. [the claimant].

13.

Notice to Debtor to attend and show cause why Administration Order should not be rescinded.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of . . . holden at . . . (Seal.)
No. of administration order.

In the matter of, &c., . . . debtor.

TAKE NOTICE, that you are hereby required to attend personally in this court, at . . . on the . . . day of . . . 19 . . . , at the hour of . . . In the . . . noon, to show cause why the administration order made against you in this court on the . . . day of . . . 19 . . . , should not be set aside or rescinded on the following grounds :

[here state grounds alleged for rescission.]

Dated this . . . day of . . . 19 . . .

To [the debtor]

Registrar.

14.

Order rescinding Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of . . . holden at . . . (Seal.)
No. of administration order.

In the matter of, &c., . . . debtor.

It is hereby ordered that the administration order made against the above-named debtor in this court on the . . . day of . . . 19 . . . , be and the same is hereby rescinded on the following grounds :

[here state grounds for rescission.]

Dated this . . . day of . . . 19 . . .

By the court,

Registrar.

15.

Notice to Debtor and Creditors and other Courts of Rescission of Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of . . . holden at . . . (Seal.)
No. of administration order.

In the matter of, &c., . . . debtor.

TAKE NOTICE, that by order dated the . . . day of . . . 19 . . . , the administration order made against [you] the above-named debtor in this court on the . . . day of . . . 19 . . . , has been rescinded on the following grounds :

[here state grounds of rescission.]

Dated this . . . day of . . . 19 . . .

To

Registrar.

[NOTE.—If there are any moneys in court to be distributed, notice of dividend should also be sent to the creditors : See Rules 16 (2), 24 (1), and Form 17.]

16.

Order suspending operation of Administration Order, or New Order
for payment by Instalments.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of _____ holden at _____ (Seal.)
No. of administration order.

In the matter of, &c., _____ debtor.

WHEREAS an administration order was made against the above-named debtor on the _____ day of _____ for the payment of his debts in full [or to the extent of _____ in the £] by instalments of _____ shillings for every _____ days:

And Whereas it appears that the debtor is unable to pay the instalments due under the said order by reason of illness [or unavoidable misfortune]:

It is hereby ordered that the operation of the said order be and the same is hereby suspended for a term of _____ from this date.

[or It is hereby ordered that the said debtor do pay the amount remaining due under the said order by instalments of _____ for every _____ days, the first of such instalments to be paid on the _____ day of _____ 19 ____.]

Dated this _____ day of _____ 19 ____
By the court, _____ Registrar.

16A.

Order rescinding Administration Order unless Debtor pays Instalments in
Arrear within a specified Time or by Instalments.

BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of _____ holden at _____ (Seal.)
No. of Administration Order.

In the matter of an administration order against A.B. _____ of
debtor.

It is hereby ordered that the administration order made against the above-named debtor in this court on the _____ day of _____ 19 ___, be rescinded without further notice to the debtor unless the sum of _____ in payment of which the debtor has made default be paid on or before the _____ day of _____ 19 [or by instalments of _____ for every _____ days, the first of such instalments to be paid on the _____ day of _____ 19 ____].

Dated this _____ day of _____ 19 ____
By the Court, _____ Registrar.

17.

Notice of Dividend.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of _____ holden at _____ (Seal.)
No. of administration order.

In the matter of, &c., _____ debtor.

(1.) Notice of Payment of Plaintiff's Costs.

Take notice, that a sum has been paid into court in this matter sufficient to pay your costs of action, amounting to _____

(2.) *Notice of Dividend.*

Take notice, that a sum has been paid into court in this matter sufficient to provide for payment of a dividend of in the pound.
The amount of the dividend on the debt of scheduled as due to you is

In either case proceed as follows.

The above sum will be paid out to you in accordance with the County Court Rules as to payment out of court of money paid in on a judgment. On your applying for the same it will be necessary that you should produce this notice.

Dated this day of 19 .
To [the Plaintiff or other Creditor.] Registrar.

18.

Order Superseding Administration Order.

THE BANKRUPTCY ACT, 1883, SECT. 122.

In the county court of holden at . (Seal.)
No. of administration order.

In the matter, &c., debtor.

WHEREAS the above-named debtor has under this order paid into court a sum sufficient to pay each debt scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration : It is ordered that such order be superseded and that the debtor be discharged from his debts scheduled under such order.

Dated this day of 19 .
By the court, Registrar

19.

Notice of Administration Order made at the County Court of
holden at , on the day of 19 .

Name of Debtor.		Residence.		Description.	Number of Creditors Scheduled		Gross Amount of Debts.	Number of Order.
Sur-name.	Christian Name or Names.	Place, Street, &c.	County.		Judgment.	Non-judgment.		
							£ s. d.	

I hereby certify that the above return is correct.
Registrar.

NOTE.—To be sent to the Registry of County Court Judgments, and to be posted up in the Office of the Court within three days of the making of the order.

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THE COUNTY COURT RULES, 1903 TO 1928.

Short title.

THE following orders and rules may be cited as "The County Court Rules, 1903," and shall apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken in all actions and matters pending on the day on which these rules come into force.

In this reprint of the rules, a note appended thus (R. S. C., Order V. r. 9) signifies that the rule is based on the High Court rule so indicated.

The County Court Rules of 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, and 1913 were all annulled by the County Court Rules, 1914, by which the rules of those respective years were all consolidated.

The County Court Rules, 1914, are directed to be read and construed as if they were contained in the County Court Rules, 1903. The County Court Rules of 1917, 1918, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927 and 1928 are here incorporated. For the convenience of practitioners all the rules are printed together, except those under a few special statutes, and it is believed are now complete.

ORDER I.

COURT AND OFFICES.

1. Every judge shall appoint the days and hours for holding his courts; and a notice of the day and hour on which each court is to be held shall, three months before the holding thereof, be affixed in some conspicuous place in the court-house and in the registrar's office; and whenever any day or hour so appointed for holding a court is altered, notice of such alteration shall immediately be affixed in like manner; but any judge may from time to time hold additional and adjourned courts.

Appointment and notice of sittings of court.

Additional or adjourned courts.

The court must be held within each district at such times as the judge appoints, provided it is held once at least in every calendar month, or at such other interval as the Lord Chancellor may appoint (County Courts Act, 1888, s. 10).

Courts need not be held in the month of September, unless the Lord Chancellor otherwise orders, and with his sanction, the judge, if he holds courts in September, need not hold them during some other month in the year. The office must, however, always be open for the receipt and payment of money in and out of court pursuant to the rules, or for any proceedings before the registrar (*ibid*, sect. 11).

2. Two courts shall not be held before the same judge on one day, unless with the consent of the Lord Chancellor; but this rule shall not apply to the holding of an additional or adjourned court, or to the City of London Court.

No two courts to be held on same day.

NOTE.—But a registrar's court may now be held on a day when the judge is not present (County Courts Act, 1919, s. 9).

This rule allows of the appointment of two deputies, who may sit in different courts on the judge's circuit on the same day (*R. v. Lloyd*, (1906) 1 K. B. 552; 75 L. J. K. B. 406). See next succeeding rule.

2A. To enable the judges to make arrangements for the hearing of appeals from registration officers under section 14 of the Representation of the People Act, 1918, the following provisions shall have effect.

Fixing of courts, &c., to fit in with hearing of registration appeals.

(1) Notice of any day or hour appointed for the holding of any court for the transaction of the ordinary business

7 & 8 Geo. 5, c. 64, s. 14.

O. I. r. 2a.

of the court may be affixed under Rule 1 of this Order at any time not less than six weeks before the day or hour so appointed :

- (2) Two courts for the transaction of such business may be held on one day before the same judge, or before any assistant judge appointed under section 14 of the said Act, without the consent of the Lord Chancellor. [1919.],

Registrar's
courts.

9 & 10 Geo.
5, c. 73, s. 9.

2c. Where pursuant to section nine of the County Courts Act, 1919, a judge appoints additional courts to be held at which the judge will not be present, such courts may be appointed to be held either—

(a) at the court house ; or

(b) at the registrar's office ; or

(c) if an office is kept open by the registrar at any place within the district of the court other than the place at which the court is held by the judge, at such office :

and any office at which any such court is appointed to be held shall, during the sitting of and for the purposes of such court, be deemed to be and shall be kept open as a court.

(2) Notice of the place, day and hour for holding any additional court under the said section shall be given in accordance with section ten of the Act four weeks before the day so appointed ; and such notice shall state that the court will be held before the registrar only ; and whenever any day so appointed is altered, notice of such alteration shall be given in accordance with the last-mentioned section.

(3) Any court so appointed shall be called and is in these rules referred to as a " registrar's court."

Rule, dated March 19th, 1920.

See "Registrar's Courts," *ante*, p. 109.

On what days
registrar to
keep county
court office
open.

3. An office shall be kept open by the registrar at each place where the court of which he is registrar is held, and such office shall be kept open every day from ten o'clock in the morning until four o'clock in the afternoon, except on Christmas Day, Good Friday, the Saturday next after Good Friday, Easter Monday, Easter Tuesday, Whit Monday, the first Monday in August, or any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or any day appointed for closing the same by the Lord Chancellor ; provided that (a) the office on Saturday may be opened at ten o'clock in the morning and closed at one o'clock in the afternoon, or, may be opened at nine o'clock in the morning and closed at twelve o'clock noon, or if for any reason it would be more convenient that the office should be closed on some other day, the office may be opened and closed at either of such hours respectively on some other day of the

week instead of Saturday, which day shall be fixed upon for such purpose by the judge, and shall not afterwards be changed except by his leave : (b) an office need not be kept open in more than one place within the district of a court, although the court is held at more than one place within the district, unless the Lord Chancellor otherwise orders : And (c) during the days on which the court is held in any place within the district other than the place where the registrar's office is situate, or during the days on which an office is open at such other place, the office may be closed in the place in which it is required generally to be kept open.

Amended by rule dated April 11th, 1921.

The Orders regulating holidays in County Courts will be found *post*, p. 941. Moneys may be paid into court, under order of the judge or otherwise, during office hours on any day when the office is open (Order II. r. 9).

Searches necessary before entering up judgment on a default summons may be made on every day on which the office is open, and other searches may be made and moneys paid out of court on three days at least in each week (Order II. r. 10).

For certain purposes, an office may, by order of the Lord Chancellor, be kept open on certain days, although no court is held at the place where such office is situate (Order I. r. 4).

There is power, but no obligation, to serve a summons on any day in which the office need not be open under the rules or under any order of the Lord Chancellor ; but such days are counted in computing the time required by the rules relating to service (Order LIV. r. 19).

3A. Where a registrar (in this rule referred to as 'the registrar') is or shall be appointed registrar of more than one court and the courts of which he is registrar are situate in different districts, the following provisions shall apply :—

Principal and local offices where registrar acts for more than one court.

(1) The Lord Chancellor may by order appoint the office of any one of the courts of which the registrar is registrar to be the principal office of such one or more of the other courts of which the registrar is registrar as may be specified in the Order.

9 & 10 Geo. 5, c. 73, s. 15.

Any office so appointed is in this rule referred to as 'the principal office.'

(2) Where a principal office has been so appointed, at least one office (in this rule called a 'local office') shall be kept open within the district of each of the courts so specified in the Order.

(3) The principal office shall, unless the Lord Chancellor shall otherwise direct, be kept open on the days and during the hours required by rule 3 of this Order and the local office or offices shall be kept open on such days and during such hours as the Lord Chancellor may direct, notwithstanding anything in Rule 3 of this Order.

(4) As regards actions or matters which, but for this rule, should be commenced in a local office and actions or matters remitted to the court to which such office is attached, the following provisions shall apply :—

O. I. r. 3.

O. I. r. 3a.

- (a) Any such action or matter may be commenced and any proceeding in any such action or matter including the payment of money into court and the lodging of any document may be taken either in the principal or in the local office :

Provided that :—

- (i.) any such action or matter shall be intituled in the court to which the local office is attached ;
 - (ii.) on the days when the local office is open no such action or matter shall without the leave of the registrar be commenced in the principal office and no proceeding in any such action or matter shall without the like leave be taken in the principal office ;
 - (iii.) the registrar may, subject to the approval of the judge, direct that all communications in every such action or matter be addressed to the principal office, and any such direction shall appear upon every summons and other process issued in every such action or matter, and all communications so addressed to the principal office shall be as valid and effectual as if they had been addressed to the local office.
- (b) In any such action or matter the registrar shall not be bound to allow judgment to be signed at or execution to be issued from the principal office or the local office until he has satisfied himself that no payment has been made and no proceeding has been taken in the other office which would render the signing of such judgment or the issue of such execution irregular.
- (c) If in any such action or matter any delay or difficulty shall be caused by a party making use of the principal office in lieu of the local office when such local office is open for business, the delay or difficulty so caused shall be at the risk of such party.
- (d) In every such action or matter the address of the local office and of the principal office and the days and hours when each such office is open shall appear upon every summons and other process issued from the local office or from the principal office. [1921.]

4. By order of the Lord Chancellor an office may be kept open by the registrar at any place within the district of a court at such times and for such purposes as the order may direct, although no court may be held at such place.

O. I. r. 4.

Keeping open office at place where no court is held.

5. The offices of the courts, or any of them, may from time to time be closed by special order of the Lord Chancellor on such days as may be mentioned in any such order.

Offices may be closed by order.

ORDER II.

OFFICERS.

Registrar.

1. Whenever the registrar or his lawful deputy is absent from the sitting of a court, the judge shall appoint a deputy to act on behalf of the registrar; and an entry of such appointment and of the cause of such absence (when ascertained) shall be made on the minutes of the court.

Absence of registrar or deputy registrar from court.

Where a registrar was not present at the sitting of the court, but was represented by an assistant clerk who was competent and ready to discharge the duties of registrar, and the registrar was himself in another part of the building, engaged in business connected with his duties as registrar, half an hour after the sitting of the court, it was held that the registrar was not absent in such a sense as to entitle the judge to appoint a deputy (*Wetherfield v. Nelson*, (1869) L. R. 4 C. P. 571; 38 L. J. C. P. 220). In case of the death or removal of the registrar, the deputy may continue to act until a successor is appointed (County Courts Act, 1888, s. 31); and if no deputy has been appointed, the judge may provisionally appoint a person qualified to be registrar to discharge the duties for not more than three months (*ibid.*, s. 32). The deputy has all the powers and privileges, and must perform all the duties of, and is subject to the same provisions and penalties as a duly appointed registrar (*ibid.*, ss. 31, 32).

As to payment of deputy registrar, see C.C. Act, 1924, sect. 9 (4).

2. The registrar shall keep books in the forms given in Part II. of the Appendix, subject as follows:—

Registrar to keep books. Appendix, Part II.

Where book A is used, neither books B, C, D, nor E shall be used, but book F shall be used.

Where books B and C are used, neither books A, D, nor E shall be used, but book F shall be used.

Where books D and E are used, books A and B shall not be used, but book C may be used; and if book C be used, book F shall be used.

Where the number of complaints entered in a court has exceeded 2,000, and book A is not used, books C and F shall be used, and either book B or books D and E.

O. II. r. 2.

Every registrar acting as high bailiff may keep book K instead of books L, N, and T.

Every entry in such books shall have a number prefixed, corresponding with the number of the plaint to which the entry relates.

These books are useless to practitioners and are not printed in any appendix hereto.

Documents to be filed and distinguished by number of plaint and by letters.

3. The registrar shall file all documents delivered to him in any action or matter, and shall distinguish them by the number of the plaint in respect of which they are filed, and from each other, by a distinctive letter of the alphabet.

Amended by County Court Rules, 1926 (No. 1) rules.

The registrar is entitled to require also the delivery of copies to him pursuant to Order LIV. r. 13.

Registrar to issue all processes.

4. The registrar shall issue all summonses, warrants, and orders of committal forthwith after the plaints are entered or the warrants or orders are applied for.

Copy of summons.

4A. (1) Before a summons is issued the registrar shall make a true copy thereof. Provided that where the summons is to be served by a solicitor the solicitor shall prepare the summons and copy and deliver them to the registrar, who shall examine, complete, and seal the same.

Documents to be annexed to summons and copy.

(2) The registrar shall in all cases where by these rules particulars are required annex to the summons and copy copies of the plaintiff's particulars, sealed with the seal of the court, and such particulars shall be deemed to be part of the summons.

(3) Where leave is granted under s. 74 of the Act for the issue of either an ordinary or a default summons for service out of the district, the registrar shall also annex to the summons a copy of the affidavit mentioned in Order V. r. 13, with a copy thereon of the order granting leave, and such copy shall be served with the summons.

(4) And where in the case of a default summons the plaintiff at the time of the entry of the plaint files a notice pursuant to Order V. r. 19, the registrar shall also annex to the summons a copy of such notice, and such copy shall be served with the summons.

Particulars of Claim.]—See Order VI. *post*.

Delivery of summons and copy to bailiff or plaintiff.

4B. (1) Where a summons is to be served by a bailiff of the court, the registrar shall deliver the summons and copy, with the documents annexed thereto respectively which are required to be so annexed under the last preceding rule, to the bailiff.

(2) Where a summons is to be served otherwise than by a bailiff, the registrar shall deliver or forward the summons and

copy, with the documents annexed thereto respectively which are required to be so annexed under the last preceding rule, to the plaintiff or his solicitor. O. II. r. 4b.

5. Where a summons is required to be served in a foreign district, the registrar shall transmit the summons and the copy thereof, with the documents annexed thereto respectively which are required to be so annexed under Rule 4A of this Order, to the bailiff of the foreign court within forty-eight hours after the plaint is entered, unless the judge of the home court orders the summons in any particular case to be served by the bailiff of such court; and where any summons is returned to the registrar of the home court by a bailiff of a foreign court, not served, the registrar shall forthwith give notice to the plaintiff of such non-service. Transmission of summons for service in foreign district.
Notice of non-service.
Form 30.

Amended by County Court Rules, 1926 (No. 1) rules.

For form of notice of non-service of ordinary summons, see Form 30.

Where a solicitor is acting for the plaintiff or execution creditor, the notice of non-service or doubtful service must be sent to him (r. 41, *post*).

As to service by a bailiff outside his own district, see sect. 77 of the Act.

6. Where, by the indorsement on the copy of a summons made by a bailiff of a foreign court it appears that the summons was delivered to some person at the place mentioned in the summons as the residence or place of business of the defendant, but from the indorsement of the statement made by such person it appears doubtful whether the court will be satisfied that the service of the summons has come to the knowledge of the defendant before the return day, the registrar of the home court shall forthwith on receiving back such copy send to the plaintiff a notice according to the form in the Appendix. Notice of doubtful service in foreign district.
Form 31.

7. Copies of all proceedings or documents in the custody of the court or its officers shall be prepared by the registrar for any party entitled to require the same, upon pre-payment of the costs of such copies. Copies of documents how made.

Copies may be obtained for the purpose of evidence in other actions pursuant to the provisions of sect. 28 of the principal Act, and Order XXIII. r. 10.

In ascertaining the length of copies of documents or proceedings, every figure will be counted as a word, and a folio will comprise seventy-two words (Order LIII. r. 27).

Rule 8 no longer exists. It is included in r. 4A, *supra*.

9. Moneys to be paid into court under the order of the judge or otherwise may be so paid, during office hours, on every day on which such office is open. Payment into court.

An acknowledgment of the payment will be given in all cases (Order II. r. 11).

If money is paid into court before the hearing, the registrar must within twenty-four hours from the time of such payment, give notice of the payment

**O. II. r. 9
Notes.**

Searches and
payment out
of court.

to the plaintiff by post, or by causing the notice to be delivered at his usual place of abode or business (County Courts Act, 1888, s. 107; Order IX. r. 12 (2); Forms 73, 74).

10. The registrar shall on every day on which the office is open allow such searches to be made as may be necessary before entering up judgment on a default summons; and he shall allow other searches to be made, and shall pay out upon demand, in cash if required, the money to which suitors are entitled, on such proof of title thereto as is prescribed by Order IX. r. 21, on three days at the least in each week, such days to be fixed by the registrar from time to time, with the approbation of the judge, and to be printed or written on the plaint note. For the purpose, however, of enabling the registrar to furnish the list of balances in the ledgers according to the requirements of the Treasury, no searches shall be made or money paid out of court during one week in each year, provided that due notice of such week shall have been affixed in some conspicuous place in the office of the registrar a month beforehand.

Searches.—The right of search in the county court appears to be limited to the parties to the proceeding and their solicitors and agents. There is no rule similar to R.S.C. Ord. LXI. r. 24 and Rule 16 of the Central Office Practice Rules, and the only information which strangers to a suit in a county court can obtain is such as can be gathered from the Registry of County Court Judgments, House of Lords.

As to searches by post, see Order IX. r. 22.

As to certificates of judgment, see Order XXIII. r. 10.

Acknow-
ledgment of
payments
and deposits.

11. Whenever money is paid into or deposited in court, whether before or after judgment, an acknowledgment in writing of such payment or deposit shall be given.

Court books
to be pro-
duced to
treasurer.

12. The books of the court, including the bankers' book and cash book, shall at all times be open to the inspection of the treasurer.

In *Burridge v. Nicholets*, (1861) 6 H. & N. 383; 30 L. J. Ex. 145; 123 R. R. 582, it was held that where a registrar, to whom notice of the treasurer's intention to audit the books had been given, locked up his office and left at the time for closing appointed by the then 6th Rule of Practice, the treasurer was justified in breaking open the office to get at the books.

No officer to
act as agent
to parties.

13. No registrar, deputy registrar, registrar's clerk, high bailiff, bailiff, broker, or other officer of the court, and no partner, or clerk of any such officer shall, on account of suitors, sign the ledger or any other book, or receive money or otherwise act as an agent for that purpose.

Nor may any registrar, deputy registrar, registrar's clerk, high bailiff, bailiff, broker, or other officer of the court, become surety in any case where, by the practice of the court, security is required (Order XXIX. r. 6).

See also sect. 41 of the Act, *ante*, p. 24.

Where
legacy, suc-
cession or

14. Before executing any order directing the payment or transfer of any fund, or part of any fund, in respect of which any

duty shall be payable to the revenue under the Acts relating to legacy, succession or estate duty, it shall be the duty of the registrar, before making the payment, to require a certificate from the proper officer of, or the production of the receipt for, the payment of the duty chargeable in respect of such fund, or any part thereof.

As to payment out of amounts under 100*l.* due to the estate of a deceased intestate where administration has not been taken out, see Order XXXVII, r. 6.

15. Where any judge acting for any other judge under section nineteen of the Act, signs any document, the registrar shall make a memorandum at the foot thereof according to the form in the Appendix.

16. Every registrar shall comply with the regulations which may from time to time be made by the Treasury for the safe custody of any securities deposited with him under section seventy of the Act.

High Bailiff

17. Whenever the high bailiff is absent from the sitting of a court, he shall transmit to the registrar a statement in writing of the cause of his absence, and an entry of the cause of such absence shall be made by the registrar on the minutes of the then sitting or the next succeeding court.

By s. 35 of the principal Act, the high bailiff must attend every sitting of the court for such time as the judge requires, unless his absence shall be allowed for reasonable cause by the judge.

18. The high bailiff shall keep books and make returns according to the forms in Part II. of the Appendix.

19. The high bailiff or a bailiff of the court shall attend for the purpose of receiving processes or for the performance of other duties, at the office of the registrar once at least every day during the hours it is open; and shall compare and examine all processes delivered to him by the registrar, so as to enable him to prove their correctness.

20. An office of the high bailiff of a court, in which the plaints entered have exceeded six thousand in any one year, shall be kept open for the purpose of answering inquiries, giving information, or for any other purpose connected with the duties of the high bailiff, during the same hours as the office of the registrar of the court is to be kept open.

21. The high bailiff shall serve or cause to be served process issued out of the court of which he is high bailiff, or sent to him for service from other courts, as soon as practicable.

21A. Every bailiff appointed to assist the high bailiff shall at all times be provided with a certificate of his appointment, showing

O. II. r. 14.

estate duty payable, it must be paid before execution of order directing payment or transfer of funds.

Memorandum where one judge signs document for another.

51 & 52 Vict. c. 43, s. 19.

Form 4.

Custody of securities.

51 & 52 Vict. c. 43, s. 70.

Absence of high bailiff from court.

High bailiff to keep books.

Appendix, Part II.

Attendance at office of registrar.

Keeping open an office.

Service of process.

Bailiffs to be provided with

O. II. r. 21^A the character in which he is acting, and shall on request produce the same.

certificates of appointment.

Service and indorsement where defendant has removed to new address within district.

Indorsement of service or non-service on copy of summons.

Forms 29, 32, 34.

Return of copy summons, and of summons not served.

Notice of non-service in home district.

Form 30.

Notice of doubtful service in home district.

Form 31.

22. Where the bailiff to whom a summons has been delivered for service ascertains in sufficient time before the return day, and before notice of non-service has been sent, that the defendant has removed from the address given on the summons to some other address within the district, it shall be his duty to effect service of the summons as if the actual address had been given on the summons, and to indorse the new address upon the copy retained by him.

23. If the service of a summons has been personal, the bailiff who served the same shall indorse on the copy of the summons delivered to him by the registrar the fact of such service; and if the service has not been personal, he shall indorse on such copy the mode of service so as to show that the provisions as to service which are applicable to the case have been complied with, and any statement made by the person to whom the summons was delivered, and any other circumstance from which it may be inferred that the service of the summons has come to the knowledge of the defendant; and in every case of service the bailiff shall indorse on such copy the place where service was effected; and if the summons has not been served, the bailiff shall indorse on such copy the reason of such non-service: and all indorsements on summonses shall be signed by the bailiff. The high bailiff shall deliver to the registrar the copy of every summons which has been served, and also the summons itself when not served, together with the list of summonses mentioned in Rule 30 of this Order, and such copies and summonses shall be produced by the registrar or high bailiff, as the judge may require.

24. Where an ordinary summons or a judgment summons required to be served in a home district has not been served, the high bailiff shall forthwith give notice to the plaintiff of the fact of such non-service according to the form in the Appendix.

If the plaintiff is acting by a solicitor, the notice must be sent to him (r. 41, *post*).

25. Where by the indorsement on the copy of an ordinary summons required to be served in a home district it appears that the summons was delivered to some person at the place mentioned in the summons as the residence or place of business of the defendant, but from the indorsement of the statement made by such person it appears doubtful whether the court will be satisfied that the service has come to the knowledge of the defendant before the return day, the high bailiff shall forthwith send to the plaintiff a notice according to the form in the Appendix.

- 26.—(1) Where a summons is issued against a company registered under the Companies (Consolidation) Act, 1908, it shall be the duty of the bailiff to whom such summons is delivered for service to ascertain at the address given on the summons whether the registered office of the company is situate at such address. O. II. r. 26
Inquiry,
service, and
indorsement
on summons
against regis-
tered com-
pany.
8 Edw. 7,
c. 69, s. 116.
Form 32 (1).
- (2) If the bailiff ascertains, either by seeing the words “registered office” painted or affixed on the outside of the premises, or by inquiry at the premises, that the registered office of the company is situate at the address given on the summons, he shall effect service of the summons at such address, and shall indorse on the copy of the summons the fact and mode of such service, and the fact that he has ascertained in one or other of the modes aforesaid that the registered office of the company is situate at the address given.
- (3) If the bailiff ascertains in sufficient time before the return day, and before notice of non-service has been sent, that the registered office of the company is situate at some other address within the district, it shall be his duty to effect service of the summons at such other address, and to indorse on the copy of the summons the new address, and the fact that he has ascertained that the registered office of the company is situate at such address. Form 32 (1).
- (4) If the bailiff is unable to ascertain whether the registered office of the company is situate at the address given on the summons, he shall effect service of the summons at such address, but shall indorse on the copy of the summons a statement to the effect that he has been unable to ascertain whether the registered office of the company is situate at such address: and the high bailiff, or, where the summons has been sent to a foreign court for service, the registrar of the home court, on the return of the copy of the summons, shall forthwith send to the plaintiff a notice according to the form in the Appendix. In such case, if the company does not appear on the return day, the action shall not proceed unless the court is satisfied, on the evidence before it, that the registered office of the company is situate at the address given; and the court, if not so satisfied, may either adjourn the action to a future day for further evidence, or order it to be struck out, or order a successive summons to issue, as to it may seem just. Form 32 (2).
Form 33.
- (5) If the bailiff ascertains that the registered office of the company is not situate at the address given on the summons, and does not ascertain that it is situate at some other address within the district, he shall make an indorsement to that effect on the copy of the summons, and return the summons itself as not served, in which case notice of non-service shall be given to the plaintiff as in other cases of non-service. Form 32 (3).
Form 30.

O. II. r. 26
Notes.

Return of
 copy of
 ordinary
 summons
 served by
 bailiff of
 foreign
 court.

Return of
 copy of
 judgment
 summons
 served by
 bailiff of
 foreign
 court.

Where return
 of service to
 home court is
 not made,
 foreign bailiff
 may be
 ordered to
 pay costs.

Form 353.

Form 354.

If a solicitor is acting, the notice of non-service must be sent to him (r. 41, *post*).

As to method of service of a default summons on a limited company by plaintiff or his solicitor, see Order VII. rr. 26 and 32.

27. Where an ordinary summons is required to be served in a foreign district, the high bailiff of the foreign court shall, eight clear days at least before the return day, transmit the copy thereof to the registrar of the home court duly indorsed and signed by the bailiff (who shall name the court of which he is a bailiff), and also the summons itself when not served.

The time is eighteen clear days in actions under the extended jurisdiction (Order XXIIA. r. 5).

28. Where a judgment summons is required to be served in a foreign district, the high bailiff of the foreign court shall, three clear days at least before the return day, transmit the copy thereof to the registrar of the home court duly indorsed and signed by the bailiff (who shall name the court of which he is a bailiff), and also the summons itself when not served.

29.—(1) Where the high bailiff of a foreign court neglects to return to the registrar of the home court the copy of an ordinary summons or a judgment summons as required by the two last preceding rules, the judge of the home court may, upon evidence of such summons having been posted to the high bailiff of the foreign court, direct notice, according to the form in the Appendix, to be given to such high bailiff that the said judge will on a day to be mentioned, unless such high bailiff shows cause to the contrary, make an order directing such high bailiff to pay to the plaintiff such sum as the judge may think reasonable, as compensation for any loss of time and expense which may have been caused to the plaintiff by such neglect.

(2) If on the day mentioned the judge makes any order for payment by such high bailiff, a memorandum of such order shall be made in the minute book, and the registrar of the home court shall transmit to the high bailiff of the foreign court a notice thereof according to the form in the Appendix.

(3) If the high bailiff within the time limited by the order remits to the registrar of the home court the sum directed by the order to be paid, the registrar shall pay the same to the plaintiff.

(4) If the high bailiff does not within the time limited by the order remit to the registrar of the home court the sum directed by the order to be paid, the registrar shall pay such sum to the plaintiff out of any money in his hands, and shall transmit to the treasurer of the foreign court a copy of the notice, certifying thereon the neglect of the high bailiff to pay the money as required, and the payment thereof by the registrar of the home court; and the registrar shall be allowed by the treasurer of his court at

his audit the amount so paid : and the treasurer of the foreign court shall deduct such sum from any payment he may thereafter make to the high bailiff. **O. II. r. 29.**

30. Seven clear days at least before the day of holding any court the high bailiff shall deliver to the registrar a list of all ordinary summonses on plaint before judgment, issued to him and returnable at such court, and shall state therein the mode of service or the cause of non-service of each summons. **High bailiff to deliver list of ordinary summonses served.**

The time required in actions under the extended jurisdiction is seventeen clear days (Order XXIIA. r. 5).

31. (1) Within two days after the service of a default summons, the high bailiff of the court in the district of which it has been served shall send notice thereof to the plaintiff according to the form in the Appendix, and shall return the copy of the summons duly indorsed to the registrar of the court from which it issued, and where any such summons cannot be served within one month from the date of issue, the high bailiff of the court in the district of which it is to be served shall send to the plaintiff a notice stating why it has not been served, and shall send a similar notice at the end of every one month during which it remains in force and unserved. **Notice of service of non-service or default summons. Form 35. Form 36.**

(2) Where the summons cannot be served by reason of the plaintiff having mis-stated or insufficiently stated any of the particulars as to the name, residence or place of business, and occupation or description of the defendant required by paragraphs (b) and (c) of Order V. Rule 4, or of the defendant having before the entry of the plaint removed from the address given on the summons, the high bailiff shall, subject to the provisions of paragraph 2 of Order VII. Rule 5A, as applied by paragraph 2 of Order VII. Rule 30A, return the summons to the registrar of the court in which the summons was issued, and shall in his notice of non-service sent to the plaintiff state that the summons has been so returned. **Return of summons for amendment, where name of defendant not correctly stated, &c.**

See note to r. 24.

32. The high bailiff shall enter in the " Order Book " all judgments or orders for the payment of money or costs, or both, or other orders, which he has received, and the date on which he has posted or otherwise sent the same. Provided that where the registrar of the court is also high bailiff, a separate book need not be kept for this purpose but the date on which the judgment or order has been posted or otherwise sent shall be entered in the Minute Book. **Order Book.**

Last para. added by County Court Rules, 1926 (No. 1), rules.

33. The high bailiff shall execute every warrant, order of commitment, or other order of the court delivered to him as soon as **Execution and entries of warrants and orders**

O. II. r. 33. possible, and shall enter in the proper book every warrant and order which he has been required to execute, and shall state from time to time therein what he has done under each warrant or order, and if the same be not executed within one month from the day of delivery to him, why it has not been executed; and he shall, at all reasonable times, give to a suitor or his solicitor all information which he may reasonably require as to the execution or non-execution of any warrant or order which has been issued at his instance.

Bailiffs are answerable for escapes and neglect to levy execution. See sect. 49 of the principal Act.

Money received under process to be entered thereon and paid to registrar within 24 hours.

4 & 5 Geo. 5, c. 59, s. 41 (2).

34. Every high bailiff levying or receiving any money by virtue of the process of any county court shall forthwith enter in ink on the face of the process, at the foot or in the margin thereof, the amount levied or received, and shall sign the entry; and, subject to Rules 34A, 35, and 36 of this Order, he shall within twenty-four hours from the receipt of any such money, except where he is by statute required to retain the same or where the process has issued out of another court, pay over the same to the registrar of the court of which he is high bailiff, who shall indorse on the process a memorandum of having received the same, and return the process to the high bailiff.

(Amended, C.C. (No 2) Rules, 1928.)

Where notice of receiving order received by high bailiff before or after payment over to registrar of money received in part satisfaction of an execution.

4 & 5 Geo. 5, c. 59, s. 41 (1), Bankruptcy Rules, 1915, 323A.

34A. Provided that where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy any money is seized or received in part satisfaction of the execution, the following provisions shall apply:—

- (i.) If before paying over such money to the registrar the high bailiff receives notice that a receiving order has been made against the debtor, he shall on request pay over such money, after deducting the costs of the execution, to the official receiver in accordance with subsection 1 of section 41 of the Bankruptcy Act, 1914, and shall send notices to the registrar and the execution creditor in accordance with Rule 36 of this Order:
- (ii.) If after paying over any such money to the registrar the high bailiff receives notice that a receiving order has been made against the debtor, he shall forthwith give notice thereof to the registrar of the court of which he is high bailiff, and shall also, if the warrant issued out of any other court, and the money, after deducting the costs of the execution, has been transmitted to that court

pursuant to Order XXVIII. Rule 2, give a similar notice to the registrar of that court : O. II. r. 34a.

- (iii.) In any case mentioned in paragraph (ii.) the amount paid to the registrar, after deducting the costs of the execution, shall on request be paid over to the official receiver or trustee in bankruptcy by the registrar to whom the same was paid, or if it has been transmitted to any other court pursuant to Order XXVIII. Rule 2, by the registrar of that court, unless in either case it has been paid out by the registrar to the execution creditor before he receives notice of the receiving order.

(Amended C. C. (No. 1) Rules, 1928.)

Under sect. 40 of the Bankruptcy Act, 1914, an execution creditor is not entitled to retain the benefit of his execution, as against the trustee, unless the execution is completed by a sale as well as by seizure before the date of the receiving order, and before notice of a bankruptcy petition against the debtor, or of the commission of any available act of bankruptcy by him. See *ante*, p. 198.

If the high bailiff has paid money to the registrar before notice of a receiving order against the execution debtor, this is made a good discharge to him as against the official receiver. If having so done he hears of a receiving order made against the debtor he must forthwith inform the registrar, who, after deducting the costs of execution, must on request pay to the official receiver all of such monies not already paid out. See Bankruptcy Rules, 1915 (Rule 323A), *post*, Part V., p. 1764.

35. Where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a debtor are sold, or money is paid in order to avoid sale, and the high bailiff is by subsection two of section forty-one of the Bankruptcy Act, 1914, required to retain the balance of the proceeds of sale or the money paid, after deducting the costs of the execution, for fourteen days, he shall within twenty-four hours after the sale of the goods or the receipt of the money send to the registrar of the court out of which the warrant of execution originally issued, and to the execution creditor, notice according to the form in the Appendix of the sale or payment and the amount realised thereunder. Notice where proceeds of execution are to be held for 14 days.
4 & 5 Geo. 5,
c. 59, s. 41 (2).
Form 171.

“Execution in respect of a judgment for a sum exceeding £20.” The test is the amount for which the execution, plus the expenses thereof, is issued, irrespective of the amount of the judgment. See *Howes v. Young*, (1876) 1 Ex. D. 146, *Willey v. Hucks*, (1909) 1 K. B. 760 and *ante*, p. 199.

An execution levied by seizure or sale is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the high bailiff acquires a good title against the trustee (s. 40 (3), Bankruptcy Act, 1914).

36. Where the high bailiff withdraws from possession of goods taken in execution, or pays over to the official receiver or trustee in bankruptcy the proceeds of sale of goods sold under an execution, or money paid in order to avoid sale or received in part Notice of withdrawal, or of payment over of money

- O. II. r. 36.** satisfaction of the execution, in consequence of having received notice that a receiving order in bankruptcy has been made against the debtor, he shall within twenty-four hours after such withdrawal or payment send to the registrar of the court out of which the warrant of execution originally issued, and to the execution creditor, notice thereof according to the form in the Appendix.
- received, on notice of receiving order.**
- Form 172.**
- Filing and custody of process when executed, &c.**
- 36A.** When any process has been executed, satisfied, withdrawn, or stopped, the high bailiff shall file such process and retain the same in his custody, unless, in the case of a warrant of execution, he is required to lodge the same in court pursuant to Order XXV. Rule 38, or, in the case of an order of commitment, the same has been delivered to the gaoler.
- Non-executions of warrant in foreign district.**
- 37.** Whenever a warrant, order of commitment, or other order of the court required to be executed in a foreign district has not been executed within one month from the day of delivery, the high bailiff of the foreign court shall, on the day after the termination of such month, make a return to the registrar of the home court according to the form in the Appendix, and shall send a copy thereof to the execution creditor, and when any such warrant or order has not been executed during the time it is in force, such high bailiff shall return the same to the registrar of the home court within twenty-four hours from the expiration of such time, and shall indorse on such warrant or order the reason why the same could not be executed, and he shall sign such indorsement; but the high bailiff shall return such warrant or order, although unexecuted, to the home court at any time if he shall be directed so to do by the registrar of the home court, and he shall at all times give such information as such registrar may require respecting such warrant or order.
- Form 174.**
- Return of warrant, if so directed.**
- Duties of high bailiff as to sale, &c., of personal property.**
- 51 & 52 Vict. c. 43, s. 146.**
- 38.** Where any personal property is directed to be sold by public auction, detained, or preserved, the high bailiff shall, if the court so directs, superintend such sale, detention, or preservation; and where any such property is directed to be sold by private contract, it shall be his duty, if the court so directs, to see that the directions of the court are duly carried out. This rule shall not apply to an execution issued under section one hundred and forty-six of the Act.
- Taking possession of goods.**
- 39.** Where a warrant directs the high bailiff to detain and preserve any goods or chattels, he shall take and retain possession thereof until further order be made by the court thereon.
- Where possession ordered to be taken until security given.**
- 40.** Where a warrant directs the high bailiff to take possession of any goods or chattels until security be given by some party for the safe keeping of the same, or for the payment of the value of the same in default of such safe keeping, but does not specify the

amount of such security, the high bailiff shall make or cause to be made an inventory and appraisal of the goods or chattels which he may take into his possession; and, upon receiving as a deposit the amount of such appraisal, or sufficient security, to be approved by the registrar, for the safe custody of such goods and chattels, and for the delivery up of possession thereof upon request, the high bailiff shall relinquish the possession thereof on condition that the same shall be re-delivered to him on request, or held to abide the order of the court. If the warrant specifies the amount of security, no less deposit or security shall be sufficient.

O. II. r. 40.

41. Where the plaintiff or execution creditor acts by a solicitor, the notices and copies referred to in Rules 5, 6, 24, 25, 26, 31, 35, 36 and 37 of this Order shall be sent to such solicitor.

Notices
where party
acts by
solicitor.

ORDER III.

PARTIES.

Generally.

1. All persons may be joined as plaintiffs in one action in whom any right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise: Provided that if upon the application of any defendant it appears that such joinder may embarrass or delay the trial, the judge may order separate trials, or make such other order as may be expedient. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any person who is not found entitled to relief, unless the court in disposing of the costs of the action otherwise directs. (R. S. C. Ord. XVI., r. 1.)

Persons may
be joined as
plaintiffs who
claim relief
jointly, severally,
or in the alternative
in respect of the
same transaction,
when common
question of
law or fact
arises.

This rule was passed in consequence of the decision in *Carter v. Rigby & Co.* (C. A.), (1896) 2 Q. B. 113; 65 L. J. Q. B. 537.

Transactions between the same persons are not to be confused with the same transactions. Thus where the causes of action do not arise out of the same transactions, a plaintiff cannot join personal claims with claims in a representative character, though against the same defendant (*Stroud v. Lawson*, (1898) 2 Q. B. 44; 67 L. J. Q. B. 718). The defendant may then set up counterclaims against each plaintiff (*M. S. & L. Rail. Co. v. Brooks*, (1877) 2 Ex. D. 243; 46 L. J. Ex. 244). Misjoinder of a plaintiff will not prevent a defendant from having the benefit of a set-off or counterclaim against him (Order X. r. 8).

As to representative actions, see r. 7, *infra*.

O. III. r. 2 Notes.

Persons may be joined as defendants against whom relief claimed jointly, severally, or in the alternative.

2. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment (R. S. C. Ord. XVI. r. 4.)

See *Thomas and Others v. Moore and Others*, (1918) 1 K. B. 555.

Where a company and an individual were sued jointly in fraudulent misrepresentation, and the action included a claim against the company for rescission of the contract and return of the money, and the company allowed judgment to go by default; it was held that such default judgment against one defendant did not operate as a bar to the cause of action against the other (*Ch. Goldrei Foucar & Son v. Louis Sinclair and the Russian Chamber of Commerce in London*, (1918) 1 K. B. 180; 87 L. J. K. B. 261; *Payne v. British Time Recorder Co., Ltd.*, and *W. W. Curtis, Ltd.*, (1921) 2 K. B. 1; 90 L. J. K. B. 445). As to joint contractors, where the defence of one succeeds, see *Pirie v. Richardson*, (1927) 96 L. K. J. B. 42.

As to costs in such actions, see *post*, p. 1088.

All defendants joined need not be interested in all the relief prayed for.

3. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest. (R. S. C. Ord. XVI. r. 5.)

All or any of the persons liable under any one contract may be joined.

4. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. (R. S. C. Ord. XVI. r. 6.)

Where plaintiff in doubt from whom he is entitled to redress.

5. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties. (R. S. C. Ord. XVI. r. 7.)

See *Honduras Co. v. Tucker*, (1877) 2 Ex. D. 301; 46 L. J. Ex. 391, and *Hummerstone v. Leary*, (1921) 2 K. B. 664; 90 L. J. K. B. 1148, which latter case shows that where two defendants are joined it is not generally right to dismiss one of them from the action at the close of the plaintiff's case on the ground that at such stage no sufficient case has been established against him. The plaintiff has a right to have the case tried out as a whole.

It appears that if the wrong person is sued by mistake and judgment is obtained against such person by default, the judgment is not a bar to an action against the right defendant (*Isaacs & Sons v. Salbstein*, (1916) 2 K. B. 139). See notes to sect. 93 of the Act.

Trustees, executors and others may sue or be sued without joining par-

6. Trustees, executors and administrators, may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the court

may, at any stage of the proceedings, order any of such persons to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto. **O. III. r. 6.**

This rule shall apply to trustees, executors, and administrators sued in proceedings to enforce a security by foreclosure or otherwise. (R. S. C. Ord. XVI. r. 8.) ties beneficially interested.

In county courts, executors and administrators may sue and be sued in their own names, as if the action were brought by or against them in their own right (County Courts Act, 1888, s. 95; but see Order V. r. 6). Trustees, executors, or administrators so suing will, it is conceived, let in a set-off or counterclaim, available against them in their private capacity. At law, the rule as to joinder was that all the executors named in the will should be joined as plaintiffs, though one only had proved, except in case of renunciation; but the rule in equity was much more elastic and now by sect. 8 of the Administration of Estates Act, 1925 (15 Geo. V. c. 23) the executor or executors to whom probate is granted may exercise all the powers conferred by law on a personal representative, whether or not power is reserved to the other executors to prove. Assuming that the provisions of sect. 97 of the principal Act extend to actions against executors, the plaintiff will only require to select as defendant an executor who has administered; if not, all who have administered should be joined.

For practice in actions by or against a personal representative, see Order XXX.

7. Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be authorized by the court, before or at the trial, to defend in such action or matter, on behalf or for the benefit of all parties so interested. (R. S. C. Ord. XVI. r. 9.) Where parties numerous, one or more may sue or be sued or defend for the benefit of all.

The provisions of this rule and of Rule 8 apply to proceedings under the Workmen's Compensation Act, 1925, and Rules, whether by way of arbitration or not (Workmen's Compensation Rules, rr. 7, 94).

This rule does not authorise an action for debt against selected members of an unincorporated religious society on their own behalf and on behalf of all other members of the society, and asking that the defendants be directed to defend the action on behalf of, or for the benefit of all persons so interested, where the plaintiff does not by writ claim any declaration of right as between himself and all the members of the Society (*Walker v. Sur and Others*, (1914) 2 K. B. 930; 83 L. J. K. B. 1188. Comp. *Taff Vale Rail. Co. v. Amalgamated Society of Railway Servants*, (1901) A. C. 426; 70 L. J. K. B. 905; and *Bedford (Duke) v. Ellis*, (1901) A. C. 8; 70 L. J. Ch. 102). *Quære*, whether this rule applies at all to an action of tort. See *Mercantile Marine Service Association v. Toms*, (1916) 2 K. B. 243; 85 L. J. K. B. 311; and *Churchill (Lord) v. Whetnall, Aberconway (Lord) v. Whetnall*, (1918) 87 L. J. Ch. 524. Both of the last-cited cases were on Order XVI r. 9, of Rules of Supreme Court, substantially identical in terms.

8. When a defendant desires to defend on behalf or for the benefit of others having the same interest, he shall within two clear days of the date of service of the summons on him give notice to the plaintiff of his intention to apply, upon a day and hour to be named in such notice, to the court for leave so to defend, and shall file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of

Where defendant desires to defend on behalf of others.
Form 96.

O. III. r. 8. such persons ; and the court may thereupon make an order for the defendant so to defend, and the names of the persons as to whom such order is made shall be added to that of the defendant in the plaint and minute-book ; and a copy of such order, with a copy of the summons and particulars in the action, and a notice according to the form in the Appendix, shall be personally served on each of such persons, and notice shall be sent to the plaintiff according to the form in the Appendix : Provided that the plaintiff or any of the persons whose names have been so added may at the trial object to the defendant defending on behalf of all or any of the persons as to whom such order has been made, and the judge may thereupon, if he thinks fit, strike the names of all or any of such persons out of the proceedings, and order the defendant to pay such costs as he may think fit.

Power to
approve
compromise
in absence
of some of
the persons
interested.

9. Where in proceedings concerning a trust a compromise is proposed, and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the court and assenting to the compromise, the judge, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts. (R. S. C. Ord. XVI. r. 9A.)

See *Saragossa Rly. Co. v. Collingham*, (1904) A. C. 159.

Persons under Disability.

Infants. **10.** Infants may sue as plaintiffs by their next friends, and may defend by their guardians appointed for that purpose ; but nothing herein contained shall affect the right of any infant to sue as if he were of full age in the cases enumerated in section ninety-six of the Act.

51 & 52 Vict.
c. 43, s. 96.

An infant when suing for any sum not exceeding 100*l.* for wages or piece-work, or for work done as a servant, may prosecute such action in the same manner as if he were of full age (County Courts Act, 1888, s. 96). As to procedure in the case of an infant plaintiff, see Order V. r. 16, and in the case of an infant defendant, see Order VII. r. 50.

Next Friend.—A married woman cannot, during coverture, act as next friend (*Thynne v. St. Maur*, (1887) 34 Ch. D. 465 ; 56 L. J. Ch. 733). An exception to this rule is made by s. 2 of the Guardianship of Infants Act, 1925 (*post*, Part V.), which gives the mother of an infant the same powers to apply to the court in respect of any matter affecting the infant as are possessed by the father.

Married
women.
45 & 46 Vict.
c. 75.

11. Married women may sue and be sued as provided by the Married Women's Property Act, 1882.

By 45 & 46 Vict. c. 75, s. 1 (2) : "A married woman shall be capable of

entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued either in contract, or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise."

By sect. 12: "Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but except as aforesaid no husband or wife shall be entitled to sue the other for a tort."

See *Edwards v. Porter and Wife*, *McNeill v. Hawes*, *post*, p. 361.

Effect of Act.—The effect of the Act is to render a wife's property, as described in the Act, her separate property for all purposes. She may sue alone for damage to it (*Weldon v. De Bathe* (C. A.), (1884) 14 Q. B. D. 339; 54 L. J. Q. B. 113); or for libel, affecting any separate trade carried on by her (see *Moore v. Robinson*, (1878) 48 L. J. Q. B. 156; *Ramsden v. Brearley*, (1875) L. R. 10 Q. B. 147; 44 L. J. Q. B. 46). She may also sue alone for damages for personal injuries, even though the cause of action arise, and the marriage take place before the Act; damages so recovered will be her separate property (*Weldon v. Winslow* (C. A.), (1884) 13 Q. B. D. 784; 53 L. J. Q. B. 528). She cannot sue her husband for damages for fraud, though she may claim rescission of a deed entered into with him, which she has improperly been induced to sign (*Hulton v. Hulton*, (1917) 1 K. B. 813; 86 L. J. K. B. 633). She may sue her husband in detainee (*Larner v. Larner*, (1905) 2 K. B. 539; 74 L. J. K. B. 797).

Liability of Property subject to Restraint.—Property which at the time of the making of a contract or thereafter a married woman is restrained from anticipating cannot be made available to satisfy any liability arising from such contract (Married Women's Property Act, 1893, s. 1; *Barnett v. Howard*, (1900) 2 Q. B. 784; 69 L. J. Q. B. 955; *Brown v. Dimpleby* (C. A.), (1904) 1 K. B. 28; 73 L. J. K. B. 35; *Wood v. Lewis*, (1914) 3 K. B. 73; 83 L. J. K. B. 1046), and the restraint on anticipation applies even to arrears which accrue due after the date of the judgment (*Bolito & Co. v. Gidley*, (1905) A. C. 98; 74 L. J. K. B. 430; approving *Whiteley v. Edwards*, (1896) 2 Q. B. 48; 65 L. J. Q. B. 457).

But property subject to a restraint on anticipation may be made liable for the costs of the opposite party in any "proceeding instituted" by a married woman or her next friend; and this liability may be enforced by the appointment of a receiver and sale of the property or otherwise, as may be just (*ibid.* s. 2; Order XXIII. r. 3); a counterclaim is such a proceeding instituted (*Hood-Barrs v. Cathcart*, (1895) 1 Q. B. 873; 64 L. J. Q. B. 520); and so is a written notice of claim to goods taken in execution (*Nunn v. Tyson*, (1901) 2 K. B. 487; 70 L. J. K. B. 854), and an intervention in a probate action (*Crickitt v. Crickitt*, (1902) P. 177; 71 L. J. P. 65). An appeal from a judgment in an action against a married woman is not a proceeding instituted by her (*Hood-Barrs v. Heriot*, (1897) A. C. 177; 66 L. J. Q. B. 356); but an appeal by a married woman plaintiff is an appeal in an action commenced or instituted by her, and in that case costs are payable out of her separate estate subject to a restraint on anticipation (*Dresel v. Ellis*, (1905) 1 K. B. 574; 74 L. J. K. B. 401).

Judgment for costs against Married Woman Plaintiff.—Where judgment is given, or an order made, for costs against a married woman in an action or proceeding instituted by her the judgment or order will be according to the form applicable in the circumstances of the case to a judgment against

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a married woman defendant; and, unless the judge otherwise orders, the judgment or order will reserve to the opposite party liberty to apply for payment of the costs out of her property subject to a restraint on anticipation (Order XXIII. r. 3, and see Married Women's Property Act, 1893, s. 2).

Liability on Contracts.—Every contract entered into by a married woman otherwise than as agent, since December 5th, 1893, will be deemed to be entered into with reference to her separate property, whether or not possessed of or entitled to any separate estate when she makes the contract; such contract binds all separate property which she may then or thereafter be possessed of or entitled to; and is enforceable against all property which she may thereafter while discoverd be possessed of or entitled to (56 & 57 Vict. c. 63, s. 1). She may be sued alone upon such contracts (*Robinson v. Lynes*, (1894) 2 Q. B. 577; 63 L. J. Q. B. 759; *Bursill v. Tanner*, (1884) 13 Q. B. D. 691); she may be sued by her husband to recover out of her separate estate money lent to her after marriage (*Butler v. Butler* (C. A.), (1885) 16 Q. B. D. 374; 55 L. J. Q. B. 55). See, when wife is found to be the agent, and judgment in a joint action is recovered against her, *Moore v. Flannagan and Wife*, (1920) 1 K. B. 919.

Liability to Bankruptcy Proceedings.—A married woman who carries on a trade or business, whether separately from her husband or not, may be made bankrupt. See Bankruptcy Act, 1914, s. 125, *post*, Part V.

Liability for Contracts, etc., before Marriage.—A married woman is liable, to the extent of her separate property (but not liable to be made bankrupt (*In re A Debtor*, (1898) 2 Q. B. 576; 67 L. J. Q. B. 820, but see *supra*, "Liability to bankruptcy proceedings")), for debts contracted, contracts entered into, and wrongs committed before the then existing (*Jay v. Robinson* (C. A.), (1890) 25 Q. B. D. 467; 59 L. J. Q. B. 367) marriage (see *Axford v. Reid* (C. A.), (1889) 22 Q. B. D. 548; 58 L. J. Q. B. 230); and her husband is secondarily liable, but only to the extent of property acquired from or through his wife (Married Women's Property Act, 1882, ss. 13, 14). As to effect of marriage after action commenced, but before judgment, see *Rothschild v. Fisher*, (1920) 2 K. B. 243. She may now be made a bankrupt if she carries on a trade whether separately from her husband or not (Bankruptcy Act, 1914, s. 125), although her husband manages it on her behalf (*In re Simon*, (1909) 1 K. B. 201; 78 L. J. K. B. 392). Husband and wife may be sued together or separately for the wife's antenuptial debts, though the husband is only liable to the extent of property acquired from or through her (*Williams v. Mercier* (C. A.), (1882) 9 Q. B. D. 337; 51 L. J. Q. B. 594; *Beck v. Pierce* (C. A.), (1889) 23 Q. B. D. 316; 58 L. J. Q. B. 516). If sued together, the husband will be entitled to his costs if found not liable (45 & 46 Viet. c. 75, s. 15). Even if an action has been brought against the wife, and judgment recovered, the husband may still be sued if the wife's separate estate is insufficient to satisfy the judgment, if he admits that he received assets with his wife (*Beck v. Pierce*, *supra*). But it has been held in the High Court that where husband and wife are sued as alternatively liable and judgment under Order XIV. is signed against the wife, this amounts to a conclusive election to rely on the liability of the wife, and the plaintiff cannot afterwards insist on the liability of the husband (*Morel v. E. of Westmorland* (H. L.), (1904) A. C. 11; 73 L. J. K. B. 93; and see *French v. Howie*, (C. A.), (1906) 2 K. B. 674; 75 L. J. K. B. 980; *Paquin v. Beauclerk* (H. L.), (1906) A. C. 148; 75 L. J. K. B. 395; *Debenhams v. Perkins*, (1925) 133 L. T. 252). A judgment against the wife must always be as to her separate property and not personal (Married Women's Property Act, 1882, s. 15; see Form of Judgment, Form 151A). If the judgment is in respect of an antenuptial debt, it cannot be enforced by way of equitable execution against her separate property subject to a restraint against anticipation, unless the restraint is contained in a settlement made by herself of her own property (*Birmingham*

Excelsior Money Society v. Lane, (1904) 1 K. B. 35; 73 L. J. K. B. 28). In any action in which the husband is sought to be made liable, an inquiry may be directed to ascertain the nature, amount, or value of property acquired by him from or through his wife (*ibid.* s. 14).

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Executrix or Trustee.—By sect. 18 a married woman who is sole or joint executrix or administratrix, or trustee, may sue or be sued without her husband, as if she were a *feme sole*.

When can sue alone apart from Act.—Irrespective of the Married Women's Property Acts, a married woman can sue alone only where the husband is civilly dead, or legally presumed to be dead, and where she has a judicial separation or protection order (Dicey on Parties, 171; Daniell, Chan. Prac., 6th edit., pp. 119—135; Order V. r. 17). Where she enters a plaint without joining her husband, she must state his name, and, as far as she can, his address and description (Order V. r. 17).

When can be sued alone apart from Act.—Irrespective of these Acts, a married woman can be sued alone only where her husband is civilly dead, or legally presumed to be dead, or where she has a judicial separation or protection order, and perhaps in some minor cases (Daniell, Chan. Prac., 6th edit., p. 185; Dicey on Parties, p. 296).

When Husband to be joined as Defendant.—A husband is not a necessary co-defendant in actions for wrongs independent of contract committed by the wife after marriage, but the plaintiff may join both if he pleases (*Seroka v. Kattenburg*, (1886) 17 Q. B. D. 177; 55 L. J. Q. B. 375; *Earle v. Kingscote*, (1900) 2 Ch. 585; 69 L. J. Ch. 725); if he does, the husband cannot pay into court and the wife deny liability (*Beaumont v. Kaye*, (1904) 1 K. B. 292; 73 L. J. K. B. 213). He is liable for torts committed by his wife during marriage, but not for such torts as arise out of a contract made with the wife (*Cole v. De Trafford*, (1917) 1 K. B. 911; 86 L. J. K. B. 764; *Edwards and Another v. Porter and Wife*, *McNeill v. Hawes* (reported together), (1925) A. C. 1, 94 L. J. K. B. 65, in which case the opinion was expressed by the Earl of Birkenhead and Viscount Cave that the effect of sect. 1, sub-s. 2 of the Married Women's Property Act, 1882, was to do away with the common law rule under which a husband could be sued with his wife in respect of her post-nuptial torts, but this opinion was not assented to by the majority of the Lords; or where she has obtained a judicial separation in the course of the action, but before judgment (*Cuenod v. Leslie*, (1909) 1 K. B. 880; 78 L. J. K. B. 695). He is a necessary defendant in actions to charge his wife's separate estate, where she has a settlement (see 45 & 46 Vict. c. 75, s. 19; and see *Roberts v. Evans*, (1878) 7 Ch. D. 830; 47 L. J. Ch. 469), or where her property is made separate otherwise than by the Married Women's Property Acts. Where she has a settlement the trustees should be made defendants also (*Atwood v. Chichester* (C. A.), (1878) 3 Q. B. D. 722; 47 L. J. Q. B. 300).

Before the Act of 1882, the High Court, under a similar rule, held that a married woman who had no visible means ought not to be allowed to sue alone without giving security; otherwise, if she had separate property available for costs (*Brown v. North* (C. A.), (1882) 9 Q. B. D. 52; 51 L. J. Q. B. 365).

Where the Married Women's Property Act, 1882, applies, a married woman may sue alone without leave, and without giving security (*Threlfall v. Wilson*, (1883) 8 P. D. 18; *Jacob v. Isaac* (C. A.), (1885) 30 Ch. D. 418; 54 L. J. Ch. 1136); in other cases the question of security depends on whether the wife has or has not separate estate available for costs (see as to plaintiffs, *Martano v. Mann* (C. A.), (1880) 14 Ch. D. 419; 49 L. J. Ch. 510; *Kingsman v. Kingsman* (C. A.), (1880) 6 Q. B. D. 122; 50 L. J. Q. B. 81; *Brown v. North*, *supra*; as to defendants, *Noel v. Noel*, (1880) 13 Ch. D. 510).

The application for leave may be *ex parte* or on notice (Order XII. r. 11). Should the action be commenced without leave, an application for security

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If an order be made, the married woman cannot escape it by discontinuing and then bringing an action by a next friend (*In re Payne*, (1883) 23 Ch. D. 288; 52 L. J. Ch. 544).

As to the joinder of claimers by husband and wife, see Order IV. r. 4.

As to entry of the plaint, Order V. r. 17.

Form of Judgment.]—The form of judgment against a married woman, as well as against a widow or divorced woman, in respect of a contract or tort before or during coverture, is given by Order XXIII. r. 2, and is to be according to Form 151, with the addition of such one of the paragraphs in Form 151A as is applicable to the circumstances of the case.

If a woman during coverture, whose estate is subject to restraint against anticipation, incurs a liability, and is sued after her husband's death, the judgment will be in the form of *Scott v. Morley* (*Soflaw v. Welch*, (1899) 2 Q. B. 419; 68 L. J. Q. B. 940).

Enforcing Judgment for Costs.]—As to enforcing judgment for costs when, being sued alone, she obtains judgment on the ground of coverture, see Order XXV. r. 4.

Where a married woman is liable for costs, to be paid out of her separate estate, the court has jurisdiction by injunction or by the appointment of a receiver to protect the fund out of which the costs are payable (*Cummins v. Perkins*, (1899) 1 Ch. 16; 68 L. J. Q. B. 57); the onus is upon her to show why a receiver should not be appointed (*Pawley v. Pawley*, (1905) 1 Ch. 93; 74 L. J. Ch. 344). The appointment of a receiver is not necessary when a married woman, who is an unsuccessful plaintiff, is ordered, under sect. 2 of the Married Women's Property Act, 1893, to pay costs out of property settled to her separate use without power of anticipation (*Huntley (Marchioness of) v. Gaskell*, (1905) 2 Ch. 656; 75 L. J. Ch. 66).

If the object of an order made against a married woman is to secure a fund or to compel payment into court of money belonging to the estate in her hands, the order should be in the common form and may be enforced by attachment; semble, if to make good her devastavit the order should be as in *Scott v. Morley* (*In re Turnbull*, (1900) 1 Ch. 180; 69 L. J. Ch. 187). A married woman against whom judgment has been obtained in respect of her separate estate may have an order made against her under Order XXV. r. 71 (1) for attendance and oral examination as to debts owing to her and for production of books and documents (Order XXV. r. 71 (4)).

A married woman may agree with her husband that the wearing apparel bought for her use by her husband shall belong to him. Such apparel then cannot be taken in execution upon a judgment obtained against her (*Rondeau, Le Grand & Co. v. Marks* (*Louis Marks, Claimant*), (1918) 1 K. B. 75; 87 L. J. K. B. 215; 34 T. L. R. 8).

A husband cannot sue his wife in tort (see sect. 12 of Married Women's Property Act, 1882), and, consequently, a husband cannot obtain an injunction against his wife to restrain her from pledging his credit, as such an unauthorised act is a tort (*Webster v. Webster*, (1916) 85 L. J. K. B. 691).

Lunatics and persons of unsound mind.

12. In cases in which before the first day of November, 1875, lunatics or persons of unsound mind not so found by inquisition might respectively have sued as plaintiffs or would have been liable to be sued as defendants in any action, they may respectively sue as plaintiffs in any action by their committees or next friends according to the practice of the Chancery Division of the High Court, and may in like manner defend any action by their committees or guardians appointed for that purpose. (R. S. C. Ord. XVI. r. 17.).

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Lunatics and other Insane Persons.]—In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before November 1st, 1875, have sued as plaintiffs or would have been liable to be sued as defendants in any action, they may respectively sue as plaintiff in any action by their committee or next friend according to the practice of the Chancery Division of the High Court of Justice; when suing by a next friend the provisions of Order V. r. 16 as to an infant suing by a next friend apply (Order V. r. 18); and they may in like manner defend any action by their committees or guardians appointed, as presently mentioned, for that purpose (Order III. r. 12).

When necessities suitable to his condition are provided for a lunatic, under circumstances which negative the idea that they were provided gratuitously, there is an implied obligation on the part of the lunatic to pay for them (*Re Rhodes* (C. A.), (1890) 44 Ch. D. 94; 59 L. J. Ch. 298).

The rule as to the consent of infants (Order III. r. 13) applies also to actions in which persons of unsound mind, whether so found by inquisition or not, are parties; but no consent by the committee of a lunatic will be valid as between him and the lunatic without the consent of the Lord Chancellor or lords justices sitting in lunacy.

As to service of notice of a judgment or order on a lunatic not so found by inquisition, see Order III. r. 29; and as to service of summons generally, see Order VII. r. 14.

As to payment into court and investment of moneys awarded to or recovered by persons of unsound mind, see Order IX. rr. 24, 25.

Contract by Insane Person.]—A contract made by a person when insane is binding upon him unless he can show that the other party knew of the insanity when the contract was made (*Imperial Loan Co. v. Stone*, (1892) 2 Q. B. 599; *York Glass Co. v. Jubb*, (1926) 134 L. T. 36).

Appointment of Guardians ad litem to Defendants who are Infants or Persons of unsound mind.—When fact of Infancy, etc., appears on Proceedings.]—Where on the face of the proceedings it appears that any defendant is an infant or person of unsound mind not so found by inquisition, at any time after service of the summons, and not less than six clear days before the return day (twelve clear days before that day in cases under the Act of 1903), the registrar, on application made on behalf of the infant or person of unsound mind on an affidavit (Form 50) accompanied by a written consent of the proposed guardian to act as such (Form 51), may appoint a guardian *ad litem* (Order VII. r. 50 (1); Order XXIIA. r. 7); where such appointment is made, the registrar must forthwith send notice of the appointment to the plaintiff (Order VII. r. 50 (2); Form 52). Where no application for the appointment of a guardian *ad litem* is made on behalf of the infant or person of unsound mind within the time before mentioned, the registrar must on the sixth day (the twelfth day in cases under the Act of 1903) before the return day send notice by post to the plaintiff or his solicitor that no such application has been made (Order VII. r. 50 (3); Order XXIIA. r. 7; Form 53). The plaintiff is thereupon, before taking further proceedings, to apply to the judge for an order that some proper person be assigned as guardian *ad litem*, by whom the defendant may appear and defend, and for a postponement of the trial if necessary (Order VII. r. 50 (4)). Such application (Form 54) is to be made on affidavit (Form 55), and notice thereof, together with a copy of such affidavit, must, three clear days at least before the day named for hearing the same, be served upon or left at the dwelling-house of the person with whom or under whose care such defendant was when the summons was served, and must also (in the case of an infant not residing with or under the care of his father or guardian) be served upon or left at the dwelling-house of the father or guardian of such infant, provided that the registrar may, on the application of the plaintiff, dispense with such last-mentioned service (Order VII. r. 50 (5)). The judge, if satisfied with the proposed guardian, may make the appointment

O. III. r. 12
Notes.

(Form 56), but if not, may appoint any other person willing to act, or in default of such person, the registrar; and the action or matter proceeds as if a guardian had been appointed on behalf of the defendant. If necessary, the judge on the hearing of the application may postpone the trial (Order VII. r. 50 (6)). In the case of an infant sued for a debt or liquidated demand, pars. 4, 5, and 6 of Order VII. r. 50 do not apply, nor is the notice required by par. 3 to be sent unless directed by the judge or registrar (Order VII. r. 50 (7)).

When the fact of Infancy, etc., does not appear on Proceedings.]—Where it does not appear on the face of the proceedings that the defendant is an infant or person of unsound mind not so found by inquisition, when on such defendant appearing at the trial it is apparent that he is an infant, and he names a guardian who assents to act, such person is to be appointed guardian accordingly; but if the defendant does not name a guardian, the judge may appoint as guardian anyone in court willing to act, or in default of any such person he may appoint the registrar, and the action or matter proceeds as if the infant had named a guardian, and the name of the guardian appointed is to be entered accordingly (Order VII. r. 51 (1); Forms 57, 58). In any other case, on its being made to appear that any defendant is an infant or a person of unsound mind, not so found by inquisition, the action or matter is not to proceed against such defendant until a guardian *ad litem* has been appointed (Order VII. r. 51 (2)). Such appointment may be made any time within six days of its being made to appear that such defendant is an infant or person of unsound mind on application made on behalf of such defendant, in accordance with Order VII. r. 50 (1), (2), and after six days in accordance with (3), (4), (5) and (6) of the same rule as already explained in the last paragraph. The provisions of par. 7 of Order VII. r. 50 apply to cases falling within this rule (Order VII. r. 51 (3)).

Entry of appointment of Guardian.]—Where a guardian has been so appointed such appointment must be entered on the summons, in the minute book, and on all subsequent proceedings (Order VII. r. 52).

Liability of Guardian for Costs.]—A guardian *ad litem* to an infant or person of unsound mind, not so found by inquisition, is not personally liable to any costs not occasioned by his personal negligence or misconduct (Order VII. r. 53).

Power to set aside Judgment where no Guardian appointed.]—Where judgment has been obtained or an order made against an infant defendant or a person of unsound mind, not so found by inquisition, without a guardian *ad litem* having been appointed, the judge may set aside such judgment or order, and order a new trial or make such other order as may be just (Order VII. r. 54).

The provisions of Order VII. rr. 50—54 include petitions (Order VII. r. 55). During the proceedings under a judgment or order the judge may at any time require the appointment of a guardian *ad litem* for an infant or person of unsound mind not so found by inquisition, who has been served with notice of the judgment or order (Order VII. r. 56).

Persons
under dis-
ability, how
consents for
can be given.

13. In any action or matter to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure given by the next friend, guardian, committee, or other person acting on behalf of the person under disability shall, with the consent of the court, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between

him and the lunatic unless given with the sanction of the Lord Chancellor or lords justices sitting in lunacy. (R. S. C. Ord. XVI. r. 21.) O. III. r. 13

Agreement not to Appeal.]—A next friend cannot bind an infant by an agreement not to appeal (*Rhodes v. Swithenbank* (C. A.), (1889) 22 Q. B. D. 577; 58 L. J. Q. B. 287).

Partners.

14. (1) Any two or more persons claiming or being liable as co-partners, and carrying on business within England and Wales, may sue and may be sued in the names of the respective firms, if any, in which such persons were co-partners at the time of the accruing of the cause of action. Co-partners may sue and be sued in the name of their firm.

(2) Where the plaintiffs sue or the defendants are sued in the name of their firm in accordance with this rule, the affidavit (if any) required before the entry of the plaint, and the præcipe, summons, and all subsequent proceedings, shall state that the plaintiffs are suing or the defendants are sued as a firm.

(3) In any such case, on application by any party to the action, the court may order a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm to be furnished in such manner, and verified on oath or otherwise, as the court may direct.

Registration of Business Names Act.]—The provisions of this Act must be carried out, otherwise the plaintiff firm may find that their claim cannot be enforced. For text of Act, see *post*, Part V.

Infant Partners.]—If one of the partners of a defendant firm is an infant, judgment may be given against the firm, but the judgment must exclude the infant partner (*Harris v. Beauchamp*, (1893) 2 Q. B. 534; *Lovell v. Beauchamp*, (1894) A. C. 607).

15. Where an action is brought by partners in the name of their firm, the plaintiffs shall, on demand made in writing by or on behalf of any defendant, forthwith send by post to the defendant so applying and to the registrar the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the judge may direct, or the judge at the trial may adjourn the hearing on such terms as he may think fit. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the summons. But all the proceedings shall, nevertheless, continue in the name of the firm. (Cf. R. S. C. Ord. XLVIII. r. 2.) Application for names of firm in action by firm.

O. III. r. 15a.

Where co-partners sue or are sued otherwise than in the name of their firm.

15A. (1) Where an action is brought by or against any two or more named persons claiming or being liable as co-partners, and carrying on business in England or Wales, such action shall not be deemed to be an action in the name of the firm within the meaning of these Rules unless the plaintiffs sue or the defendants are sued in the name of their firm, and are stated to be suing or to be sued as a firm, but shall be deemed to be an action by or against the individuals named as plaintiffs or defendants; and service shall be effected, judgment entered, and execution issued accordingly.

Application of rules to actions between firm and any of its members.

16. The provisions of these rules as to actions by or against firms shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within England or Wales; but no execution shall be issued in any such action without leave of the judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just. (R. S. C. Ord. XLVIII. r. 10.)

Where one person carries on business in name other than his own.

17. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all the provisions of these rules relating to proceedings against firms shall apply. (R. S. C. Ord. XLVIII. r. 11.)

When partners are sued under the above provisions, the judgment can only be entered in the name of the firm (*Jackson v. Litchfield* (C. A.), (1882) 8 Q. B. D. 474; 51 L. J. Q. B. 327). When so entered, an action apparently still lies against the individual partners on the judgment (*Clark v. Cullen*, (1882) 9 Q. B. D. 355), or the judgment creditor may apply for leave to issue execution pursuant to Order XXV. r. 11 (see *Davis v. Morris*, (1883) 10 Q. B. D. 436; 52 L. J. Q. B. 401; *Munster v. Railton* (C. A.), (1883) 11 Q. B. D. 435; 52 L. J. Q. B. 409; see further Annual Practice, notes to Order XLVIII. R. S. C.).

Under sect. 97 of the Act as already shown the plaintiff may sue one or more partners in their own names for a joint debt, and is not obliged to join all.

Although a person carrying on business alone in a name other than his own may be sued in such name, he can only sue in his own name (*Mason v. Mogridge*, (1892) 8 T. L. R. 805.)

As to service on firms, see Order VII. r. 15. As to execution, Order XXV. r. 11; judgment summons, Order XXV. r. 27; and as to charging orders on partnership property for the separate debt of a partner, Order XXV. rr. 12, 13.

Notice to be posted in office as to issue of process against partners, &c. Form 7A.

17A. To facilitate the issue of process in the proper form against persons carrying on business as co-partners, or against a person carrying on business in a name or style other than his own name, a notice according to the form in the Appendix shall be posted in a conspicuous place in the office of the registrar.

Administration and Execution of Trusts.

O. III. r. 18.

18. In any case in which the rights of an heir-at-law or customary heir or the next of kin or a class depend upon the construction which the judge may put upon an instrument, and it is not known or is difficult to ascertain who is or are such heir-at-law or customary heir or next of kin or class, and the judge considers that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, customary heir, next of kin, or class have been ascertained by means of inquiry or otherwise, the judge may appoint some one or more proper person or persons appearing to him on such evidence as he thinks sufficient to have a presumptive or *prima facie* claim to be regarded as heir-at-law, customary heir, or one of the next of kin or other class in question, to represent such heir-at-law, customary heir, next of kin, or class; and the judgment or order of the judge in the presence of such person or persons shall be binding upon the heir-at-law, customary heir, next of kin, or class so represented. (R. S. C. Ord. XVI. r. 32 (a).)

Heir-at-law,
next of kin,
or a class,
when un-
known, how
represented.

19. In any case in which an heir-at-law or customary heir or any next of kin or a class is or are interested in any proceedings, the judge may, if, having regard to the nature and extent of the interest of such persons or any of them, it appears expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more person or persons to represent such heir, or to represent all or any of such next of kin or class; and the judgment or order of the judge in the presence of the person or persons so appointed shall be binding upon the persons so represented. (R. S. C. Ord. XVI. r. 32 (b).)

Power to
appoint
person to
represent
absent
parties.

20. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin. (R. S. C. Ord. XVI. r. 33.)

When
residuary
legatees or
next of kin
need not be
served.

21. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate. (R. S. C. Ord. XVI. r. 34.)

Legatee
entitled to
judgment
need not
serve other
legatees.

22. Any residuary devisee or heir entitled to the like judgment or order may have the same without serving any co-residuary devisee or co-heir. (R. S. C. Ord. XVI. r. 35.)

Co-residuary
need not be
served.

O. III. r. 23.

Other
cestuis que
trust need
not be
served.

Waste or
protection
of property.

Judgment for
administra-
tion by
executor
against one
legatee, &c.

Judge may
order parties
to be added,
and give
directions as
to conduct of
action.

Notice of
judgment
when to be
served.

Preparation
of notice.
Form 317.

Service of
notice.

23. Any one of several *cestuis que trust* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other *cestui que trust*. (R. S. C. Ord. XVI. r. 36.)

24. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest. (R. S. C. Ord. XVI. r. 37.)

25. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts. (R. S. C. Ord. XVI. r. 38.)

See *Re Peppitt*, (1877) 4 Ch. D. 230 ; 46 L. J. Ch. 95.

26. The judge may require any person to be made a party to any action or matter, and may give the conduct of the action or matter to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question. (R. S. C. Ord. XVI. r. 39.)

27. Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made, the judge may direct that any persons interested in the estate or under the trust or in the hereditaments shall be served with notice of the judgment or order ; and after such notice such persons shall be bound by the proceedings in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may at the next sitting of the court after such service, or by leave of the judge at any subsequent sitting, apply to the judge to discharge, vary, or add^{ed} to the judgment or order (Cf. R. S. C. Ord. XVI. r. 40.)

28. Where the judge directs that any person shall be served with the notice mentioned in the last preceding rule, the notice shall be prepared by the registrar, who shall annex thereto a copy of the judgment or order, and issue the same to the bailiff for service, and shall also make and deliver to the bailiff a copy of the notice.

29. Notice of a judgment or order under the two last preceding rules shall, whether the person to be served is or is not an infant or a person of unsound mind not so found by inquisition, be

served in the same manner as a summons in an action is required to be served on such person; and the bailiff shall make an indorsement on the copy of the notice delivered to him, showing the fact, mode, and place of service, in the same manner as on the service of a summons in an action. O. III. 29.

30. Where it appears to the judge that by reason of absence or for any other sufficient cause the service of the notice of the judgment or order mentioned in the last preceding rules upon any person cannot be made or ought to be dispensed with, the judge may if he thinks fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such notice. (R. S. C. Ord. LV. r. 35.) Where service of notice of judgment or order may be dispensed with.

31. Where service of notice of a judgment or order for accounts and inquiries is dispensed with, the judge may, if he thinks fit, order that the persons as to whom service is dispensed with shall be bound as if served, and they shall be bound accordingly, except where the judgment or order has been obtained by fraud or non-disclosure of material facts. (R. S. C. Ord. LV. r. 35A.) Power to bind persons service on whom is dispensed with.

The court has complete discretion over the costs in these as in other actions (County Courts Act, 1888, s. 113; *Plumb v. Craker*, (1885) 16 Q. B. D. 40; 55 L. J. Q. B. 116).

32. In any action or matter to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party. (R. S. C. Ord. XVI. r. 45.) When heir-at-law need not be a party.

33. If in any action or matter it appears to the judge that any deceased person who was interested in the matter in question has no legal personal representative, the judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some proper person to represent his estate for all the purposes of the action or matter, on such notice to such persons, if any, as the judge may think fit, either specially or generally by public advertisement; and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the action or matter. (R. S. C. Ord. XVI. r. 46.) Where no legal representative.

If the judge adopts either of the courses allowed by this rule, the order should contain a recital to that effect. *Re Richerson*, (1893) 3 Ch. 146.

34. In any action or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the court, be entitled to appear either in court or in chambers on the claim of any person not a party to the action or matter against the estate of the deceased person in respect of any debt or liability. The court may direct Except by leave, only executor or administrator to appear on claim of person not a party.

O. III. r. 34.

or give liberty to any other party to the action or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as the court may think fit. (R. S. C. Ord. XVI. r. 47.)

ORDER IV.**JOINDER OF CAUSES OF ACTION.**

What claims may be joined with action of ejectment.

1. No cause of action shall, unless by leave of the court, be joined with an action of ejectment, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed or any part thereof, or damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed.

See *Wheeler v. Keeble, Ltd.*, (1919) 88 L. J. Ch. 554.

Joinder of claim for possession in action for foreclosure or redemption generally.

Provided that nothing in this order contained shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action of ejectment within the meaning of these rules.

Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may apply to the judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case may require. (See R. S. C., Ord. XVIII. r. 2.)

As to joinder of claims by trustee in bankruptcy.

2. Claims by a trustee in bankruptcy as such shall not, unless by leave of the court, be joined with any claim by him in any other capacity.

Joinder of causes of action generally.

3. Subject to the two preceding rules a plaintiff may unite in the same action several causes of action without leave of the court.

See *Thomas and Others v. Moore and Others*, (1918) 1 K. B. 555.

Claims by or against husband and wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

By Married Woman.—Where a married woman enters a plaint in an action to which her husband is not a party, she must state the name, and, so far as she can, the address and description of her husband (Order V. r. 17).

In an action for damages for personal injuries to a wife, her husband may join a separate claim in his own right for consequential damage to himself.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is used as executor or administrator. (R. S. C., Ord. XVIII. r. 5.) **O. IV. r. 5.**
Claims by or against executor or administrator.

It was held in the High Court that a plaintiff cannot under a rule in the same words join a purely personal claim with a claim as executor, and if he does so he will not be assisted by rule 5 of this order (*Tredegar (Lord) v. Roberts and Another*, (1914) 1 K. B. 283; 83 L. J. K. B. 159).

A plaintiff who is administrator, although shown to be insolvent, will not be ordered to give security for the defendant's costs of the action (*Rainbow v. Kittoe*, (1916) 1 Ch. 313).

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. **Joint and separate claims by plaintiffs.**

7. If at any time it appears or is made to appear to the judge that any causes of action united or claims joined in any action cannot be conveniently tried and disposed of together, he may order separate trials, or may exclude any such cause of action or claim, and may order the proceedings to be amended accordingly, and may make such order as to costs as may be just. **Separate trials may be ordered.**

ORDER V.

COMMENCEMENT OF ACTION.

1. All proceedings authorised to be commenced in a county court by or under the Act shall, except when otherwise provided by the Act or these rules, be commenced by the entry of a plaint, and shall be called actions. **Actions be commenced by plaint.**

As to entry of plaint through the post, see r. 12, *infra*.

2. Where the parties, in pursuance of section sixty-four of the Act, agree to try any action in a county court, a plaint shall be entered, and a summons shall be issued thereon as in other cases, and all the rules and practice of the court shall apply in such cases, so far as the same are applicable. The plaintiff on entering the plaint shall file with the registrar the memorandum of consent required by the Act. **Trials by agreement under 51 & 52 Vict. c. 43, s. 64. Form 13.**

If both plaintiff and defendant in any action assigned to the King's Bench Division of the High Court, *i.e.*, such as might have been brought at common law (see Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. V. c. 49) sect. 56, and note to that section in Annual Practice), agree by a memorandum signed by them or their solicitors (Form 13), that the court shall have power to try any action, the court will have jurisdiction (County Courts Act, 1888, s. 64).

3. Actions brought to recover possession of tenements under the provisions of section one hundred and thirty-eight or section one hundred and thirty-nine of the Act shall be distinguished as **Actions to recover possession of tenements,**

O. V. r. 3.

and actions
of ejectment.
51 & 52 Vict.
c. 43, ss. 138,
139, 59.

actions for the recovery of possession, and actions brought under section fifty-nine of the Act shall be distinguished as actions of ejectment. Where an action of ejectment is brought in a case in which, in the opinion of the judge, an action should have been brought for the recovery of possession, the plaintiff shall not be entitled to any further relief or to any further costs than he would have been entitled to in an action for the recovery of possession.

Amendment
where eject-
ment pro-
ceedings
brought
under s. 138
or s. 139.

3A. Where in an action brought for recovery of possession under section 138 or section 139 of the County Courts Act it shall appear at any time before or at the hearing that the action should have been brought for ejectment under section 59 of the Act, the judge or registrar may on the application of the plaintiff amend the proceedings for the purpose of enabling the action to be continued as an action of ejectment under that section upon such terms and in accordance with such directions as he shall think fit, but without prejudice to an application under that section (to be made at any time within eight days after the order of amendment) to have the action tried in the High Court, and the hearing or further hearing or judgment may be postponed or adjourned for that purpose or on any other ground.

Application
to the High
Court under
s. 59.

3B. An application in an action of ejectment under section 59 of the County Courts Act to have the action tried in the High Court shall be made within eight days from the day of service of the summons except in the case referred to in the preceding rule.

Rules 3a and 3b dated August 1, 1924. See County Courts Act, 1924, sect. 7, *ante*, p. 250.

Nature of Action of Ejectment and Jurisdiction of Court.—The action of ejectment, before the passing of the Common Law Procedure Act, 1852, was a mere fiction of law, by means of which the right to the specific recovery of real property was tried in an action carried on between a nominal plaintiff and a nominal defendant (see *Cole on Ejectment*). By that Act, however, all fiction was abolished and provision was made for a simple writ, so framed as to raise the question at issue in a true and concise form (15 & 16 Vict. c. 76, ss. 168, 169).

Jurisdiction of Court.—Before the County Courts Act, 1867, the county courts had no jurisdiction in ejectment except by agreement, although a landlord could in certain cases recover possession of a tenement which was wrongfully withheld by his tenant. They have now jurisdiction over all actions of ejectment, where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect thereof, exceeds the sum of 100*l.* by the year (County Courts Act, 1888, s. 59).

The action is now called "an action of ejectment," and if the action has been brought for recovery of premises wrongly under sect. 138 or sect. 139 it can now be treated, on terms, as an "action of ejectment." See sect. 7 of County Courts Act, 1924, and, *supra*, r. 3A.

Particulars of Claim.—For forms of particulars of claim, see *post*, p. 904.

Procedure in Ejectment Action.—See notes to sect. 59 of the Act, *ante*, p. 39.

4. No plaint shall be entered without the party desiring to enter the same filing at the office of the registrar a præcipe for that purpose.

O. V. r. 4.

Præcipe on entry of plaint.

Such præcipe shall contain—

- (a) the full names, occupation or description, and residence or place of business of the plaintiff, and if the plaintiff is a female, a statement whether she is married, single or a widow, and if she is married, the full names of her husband, and, if the plaintiff is an infant required to sue by a next friend, the particulars required by Rule 16 of this Order ;
- (b) the surname of the defendant, his general occupation or description, and, subject to the provisions of Rule 13 of this Order, his residence or place of business, and (where known) his full names, the name of the street in which his residence or place of business is situate, and the number of the house ;
- (c) a statement whether the defendant is a male or a female, and, if known, whether of full age or not, and if a female, whether she is married, single, or a widow ; provided that if these facts are not known, the plaint may be issued and the summons served without their being stated ;
- (d) a short statement of the cause of action, or remedy or relief sought, and the amount of the debt or damages claimed.

Where the intended plaintiff is illiterate and unable to furnish the required information in writing, the præcipe shall be filled up by the registrar's clerk.

If the plaint is entered by a solicitor, he shall state in the præcipe his name and place of business.

Amended C. C. (No. 3) Rules, 1928.

See Forms 6 and 7 and notes to sect. 73 of the Act, *ante*, p. 79.

Notwithstanding the provision of para. (a), *supra*, it would appear that a trustee in bankruptcy suing may sue as " the trustee of the property of—a bankrupt," without giving his own name. See sect. 76 of Bankruptcy Act, 1914.

NOTE.—A company may issue process in the County Court, without appointing an attorney for that purpose. See *Kinnell & Co., Ltd. v. Harding, Wace & Co.*, (1918) 1 K. B. 405.

4A. Where co-partners sue or are sued in the name of their firm, or a person carrying on business in a name or style other than his own name is sued in such name or style, pursuant to Ord. III. r. 14 or r. 17, it shall be stated in the præcipe that the plaintiffs are suing or the defendants are sued as a firm. .

Where partners sue or partners or person carrying on business, &c. are sued in firm name.

O. V. r. 5.

Præcipe where registered company is defendant. 8 Edw. VII., c. 69, s. 116. Capacity in which plaintiff sues or defendant is sued to be stated in præcipe.

Particulars to be stated in præcipe, &c., where assignee sues.

Assignee not entitled to issue default summons. 51 & 52 Vict. c. 43, s. 86.

Default summons. Præcipe to state how service to be made.

Security for undertaking as to costs, where plaintiff not resident in England or Wales.

Form 16.

Form 17.

Security by person temporarily resident in England.

5. Where a company registered under the Companies (Consolidation) Act, 1908, is a defendant, the præcipe shall give an address for service, described as "being the registered office of the company."

For service on limited company, see Order II. r. 26, and Order VII. r. 26.

6. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, it shall be stated in the præcipe and particulars in what capacity the plaintiff sues or the defendant is sued.

See Order III. rr. 7 and 8.

7. Where an assignee of a debt or other legal chose in action sues, the fact that he is such assignee, and the name, address, and description of the assignor, shall be stated in the præcipe and summons, and in the particulars (if any).

Legal Assignments of things in Action.—See sect. 136 of Law of Property Act, 1925, 15 Geo. V. c. 20, and consult *In re Westerton*; *Public Trustee v. Gray*, (1919) 88 L. J. Ch. 392, and *Hockley v. Goldstein*, (1921) 90 L. J. K. B. 111.

8. An assignee of a debt or other legal chose in action shall not be entitled to issue a default summons under section eighty-six of the Act.

See *Reg. v. Pontypool C. C. Judge*, (1894) 63 L. J. Q. B. 702.

9. Where the issue of a default summons is desired, and the plaintiff wishes the same to be served otherwise than by a bailiff, he shall so request in the præcipe required to be filed before the entry of the plaint.

See, as to default summons or special default summons, *ante*, pp. 99—105.

10. Where it appears, on an application for the entry of a plaint, that the plaintiff does not reside in England or Wales, the summons shall not be issued until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the registrar: Provided that where the plaint is entered through a solicitor, an undertaking by him, according to the form in the Appendix, to be responsible for the costs shall be sufficient. If the plaintiff fails in or discontinues his action or proceeding, and does not pay the amount of costs ordered to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from him or from his solicitor, if he has given the undertaking, as for the recovery of a judgment debt.

11. A person ordinarily resident out of England and Wales may be ordered to give such security or undertaking as in the preceding rule mentioned, though he may be temporarily resident in England or Wales. (R. S. C., Ord. LXV. r. 6A.)

See *Chellew v. Brown*, (1923) 2 K. B. 844, and notes under "Security for costs," *post*, p. 1025.

12.—(1) Where a plaintiff desires to enter a plaint in a court within the district of which he does not reside or carry on business, he or his solicitor (if the solicitor has no office within the district) may, instead of attending at the office of the court, transmit, by prepaid post, to the registrar—

O. V. r. 12.
 Entry of
 plaint by
 letter.

- (a) A præcipe containing the information required to be given under Rules 4, 4A, and 5 of this Order;
- (b) Where the summons is to be served by a solicitor, the summons and all necessary copies thereof;
- (c) Where particulars are required under Ord. VI. r. 1, as many copies of the particulars of demand or cause of action as are required by that rule;
- (d) Where an affidavit is required by the Act or these rules before the entry of the plaint, such affidavit, and where a copy of the affidavit is to be annexed to the summons and served therewith, a copy for each defendant to be served;
- (e) Where a plaintiff desiring a default summons does not desire the order upon the judgment to be for payment forthwith, the notice and copies required by Rule 19 of this Order;
- (f) A money order for the fees payable upon the entry of the plaint, including the fees payable on any affidavit required before the entry of the plaint, payable to the registrar at the post office of the town or place in which the court is held: and—
- (g) An envelope addressed to himself, with sufficient postage stamps thereon:

And upon receipt of the above the registrar shall examine the documents transmitted to him, and shall (subject, where leave to enter the plaint is required, to the provisions of these rules as to such leave being granted) enter the plaint, and issue the summons, and forward in the addressed envelope—

- (i.) if the summons is to be served by a bailiff, the plaint note; or
- (ii.) if the summons is to be served otherwise than by a bailiff, the plaint note, and the summons and all necessary copies thereof, completed and sealed, with the documents annexed thereto respectively which are required to be so annexed under Ord. II. r. 4A.

(2) For the purposes of this rule the several districts of the metropolitan courts shall be considered *inter se* as one district only.

It follows from the last-mentioned provision that a plaintiff living in one district of the metropolis cannot of right enter a plaint through the post against a defendant living in another district of the metropolis; but it is believed that where so applied for the plaint is generally entered.

O. V. r. 13.

How leave
under 51 &
52 Vict.
c. 43, s. 74,
may be
obtained.

13.—(1) Where leave to enter a plaint is required under section seventy-four of the Act, an application shall be made upon the affidavit of the proposed plaintiff or of some person on his behalf who has knowledge of the facts, setting forth the facts on which the application is grounded, according to such one of the forms in the Appendix as shall be applicable to the case.

See notes to sect. 74 of the Act.

Ordinary
summons.
Form 8 (1).

(2) The affidavit on an application for leave to enter a plaint and issue an ordinary summons shall be according to the form 8 (1) in the Appendix.

Where pro-
posed plaintiff
is an assignee.
Forms 8 (1),
8 (2).

(3) The affidavit on an application on behalf of an assignee of a debt for leave to enter a plaint and issue an ordinary summons shall be according to the form 8 (1) in the Appendix, with the addition of a paragraph according to the form 8 (2) in the Appendix, stating the name, address, and description of the person with whom the debt was originally contracted, and that such debt has been absolutely assigned to the proposed plaintiff, and that express notice in writing of such assignment has been given to the debtor.

Express notice in writing must be given or the assignee cannot sue. *Hockley v. Goldstein*, (1921) 90 L. J. K. B. 111. Law of Property Act, 1925, sect. 136.

Default or
special
default
summons.
Form 9.

(4) The affidavit on an application for leave to enter a plaint and issue a default summons or a special default summons as hereinafter defined shall be according to the form 9 in the Appendix.

(5) The affidavit shall be lodged with the registrar, together with a copy of the same for each defendant.

(6) The judge or registrar shall duly consider the facts disclosed by the affidavit, and shall exercise his discretion in each case as to the grant or refusal of leave in accordance with the circumstances and with the following paragraphs of this rule.

(7) Where the proposed plaintiff is the assignee of a debt, the judge or registrar shall in particular consider whether the proposed place of trial will be less convenient of access to the proposed defendant than the place at which he might have been sued if the debt had not been assigned, and if he shall be of opinion that it would, he shall refuse leave.

Where receipt
of order or
letter relied
on.

(8) Where the receipt of an order or a letter within the district is relied on as the cause of action or a part thereof, the receipt of such order or letter shall not be considered a sufficient ground for granting leave unless it appears in the affidavit that such order or letter was addressed to the proposed plaintiff, and purported to be signed by the proposed

defendant, or on his behalf by some member of his household or some person in his employ; and the receipt of a letter from an agent of the proposed plaintiff purporting to transmit an order given to him by or on behalf of the proposed defendant shall not be considered as a sufficient ground for granting leave.

O. V. r. 13.

Where proposed defendant is a domestic servant, labourer, &c.

(9) Where the proposed defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, leave shall not be granted unless—

(a) it appears by the affidavit that the proposed defendant was residing in the district when the debt or part thereof was contracted, or the cause of action wholly or in part arose; or

(b) it appears by the affidavit that the proposed defendant or some person on his behalf was personally present in the district when the debt or part thereof was contracted, or that the proposed defendant or some person for whose acts or defaults he is alleged to be responsible was personally present in the district when the cause of action wholly or in part arose; or

(c) the judge or registrar is satisfied that the proposed place of trial will not be less convenient of access to the proposed defendant than the court in which he could be sued without leave; or

(d) it appears by the affidavit that the proposed plaintiff has reason to believe that the proposed defendant admits the claim, and that the proposed plaintiff has not more than fourteen and not less than seven clear days before the filing of the affidavit given or caused to be given to the proposed defendant notice in writing of his intention to apply for leave, and has by such notice required the proposed defendant to state whether he disputes the claim, and that the proposed defendant has either admitted the claim or failed to give notice that he disputes it;

and in such cases the forms of affidavit numbered 8A and 9A in the Appendix shall be used in lieu of the forms numbered 8 (1) and 9, such paragraphs only of the said forms being used as are applicable to the circumstances.

(10) Subject to the provisions of this rule, leave may be granted, and the summons may be issued, although the plaintiff cannot give the present place of residence or business of the proposed defendant; but in that case the proposed defendant shall be served personally, wherever in England or Wales he may be met with. Service of an

Where address of proposed defendant not known.

O. V. r. 13. ordinary summons in such case may, if so requested in the præcipe, be effected by any person by whom a default summons may be served under Ord. VII. r. 33. Where service is effected otherwise than by a bailiff, an affidavit of service according to the form in the Appendix must be lodged with the registrar seven clear days before the return day.

Form 37.

(11) Subject to the last preceding paragraph no leave shall be granted unless the occupation or description of the proposed defendant is fully set out in the affidavit.

(12) Every order granting leave under this rule shall be signed by the judge or registrar in his own handwriting at the foot of the affidavit.

As to effect of irregularity, see *Pringle v. Hayes*, (1925) 1 K. B. 573.

Affidavit for issue of default summons in district.

Forms 11, 12

14. The affidavits to be filed for the issue of default or special default summonses for service in the district shall be according to the forms 11 and 12 in the Appendix, and every such affidavit shall contain the particulars as to the name, residence, or place of business, and occupation or description of the proposed defendant required by paragraphs (b) and (c) of Rule 4 of this Order.

15. (Annulled.)

Infant to sue by next friend.

Form 15.

Liability of next friend for costs.

16.—(1) Where an infant desires to commence an action (other than for wages or piece-work, or for work as a servant), or is a claimant in an interpleader proceeding, he shall sue by a next friend, and the full names, occupation or description, and residence or place of business of the next friend shall be stated in the præcipe; and such next friend shall, at the time of entering the plaint or delivering the particulars of the goods and chattels alleged to be the property of the infant, either attend at the office of the registrar and give an undertaking, according to the form in the Appendix, to be responsible for costs, or transmit such an undertaking to the registrar: and if such undertaking is not given at the office of the registrar, it shall be attested by a solicitor, or by a clerk to a registrar nominated to take affidavits.

(2) The plaint shall not be entered or the particulars received until such undertaking has been given. On its being given it shall be filed with the registrar, and the action or interpleader proceeding shall proceed in the name of the infant by such next friend, but no order of the court shall be necessary for the appointment of the next friend. On entering into the undertaking the next friend shall be liable for costs in the same manner and to the same extent as if he were himself the plaintiff; and if the infant fails in or discontinues his action or proceeding, an order for payment of costs may be made against the next friend, whether any order for costs is or is not made against the infant; and pro-

O. V. r. 16.

ceedings may be taken on the order for the recovery of such costs as for the recovery of a judgment debt.

(3) Where any action or matter in which an infant is suing by a next friend is remitted or transferred from the High Court to a county court, the plaintiff shall lodge with the registrar, pursuant to Order XXXIII. Rule 1, the written authority for the use of the name of the next friend filed in the High Court, or a duplicate or copy thereof, and such authority shall be deemed to be an undertaking within the meaning of this rule.

Where action,
&c., remitted
from High
Court.

(4) Where an infant commences as an adult without a next friend an action in which a next friend is required, the court may, on the application of either party, and on such terms as the court shall think just, appoint a next friend ; or it may order the action to be struck out.

17. Where a plaint is entered by a married woman in which her husband is not joined, she shall state the name, and, so far as she can, the address and description of her husband.

Married
women
suing.
45 & 46 Vict.
c. 75.

See notes to Order III. r. 11.

18. Where a plaint is entered or a claim in an interpleader proceeding is made by or on behalf of a person of unsound mind not so found by inquisition, he shall sue by a next friend ; and the provisions of Rule 16 as to an infant suing by a next friend shall apply to a person of unsound mind so suing.

Person of
unsound
mind suing.

19. Where a plaintiff requiring a default summons does not desire the order upon the judgment to be for payment forthwith, he may at the time of the entry of the plaint file a notice of the time or times, and of the instalments, if any, at or by which he consents to accept payment, together with as many copies of such notice as there are defendants ; and a copy of such notice shall be annexed to the summons and served therewith ; and if he neglects to file such notice he may nevertheless give notice to the registrar to the like effect at the time of entering up judgment.

Practice
where plain-
tiff by
default
summons
does not
require pay-
ment forth-
with.

Form 24.

ORDER VI.

PARTICULARS AND STATEMENT OF CLAIM.

1. Subject to the provisions of these rules, the plaintiff shall at the time of the entry of the plaint in every action file particulars of his claim or demand, in which he shall specify the cause of action in respect of which the action is brought, as well as the pecuniary or other claim which he seeks to establish ; but this rule shall not apply where the action is brought by ordinary summons for debt or damages only, and the amount claimed does not exceed forty shillings. Where the claim or demand exceeds one hundred pounds,

Particulars
when to be
filed.

O. VI. r. 1. and the plaintiff desires to abandon the excess, the abandonment of the excess shall be entered at the end of the particulars.

Abandonment of excess of claim over 100l.

Where defendant is a female.

Copies of particulars to be filed.

Where a claim is made against a married woman or a widow, the particulars shall state whether the claim is in respect of a contract or tort before coverture or during coverture, or (in the case of a widow) in respect of a contract or tort since the determination of the coverture.

The plaintiff shall, when filing particulars, file a copy to be annexed to the summons to be served on the defendant; and where there are more defendants than one, he shall file two copies for each additional defendant. He shall also, where so required by any of these rules, file an additional copy for the use of the judge.

Abandonment of Excess.]—See notes to sect. 81 of the Act. The abandonment of the excess whenever made must be entered on the particulars and in the minute book (Order XIV. r. 13).

Particulars of Claim.]—The general rule is, that a defendant is entitled to such particulars of the plaintiff's demand as will give him that information which a reasonable man would require respecting the matters against which he has to defend himself (*per* Alderson, B., *Rennie v. Beresford*, (1846) 15 M. & W. 78, 83; 15 L. J. Ex. 78; *Richardson v. Silvester*, (1873) L. R. 9 Q. B. 34; 43 L. J. Q. B. 1); the question in each case being, not whether every statement contained in the particulars is accurate, but whether the inaccuracy in them is such that the defendant could have been misled by it (see *per* Parke, B., in *Stancliffe v. Clarke*, (1853) 7 Ex. 439; 21 L. J. Ex. 129). In an action by an engineer who had employed other persons, the court held that the particulars of demand must be as specific as it was possible for the plaintiff to make them, and that a mere statement of aggregate sums claimed in respect of tavern bills, finding surveyors, meeting and arranging with solicitors, etc., would not suffice (*Prichard v. Nelson*, (1847) 16 M. & W. 772; 16 L. J. Ex. 207; 4 D. & L. 693). Although it was not formerly the case, it is believed that a plaintiff who gives credit for any amount in his particulars may be ordered to furnish particulars of it. In an action for a building account, the plaintiff gave credit for two sums, one for work not done, the other for building materials; he was ordered to give particulars (*Godden v. Corsten*, (1879) 5 C. P. D. 17; 49 L. J. C. P. 112). Particulars should give the information required with as little technicality as is consistent with brevity and precision (Forms of particulars are now prescribed in a few cases only, viz., actions and interpleaders sent for trial from High Court (Forms 280, 282, 284), actions in which title is in question (Form 279), interpleaders (Forms 211, 212), certain equity actions (Forms 311, 313, 324). Some forms have been prepared by the late editor, and will be found under heading "Editor's (late) Additional Forms," on pp. 902—907.

If the particulars do not disclose a cause of action within the jurisdiction, the defendant may obtain a prohibition.

As to disallowance of costs when the particulars are insufficient, see r. 9 of this Order.

Particulars in cases of account.

2. Where the plaintiff in the first instance desires to have an account taken, the particulars shall contain a claim that such account be taken, and shall state the amount which the plaintiff claims subject to such account; and if such amount exceeds one hundred pounds, and the plaintiff desires to abandon the excess

the abandonment of the excess shall be entered at the end of the particulars. If no amount is stated in the particulars, the plaintiff shall be deemed to claim one hundred pounds. O. VI. r. 2.

3. In actions of ejectment the particulars shall contain a full description of the property sought to be recovered and of the annual value thereof, and of the rent, if there be any, fixed or paid in respect thereof. Particulars in actions of ejectment.

As many copies of the particulars must be filed as there are defendants (Order LIV. r. 13).

4. Where an action is brought under section sixty of the Act, whatever the amount of damages claimed may be, the plaintiff shall, at the time of the entry of the plaint, file a concise statement in writing of his cause of action, and of the particulars thereof. Particulars in actions under 51 & 52 Vict. c. 43, s. 60. Form 279.

A copy of the statement, sealed with the seal of the court, must be annexed to the summons, and the statement will be deemed part of the summons (Order II. r. 4A). In action for administration plaintiff may ask that only certain questions may be decided and renounce right to general order for administration.

5. Where any person entitled to bring or maintain an action for the administration of the estate of any deceased person or the execution of any trust desires to submit for the determination of the court any of the following questions or matters :

- (a) any question affecting the rights or interests of any person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust* :
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others :
- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts :
- (d) the payment into court of any money in the hands of the executors or administrators or trustees :
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees :
- (f) the approval of any sale, purchase, compromise, or other transaction :
- (g) the determination of any question arising in the administration of the estate or trust :

he shall in his particulars specify concisely the question or matter upon which the decision of the court is required ; and that he is willing to renounce his right to an order for a general administration of the estate or trust.

See sect. 67 of the Act and the notes thereto.

It is believed that, under Order X. r. 19, there is an obligation to state concisely the facts on which the defendant relies by way of defence in these, as in all equity actions, and that, in the event of his not doing so, he might be prevented from relying on such facts by way of defence, or an adjournment ordered to enable it to be done.

O. VI. r. 5A.

Particulars
in actions by
money-
lenders.

5A. Where a moneylender within the meaning of the Money-lenders Acts, 1900 to 1927, seeks to recover money lent or interest on money lent or both or to enforce any agreement made or security taken in respect of money lent the provisions of Rules 1, 6, 7, 8 and 9 of this Order shall apply notwithstanding that the amount claimed does not exceed forty shillings, and he shall in his particulars state :—

- (1) the date on which the loan was made ;
- (2) the amount actually lent to the borrower ;
- (3) the rate per cent. per annum of interest charged ;
- (4) the date of the note or memorandum in writing of the contract ;
- (5) the date when the contract was signed by the borrower ;
- (6) the date when a copy of the contract was delivered or sent to the borrower ;
- (7) the amount of every payment already received by the money-lender in respect of the loan and the date on which such payment was made ;
- (8) the amount of every sum due to the moneylender but unpaid ;
- (9) the date upon which every such sum became due ;
- (10) the amount of interest accrued due and unpaid on every such sum.

Provided that the said Rule 5A shall not apply where the loan was made before the 1st January, 1928.

The above Rule 5a. added by C. C. (No. 2) Rules, 1927.

Particulars
where more
than one
cause of
action.

6. Where the plaintiff seeks to obtain payment or satisfaction, or relief, redress, or remedy upon more than one cause of action or claim, he shall in his particulars state the grounds of each claim separately, and shall also state separately the payment or satisfaction, relief, redress, or remedy he claims in respect of each.

Notice by
defendant
for further
particulars.

7. In any action the defendant may, at any time not later than five clear days before the return-day, give notice to the plaintiff that he requires further particulars, and the plaintiff shall, within two clear days of the service of such notice, file full particulars of his claim, and of the relief or remedy to which he claims to be entitled, and shall within the same time deliver to the defendant a copy thereof. If the plaintiff fails to comply with such notice, or complies therewith insufficiently, the court, before or at the trial, if satisfied that the defendant is thereby prejudiced in his defence, may order the plaintiff to file and deliver full particulars, and may adjourn the action, and stay all proceedings therein until such order has been complied with, and may order the action to

be dismissed unless such order is complied with within such further time as the court may order, and may make such order as to costs as the court may think fit. (Amended 1925.) O. V. r. 7.

In actions under the extended jurisdiction and in actions exceeding fifty pounds, transferred from the High Court, the notice must be given not less than fifteen clear days before the return-day (Order XXIII. r. 6, Order XXXIII. r. 3B.).

8. Where the amount claimed in any case includes a fraction of a penny, such fraction shall not be entered in the books of the court, and judgment shall not be given for any fraction of a penny. Fraction of a penny.

9. Where a plaintiff sues by solicitor, the particulars must be signed by the solicitor in his own name or that of his firm, and he shall state thereon his place of business and where he will accept service of proceedings in the action or matter on behalf of the plaintiff, otherwise the costs of entering the plaint by solicitor shall not be allowed. Provided that the clerk of a solicitor, if duly authorised, may sign the particulars on behalf of and in the name of his master. Signature of particulars by solicitor or authorised clerk.

If in the opinion of the court the particulars are insufficient, the costs of entering the plaint by solicitor shall not be allowed unless the court otherwise orders.

A lithographed signature will not suffice (*R. v. Cowper* (C. A.), (1890) 24 Q. B. D. 533; 59 L. J. Q. B. 265).

ORDER VII.

PLAINT NOTE AND SUMMONS. SERVICE. GUARDIANS AD LITEM.

Plaint Note.

1. At the time of entering a plaint the registrar shall give to the plaintiff a note under the seal of the court, according to such one of the forms in the Appendix as shall be applicable to the case, with a memorandum thereon according to the form in the Appendix. In the event of such note being lost or destroyed, a duplicate thereof may be given from time to time, upon proof by affidavit or otherwise, to the satisfaction of the registrar, that the person applying is the plaintiff, or his agent authorised in that behalf, and that the plaintiff is entitled to the money (if any) paid into court to his credit. Plaint note.
Forms (new)
18, 19, 20, 21.

(2) Forms 18 to 21 are hereby annulled, and the forms in the appendix shall stand in lieu thereof. [1920.]

Order VII. r. 1 (2) substitutes new forms for the forms previously existing. The new forms provide—(1) a new memorandum on all plaint notes (Form 18); (2) a new plaint note, ordinary summons (Form 19); (3) a new plaint note, default summons (Form 20); and (4) a new plaint note special default summons (Form 21).

O. VII. r. 1. As to payment of money out of court on production of the plaint note, see Order IX. r. 21; see also Order LIV. r. 26.

Forms 18, 19, 20, 21. **1A.** The words "eight shillings" shall be substituted for the words "five shillings" in Form 18 in the Appendix.

Alteration of Form 18. This is the present fee payable for a jury, if required. It is payable in the first instance by the party requiring the jury, together with a court fee of 10s.

Summons on Plaint.

Form and date of summons. **2.** A summons to appear to a plaint shall be according to one or other of the forms in the Appendix, and shall be dated of the day on which the plaint was entered, and the date thereof shall be the commencement of the action.

See *Pringle v. Hales*, (1925) 1 K. B. 573; 94 L. J. K. B. 458.

Forms (new) 22, 23, 25. **(2)** Forms 22, 23 and 25 are hereby annulled, and the forms in the appendix shall stand in lieu thereof. [1920.]

Order VII. r. 2 substitutes new forms of summons for those previously existing. These new forms provide—(1) a new form of ordinary summons (Form 22); (2) a new form of default summons where the claim does not exceed 10*l.* (Form 23); (3) a new form of special default summons where the claim exceeds 10*l.* (Form 25).

2A. The words "ten clear days" (or, in actions under the Employers' Liability Act, 1880, "fifteen clear days") shall be substituted for the words "five clear days" in the paragraphs relating to juries in the prescribed form of plaint notes and summonses to appear to plaints.

Ordinary Summons and Service.

Ordinary summons when returnable. **5.** An ordinary summons may be made returnable either at the court for which plaints are then being entered, or at the request of the plaintiff at any subsequent court.

The day appointed for the appearance of the defendant, or any other day fixed for the trial, is called the return-day (see sect. 186 of the Act).

Amendment of summons as to name, &c., of defendant. **5A.**—(1) Where an ordinary summons has not been served by reason of the plaintiff having mis-stated or insufficiently stated any of the particulars as to the name, residence, or place of business, and occupation or description of the defendant required by paragraphs (b) and (c) of Ord. V. r. 4, or of the defendant having before the entry of the plaint removed from the address given on the entry thereof, the summons may be amended as to such particulars at any time which will allow the summons to be served in sufficient time before the return-day, on the plaintiff correcting and re-swearing the affidavit (if any) required by these rules before the entry of the plaint, or swearing a further

affidavit, and on payment of such additional fee for service as may be prescribed. **O. VII. r. 5a.**

(2) Provided nevertheless that if the bailiff ascertains *in sufficient time before the return-day*, and before notice of non-service has been sent, that the defendant has removed from the address given on the summons to some other address within the district of the court, it shall be his duty to effect service in accordance with Ord. II. r. 22, without such amendment as is provided for by the preceding paragraph; and the new address endorsed on the copy of the summons retained by the bailiff shall be entered in the books of the court.

The words in italics do not apply to a default or special default summons, see r. 30A. of this Order.

(3) Provided also, that if the address of the defendant given on the entry of the plaint was within the district of the court, and the defendant has before the entry of the plaint removed to some other address outside the district of the court, an amendment of the summons as to such address shall only be allowed on the plaintiff swearing an affidavit and obtaining leave for the service of the summons outside the district in accordance with section 74 of the Act and Order V., Rule 13; and in any such case the words "to serve the summons in this action on the above named outside the district of this court" shall be substituted for the words "to enter a plaint against the above named" in the order giving leave to serve the summons outside the district.

For the purposes of this paragraph the words "the district of the court" shall in the case of a summons issued under section eighty-four of the Act mean the district of any court mentioned in that section.

6.—(1) Subject to the provisions of this rule, where an ordinary summons has not been served in sufficient time before the return-day, successive summonses may be issued without entering a new plaint.

(2) A successive summons shall not be issued in any case in which the non-service has been caused by the fact of the plaintiff having mis-stated or insufficiently stated any of the particulars as to the name, residence, or place of business, and occupation or description of the defendant required by paragraphs (b) and (c) of Ord. V. r. 4, or of the defendant having, before the entry of the plaint, removed from the address given on the entry thereof, unless the plaintiff satisfies the court that the mis-statement or insufficient statement was made or given in good faith, and without any want of reasonable care on his part, or that he could not by the exercise of reasonable care have discovered the fact of such removal before the entry of the plaint, in either of which

Service where defendant has removed to another address within the district.

Service where defendant has removed to address outside the district.

51 & 52 Vict. c. 43, s. 74.

51 & 52 Vict. c. 43, s. 84.

Successive summonses.

O. VII. r. 6. cases a successive summons, amended in accordance with the last preceding rule, may, subject to paragraph 3 of that rule, be issued without entering a new plaint.

(3) Successive summonses shall bear the same date and number as the summons first issued, which date and number shall be written in red ink in the plaint book, and such summonses shall be a continuance of the first summons.

(4) No successive summons shall be issued on a plaint after three months from the date of entry.

Successive summons where defendant removes from district after entry of plaint.

7. Where an ordinary summons, whether issued for service in or out of the district, has not been served by reason of the defendant having after the entry of the plaint removed out of the district in which such summons was required to be served, a successive summons may be issued under the last preceding rule for service on such defendant in any other district to which he has removed.

Rule 8, annulled by the County Court (No. 1) Rules, 1925 (4).

When ordinary summons is to be delivered for service.

Time of service.

9. An ordinary summons to appear to a plaint (*except in an action of ejectment*) (*a*) shall, in order to insure its service, be delivered to the bailiff, where it is to be served in the home district, fifteen clear days at least, and where it is to be served in a foreign district eighteen clear days at least before the return-day, and shall, in either case, be served ten clear days at least before the return-day thereof: Provided that a summons may be issued and served at any time before the return-day, on production by the plaintiff to the registrar of an affidavit showing that the defendant is about to remove out of the district of the court, or out of the district of the court in the district of which he resides; and the service of such summons may be deemed good service, if at the hearing the judge is satisfied, on the evidence on oath before him, that such party was about to remove out of the district of such court; but in every such case, whether such proof be given or not, the judge may in his discretion, and on such terms as he may think fit, adjourn the hearing.

(*a*) Words printed in italics are now to be omitted. County Court (No. 1) Rules, 1925, r. 5.

In actions under the extended jurisdiction the times are twenty-five twenty-eight and twenty clear days respectively. (Order XXIIA. r. 2.)

Mode of service of an ordinary summons.
Form 29.

10.—(1) Subject to the provisions of this and the following rules, service of an ordinary summons shall be effected by delivering the same to the defendant personally, or to some person apparently not less than sixteen years old at the house or place of dwelling, or place of business, of the defendant.

(2) Provided, that service may be effected—

(*a*) in the cases mentioned in Rules 12 to 16 and 18 to 27 (both

inclusive) of this order, in the manner prescribed by those rules ; or O. VII. r. 10.

(b) under an order for substituted service as prescribed by Rule 40 of this order.

(3) For the purposes of this rule a place of business shall not be deemed to be the place of business of the defendant unless he is the master or one of the masters thereof.

11. Where by the indorsement on the copy of an ordinary summons it appears that service was effected by delivering the summons to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the defendant, and the defendant does not appear on the return-day, the action shall not proceed if the court is satisfied, on the evidence before it, that the service of such summons did not come to the knowledge of the defendant before the return-day. Where summons left at residence or place of business of defendant, and he does not appear.

In such case the court may either order the action to be struck out, or order a successive summons to issue, as to it may seem just ; or, if the court is in doubt whether the service of the summons has come to the knowledge of the defendant before the return-day, it may order the action to be struck out, or order a successive summons to issue, or may adjourn the action to a future day for further evidence ; and may in that case direct notice of such adjournment, with a copy of the summons and particulars to be served on the defendant : and such notice and copy may be served by the high bailiff by post in accordance with the provisions of Ord. LIV. r. 2. Form 93A.

See also Order II., r. 25.

12. Where a solicitor represents that he is authorised to accept service on behalf of a defendant, it shall be sufficient service to deliver the summons to him, provided that he shall at the time of such delivery indorse upon the copy of the summons retained by the bailiff, or, where the summons is served otherwise than by a bailiff, on the copy retained by the person serving the same, a memorandum that he accepts service thereof on behalf of such defendant. Where solicitor represents that he is authorised to accept service.

13. Where an infant is a defendant, service on his father or guardian, or (if none) on the person with whom the infant resides or under whose care he is, shall, unless the court otherwise orders, be deemed good service on the infant. Provided that the court may order that service made or to be made on the infant shall be deemed good service. (R. S. C., Ord. IX. r. 4.) Service on infant.

14. Where a lunatic or a person of unsound mind not so found by inquisition is a defendant, service on the committee (if any) of the Service on a lunatic or person of unsound mind.

O. VII. r. 14. lunatic, or (if none) on the person with whom the person of unsound mind resides or under whose care he is, shall, unless the court otherwise orders, be deemed good service on such defendant. (R. S. C., Ord. IX. r. 5.)

Service on partners.

15. Where persons are sued as partners in the name of their firm, the summons shall be served either upon any one or more of the partners, or at the principal place of the partnership business within the district of the court in the district of which the summons is to be served upon any person having or appearing to have at the time of service the control or management of the business there, and, subject to these rules, such service shall be deemed good service on the firm so sued, whether any of the members thereof are out of England and Wales or not, and no leave to issue a summons against the members of the firm out of England and Wales shall be necessary; provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the summons shall be served upon every person within England and Wales sought to be made liable.

See notes to sect. 74 of the Act: "Dwelling or carrying on business," *ante*, p. 82.

Service at a branch office at Middlesbrough has been held to be good service on a firm whose principal place of business was in Scotland (*Weatherley v. Calder*, (1890) 61 L. T. 508), but in this case the defendant appeared and made several applications in the action.

Service where person carries on business in name other than his own.

Indorsement or affidavit of service under Rules 15, 16, to state in what capacity served.

Form of indorsement or affidavit. Forms 29A, 37 (2).

16. Where one person carrying on business in a name or style other than his own name is sued in such name or style as if it were a firm name, the summons may be served either upon such person, or at the principal place of business of such person within the district of the court in the district of which the summons is to be served upon any person having or appearing to have at the time of service the control or management of the business there; and, subject to these rules, such service shall be deemed good service on the person so sued.

16A. Where a summons is served under either of the two last preceding rules, the indorsement or affidavit of service shall state whether the person served was served as a partner, or as the person carrying on the business, or as a person having or appearing to have the control or management of the business, or in both characters.

(2) The indorsement or affidavit of service shall be according to such one of the forms in the Appendix as shall be applicable to the case.

Where husband and wife are defendants.

17. Where husband and wife are both defendants they shall both be served, unless the court otherwise orders. (R. S. C., Ord. IX. r. 3.)

18.—(1) Where a defendant is living or serving on board of any ship or vessel belonging to His Majesty's Navy, the summons shall be personally served. O. VII. r. 18.
Service where defendant on board ship.

Provided that where a defendant so living or serving is a commissioned or warrant officer of His Majesty's Navy, and the Registrar is satisfied that the ship or vessel is within the district of some specified county court, the summons may be served by sending it by registered post addressed to the defendant on board the ship or vessel; and in any such case the provisions of Order LIV. Rule 2, relating to service by post, shall apply.

(2) Where a defendant is living or serving on board of any ship or vessel other than a ship or vessel belonging to His Majesty's Navy, it shall be sufficient service to deliver the summons to the person on board who is, at the time of such service, apparently in charge of the ship or vessel.

(3) Where service is to be effected on board of any ship or vessel, the bailiff shall on request produce a certificate of his appointment, to enable him to gain access to the ship or vessel for the purpose of effecting such service.

Amended, County Court (No. 1) Rules, 1927.

19. Where a defendant is residing or quartered in any barracks, and serving His Majesty as a soldier or marine, it shall be sufficient service to deliver the summons at the barracks to the adjutant of the corps, or to any officer or serjeant of the company or troop to which such soldier or marine belongs: and the bailiff shall on request produce a certificate of his appointment, to enable him to gain access to the barracks for the purpose of effecting such service. Service on soldier or marine.

19A. Where a defendant is residing at any hostel or other similar institution for workers, it shall be sufficient service to deliver the summons to the superintendent or any person appearing to be the head officer in charge thereof. Service on worker residing in hostel, &c.

20. Where a defendant is a prisoner in a gaol, it shall be sufficient service to deliver the summons at the gaol to the governor or any person appearing to be the head officer in charge thereof. Service on prisoner.

21. Where a defendant is working in any mine or other works underground, it shall be sufficient service to deliver the summons at the mine or works, to the engine-man, banks man, or other person apparently in charge of the mine or works. Service on miner.

22. Where a defendant is employed and dwells in any lunatic or other public asylum, or in any common gaol or house of correction, it shall be sufficient service to deliver the summons to the gate-keeper or lodge-keeper of the asylum, gaol, or house of correction. Service where defendant employed in a public asylum or prison.

O. VII. r. 23.

Where
defendant
keeps his
house
closed.

Service in
case of
vacant pos-
session.

Service
where
violence
threatened.

Service of
summons
on corpora-
tion, hun-
dred, &c.

Statutory
provisions
as to service
on companies.
8 & 9 Vict.
c. 16, s. 135.
8 & 9 Vict.
c. 18, s. 134.
8 & 9 Vict.
c. 20, s. 138.
8 Edw. 7,
c. 69, ss. 62,
116.

Appendix,
Part III. (1).
Service on
railway
company.

23. Where a defendant keeps his house or place of dwelling or place of business closed, so as to prevent a bailiff from serving a summons, it shall be sufficient service to affix such summons on the door of such house or place of dwelling or place of business.

24. Service of the summons in an action of ejectment, or for the recovery of possession of a tenement, may, in case of vacant possession, if it cannot otherwise be effected, be made by posting a copy of the summons upon the door of the dwelling-house or other conspicuous part of the property. (R. S. C., Ord. IX. r. 9.)

This rule does not make Order VII. r. 40 inapplicable to these actions.

25. Where a bailiff is prevented by the violence or threats of the defendant, or of any other person in concert with him, from personally serving the summons, it shall be sufficient service to leave such summons as near to the defendant as practicable.

26.—(1) In the absence of any statutory provision regulating the service of process, service on a corporation aggregate may be made on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and when by any statute provision is made for service of any summons, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or unincorporate, a summons may be served in the manner so provided. (Cf. R. S. C., Ord. IX. r. 8.)

The "head officer" must be the chief officer of the defendants, and not merely head of a separate place of business (*Golding v. La Sainte Union* (C. A.), (1892) 67 L. T. 605).

(2) The statutory provisions with respect to service contained in—

(a) the Companies Clauses Consolidation Act, 1845;

(b) the Lands Clauses Consolidation Act, 1845;

(c) the Railways Clauses Consolidation Act, 1845; and

(d) the Companies (Consolidation) Act, 1908,

are set forth in Part III. (1) of the Appendix (*post*, p. 908).

See *Pearks, etc., Ltd. v. Richardson*, (1902) 1 K. B. 91; 71 L. J. K. B. 18, *per* Lord Alverstone, C.J.

27. Service of a summons on a railway company may be effected by delivering the summons to a secretary, station master, or clerk of the company, at any station or office of the company within the district of the court in which the summons is to be served.

Club.—Persons carrying on a proprietary club may be sued as a firm in the name of the club, and, for the purposes of service, the club should be treated as a partnership business (*Firmin v. International Club*, (1889) 5 T. L. R. 694).

A club registered under the Industrial and Provident Societies Act, 1893

(56 & 57 Vict. c. 39) is a corporate body and must sue or be sued in its registered name. If registered under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25, s. 8 (4)), legal proceedings by or against the club should be taken in accordance with sect. 94 of that Act, printed *post*, Part V.

A members' club cannot be sued in the club name and service on the secretary is bad (*Grossman v. Granville Club*, (1884) 28 Sol. J. 513). If the action is on contract, the proper course is to sue those members of the committee who authorised the contract to be entered into.

28. Where a summons has been served in one of the modes hereinbefore mentioned, but it appears that it has come to the knowledge of the defendant less than ten clear days before the return-day, the action may, at the discretion of the court, proceed or be adjourned, whether the defendant appears or not on such return-day.

29. Where a summons is issued under section eighty-four of the Act, it shall be served by a bailiff of the court within the district of which the defendant dwells or carries on business, unless the court otherwise specially orders: Provided that this rule shall not interfere with the general power now vested in the bailiff of the court from which a summons issues to serve the same within five hundred yards of the boundary of the district of such court.

For the general power referred to, see sect. 77 of the Act, *ante*, p. 87.

29A.—(1) A successive summons may, by leave of the court, and subject to the provisions of this rule, be served—

- (a) by the plaintiff, or some clerk or servant in his permanent and exclusive employ, or
- (b) by the plaintiff's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve the summons who might be so employed to serve a writ in an action in the High Court.

(2) Where service of a successive summons is effected otherwise than by a bailiff, it shall be effected either—

- (a) by delivering the summons to the defendant personally; or
- (b) in the cases mentioned in Rules 12 to 22, 24, 26, and 27 of this Order, in the manner prescribed by those rules; or
- (c) under an order for substituted service as prescribed by Rule 40 of this Order.

(3) Where service of a successive summons is effected otherwise than by a bailiff, a copy of the summons, with the date and place and mode of service indorsed thereon, and an affidavit of service according to the form in the Appendix, with such modifications as circumstances may require, shall within three clear days after the day of service, or such further time as may be allowed by the registrar of the court issuing the summons, be delivered or transmitted to such registrar by the plaintiff.

O. VII. r. 27
Notes.

Where summons has come to knowledge of defendant less than ten days before return-day.

Where summons issues under 51 & 52 Vict. c. 43, s. 84.

When successive summons may be served otherwise than by bailiff.

Form 37.

O. VII. r. 29b.

Default Summons and Service.

Default or
special
default sum-
monses for
liquidated
demands.
Forms 23, 25.

Default Summons.—The rules relating to default summonses are made pursuant to sect. 8 of the County Courts Act, 1919, *ante*, p. 98. A summary of the procedure relating to default summonses will be found *ante*, pp. 99—105.

29B.—(1) In any action in which the plaintiff seeks only to recover a debt or liquidated demand in money (including a demand on a bill of exchange, promissory note or cheque, with expenses of noting or protest), the plaintiff may at his option cause to be issued either—

- (a) an ordinary summons ; or
- (b) where the demand of the plaintiff does not exceed ten pounds, a default summons ; or
- (c) where the demand of the plaintiff exceeds ten pounds, a special default summons,

in accordance with these rules.

Restriction
on issue of
default or
special
default
summonses.

(2) Provided that—

- (a) No summons other than a summons in the ordinary form shall be issued where the amount claimed does not exceed two pounds ;
- (b) No summons other than a summons in the ordinary form shall be issued for service in the district against a defendant who is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, where the amount claimed does not exceed five pounds, unless the defendant carries on or formerly carried on some trade or calling, and the claim is for the price, value or hire of goods sold and delivered or let on hire to the defendant to be used or dealt with in the way of that trade or calling, or for the price or value of work done for the defendant for the purposes of that trade or calling ; and
- (c) No summons other than a summons in the ordinary form shall be issued for service out of the district against any such defendant as in the preceding proviso mentioned unless the amount claimed exceeds five pounds, and the defendant carries on or formerly carried on some trade or calling, and the claim is for the price, value or hire of goods sold and delivered or let on hire to the defendant to be used or dealt with in the way of that trade or calling or for the price or value of work done for the defendant for the purposes of that trade or calling.
- (d) No summons other than a summons in the ordinary form shall be issued where a moneylender within the meaning of the Moneylenders Acts, 1900 to 1927, seeks to recover

money lent or interest on money lent or both, or to enforce any agreement made or security taken in respect of money lent. **O. VII. r. 29b.**

NOTE:—Paragraph (d) added by C. C. (No. 2) Rules, 1927.

(3) Where the issue of a default summons or a special default summons is desired, the plaintiff shall file an affidavit made by himself or by some person on his behalf who has knowledge of the facts, in accordance with Order V. Rule 14, or where leave to enter a plaint is required under section seventy-four of the Act, the plaintiff shall apply for such leave on affidavit in accordance with Order V. Rule 13.

Affidavit for issue of default or special default summons.

Forms 9, 9A, 11, 12.

29C. A default summons or a special default summons shall, subject to Rules 30B to 32 of this Order, be personally served on the defendant in accordance with these rules ; and if the defendant does not within eight days after the service of the summons, inclusive of the day of service, deliver to the registrar, by post or otherwise, either

Service of default or special default summons.

Judgment in default of notice or affidavit of defence or admission.

(a) in the case of a default summons, a notice of defence in writing, as hereinafter mentioned, signed by himself or his solicitor ; or

(b) in the case of a special default summons, an affidavit of defence, with a copy thereof, as hereinafter mentioned, made by the defendant or by some person on his behalf who has knowledge of the facts ; or

(c) in the case of either a default or a special default summons, an admission as hereinafter mentioned,

the plaintiff may, after eight days (or, where a notice or affidavit of defence is returned for amendment pursuant to paragraph 3 of Rule 34B of this Order, twelve days) and within two months from the day of service, upon proof of service, have judgment entered against the defendant for the amount of his claim and costs, such costs to be taxed by the registrar ; and the order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments as the plaintiff may in writing agree to accept at the time of the entry of the plaint, or at the time of entering judgment.

Form 24.

29D. Where two or more persons are made defendants whether as jointly or as severally liable, the plaintiff may have judgment against any one or more of the defendants in default under the preceding rule and in accordance with that rule, and may issue execution thereon without prejudice to his right to proceed with the action against any other defendant or defendants whether served or not served, and if served whether also in default or not in default.

Judgment in default where two or more defendants.

(Added by County Court Rules, 1926 (No. 1), rules.)

O. VII. r. 30.

Service of
default
or special
default
summons

Extension of
time for
service.

Effect of
extension.

Amendment
of summons
as to name,
&c., of
defendant.

Where
solicitor
represents
that he is
authorised to
accept ser-
vice.

Service on
partners.

30.—(1) A default summons or a special default summons shall be served within a period of twelve months from its date.

(2) If any defendant named in any such summons has not been served therewith, the plaintiff may, before the expiration of twelve months, apply to the registrar; and if the registrar is satisfied that reasonable efforts have been made to serve such defendant, or that there is some other good reason why service has not been effected, he may, on payment of such fee as may be prescribed, order that the time for service be extended for a further period of twelve months, and so from time to time during the period for which the time for service is extended.

(3) Any order so made shall be indorsed in red ink on the summons and any copy thereof, and signed by the registrar, and shall be entered in red ink in the plaint book; and the summons shall remain in force accordingly, and shall be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date on which the plaint was entered.

30A.—(1) Where a default summons or a special default summons has not been served by reason of the plaintiff having mis-stated or insufficiently stated any of the particulars as to the name, residence or place of business, and occupation or description of the defendant required by paragraphs (b) and (c) of Order V. Rule 4, or of the defendant having before the entry of the plaint removed from the address given on the summons, the summons may at any time during its currency be amended as to such particulars on the plaintiff correcting and reswearing the affidavit required by these Rules before the entry of the plaint, or swearing a further affidavit, and on payment, where the summons is to be served by a bailiff, of such additional fee for service as may be prescribed.

(2) Paragraphs 2 and 3 of Rule 5A of this Order, as to ordinary summonses, shall apply to default summonses and special default summonses with the omission of the words "in sufficient time before the return-day, and" from paragraph 2.

30B. Where a solicitor represents that he is authorised to accept service of a default summons or a special default summons on behalf of a defendant, it shall be sufficient service to deliver the summons to him, provided that he shall at the time of such delivery indorse upon the copy of the summons retained by the bailiff, or, where the summons is served otherwise than by a bailiff, on the copy retained by the person serving the same, a memorandum that he accepts service thereof on behalf of such defendant.

31. Where a default summons or a special default summons is issued against partners in the name of the firm, the summons may

be served either upon any one or more of the partners, or at the principal place of the partnership business within the district of the court in the district of which the summons is to be served upon any person having or appearing to have at the time of service the control or management of the business there, and, subject to these rules, such service shall be deemed good service on the firm so sued, whether any of the members thereof are out of England and Wales or not, and no leave to issue a summons against the members of the firm out of England and Wales shall be necessary; provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the summons shall be served upon every person within England and Wales sought to be made liable.

O. VII. r. 31.

31A. Where a default summons or a special default summons is issued against a person carrying on business in a name or style other than his own name in such name or style, the summons may be served either upon such person, or at the principal place of business of such person within the district of the court in the district of which the summons is to be served upon any person having or appearing to have at the time of service the control or management of the business there; and, subject to these rules, such service shall be deemed good service on the person so sued.

Service where person carries on business in name other than his own.

31B.—(1) Where a summons is served under either of the two last preceding rules, the indorsement or affidavit of service shall state whether the person served was served as a partner, or as the person carrying on the business, or as a person having or appearing to have the control or management of the business, or in both characters.

Indorsement or affidavit of service under Rules 31, 31A, to state in what capacity served.

(2) Such indorsement or affidavit shall be according to such one of the forms in the Appendix as shall be applicable to the case.

Forms 34A, 37 (2).

32. Where a default summons or a special default summons is issued against a corporation or against any other defendant or body of defendants mentioned in Rule 26 of this Order, it shall be deemed to be sufficiently served on such corporation or other defendant or body of defendants if served in accordance with the said rule.

Service on corporation, &c.

33. A default summons or a special default summons may be served in any district in which the defendant may be met with by—

Default summons may be served in any district.

(a) a bailiff of a court;

or, when so requested on the entry of the plaint under Order V. r. 9—

(b) by the plaintiff or some clerk or servant in his permanent and exclusive employ; or

By whom service may be effected.

(c) by the plaintiff's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of

O. VII. r. 33.

them, or some person employed by either of them to serve the summons who might be so employed to serve a writ in an action in the High Court.

Provided that, if in any case in which no request has been made on the entry of the plaint under Order V. r. 9, any difficulty is experienced by the bailiff in effecting service, the summons may by leave of the registrar be served in accordance with paragraph (b) or paragraph (c) of this rule.

As to preparation of the summons, see Ord. II., r. 4A (1).

The person serving the summons must be over the age of sixteen (Order LIV. r. 5A).

For form of affidavit of service, see Forms 37, 37 (2).

Order for liberty to proceed where personal service cannot be effected.
Form 46.

33A.—(1) Where personal service cannot be effected, and the judge or registrar is satisfied by affidavit that reasonable efforts have been made to effect service, and either that the summons has come to the knowledge of the defendant, or that he wilfully evade service of the same, the judge or registrar may order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as he may think fit.

(2) In any such case the judge or registrar may order that a sealed copy of the order, with a sealed copy of the summons and particulars (unless the judge or registrar is satisfied that the defendant has already received the same), shall be served by the plaintiff on the defendant by delivering the same to some adult inmate at the usual or last known place of residence or business of the defendant, or by sending the same by registered post addressed to the defendant at his usual or last known place of residence or business, or addressed to the defendant at the office of any solicitor who appears by the affidavit filed or other evidence given on behalf of the plaintiff to be acting for or in communication with the defendant, and the summons shall be deemed to have been personally served on the defendant at the time when the copy is so delivered, or at the time when the registered letter would have been delivered in the ordinary course of post. Provided that a place of business shall not be deemed to be the place of business of the defendant unless he is the master or one of the masters thereof.

Steps to be taken by bailiff to enable plaintiff to apply for leave to proceed.

33B.—(1) Where service is to be effected by a bailiff, and personal service cannot be effected, it shall be the duty of the high bailiff, if so requested by the plaintiff or his solicitor, and on payment of the prescribed fee, to take such steps as may be necessary to enable the plaintiff to apply for liberty to proceed as if personal service had been effected, and to carry out any order made on such application.

Amended. County Court (No. 1) Rules, 1925. Paragraph (2) is annulled.

(3) Where any such step is taken, then—

O. VII. r. 33b.

(a) if personal service is effected, the fee so paid may be allowed as costs against the defendant when judgment is entered, or, if the amount entered on the summons is paid without judgment being entered, an order may be made for the payment of the said fee by the defendant: or

Amended. County Court (No. 1) Rules, 1925, r. 6.

(b) if an order giving liberty to proceed is made, the fees paid on the request and on the application may be allowed as costs against the defendant, and if so allowed shall be entered on the summons when the order giving liberty to proceed is made: but they shall not be allowed in addition to item 17 of the scales of costs.

Paragraph (4) annulled. County Court (No. 1) Rules, 1925, r. 6.

Court Fees.]—The fee payable on a request to a high bailiff to take steps to enable the plaintiff to apply for an order for substituted service, or to apply for leave to proceed as if personal service had been effected, is an amount equal to one-half the fee paid on the entry of the plaint, with a maximum of 5s. A further fee of a like amount is payable on the application to the Registrar for an order (C. C. Fees Order, 1925, Fee No. 5).

34. Where a default summons or a special default summons has been served otherwise than by a bailiff, a copy of the summons, with the date and place of service indorsed thereon, and an affidavit of service according to the form in the Appendix, shall within three clear days after the day of service, or such further time as may be allowed by the registrar of the court issuing the summons, be delivered or transmitted to such registrar by the plaintiff. Where service effected otherwise than by bailiff. Form 37.

And where an order is made giving liberty to proceed as if personal service had been effected, the plaintiff shall (unless the defendant delivers a notice or an affidavit of defence or an admission in accordance with these rules) after the expiration of the time limited for delivering such notice or affidavit or admission but before or at the time of entering judgment, deliver or transmit to the registrar the order giving liberty to proceed, and, where conditions are imposed by the order, an affidavit showing that such conditions have been complied with. Where leave given to proceed as if personal service had been effected. Form 46.

34A. Where a default summons or a special default summons has been entered by post pursuant to Order V. r. 12, and the defendant does not deliver a notice or an affidavit of defence or an admission in accordance with these rules, the plaintiff or his solicitor (if the solicitor has no office within the district) may, instead of attending at the office of the court, transmit, by post, to the registrar— Entry of judgment on default or special default summons by letter.

O. VII. r. 34a-

Form 37A.

(a) The plaint note :

(b) A præcipe according to the form in the Appendix, requesting the registrar to enter judgment, stating the amount of debt and costs for which judgment is to be entered, and the instalments, if any, which the plaintiff or his solicitor consents to take :

(c) A money order for the fees payable on entering judgment, payable to the registrar at the post office of the town or place in which the court is held : and

(d) An envelope addressed to himself, with the appropriate postage thereon ;

And upon receipt of the above the registrar shall enter judgment, and forward the plaint note, with the fee on signing judgment marked thereon, in the addressed envelope.

Where a defendant is a married woman, or a widow, the præcipe shall state that fact, and shall state whether judgment is to be entered against her in respect of a contract before coverture or during coverture, or (in the case of a widow) in respect of a contract since the determination of the coverture, according to the form in the Appendix.

Form 37A.

Form 37B.

Notice or
affidavit of
defence.

34B.—(1) Where a defendant to a default summons delivers a notice of defence he shall state therein that he intends to defend the action, and the facts on which he relies as a defence ; or if he has a set-off or counterclaim which he intends to set up he shall state the facts on which he relies in support thereof : and where his defence, set-off or counterclaim goes only to part of the plaintiff's claim he shall state what part of the plaintiff's claim is admitted.

(2) Where a defendant to a special default summons delivers an affidavit of defence, he shall state therein that he intends to defend the action, and has a good defence on the merits, and shall state shortly the grounds of his defence ; or if he has a set-off or counterclaim which he intends to set up he shall state that fact and shall state shortly the grounds of such set-off or counterclaim ; and he shall state whether his defence, set-off or counterclaim goes to the whole or to part only, and if so to what part of the plaintiff's claim, and what part (if any) of the plaintiff's claim is admitted ; and the defendant shall deliver to the registrar with such affidavit a copy thereof for the use of the plaintiff.

(3) Where a defendant to a default summons delivers an affidavit of defence without signing the same, or without stating any facts on which he relies as a defence, set-off or counterclaim, or a defendant to a special default summons delivers an affidavit of defence which is not duly sworn, or which does not state any grounds of defence set-off or counterclaim, the registrar shall

return the notice or affidavit of defence to the defendant, by post, **O. VII. r. 34b.** with a notice requiring him to amend the notice of defence by adding his signature or stating the facts on which he relies, or to amend the affidavit of defence by duly swearing to the same or stating his grounds of defence, set-off or counterclaim; and if the defendant does not within twelve days from the date of service of the summons, inclusive of the day of service, return to the registrar by post or otherwise, the notice or affidavit of defence duly amended, he shall be liable to have judgment entered against him in the same manner as if he had failed to deliver any notice or affidavit of defence, without prejudice to any application by the defendant under Rule 34f of this Order to be let in to defend, or to have the judgment set aside and be let in to defend. **Form 37 (3).**

(4) Subject to the last preceding paragraph, an informality or defect in any notice or affidavit of defence shall not prevent it from being accepted.

(5) The delivery of a signed notice of defence or a duly sworn affidavit of defence shall not debar the defendant from setting up any further or other defence, set-off or counterclaim in accordance with these rules.

34c.—(1) Where within the time limited by these rules a defendant to a default summons delivers a notice of defence, or the defendant to a special default summons delivers an affidavit of defence, or where in either case the defendant has been let in to defend the action, the registrar shall fix a day for the trial of the action and shall send by post to the plaintiff—

- (a) in the case of a default summons a copy of the notice of defence, with a notice according to the form in the **Form 38.**
Appendix; or **Form 39.**
- (b) in the case of a special default summons the copy of the affidavit required by the last preceding rule, with a notice according to the form in the Appendix; **Form 40.**

and shall send by post to the defendant a notice according to the form in the Appendix.

The day of trial, subject to Rule 34d, shall be so fixed as to allow the copies and notices to be sent ten clear days at least before the day so fixed.

(2) The copy of the notice of defence to be sent to the plaintiff pursuant to this rule shall be made by the registrar at the cost in the first instance of the plaintiff, but the sum paid or payable by the plaintiff for the same may be allowed to him as costs in the action. **Copies of notice or affidavit of defence.**

(3) Where the defendant to a special default summons fails to deliver to the registrar a copy of his affidavit of defence as required by the last preceding rule, the copy of the affidavit to be sent to

O. VII. r. 34c. the plaintiff pursuant to this rule shall be made by the registrar at the cost in the first instance of the plaintiff; but the plaintiff shall in any event be entitled to recover the sum paid or payable by him for the same from the defendant in default.

Admission
with or with-
out offer of
payment.

34D.—(1) A defendant to a default or special default summons may in his notice or affidavit of defence state that he admits the whole or part of the plaintiff's claim either with or without an offer of payment, or he may deliver therewith such an admission in writing either with or without such offer, or he may, instead of delivering a notice or affidavit of defence, sign and deliver to the registrar, by post or otherwise, within the time limited by these rules for delivering a notice or affidavit of defence, an admission of the whole claim either with or without such offer.

Admission of
whole claim.

(2) On receipt of such admission, if an admission of the whole claim, the registrar shall, as soon as reasonably may be after the receipt of the admission, fix a day for the disposal of the action and send notices to the plaintiff and defendant according to the forms in the Appendix.

Form 40.

Form 41.

With offer of
payment.

When the admission is accompanied by an offer of payment, and the plaintiff within five clear days after the receipt thereof gives notice to the registrar that he accepts the offer of payment, the registrar shall thereupon, on payment of the fee for entering judgment, enter judgment for the amount claimed and for court fees and costs, and payment shall be ordered to be made in accordance with the offer of the defendant.

Without
offer of
payment or
where offer
is not
accepted.

Where the admission is not accompanied by an offer of payment or where the offer of the defendant for payment is not accepted by the plaintiff within the time limited by this rule, the action will be disposed of on the day fixed for disposal.

Admission
of part of
claim.

Form 65.

(3) On receipt of such admission if an admission of part only of the claim the registrar shall, as soon as reasonably may be after the receipt of the admission, send notice thereof to the plaintiff according to the form in the Appendix, and if the plaintiff within five clear days after the receipt thereof sends notice to the registrar in the form annexed to the notice of admission accepting the amount admitted in satisfaction of his claim and also either (a) accepting the mode of payment offered by the defendant (if any) or (b) whether there is any such offer or not, stating his willingness to leave it to the registrar to give judgment for the amount admitted and direct the time and mode of payment in accordance with section 5 (4) of the County Courts Act, 1919, and section 105 of the County Courts Act, 1888, the registrar shall thereupon, in the case of (a) on payment of the fee for entering judgment, enter judgment for the amount admitted and for court fees and costs, and payment shall be ordered to be made in accordance with the

Form 42.

offer of the defendant, and in the case of (b) fix a day for the disposal of the action and send notices to the plaintiff and defendant according to the forms in the Appendix. O. VII. r. 34d.
Form 41.

If the plaintiff gives notice that he refuses to accept the amount admitted in satisfaction of his claim or rejecting the offer of payment (if any) that he is not willing to leave it to the registrar to give judgment for the amount admitted and direct the time and mode of payment as stated above or gives no such notice of acceptance as hereinbefore referred to within the five days the registrar shall fix a day for the trial of the action and send notices as under Rule 34c.

(4) Where a defendant to a default summons or special default summons delivers a notice or affidavit of defence without admitting any part of the plaintiff's claim, he may, notwithstanding the expiry of the time hereinbefore by paragraph (1) limited for delivering admissions, deliver or make an admission in writing of the whole or part of the plaintiff's claim with or without an offer of payment at any time before or when the action is called on, but in that case there may be allowed to the plaintiff any further costs properly incurred by him in consequence of the defendant having omitted to deliver or make the admission in due time. Admission after notice or affidavit of defence delivered.

(5) The plaintiff may, whether the period of five days for acceptance mentioned in paragraphs (2) and (3) of this rule has expired or not, send or give his notice of acceptance to the registrar at any time before or when the action is called on. Late acceptance of admission.

(6) In the case of late admission or late acceptance referred to in paragraphs (4) and (5) of this rule, the same procedure shall be followed, if and so far as time permits, as described in paragraphs (2) or (3) respectively, as the case may require. And if the day has already been fixed for trial of the action and in consequence of the late admission or acceptance as the case may be no notice for disposal of the action can be given at all, or time does not permit of the requisite notice of disposal being given for a day earlier than the day of trial, the action shall not be tried, but shall be disposed of on the day fixed for trial after such notice of disposal (if any) to the defendant on that day as time may permit. Procedure in case of late admission or late acceptance of admission.

(7) Except in the case where the action is to be disposed of on the day fixed for trial of the action, the day for disposing of the action shall in every case be so fixed as to allow the notices thereof to be sent four clear days at the least before the day so fixed. Length of notice of disposal.

(8) The day fixed for disposal of the action need not be a court day, and the action shall on payment of the necessary fee be disposed of on that day or, under the circumstances stated in Actions may be disposed of on a non-court day.

O. VII. r. 34d. paragraph (6), on the day (if any) fixed for the trial by the registrar, either in chambers or in court and whether the judge is sitting or not, and the registrar shall, after hearing the parties (or their permitted representatives) if present and any witnesses, or in their absence, give judgment for the amount admitted with court fees and costs, and make such order for payment as shall seem just in accordance with and subject to the provisions of section 5 (4) of the County Courts Act, 1919, and section 105 of the County Courts Act, 1888. In the event of the necessary fee not being paid, the case may be adjourned at the plaintiff's request on such terms as the registrar thinks fit and otherwise shall be struck out. The judge may, if he is sitting and thinks fit, dispose of or otherwise deal with the case instead of the registrar. [1923.]

Where
several
defendants.

Where
defendant
neglects to
deliver
notice or
affidavit of
defence.

34E. (Annulled. County Court Rules, 1926 (No. 1) rules.)

34F.—(1) Where any defendant neglects to deliver a notice or affidavit of defence within the time limited by these rules, the court may, at any time before judgment is entered, on an affidavit disclosing a defence on the merits and satisfactorily explaining his neglect, let in the defendant to defend upon such terms as the court may think just. In any such case the registrar shall send to the plaintiff a copy of the affidavit, and shall send to the parties notice of the day fixed for the trial in accordance with these rules.

(2) After judgment in default of delivery of a notice or affidavit of defence, the judge may in special circumstances, on application made on notice to the plaintiff and on an affidavit disclosing a defence on the merits and satisfactorily explaining the defendant's neglect, set aside the judgment and let in the defendant to defend upon such terms as the judge may think just. In any such case the defendant may apply to the registrar to stay or set aside execution pending the hearing of the application to the judge, and the registrar may stay or set aside the same accordingly, upon such terms as to payment into court, giving security, or otherwise, as he may think just. If the defendant is let in to defend the registrar shall send to the parties notice of the day fixed for the trial in accordance with these rules.

When
default
summons to
be struck
out.

Limitation
of time for
signing
judgment.

35. Where a default summons or a special default summons has not been returned to the registrar within twelve months from the date of its issue, it shall be struck out of the plaint book, unless the time for its service has been extended.

36. Where after service of a default summons or a special default summons has been effected on any defendant, and no

notice or affidavit of defence has been delivered, and the defendant has not been let in to defend, and two months have expired from the date of service, or, where an order has been made giving liberty to proceed as if personal service has been effected, from the date of service of the order, judgment shall not be entered against such defendant, and the action shall be struck out against him, subject to the power of the Court to enlarge the time under Order LIV. r. 12. **O. VII. r. 36.**

Amended by County Court Rules, 1926 (No. 1) rules.

37. Where a default summons or a special default summons has been served in due time to prevent the operation of a statute of limitations, and either party dies after the service and after the lapse of the period within which it is provided by the statute that an action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representative of the deceased party, within one year from the day of service of the summons. **Where either party dies after service of summons in time to prevent operation of statutes of limitations.**

38. A default summons or a special default summons may, at the request of the plaintiff, be exchanged without fee for an ordinary summons upon the summons being filed in court within twelve months of its issue. **Exchange of default for ordinary summons.**

39. Subject to the special provisions of this Order, any of the rules or forms referring to default summonses shall be read and construed as applying also to special default summonses under these rules, and as if the words "or a special default summons" were inserted therein after the words "default summons." **Application of rules and forms referring to default summonses to special default summonses.**

See notes on default and special default summonses, sect. 86, *ante*, pp. 99—105.

Substituted Service.

40. Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons (other than a default or special default summons or judgment summons), petition, notice, proceeding, or document cannot be made, the court may, upon an affidavit showing grounds, make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may be just. **Substituted service, and notice in lieu of service. Forms 43, 44, 45.**

Where service is by solicitor, and the opposite party acts without one service ought, it is believed, to be personal, or under an order for substituted service under this rule. See rule 29A, *supra*.

Service out of England and Wales.

[Conf. R. S. C. Order XI.]

41. Service out of England and Wales of a summons or notice of a summons may be allowed by the court whenever— **Service out of England and Wales, when allowed**

- O. VII. r. 41. — (a) the whole subject-matter of the action is land situate within the district of the court (with or without rent or profits); or
- (b) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the district of the court is sought to be construed, rectified, set aside, or enforced in the action; or
- (c) any relief is sought against any person residing or carrying on business within the district of the court, or sued in the court pursuant to leave granted under section seventy-four of the Act; or
- (d) the action is for the administration of the personal estate of any deceased person who had his last place of abode within the district of the court, or for the execution (as to property situate within the district) of the trusts of any written instrument of which the person to be served is a trustee, which ought to be executed according to the law of England; or
- (e) the action is founded on any breach or alleged breach within the district of the court of any contract wherever made which, according to the terms thereof, ought to be performed within England or Wales, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; or
- (f) any injunction is sought as to anything done or to be done in the district of the court, or any nuisance in such district is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
- (g) any person out of England and Wales is a necessary or proper party to any action properly brought (a) in the court against some other person duly served in England or Wales.

NOTE.—(a) See *John Russell & Co., Ltd. v. Cayzer Irvine & Co., Ltd.*, (1916) 2 A. C. 298; 85 L. J. K. B. 1152.

The judge alone can exercise the powers conferred by this rule. See r. 48A, *infra*. A court fee of 10s. is payable on the application (C.C. Fees Order, 1925, Fee No. 6).

“**Summons or notice of summons.**”]—The word “summons” in this rule apparently includes garnishee and interpleader summonses and any process of the court which is directed to be served like a summons, *e.g.*, third party notices, petitions, etc. (*Re Cliff*, (1895) 2 Ch. 21).

The procedure does not apply to default summonses; they cannot be issued for service out of England or Wales (Order VII. r. 44A).

42. Where leave is asked from the court to serve a summons under the last preceding rule in Scotland or in Ireland, if it appears to the court that there may be a concurrent remedy in Scotland or Ireland (as the case may be), the court shall have regard to the comparative cost and convenience of proceeding in the district of the court or in the place of residence of the defendant or person sought to be served, and particularly to the powers and jurisdiction, under the statutes establishing or regulating them, of the Sheriff's Courts or Small Debts Courts in Scotland, and of the Civil Bill Courts in Ireland, respectively.

O. VII. r. 42.

How discretion to be exercised.

43. In probate actions service of a summons or notice of a summons out of England and Wales may be allowed by leave of the court.

Probate actions.

44. Every application for leave to serve a summons or notice of a summons on a defendant out of England and Wales shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or may probably be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it is made sufficiently to appear to the court that the case is a proper one for service out of England and Wales under these rules.

Application to be supported by evidence.

44A. Leave shall not be granted to serve a default summons or notice of a default summons on a defendant out of England and Wales.

Default summons not to be issued for

45. Any order giving leave to effect such service or give such notice shall fix a day on which the action will be proceeded with, and on which the defendant is to appear, such day to be so fixed as to allow sufficient time after service for the defendant to appear, regard being had to the place or county where or within which the summons is to be served or the notice given.

service out of England and Wales.

Order to fix time for appearance.

Form 47.

46. When the summons itself is to be served on the defendant, a notice according to the form in the Appendix shall be annexed to the summons and served therewith, and the summons and notice shall be served in the manner in which default summonses are required to be served.

Notice where summons to be served.

Form 48.

47. When the defendant is neither a British subject nor in British dominions, notice of the summons according to the form in the Appendix, and not the summons itself, shall be served on him; and such notice shall be served in the manner in which default summonses are required to be served.

Notice in lieu of summons.

Form 49.

O. VII. r. 48.

Proof of
service.

48. Where leave is given under these rules to serve a summons or notice of a summons on a defendant out of England and Wales, and such defendant does not appear on the day fixed for proceeding with the action, the plaintiff shall before proceeding file an affidavit of service of the summons or notice, as the case may be. (R. S. C., Ord. XIII. r. 2.)

Powers to be
exercised by
judge or
deputy only.

48A. The powers of the court under Rules 41 to 48 of this Order shall be exercised only by the judge, or deputy judge, or by one judge acting for another under section nineteen of the Act.

Application
to set aside
service.

49. A defendant served with a summons or notice of a summons under this Order may apply, on notice, to the judge to set aside the service of such summons or notice upon him, or to discharge the order authorising such service. (R. S. C., Ord. XII. r. 30.)

Notwithstanding this rule, a writ of prohibition may be granted where the judge has wrongly exercised his powers. See *ante*, p. 159.

Appointment of Guardians ad litem to Infants or Persons of Unsound Mind.

Appoint-
ment of
guardian
ad litem to
defendant
appearing
on face of
proceedings
to be an
infant or a
person of
unsound
mind.

50. Where it appears on the face of the proceedings that any defendant to an action or matter is an infant or a person of unsound mind not so found by inquisition, the following provisions shall apply:—

- (1) At any time after the service of the summons, and not less than six clear days before the return day, a guardian *ad litem* to such infant or person of unsound mind may be appointed by the registrar, on application made to him on behalf of such infant or person of unsound mind, on affidavit according to the form in the Appendix, accompanied by a written consent of the proposed guardian to act as such guardian.

By Order XXIIA. r. 7 and Order XXXIII. r. 3B., in actions under the extended jurisdiction and in actions over fifty pounds transferred from the High Court, "twelve clear days" are substituted for "six clear days."

- (2) Where such appointment is made, the registrar shall forthwith send notice by post of such appointment to the plaintiff, according to the form in the Appendix.
- (3) Where no application for the appointment of a guardian *ad litem* is made on behalf of the infant or person of unsound mind within the time hereinbefore limited, the registrar shall on the sixth day before the return day send notice by post to the plaintiff that no such application has been made, according to the form in the Appendix.

Form 52.

Form 53.

By Order XXIIA. r. 7 and XXXIII. r. 3B., in actions under the extended jurisdiction and in actions over fifty pounds transferred from the High Court, the words "twelfth day before the return day" are substituted for the words "sixth day before the return day."

O. VII. r. 50
Note.

- (4) The plaintiff shall thereupon, before proceeding further with the action or matter against such infant or person of unsound mind, apply to the judge for an order that some proper person be assigned guardian *ad litem* of such defendant, by whom he may appear and defend, and, if necessary, for a postponement of the trial.
- (5) Such application shall be made on affidavit according to the form in the Appendix; and notice of such application, together with a copy of such affidavit, shall three clear days at least before the day in such notice named for hearing the application be served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of service of the summons, and shall also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) be served upon or left at the dwelling-house of the father or guardian (if any) of such infant: Provided that the registrar may, on the application of the plaintiff, dispense with such last-mentioned service. Forms 54, 55.
- (6) On the hearing of the application the judge, if satisfied with the proposed guardian, may appoint him to act as such guardian; but if not so satisfied, the judge may appoint any other person willing to act as guardian; or in default of such person, the judge may appoint the registrar to act as guardian; and the action or matter shall thenceforth proceed as if a guardian had been appointed on behalf of the defendant. The judge may, if necessary, on the hearing of such application, postpone the trial. Form 56.
- (7) Provided, that where an infant is sued for a debt or other liquidated demand, the notice required by paragraph (3) of this rule need not be sent, nor shall paragraphs (4) to (6) of this rule apply, unless in any case the registrar thinks it necessary for the protection of such infant that such notice should be sent, or the judge directs such notice to be sent.

51. Where it does not appear on the face of the proceedings but is made to appear in the course of the proceedings, that any defendant to an action or matter is an infant or a person of unsound mind not so found by inquisition, the following provisions shall apply:—

Appointment
of guardian
ad litem to
defendant
ascertained
to be an
infant or a
person of

- (1) If on any defendant appearing at the trial it appears that

O. VII. r. 51.

unsound
mind.

Forms 57, 58.

such defendant is an infant, and such defendant names a person as his guardian who then assents so to act, such person shall be appointed guardian accordingly : but if the defendant does not name a guardian, the judge may appoint as guardian any person in court who is willing to act as such guardian ; or in default of any such person the judge may appoint the registrar to act as guardian ; and the action or matter shall thenceforth proceed as if the infant had named a guardian, and the name of the guardian appointed shall be entered according to one or other of the forms in the Appendix.

- (2) In any other case, on its being made to appear that any defendant is an infant or a person of unsound mind not so found by inquisition, a guardian *ad litem* to such defendant may be appointed at any time within six days of its being made to appear that such defendant is an infant or a person of unsound mind, on application made on behalf of such defendant in accordance with paragraphs (1) and (2) of the last preceding rule ; and if no such application is made within such period of six days, the registrar shall send notice to the plaintiff in accordance with paragraph (3) of the same rule ; and thereupon the plaintiff shall, before proceeding further with the action or matter against such defendant, apply for such appointment in accordance with paragraphs (4) to (6) of the same rule. And the trial shall, if necessary, be postponed to allow an application for the appointment of a guardian to be made.

- (3) Provided, that paragraph (7) of the last preceding rule shall apply to cases falling within this rule.

Entry of
appointment
on summons,
&c.

52. Where a guardian is appointed under either of the two preceding rules, such appointment shall be entered on the summons and in the minute book, and on all subsequent proceedings.

Limitation of
liability of
guardian for
costs.

53. A guardian *ad litem* to an infant or a person of unsound mind not so found by inquisition shall not be personally liable to any costs not occasioned by his personal negligence or misconduct.

Power to set
aside judg-
ment against
infant or
person of un-
sound mind
where no
guardian
appointed.

54. Where judgment has been obtained or an order made against a defendant who was at the time an infant or a person of unsound mind not so found by inquisition, without a guardian *ad litem* having been appointed to such defendant, the judge may set aside such judgment or order and order a new trial, or make such other order as may be just.

55. In the five preceding rules "summons" includes "petition," "plaintiff" includes "petitioner," "defendant" includes "respondent," and "trial" includes "hearing."

O. VII. r. 55.

Application of preceding rules to petition. Guardians *ad litem* with reference to proceedings under judgment or order.

56. At any time during the proceedings under any judgment or order, the judge may, if he thinks fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition who has been served with notice of such judgment or order. (R. S. C., Ord. LV. r. 27.)

ORDER VIII.

CONSOLIDATION OF ACTIONS OR STAY OF PROCEEDINGS. TRANSFER.

1. Where several actions are brought by the same plaintiff against the same defendant in the same court for or in respect of different causes of action which might in accordance with the provisions of Order IV. have been joined in one action, the defendant may apply to the judge that the said actions may be consolidated.

O. VIII. r. 1

Consolidation of separate actions which might have been joined in one.

A plaintiff may not divide a cause of action for the purpose of bringing two or more actions (County Courts Act, 1888, s. 81). But he may bring different actions in respect of different causes of action. An order to consolidate such actions might cause the jurisdiction to be exceeded as to amount, and it is therefore doubtful whether, if the effect of consolidation would be to make the consolidated action one which could not have been commenced in a county court, any order could be made.

Form 59.

It should be noticed that an application under this rule must be made to the judge.

2. Where several actions are brought by different plaintiffs against the same defendant in the same court for or in respect of causes of action arising out of the same breach of contract, wrong or other circumstances, the defendant may, on filing an undertaking to be bound so far as his liability in the said several actions is concerned by the decision in such one of the said actions as may be selected by the judge, apply to the judge for an order to stay the proceedings in the actions other than the one so selected, until judgment is given in such selected action.

Stay of proceedings in actions brought in respect of same matter, till judgment given in selected action.

Form 60.

Form 61.

Note that the application must be made to the judge. For application of rules 2—6 to proceedings under the Workmen's Compensation Act, see Workmen's Compensation Rules, r. 17.

3. Applications under the two preceding rules shall be made upon notice to the plaintiffs to be affected by any order made thereon.

Applications under preceding rules.

These applications cannot be made *ex parte*.

O. VIII. r. 4.

Judge may
impose terms.

Where judg-
ment in
favour of
defendant in
selected
action.

Form 62.

4. Upon the hearing of any application for consolidation of actions or for stay of proceedings the judge may impose such terms and conditions and make such order in the matter as may be just.

5. If judgment in a selected action under Rule 2 of this Order is given in favour of the defendant, the defendant shall be entitled to his costs up to the date of the order staying proceedings against every other plaintiff whose action is stayed, unless such plaintiff gives the registrar within one month from such judgment notice in writing to set down his action for trial. On such judgment being given, the registrar shall send to every other plaintiff a notice according to the form in the Appendix, and if any such plaintiff gives notice to the registrar to set down his action for trial, the registrar shall appoint a day for the trial, and send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day.

See *Doyle v. Anderson*, (1834) 1 A. & E. 635; 40 R. R. 381; *Doyle v. Douglas*, (1833) 4 B. & Ad. 544; *Amos v. Chadwick*, (1877) 4 Ch. D. 869; 47 L. J. Ch. 871.

Where judg-
ment given
against
defendant in
selected
action.

Form 62.

6. If judgment in a selected action is given against the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their debts or damages and costs. On such judgment being given the registrar shall send to each such plaintiff a notice according to the form in the Appendix, and a plaintiff desiring to proceed shall within one month from the date of such notice give to the registrar notice in writing to set down his action for trial, and on receipt of such notice the registrar shall appoint a day for the trial, and send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day.

Stay of
actions for
same cause
against
several
defendants,
till judgment
given in
selected
action.

7. Where several actions of contract are brought by the same plaintiff against several defendants in the same court, and the event of the said actions depends on the finding of the judge or jury on some question common to all the said actions, the judge may at any time select one of such actions for trial, and stay the proceedings in all the other actions until the judgment in the action so selected is given; but after judgment in such selected action, unless the plaintiff and the defendants in the other actions, or any of them, submit to have judgment passed and entered therein in accordance with the judgment in the action so selected such other actions shall proceed in the same manner as if they had not been stayed; and on receipt of notice from the plaintiff or defendant in any such action to set down the action for trial the

registrar shall appoint a day for the trial, and shall send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day. O. VIII. r. 7.

8. Where actions are commenced in different courts by parties in the same interest, upon application by any of the parties they shall be transferred to the court in which the first plaint was entered, and shall there be proceeded with in the same way in all respects as if they had been commenced in that court. Transfer of actions commenced in different courts.

For the practice, see Rule 9, *infra*.

9. Where application is intended to be made for the transfer of any action, matter, or proceeding under section eighty-five of the Act, or under the last preceding rule, or under Order XXXIII. Rule 19, three clear days' notice in writing of such intended application shall be given by the applicant to the registrar of the court in which such action, matter, or proceeding is pending, and to all parties who may be affected by such application; but the judge may at any time, by consent of all parties, or without such consent if he thinks fit, order a transfer, although this rule has not been complied with. When a transfer is ordered the judge may make such order as to the costs incurred before or occasioned by such transfer as he may think fit; and a certified copy of the proceedings shall be transmitted in accordance with section eighty-five of the Act, and the provisions of that section shall apply. The costs of such copy and the costs of transmission shall be paid for in the first instance by the party on whose application the transfer has been made, or, if the transfer is made by the judge without any application to transfer being made to him, such costs shall be paid for in the first instance by the plaintiff in the action, matter, or proceeding: but such payment shall be without prejudice to any question as to the party by whom such costs are ultimately to be borne. Application for transfer under last rule or 51 & 52 Vict. c. 43, s. 85, or Order XXXIII. r. 19.
Forms 120, 121.
Costs before or occasioned by transfer.
Transmission of certified copy of proceedings.

Costs of Transferred Action.—See Part II., “Costs and Court Fees,” at p. 1037.

ORDER IX.

DISCONTINUANCE, CONFESSION, ADMISSION, AND PAYMENT INTO OR OUT OF COURT.

1.—(1) If the plaintiff desires to discontinue any action or matter against all or any of the parties thereto, or to withdraw any part of his alleged cause of complaint, he shall give notice in writing thereof to the registrar, and to every party as to whom he so desires to discontinue or withdraw; and after the receipt of such notice any such party may, unless the judge on the application of the plaintiff otherwise orders, tax his costs incurred Discontinuance of action or withdrawal of part of claim.
Forms 63, 253.
Costs.
Form 64.

O. IX. r. 1

before the receipt of the notice, or if the action or matter be not wholly discontinued, his costs incurred before the receipt of the notice in relation to the matter so withdrawn, and may enter judgment for such costs in case the same are not paid within fourteen days after taxation, and on entering up judgment item 62 in the scale of costs may be allowed. Provided that if the action is not wholly discontinued as against the party entering up judgment, execution shall not issue on the judgment before the action is disposed of except by leave of the court.

It will be noted that an application to the Court for costs is not necessary.

A discontinuance or withdrawal is not a defence to a subsequent action; but if a subsequent action is brought for substantially the same cause of action, it may be stayed by the judge until payment of the costs of the discontinued action (Order IX. r. 1 (2)).

In the High Court it has now been held that the only way a plaintiff can without leave withdraw his action is by means of the rules provided for discontinuance (*Fox v. Star Newspaper*, (1900) A. C. 19; 69 L. J. Q. B. 117).

Stay of
subsequent
action till
costs of
action dis-
continued or
claim with-
drawn are
paid.

(2) Discontinuance or withdrawal under this rule shall not be a defence to any subsequent action; but if after such discontinuance or withdrawal a subsequent action is brought for the same or substantially the same cause of action before the payment of the costs in this rule mentioned, the judge may, if he thinks fit, order a stay of such subsequent action until such costs have been paid.

Admissions
under 9 & 10
Geo. 5, c. 73,
s. 5 (2).

Form 67.

2.—(1) A defendant to an ordinary summons, who admits his liability for the whole or part of any claim, but desires the decision of the court as to the time and mode of payment thereof, may sign an admission in writing stating therein that he offers to pay the amount admitted within a time or by instalments to be specified in the admission.

(2) The admission shall be signed by the defendant or his solicitor and shall be delivered to the registrar five clear days at least before the return day: Provided that if the admission is not so delivered it may be delivered at any time before or when the action is called on, subject however to an order by the court for payment by the defendant of any costs properly incurred by the plaintiff in consequence of the admission not having been delivered in due time.

(3) The registrar shall, as soon as reasonably may be after the receipt of the admission (if it is delivered in time to permit of his so doing) send notice thereof to the plaintiff according to one of the forms in the Appendix.

(4) If the plaintiff in the case of admission of part only of the claim elects to accept the amount admitted in satisfaction of his claim, and to accept the offer of payment made by the defendant, or in the case of admission of the whole claim elects to accept the

Form 66.

Form 67.

offer of payment, he should send notice of acceptance to the registrar and to the defendant within such reasonable time before the return day as the filing of the admission by the defendant may permit; or he may give such notice of acceptance at any time before the return day or may attend on the return day and accept the admission and offer, or the offer, as the case may be, without giving such notice.

(5) In any such case of acceptance as aforesaid, the registrar may, on the return day, on payment of the fee for entering judgment, and whether the parties or either of them attend or not, enter judgment for the amount admitted and for court fees and costs, and payment shall be ordered to be made in accordance with the offer of the defendant.

(6) If the plaintiff in the case of admission of part only of the claim elects to accept the amount admitted in satisfaction of his claim, but objects to the mode of payment offered by the defendant, or in the case of admission of the whole claim objects to the mode of payment, he should send notice in that behalf to the registrar and the defendant within such reasonable time before the return day as the delivery of the admission by the defendant may permit; or he may give such notice at any time before the return day, or may attend on the return day and notify the same.

(7) If the plaintiff in the case of admission of part only of the claim objects to accept the amount admitted by the defendant and the offer of payment in satisfaction of his claim, he should send notice in that behalf to the registrar and to the defendant as in paragraph (6); or he may give such notice at any time before the return day or may attend on the return day and notify the same.

(8) In the case where objection is taken to the amount admitted as well as to the offer of payment as in paragraph (7) the action shall be dealt with on the return day in the ordinary way; in any other case (except the case mentioned in paragraphs (4) and (5)) the registrar will on the return day, if the plaintiff attends and on payment of the necessary court fee, or if he does not attend but sends the fee to the registrar, give judgment for the amount admitted with court fees and costs, and direct the time and mode of payment in accordance with section 5 of the County Courts Act, 1919, and section 105 of the County Courts Act, 1888 [1923].

In actions under the extended jurisdiction and in actions over fifty pounds transferred from the High Court, "ten clear days" is substituted for "five clear days" (Order XXIIA. r. 8, Order XXXIII. r. 3B.).

O. IX. r. 3.

Admission
by letter
addressed to
court.

3. Where a defendant does not appear on the return day, and has not signed an admission in accordance with the last preceding rule, the court may accept as an admission of the claim or any part thereof any letter addressed to the court and purporting to be written by or on behalf of the defendant, if the court is satisfied that such letter was in fact written by or by the authority of the defendant; and a note of such letter having been accepted as an admission shall be entered in the minute book.

Agreement
as to amount
of debt and
terms of
payment
under 9 & 10
Geo. 5, c. 73,
s. 5 (3).
Form 68.

4.—(1) If the plaintiff and the defendant in any action can agree as to the amount payable in respect of the claim and the terms and conditions upon which the amount is to be paid, they may sign an agreement according to the form in the Appendix and file the same.

(2) The parties to any such agreement may also agree as to the amounts of the court fees and costs to be paid by the defendant, subject to the approval of the registrar, and such amounts shall be stated separately in the agreement.

(3) On any such agreement being filed the registrar may, on payment of the fee for entering judgment, enter judgment for the amount agreed upon and the court fees and costs agreed upon and approved, and order payment of the same upon the terms and conditions mentioned in the agreement, or if the amounts of the court fees and costs have not been agreed upon and approved, may enter judgment for the amount agreed upon and the court fees and costs properly incurred by the plaintiff in relation to that amount, and order payment of the same on the terms and conditions mentioned in the agreement.

Admission
of truth of
plaintiff's
statement
Form 71.

Form 72.

5. Where a defendant desires to admit the truth of the statements in the plaintiff's particulars, and to submit to the judgment of the court thereon, he may sign an admission according to the form in the Appendix. Such admission shall be filed five clear days at least before the return day, and the registrar shall transmit a notice thereof by post to the plaintiff; and the plaintiff shall not, unless the judge otherwise orders, be allowed any costs incurred after the service upon him of notice of such admission in relation to the proof of the matter so admitted: Provided that the plaintiff shall be entitled, notwithstanding such admission, to his costs of attending on the day of trial to enter up judgment and tax his costs.

In actions under the extended jurisdiction and in actions over fifty pounds transferred from the High Court, "ten clear days" is substituted for "five clear days" (Order XXIIA. r. 8, Order XXXIII. r. 3B.).

Admission
by any
party.

6. Any party to an action or matter may give notice in writing to any other party that he admits the truth of the whole or of

any part of the case or claim of such other party, and no costs incurred after the receipt of such notice in respect of the proof of any matters admitted therein shall be allowed ; but the costs of any steps taken prior to the receipt of such notice may be allowed if the registrar on taxation is of opinion that they were not taken unnecessarily or prematurely.

O. IX. r. 6
Form 71.

The admission must be specific and clear, and such a one as dispenses with any proof whatsoever (*Pincott v. Letts*, (1897) 77 L. T. 160).

7. Any defendant in an action of ejectment or for the recovery of possession of a tenement may at any time before the return day confess the action as to the whole or any part of the land by signing in the presence of any registrar or of a clerk to a registrar, or of a solicitor, an admission of the title of the plaintiff to the land or such part thereof, and of his right to the possession thereof, which admission shall be attested by the person in whose presence it is signed ; and the registrar shall upon the receipt of such admission forthwith give notice thereof by post to the plaintiff ; and the court may on the return day, upon proof of the signature of the defendant to such admission, by affidavit or otherwise, in case the same is not attested by a registrar or a clerk to a registrar, and without any further proof of the plaintiff's title (if no defendant other than the defendant signing such admission defends for the said land or such part thereof), give judgment for the plaintiff for the recovery of possession and for costs. Provided that if the plaintiff receives notice of such admission before the return day, he shall not be entitled as against any defendant signing to any costs incurred subsequently to the receipt of such notice, except the costs of attending the court on the return day, unless the court otherwise orders. Provided also, that where the admission is not signed by all the defendants defending for the said lands or such part thereof, the action shall proceed against all the defendants who have not signed as if no admission had been signed.

Confession
by defendant
in action of
ejectment or
for recovery
of possession.
Forms 256,
274.

Form 275.

8. Any party may by notice in writing according to the form in the Appendix, at any time not later than six clear days before the return day, call on any other party to admit, for the purposes of the action, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same by the delivery of a written admission of the fact or facts as aforesaid not less than three clear days before the return day, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the action, matter, or issue may be, unless at the trial the court

Notice to
admit specific
facts.
Form 113.
Form 114.

O. IX. r. 8. certifies that the refusal to admit was reasonable, or unless the court at any time otherwise orders. Provided that any admission made in pursuance of such notice shall be deemed to be made only for the purposes of the particular action, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving notice: Provided also, that the court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

In actions under the extended jurisdiction and in actions over fifty pounds transferred from the High Court, "twelve clear days" and "six clear days" are substituted for "six clear days" and "three clear days" respectively (Order XXIIA. r. 9, Order XXXIII. r. 3B).

Evidence of admissions.
Forms 66, 70, 72.

9. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of this order, shall be sufficient evidence of such admissions, if evidence thereof be required.

Rules 10, 11.—Special rules under the "Partition Acts," now obsolete.

Payment into court.
51 & 52 Vict. c. 43, s. 107.

12.—(1) A defendant who desires to pay money into court pursuant to section one hundred and seven of the Act shall pay the same five clear days at least before the return day. Every such payment shall be taken to admit *pro tanto* the claim or cause of action or complaint in respect of which the payment is made, unless the defendant at the time of paying the money into court files with the registrar a notice according to the form in the Appendix, stating his name and address, and further stating that notwithstanding such payment the defendant denies his liability; but no such payment with a denial of liability shall be permitted in any action or counterclaim for libel or slander. The defendant must also pay into court, in respect of the court fees and solicitor's costs (if any) entered on the summons, a sum proportionate to the amount paid in in respect of the claim, unless the payment into court is made under a defence of tender, in which case he may make such payment without costs.

Form 75.

Forms 73, 74.

(2) The registrar shall, within twenty-four hours from the time of any payment made pursuant to the last preceding paragraph, send to the plaintiff notice thereof; and when such payment is made with a denial of liability, he shall also send therewith a copy of the notice prescribed by the last preceding paragraph.

(3) The defendant may also at any time less than five clear days before the return day pay money into court, and notice thereof shall be given by the registrar to the plaintiff in accordance with the last preceding paragraph; but the defendant shall not

be permitted, except by leave of the court, to give a notice O. IX. r. 12. denying liability at the time of such payment.

(4) Where money is paid into court less than five clear days before the return day, or where it is in any case paid in without costs, if the plaintiff does not elect to accept the money so paid in satisfaction, he may proceed as if no such payment had been made, and, unless the court otherwise orders, he shall be entitled to costs on such sum as he may recover, whether such sum be less than the sum paid into court or not.

In actions under the extended jurisdiction, and in actions over 50*l.* transferred from the High Court, "ten clear days" is substituted for "five clear days" in paragraphs 1, 3 and 4 of the above rule (Order XXIIA, r. 9, Order XXXIII. r. 3B).

Where several plaintiffs.—The Court of Appeal has held that a general payment of money into court in the High Court where two or more plaintiffs with distinct causes of action sue is bad and that the defendant must apportion the amount to the respective claims (*Smith v. Schilling*, (1928) 1 K. B. 429; 97 L. J. K. B. 281; overruling *Benning v. Ilford Gas Co.*, (1907) 2 K. B. 290). This decision will apparently govern a payment into court in the county court in similar circumstances.

When without Denial of Liability.—A payment without denial of liability admits *pro tanto* the claim or cause of action or complaint in respect of which it is made; though if the claim is for a debt composed of several items, a general payment will not admit that something is due under each item (*Hennell v. Davies*, (1893) 1 Q. B. 367; 62 L. J. Q. B. 220). The payment ought to be made at least five clear days (ten clear days in cases under the Act of 1903, and in actions over 50*l.* transferred from the High Court) before the return day (see *R. v. Leeds C. C. Registrar*, (1885) 16 Q. B. D. 691; *Stevens v. Hounslow*, (1889) 38 W. R. 236; 61 L. T. 839), with court fees proportionate to the amount paid in, and a proportionate amount of solicitor's costs, if any, unless the payment into court be made under a defence of tender, when the defendant may make the payment without costs. If the defendant claims to be entitled to a set-off or counterclaim, he may pay in the residue, but must pay into court court fees and solicitor's costs proportionate to the amount paid in (Order IX. r. 17). The money may be paid in any day when the office is open, during office hours (Order II. r. 9). An acknowledgment of the payment will be given in all cases (Order II. r. 11).

Within twenty-four hours from the time of such payment, the registrar must give notice of the payment to the plaintiff (see as to default of officer, *Francis v. Dowdeswell*, (1874) L. R. 9 C. P. 423, 432; 43 L. J. C. P. 248) by post, or by causing the notice to be delivered at his usual place of abode or business (County Courts Act, 1888, s. 107; Order IX. r. 12 (2); Forms 73, 74).

Where Plaintiff Accepts it.—If the plaintiff elects to accept the sum paid into court in satisfaction of his claim, whether the same has been paid in due time or not, or with or without costs, or with or without a notice of denial of liability, and sends to the registrar and to the defendant by post, or leaves at the registrar's office and at the defendant's dwelling or place of business, a written notice (Form 76), stating such acceptance, within such reasonable time before the return day as the time of payment by the defendant permits, the action will abate, and the plaintiff will not be liable for any costs incurred by the defendant after receiving the notice (Order IX. r. 13 (1) (2)). In default of acceptance the action may proceed, but the plaintiff may accept the money at any time before the case is called on and opened, subject to the payment of any costs reasonably incurred by the defendant

O. IX. r. 12
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since payment into court, which may be allowed by the court (Order IX. r. 13 (5) (6)). If the plaintiff claims too small a sum, and the amount claimed is paid into court without denial of liability and taken out by the plaintiff, the latter cannot bring a fresh action for the larger amount, and give credit for the sum paid into and taken out of court; the matter is *res judicata* (*Sanders v. Hamilton*, (1907) 96 L. T. 679).

Where Costs Insufficient.]—The statute (sect. 107) gives the plaintiff the “costs incurred,” and the court may in its discretion order the defendant to pay such fees and costs beyond the fees and costs (if any) paid into court, as the plaintiff may have properly incurred for work done, before the receipt of notice of payment into court, and in attending the court to obtain the order for the same, but no hearing fee is to be charged (Order IX. r. 13 (3)).

Notice of Application for Costs.]—When the plaintiff intends to apply for such costs, he must give notice of his intention in his notice of acceptance of the sum paid in, unless the time of payment into court does not permit of notice of acceptance being given, in which case the plaintiff may apply for costs without giving the notice (Order IX. r. 13 (1) (4); Form 76).

Where Plaintiff Proceeds.]—If the plaintiff proceeds, and recovers no more than was paid into court, he must pay the costs incurred by the defendant after the payment into court; such costs to be settled by the court and an order made for payment of them by the plaintiff (sect. 107).

The defendant may also, at any time less than five clear days (ten clear days in actions under the Act of 1903, and in actions over 50*l.* transferred from the High Court) before the return day, pay money into court, with costs, as above-mentioned, and notice will be given of the payment as above; but the defendant may not, except by leave of the court, give a notice denying liability at the time of such payment. If it is so paid, or in any case where it is paid in without costs, the plaintiff may elect to accept in satisfaction the sum paid in, and send the written notice (Form 76), and claim costs or further costs as above mentioned. If the plaintiff does not accept money so paid in in satisfaction, he may proceed as if there had been no such payment, and will be entitled to his costs on the amount recovered by him, unless the court otherwise orders (Order IX. r. 12 (3) (4); Order XXIIA. r. 10). If nothing is paid in for costs, and the judge finds the sum paid in sufficient and gives judgment for the defendant, he may give the plaintiff his costs up to the payment into court, and the subsequent costs to the defendant (*Sykes v. Wesleyan and General Assurance Society*, (1907) 76 L. J. K. B. 626).

Money may be taken out.]—When money is paid into court without a denial of liability the plaintiff may take it out at once whether he accepts it in satisfaction or not (sect. 107). It has been held that if a High Court action abates by reason of the death of the defendant after paying money into court without a denial of liability, the money should be paid out to the plaintiff and not to the executors of the defendant (*Brown v. Feeney*, (1906) 1 K. B. 563; 75 L. J. K. B. 494.) If it is not taken out and the result of the action is that it was paid into court under an error, *quære* if the judge then can or cannot order it to be paid out to the defendant (see *Chiverton v. Ede*, (1921) 2 K. B. 30; 90 L. J. K. B. 491).

Payment with Denial of Liability.]—In order that payment shall not operate as an admission, the defendant, at the time of paying money into court, must file with the registrar (with the copies required by Order LIV. r. 13) a notice (Form 75) stating his name and address, and that notwithstanding such payment he denies his liability. Payment into court with a denial of liability cannot be made in any action or counterclaim for libel or slander. A proportionate part of the court fees and solicitor's costs, if any, must be paid in, as in other cases, unless the payment into court is made under a defence of tender (Order IX. r. 12 (1)). The registrar, with the

notice of payment above-mentioned, must send to the plaintiff a copy of the notice denying liability (Order IX. r. 12 (2); Forms 74, 75). **O. IX. r. 12 Notes.**

In an action of negligence a defendant may under this rule file a notice that he admits negligence but denies the alleged damage, and pay into court a sum of money in satisfaction of the claim. This is a denial of liability, as a denial of damage is a denial of liability. If plaintiff only recovers the amount so paid into court, the defendant is entitled to his costs (*J. R. Munday, Ltd. v. London County Council*, (1916) 2 K. B. 331; 85 L. J. K. B. 1509. *Comp. Critchell v. London and South Western Rail. Co.*, (1907) 76 L. J. K. B. 422).

Time for Payment.—The payment must be made five clear days (ten clear days in actions brought under the Act of 1903 and in actions over 50l. transferred from the High Court) at least before the return day (Order IX. r. 12 (1); Order XXIIA. r. 10; Order XXXIII. r. 3B.); and, except by leave of the judge or registrar, cannot be made afterwards with a notice denying liability (Order IX. r. 12 (3)).

If the plaintiff then accept the money in satisfaction, he must give notice as provided and the action will abate (Order IX. r. 13 (1) (2); Form 76); and the money may be taken out of court at once (*Wood v. Leetham*, (1892) 61 L. J. Q. B. 215).

If not accepted in satisfaction, the money will be retained in court until after the trial, and if the plaintiff recovers less than the amount paid into court, the balance will be repaid to the defendant, unless the court otherwise orders. The court may order any costs awarded to the defendant to be set against the amount recovered by the plaintiff. If the defendant succeeds, the whole amount will be repaid to him, unless the court otherwise orders (Order IX. r. 19). In either case, judgment should be entered for the defendant, with, subject to the general discretion of the judge, costs (*Wood v. Leetham, supra*).

Where an executor or administrator is defendant, and he admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he must pay it into court under the above rules (Order XXX. r. 11).

The rules also apply to payment into court in actions of libel remitted from the High Court (Order IX. r. 14). A plaintiff may, in answer to a counterclaim, pay money into court under the same conditions (Order IX. r. 16). The above provisions do not apply to payments into court in equity actions or matters under order of the court (Order IX. r. 23).

Taxation; Costs of Issues.—Where in an action for negligence the defendant paid money into court with a denial of liability, and the trial resulted in a verdict for an amount less than that so paid in, it was held that the judge's order giving the defendant the general costs of the action and the plaintiff the costs of the issues found in his favour was right (*Wagstaffe v. Bentley*, (1902) 1 K. B. 124; 71 L. J. K. B. 55), and it is immaterial that the issue on which the plaintiff succeeds is not an issue going to the whole cause of action (*Hubback v. British North Borneo Co.*, (1904) 2 K. B. 473; 73 L. J. K. B. 654). Under similar circumstances, the plaintiff having been nonsuited, a new trial was ordered, the costs of the first trial to abide the event. At the second trial the plaintiff obtained a verdict for the sum paid into court, and it was held that the defendants were entitled to the general costs of the action, but that the county court judge had a discretion as to giving the plaintiff the costs of the issue of negligence, on which he had succeeded (*Dunn v. South Eastern Rail. Co.*, (1903) 1 K. B. 358; 72 L. J. K. B. 127). It is not now unusual to give to an unsuccessful defendant the costs of an issue or issues on which he succeeded. See, further, on this subject, Part II., "Costs and Court Fees," at p. 1048.

Tender.—If the money is paid into court with the defence of tender, no court fees or costs need be paid in (Order IX. r. 12 (1)). The plaintiff may accept the money in satisfaction, but is not entitled to take it out of court,

O. IX. r. 12
Notes.

or to any costs, without an order of the court, which may make such order as to the costs of either party as may be just, and may order any costs awarded to the defendant to be deducted from the amount paid into court and to be paid to the defendant (Order IX. r. 18).

Money is obtained out of court on production of the plaintiff note, just as when it has been paid in under a judgment.

Generally.]—As to payment into court by officers of court, as amends, see p. 30; under a default summons, r. 15, *infra*; when assignment of *choses in action* disputed, Order XXVII. r. 15; when defendant sets up lien on specific property, Order XII. r. 7; when money found due to infant or person of unsound mind, r. 24, *infra*; in replevin, sect. 134, C. C. Act; under Trustee Act, 1925, *ante*, p. 68.

Neither the fact that money has been paid into court, nor the amount paid in, is to be communicated to a jury, who must find their verdict without reference to any payment into court (Order IX. r. 26).

When payment into court is made, and an apology tendered in actions for libel (see *Jones v. Mackie*, (1867) L. R. 3 Ex. 1; 37 L. J. Ex. 1), it is believed that the payment is only conditional, and does not admit the cause of action (Order IX. r. 26).

Acceptance
of amount
paid in in
satisfaction
of claim.

Form 76.

13.—(1) If the plaintiff elects to accept in satisfaction of his claim the money paid into court by the defendant, whether the same has been paid in in due time or not, or with or without costs, or with or without a notice of denial of liability, he shall send to the registrar and to the defendant by post, or leave at the registrar's office and at the defendant's dwelling or place of business, a written notice according to the form in the Appendix, stating such acceptance, within such reasonable time before the return day as the time of payment by the defendant has permitted.

(2) Thereupon the action shall abate, except as herein provided, and the plaintiff shall not be liable to any costs incurred by the defendant after receiving such notice.

If the plaintiff claims too small a sum, and the amount claimed is paid into court without denial of liability and taken out by the plaintiff, the latter cannot bring a fresh action for the larger amount and give credit for the sum paid into and taken out of court; the matter is *res judicata* (*Sanders v. Hamilton*, (1907) 96 L. T. 679).

(3) In any such case the court may in its discretion order the defendant to pay such fees and costs, beyond the fees and costs (if any) paid into court by the defendant, as the plaintiff may have properly incurred for work done before the receipt of notice of payment into court, and in attending the court to obtain the order for the same, but no hearing fee shall be charged.

(Revised C. C. (No. 1) Rules 1923.)

Provision
as to costs.
Form 77.

Form 76.

(4) If the plaintiff intends to apply for such costs, he shall give notice of his intention in his notice of acceptance of the sum paid in, according to the form in the Appendix, or where the time of payment into court by the defendant does not permit of notice of acceptance being given, the plaintiff may apply for such costs without giving such notice.

(5) Where the plaintiff has not given notice of acceptance in

accordance with paragraph 1 of this rule, he may nevertheless accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the defendant since the date of payment into court, and which may be allowed by the court. O. IX. r. 13.

(6) In default of acceptance by the plaintiff the action may proceed.

(7) Where money is paid into court without a denial of liability, or under a defence of tender, and the action proceeds, the sum paid into court shall be included for the purpose of calculating the amount on which any costs allowed to the plaintiff are to be charged: but if the plaintiff recovers more than the sum so paid judgment shall be entered only for the additional amount recovered and the fees and costs so allowed; and in any such case the words "in addition to the sum of £ paid into court by the defendant" shall be added to the first paragraph of the form of judgment in the Appendix.

Form 151.

Amended. County Court (No. 1) Rules, 1925, r. 7.

If before the trial or hearing the defendant pays money into court without a denial of liability or under a defence of tender, the hearing fee is calculated only on the balance of the claim (C. C. Fees Order, 1925).

13A. Where in an action against two or more defendants money is paid into court by one or some but not all of them, in respect of a cause of action for which the defendants are sued jointly, and the plaintiff elects to accept the sum so paid in, he shall in addition to giving the notice required by Rule 13 of this Order give notice to the other defendants of his having accepted the money so paid in; and thereupon all further proceedings in respect of the joint cause of action, except as to costs, shall be stayed, and the judge may upon application by any party make such order as may appear to be just as to the costs of the plaintiff and of the defendants (other than the defendant or defendants who has or have made the payment into court) incurred in respect of the cause of action satisfied by such payment. If the plaintiff does not accept the money so paid in by one or some but not all of several defendants in respect of a joint cause of action, but proceeds to trial and recovers no more than the amount paid into court, the judge may make such order as may appear to be just in respect of the costs of the joint cause of action as between the plaintiff and the defendants other than the defendant or defendants who has or have made the payment into court. (Cf. R.S.C., O. XXII. r. 8a.)

14. Where a defendant, in an action of libel remitted under section sixty-six of the Act, pays money into court under section remitted

O. IX. r. 14. two of the Libel Act, 1843, the rules of this Order shall apply to and be observed with reference to such payment into court, so far as they are applicable.

action of libel.

51 & 52 Vict. The transmission to the county court of money paid into the High Court or a district registry before the action was transferred or remitted is provided for by Order XXXIII. r. 3A.

c. 43, s. 66.

6 & 7 Vict.

c. 96, s. 2.

Form 87.

Where payment made with or after notice or affidavit of defence to default or special default summons.

15. Where a notice of defence to a default summons or an affidavit of defence to a special default summons has been delivered, and the defendant before notice of the day fixed for the trial has been sent to the plaintiff pays into court the amount or a portion of the amount claimed, together with a sum in respect of the court fees and solicitor's costs (if any) entered on the summons proportionate to the amount paid in in respect of the claim, he shall not be liable to any further costs if the plaintiff accepts the money paid in in satisfaction of his claim. Where payment into court is made after notice of trial has been so sent, the provisions of Rule 13 of this Order shall apply.

See notes to sect. 86 "Default" and "Special Default Summons," *ante*, pp. 99—105.

Payment by plaintiff in answer to counter-claim.

16. A plaintiff may, in answer to a counter-claim, pay money into court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant.

It will be paid out, pursuant to Order II. r. 10, on proof to the registrar's satisfaction that the person applying is entitled or authorised to receive it (see Order IX. r. 21).

Fees and costs on payment of amount admitted after deducting set-off or counter-claim.

17. Where a defendant pays into court any sum admitted by him to be due, after deducting any amount claimed by him as a set-off or counter-claim, he must pay into court in respect of the court fees and solicitor's costs (if any) entered on the summons a sum proportionate to the amount paid in in respect of the plaintiff's claim.

Acceptance of money paid into court under defence of tender.

18. Where a defendant pays money into court under a defence of tender, the plaintiff may accept the same in satisfaction of his claim in accordance with Rule 13; but he shall not be entitled to take out of court the amount so accepted, nor to any costs, without the order of the court; and the court may make such order as may be just as to the costs of either party, and may order any costs awarded to the defendant to be deducted from such amount and paid to the defendant.

Costs.

Money paid in with denial of liability.

19. Where a defendant pays into court a sum less than the sum claimed, with a notice of denial of liability, and the plaintiff does not accept the same in satisfaction of his claim, the money shall not be paid out until after the trial and judgment; and if the plaintiff recovers less than the amount paid into court, the balance of such amount shall be repaid to the defendant, unless the court

otherwise orders, and the court may order any costs awarded to the defendant to be set off against the amount recovered by the plaintiff; and if the defendant succeeds, the whole amount paid into court shall be repaid to him, unless the court otherwise orders. O. IX. r. 19.

In either case, judgment should be entered for the defendant, with, subject to the general discretion of the judge, costs (*Wood v. Leetham*, (1892) 61 L. J. Q. B. 215)

20. Where money is paid to the plaintiff instead of being paid into court, the following provisions shall apply :— Payment to plaintiff instead of into court. Form 76.

- (1) If the plaintiff accepts the money so paid in satisfaction of his claim, he shall send to the registrar and to the defendant notice of such acceptance in accordance with Rule 13 of this Order.
- (2) Thereupon the action shall abate, except as herein provided, and the plaintiff shall not be liable to any costs incurred by the defendant after receiving such notice.
- (3) In any such case the court may, in its discretion, order the defendant to pay such fees and costs, beyond the fees and costs (if any) paid to the plaintiff by the defendant, as the plaintiff may have properly incurred for work done before the receipt of the money so paid, and in attending the court to obtain the order for the same, but no hearing fee shall be charged. Form 77.
- (4) If the plaintiff intends to apply for such costs, he shall give notice of his intention according to the form in the Appendix, in accordance with Rule 13 of this Order, or where the time of payment to the plaintiff by the defendant does not permit of notice of acceptance being given, the plaintiff may apply for such costs without giving such notice. Form 76.
- (5) Where the plaintiff has not given notice of acceptance in accordance with paragraph 1 of this Rule, he may nevertheless accept the money paid to him at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the defendant since the date of payment, and which may be allowed by the court.
- (6) In default of acceptance the action may proceed.
- (7) If the action proceeds, the sum paid to the plaintiff shall be included for the purpose of calculating the amount on which any costs allowed to the plaintiff are to be charged; but if the plaintiff recovers more than the sum so paid, judgment shall be entered only for the additional amount recovered and for the fees and costs so allowed to the *Hughes v. Justin*, (1894) 1 Q. B. 667.

O. IX., r. 20.

plaintiff: and if the plaintiff recovers no more than the sum so paid, the judge may order him to pay to the defendant the costs incurred by him after such payment.

Amended C. C. (No. 1) Rules, 1924, and (No. 2) Rules, 1927.

Payment of
money out
of court.

21. Money paid into court, whether under a judgment or order, or otherwise, shall be paid out to plaintiffs pursuant to Order II. Rule 10, on production of the plaint note or the duplicate mentioned in Order VII. Rule 1, and to defendants on production of the summons issued in the action, or the duplicate mentioned in Order LIV. Rule 26. Money paid into court by plaintiffs in replevin or under Rule 16 of this Order shall be paid out pursuant to Order II. Rule 10, on proof to the satisfaction of the registrar that the person applying for the same is entitled or authorised to receive the same.

How obtained out of Court.]—Money is obtained by plaintiffs out of court, whether paid under a judgment or otherwise, upon production of the plaint-note, or duplicate, as provided below, and by defendants on production of the summons. In the event of the original being lost or destroyed, on proof, by affidavit or otherwise, to the satisfaction of the registrar that the person applying is the plaintiff or his duly authorised agent, and that he is entitled to the moneys in court, the registrar may, from time to time, issue a duplicate (Order VII. r. 1). Money paid into court by plaintiffs in replevin, or in answer to a counterclaim, will be paid out on proof that the person applying is entitled or authorised to receive it.

Upon an application by the plaintiff for payment out of court, the defendant's trustee in bankruptcy cannot claim the money on behalf of the bankrupt's estate (*London Fancy Box Co. v. Berkeley*, (1906) 96 L. T. 727).

If the person entitled to the money does not reside or carry on business in the district of the court in which the money has been paid, he may send by prepaid post to the registrar of the court in which the money has been paid, the proof of title required by the last preceding rule and a receipt signed by the party (duly stamped where necessary), with a request that the money may be transmitted to him by post; and a stamped envelope addressed to himself. The registrar must examine the documents sent, and when satisfied that the applicant is entitled or authorised to receive the money, shall return the documents, and send to such person a crossed cheque or crossed post-office order in the addressed envelope. The remittance will be at the risk of the person to whom, and at whose request it is made. The registrar on a written request from any such party or his solicitor (if his solicitor has no office within the district) enclosing stamped and addressed envelope for reply, shall give information as to the money (if any) paid into court. If information in more than twenty actions is called for the solicitor may be required to attend at the court. The several districts of the metropolitan courts are to be considered *inter se* as one district only for the purposes of this rule (Order IX. r. 22). Hence a person residing or carrying on business in one district of the metropolis cannot obtain payment through the post of money paid to his credit in the court of another district of the metropolis (Order IX. r. 22, *infra*).

If money be paid out of court by mistake to the wrong person, the judge may order him to refund, and in default execution may issue (*Aspey v. Jones*, (1884) 54 L. J. Q. B. 98).

Money due to suitors must be paid out of court in cash, if required, on three days, at least, in each week, the days being fixed by the registrar from time to time, with the approbation of the judge, and being printed or written on the plaint-note. During one week in the year, of which due

notice must be fixed a month beforehand in some conspicuous place in the office of the registrar, no payments will be made out of court (Order II. r. 10).

O. IX. r. 21
Notes.

The above rules do not apply to payment out of court in equity actions or matters (Order IX. r. 23).

See, as to money unclaimed for six years, C. C. Act, 1888, s. 173, *ante*, p. 225.

22.—(1) Where money has been paid into court to the credit of any party to any proceeding who neither resides nor carries on business within the district of the court, such party may transmit by prepaid post to the registrar the proof of title required by the last preceding rule, with a request for the transmission of the money by post, and a receipt for the same (duly stamped where necessary) signed by such party, and an envelope addressed to himself, with sufficient postage thereon; and the registrar shall examine the documents transmitted to him, and when satisfied that the applicant is entitled or authorised to receive the money shall return the documents and forward the amount, less the cost of remittance, by crossed cheque or crossed money order, in the addressed envelope, payment by post being in all cases at the risk of the party requesting the same.

Payment to parties out of the district by cheque or money order.

(2) For the purposes of this Rule the registrar shall on receipt of a written request from any such party or his solicitor (if the solicitor has no office within the district), together with a stamped and addressed envelope for reply, forward to the party or his solicitor in the addressed envelope information as to the amount (if any) paid into court. Provided that if a party or his solicitor requests such information in more than twenty actions at the same time, the registrar may require him to attend at the office of the court.

Information as to money in court.

(3) For the purposes of this Rule the several districts of the Metropolitan Courts shall be considered *inter se* as one district only.

23. The rules of this Order as to payment into or out of court shall not apply to any payment into or out of court in pursuance of any order or direction made under the provisions of sections sixty-seven to seventy-one of the Act, or the Partition Acts, 1868 and 1876, or otherwise under the equitable jurisdiction of the court.

When rules of this order not to apply. 51 & 52 Vict. c. 43, ss. 67—71. 31 & 32 Vict. c. 40. 39 & 40 Vict. c. 17.

24. In any action or matter in which money or damages is or are claimed by or on behalf of an infant, or a person of unsound mind not so found by inquisition, no settlement or compromise or acceptance of money paid into court, whether before or at or after the trial, shall be valid without the sanction of the judge, and no money or damages recovered or awarded in any such action or matter, whether by settlement, compromise, payment

Settlement of claims on behalf of infants or persons of unsound mind.

O. IX. r. 24. into court, or otherwise, before or at or after the trial, shall be paid, to the next friend of the plaintiff or to the plaintiff's solicitor unless the judge shall so direct. All money or damages so recovered or awarded shall, unless the judge shall otherwise direct, be paid into court to the credit of an account intituled in the action or matter; and any sum so paid into court may either be invested (a) or be paid from time to time out of court to such person as the judge may direct, to be held and applied for the maintenance and education or otherwise for the benefit of such infant or person of unsound mind in such manner as the judge may from time to time direct.

Payment into court and application of moneys recovered or awarded.

The provisions of this rule shall apply to all actions in which damages are claimed or awarded or recovered by, to, or on behalf of an infant or person of unsound mind not so found by inquisition under the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93).

9 & 10 Vict. c. 93.

Nothing in this rule shall prejudice the lien of a solicitor for costs.

Proviso as to infants suing under 51 & 52 Vict. c. 43, s. 96.

This rule shall not apply to any case in which an infant sues as if he were of full age for money due to him for wages or piece-work, or for work as a servant, pursuant to section ninety-six of the Act.

NOTE.—(a) See County Courts (Investment) Act, 1900 (63 & 64 Vict. c. 47), and War Loan (Trustees) Act, 1915 (5 & 6 Geo. V. c. 56), *ante*, p. 262.

As to investment of moneys transferred from the High Court under sect. 205 of the Judicature Act, 1925, see Order XXXV., *post*.

Orders as to moneys in court or invested under last rule.

25. When any moneys have been paid into court or invested pursuant to the order of the judge under the last preceding rule, it shall not be necessary that applications in regard to them shall be made by petition. Any person interested may apply in person to the judge, and he, on such evidence of right and identity as he may think necessary, may make such order as he may think fit.

Payment into court not to be communicated to jury.

26. Where an action or matter is tried with a jury, no communication to the jury shall be made until after the verdict is given, either of the fact that money has been paid into court, or of the amount paid in. The jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into court. (R. S. C., Ord. XXII. r. 22.)

Where plaintiff sues on behalf of others.

ORDER X.

DEFENCE AND COUNTER-CLAIM.

1. Where a plaintiff sues on behalf of or for the benefit of others having the same interest, the defendant may avail himself of any defence in respect of each of the persons in whose behalf

or for whose benefit the plaintiff so sues which he would have had against such person if he had been plaintiff. O. X. r. 1.

Forms 96, 97, 98.

2. A defendant in an action may set-off, or set up by way of counter-claim against the claims of the plaintiff, any right or claim *other than a claim in ejectment*, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. Set-off and counter-claim.

NOTE.—The words in italics were added by County Court (No. 2) Rules Dated August 2, 1922.

Set-off and Counterclaim.]—As to the difference between a set-off and a counterclaim, see note to sect. 82 of the Act, "Set off" (*ante*, p. 92) and consult *Winterfield v. Bradnum* (C. A.), (1878) 5 Q. B. D. 324, 326; 47 L. J. Q. B. 270, *per* Brett, L.J.; *Sykes v. Sacerdoti* (C. A.), (1885) 15 Q. B. D. 423; 54 L. J. Q. B. 561. A third party brought in by a defendant may counterclaim against the defendant (*Barclays Bank v. Tom*, (1923) 1 K. B. 221).

3. Where the plaintiff objects in writing under the powers given by section eighteen of the Supreme Court of Judicature Act, 1884 (*a*), to the court giving any relief on any counter-claim exceeding that which the court would have jurisdiction to give independently of that section, he shall give notice in writing of his objection to the registrar and to the defendant, according to the form in the Appendix, within two clear days after the receipt of notice of the counter-claim. The plaintiff may at the time of giving notice of objection also give notice that he will on the day fixed for the trial apply to the judge to adjudicate upon the original claim (if not admitted), subject to such order as the judge may make for the stay of execution or otherwise in reference thereto. Objection by plaintiff under 47 & 48 Vict. c. 61, s. 18. Form 78.

NOTE.—(*a*) Now sect. 203 of the Supreme Court of Judicature (Consolidation) Act, 1925, 15 & 16 Geo. V. c. 49, *ante*, p. 36.

The notice of objection will cut down the jurisdiction to the point at which it stood prior to the Act above cited, *i.e.*, the judge will not be able to give effect to the counter-claim for any purpose other than that of defeating the plaintiff's claim (15 & 16 Geo. V. c. 49, s. 203; *Davis v. Flagstaff Co.* (C. A.), (1877) 3 C. P. D. 228; 47 L. J. C. P. 503); and the defendant will be compelled to sue for the residue in the High Court, but the plaintiff will there be estopped from litigating the questions, except as to amount, over again (*Webster v. Armstrong*, (1885) 54 L. J. K. B. 236). At the time of giving notice of objection, the plaintiff may give notice that he will on the day fixed for the trial apply to the judge to adjudicate on the original claim (Order X. r. 3).

Removal into High Court.]—It appears that whether any such notices be given or not, the court may of its own motion or on the application of either party, at or before the trial, adjourn the trial to enable either party to apply for the removal of the whole proceedings into the High Court (under the provisions of sect. 126), or it may give judgment on the plaintiff's claim and stay execution for such time as may be necessary to enable the defendant to establish his counterclaim by action in a court of competent jurisdiction.

O. X. r. 3
Notes.
 ———

If, however, after such adjournment, neither party applies to remove the proceedings, or if the defendant does not bring his action within the time named, the court will then have complete jurisdiction over the whole matter as if the parties had consented to the jurisdiction (15 & 16 Geo. V. c. 49, s. 203). The above paragraphs are submitted as the effect of the provisions just cited. They are open, however, to much discussion. It is not absolutely certain, for example, that the powers of the last paragraph can be exercised if the plaintiff has objected to the jurisdiction. Moreover, this singular result might happen. A plaintiff might object to the jurisdiction, and the judge might give judgment for him on his claim, but stay proceedings for three months to enable the defendant to bring an action. At the end of the three months, if defendant had not brought his action, the judge would have jurisdiction, although plaintiff objected and had no control over the defendant.

Prohibition will not lie before the trial merely because a defendant raises by counterclaim matters which would not be within the jurisdiction of the court if raised by original action (*Davis v. Flagstaff Co.* (C. A.), (1877) 3 C. P. D. 228).

In action of
 ejectment
 or for re-
 covery of
 possession,
 any person
 not named
 as a defend-
 ant may,
 by leave,
 appear.
 Form 254.

4. In an action of ejectment or for the recovery of possession of a tenement any person not named as a defendant in the summons may by leave of the court be allowed to appear and defend on filing, five clear days at least before the return day an affidavit, together with as many copies thereof as there are plaintiffs and defendants, showing that he is in possession either by himself or his tenant of the property or some part thereof mentioned in the particulars (such part being described in the affidavit with reasonable certainty); and upon such affidavit being filed and leave given, the registrar shall enter the name, address, and description of the person filing the affidavit in the plaint book as a defendant in addition to the name of every person originally made defendant, and shall three clear days at least before the return day give notice, according to the form in the Appendix, by post or otherwise, to the plaintiffs and the original defendants, that the person filing the affidavit has filed the same, and will appear and defend at the trial of the action, annexing to each notice a copy of the affidavit. In all subsequent proceedings in the action, the person filing the affidavit shall be named as a defendant.

Amended, C. C. (No. 3) Rules, 1928.

In cases under the extended jurisdiction, and in actions over 50*l.* transferred from the High Court, "ten clear days" is substituted for "five clear days," and "eight clear days" for "three clear days" (Order XXIIA. r. 11; Order XXXIII. r. 3B.).

In action of
 ejectment
 or for re-
 covery of
 possession,
 defendant
 may give
 notice that
 he will limit
 his defence

5. In an action of ejectment or for the recovery of possession of a tenement any defendant may, five clear days at least before the return-day, file with the registrar a notice in writing, together with a copy for the plaintiff, according to the form in the Appendix, that he intends to limit his defence to a part only of the property mentioned in the particulars, describing that part in such notice with reasonable certainty; and the registrar shall three clear

days at least before the return day send the copy of such notice by post to the plaintiff. **O. X. r. 5.**

Amended, C. C. (No 3) Rules, 1928.

See Order LIV. r. 13.

to part of
the pro-
perty.

Form 255.

In cases under the extended jurisdiction, and in actions over 50*l.* transferred from the High Court, "ten clear days" is substituted for "five clear days," and "eight clear days" for "three clear days" (Order XXIIA. r. 11; Order XXXIII. r. 3B.).

6. A defendant intending to avail himself of the power given by section sixty-two of the Act, to object to an action being tried in the court, shall give notice in writing to the registrar and to the plaintiff five clear days at least before the return-day, by post or otherwise, according to the form in the Appendix, and shall therein name the parties whom he proposes to be his sureties, or state therein his willingness to deposit money in lieu of giving security, and if he fails to give such security or make such deposit before the return day, or fails to give such notice of his intention to object as aforesaid, he shall not be entitled to object to the action being tried in the court. He shall also after giving such notice as aforesaid apply *ex parte* to the judge on affidavit for his certificate that in his opinion some important question of law or fact is likely to arise in the action, and if the certificate is granted notice thereof shall be sent by the registrar to the plaintiff by post or otherwise. The affidavit above referred to shall specify any important questions of law or fact which are likely to arise in the action; and in the case of a question of law, shall further specify the facts which are relied on as likely to raise such question.

Objection to
jurisdiction
of court.

51 & 52 Vict.
c. 43, s. 62.

Form 79.

Form 82.

Form 80.

Form 81.

See notes to sect. 62 of the Act, *ante*, p. 47.

In actions under the extended jurisdiction, the notice must be given ten clear days at least before the return day (Order XXIIA. r. 12).

For form of bond, see Form 82.

7. Where a plaintiff avails himself of the provisions of section ninety-seven of the Act, and does not proceed against all of several persons jointly answerable, every defendant sued may avail himself of any defence or counter-claim to which he would have been entitled if all the persons liable were made defendants.

Where one of
several per-
sons jointly
answerable
is sued.

51 & 52 Vict.
c. 43, s. 97

See sect. 97 of the Act and notes thereto, *ante*, p. 115.

One defendant cannot counterclaim against another. If there be any right to enforce in the action any claim against a co-defendant, it must be under the provisions stated in the next section in reference to contribution (*Furness v. Booth* (M. R.), (1877) 4 Ch. D. 586; 46 L. J. Ch. 112). A third party brought in by a defendant under a claim for contribution or indemnity may counterclaim the defendant who brings him in (*Barclays Bank v. Tom*, (1923) 1 K. B. 221), but cannot counterclaim the plaintiff (*Eden v. Weardale Co.* (C. A.), (1885) 28 Ch. D. 333; 54 L. J. Ch. 384). A third party brought in as defendant to a counterclaim cannot counterclaim the defendant who brings him in, nor the plaintiff (*Alcoy, etc., Co. v. Greenhill* (C. A.), (1896) 1 Ch. 19; 65 L. J. Ch. 99; following *Street v. Gover*, (1877) 2 Q. B. D. 498; 46 L. J. Q. B. 582).

O. X. r. 8.

Misjoinder
of plaintiffs
not to defeat
counter-
claim.

Disclaimer,
admission
and other
statements
by defendant.
Form 83.

8. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a set-off or counter-claim, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

9. A defendant in any action or matter may file a statement disclaiming any interest in the subject matter thereof, or admitting or denying any of the statements in the plaintiff's particulars, or raising any question of law on such statements without admitting the truth thereof; or he may state concisely any new fact or document upon which he intends to rely as a defence, or which he intends to bring to the notice of the court; and a copy of such statement shall be filed therewith, and such copy shall be transmitted by the registrar to the plaintiff: Provided always, that in exercising his discretion as to costs the judge shall consider the fact of a defendant having or not having availed himself of the powers given by this rule. This rule shall apply to a plaintiff who is defendant by counter-claim.

As to confession of judgment, see Order IX. r. 5, and for notice of admission of facts, Order IX. r. 6.

When
plaintiff
may require
particulars
of defence.
9 & 10 Geo. 5,
c. 73,
s. 24 (2) (b).

9A.—(1) In any action where there is a right of appeal under section 120 of the Act the plaintiff may at any time not less than seven clear days (or where the claim exceeds the sum of fifty pounds, twelve clear days) before the return day give notice to any defendant that he requires him to state in writing the nature of his defence, if any, to the action, and thereupon the defendant shall within four clear days from the service of such notice file a concise statement of his grounds of defence, if any, and shall within the same time deliver to the plaintiff a copy thereof.

(2) Where the defendant intends to rely on any ground of defence mentioned in the succeeding rules of this Order, his statement shall be in accordance with the rules applicable thereto.

(3) If the defendant fails to comply with such notice, or complies therewith insufficiently, the court may before the trial, if satisfied that the plaintiff is thereby prejudiced,

(a) order the defendant to file and deliver such a statement; or

(b) order further and better particulars of any statement already delivered; or

(c) adjourn the action,

and may make such order as to costs as the court may think fit.

(4) The provisions of this rule shall with the necessary modifications apply to a counterclaim where the debt demand or

damages claimed thereby exceeds the sum of twenty pounds, and to the defence thereto. **O. X. r. 9A.**

(5) If a defendant fails to comply with any order of the court made under this rule he may either be debarred from defending altogether or only be allowed to defend on such terms as the court may think fit.

(Revised, C. C. (No. 2) Rules, 1927.)

9B.—(1) Nothing in the preceding rule shall affect any obligation imposed by these rules on a defendant to a claim or counter-claim as to stating within the time limited by these rules the nature of his defence, set-off or counterclaim in his notice or affidavit of defence or otherwise. Obligation to state defence, &c., in accordance with rules not affected.

(2) Provided that where any defendant to a claim or counter-claim has stated the nature of his defence, set-off or counterclaim in any such manner as in these rules provided, he shall not be required to state such defence, set-off or counterclaim again in any other such manner. Defendant not required to state defence, &c., twice.

10. Where a defendant intends to rely on any of the grounds of defence mentioned in Rules 12, 13, 14, 15, 16, 17, 18, 19, and 20 of this Order (a), or upon any set-off or counter-claim, he shall file in duplicate a notice stating thereon his name and address, together with a concise statement of his grounds of defence, or of his set-off or counter-claim, five clear days at least before the return day; and the registrar shall thereupon, within twenty-four hours after receiving the same, transmit by post one copy of such notice and statement to the plaintiff. Notice to be given of special defences. Forms 84, 85.

NOTE.—(a) And see further special rules rr. 21 and 21A of this order.

In cases under the extended jurisdiction, and in remitted actions where the claim exceeds £50 or is for damages without specifying the amount, the notice must be filed ten clear days at least before the return day instead of five clear days. (Order XXIIa, r. 13; Order XXXIII, r. 3b).

Special Defences.—The special defences are Infancy (r. 12), Coverture (r. 13), any Statute of Limitations (r. 14), Bankruptcy (r. 15), truth of a libel or slander (r. 16), mitigating circumstances or character of the plaintiff in action of libel or slander (r. 17), defence under any Act of Parliament (r. 18), equitable defence (r. 19), tender (r. 20), fraud or misrepresentation (r. 21A). Similar notice, or notices, must be given where plaintiff relies on any such defence as an answer to a counterclaim set up by the defendant (see rr. 11, 21, 21A, 22). The Gaming Acts need not be specially pleaded (r. 18 (2)).

See notes to sect. 82 of principal Act, *ante*, p. 91.

“Set-off.”—To a claim for the price of goods sold, the defence that the goods were warranted and that there was a breach of such warranty is not a “set-off” or “statutory defence” within the meaning of this rule (*Bright v. Rogers*, (1917) 1 K. B. 917; 86 L. J. K. B. 804).

10A. Where a defendant who is required by these rules to state his grounds of defence, set-off, or counterclaim, whether in his notice or affidavit of defence or under any of the rules of this Order, desires at the trial to avail himself of any ground of defence, Where defendant fails to give notice of defence, set-

O. X. r. 10A. set-off or counterclaim which he has omitted so to state, and the plaintiff does not consent to permit the defendant to avail himself thereof, the judge may, on such terms as he may think fit, adjourn the trial to enable the defendant to file a notice containing a concise statement of such grounds of defence, set-off or counterclaim, and to deliver a copy thereof to the plaintiff.

off or counterclaim.

The judge is not bound to adjourn the trial as a condition of allowing the defence to be pleaded, if he is of opinion that the plaintiff will not be prejudiced (*Thomas v. Gower R. D. C.*, (1922) 2 K. B. 76).

Set-off or counterclaim.

Form 84.

11. Where a defendant intends to rely on a set-off or counterclaim against any of the claims of the plaintiff, his statement shall contain particulars of such set-off or counterclaim, and *mutatis mutandis* the provisions of Order VI. shall apply to such particulars.

If a defendant gives an imperfect notice, and is thereby precluded from proving his set-off at the trial, he may still enforce it by subsequent original action (*Stanton v. Styles*, (1850) 5 Ex. 578; 19 L. J. Ex. 336; and see *Hindley v. Haslam*, (1878) 3 Q. B. D. 481).

Infancy.

Form 85.

12. Where a defendant intends to rely on the defence of infancy, he shall in his statement set forth, so far as he is able, the place and date of his birth.

An infant who has obtained loans by fraudulent misrepresentation that he was of full age cannot be made liable to repay them on attaining full age, either as damages for fraudulent misrepresentation, or as money had and received, or on equitable grounds (see *R. Leslie, Ltd. v. Shiell*, (1914) 3 K. B. 607; 83 L. J. K. B. 1145).

Coverture.

Form 85.

13. Where a female defendant intends to rely on the defence of coverture, she shall in her statement set forth, so far as she is able, the place and date of her marriage, together with the Christian name and surname of her husband, and his address and description so far as known.

Statute of limitations.

Form 85.

14. Where a defendant intends to rely on the defence of any statute of limitations, his statement shall be according to the form in the Appendix.

The inclusion of a debt in an affidavit for probate is not a sufficient acknowledgment of the same to take it out of the statute (*Lloyd v. Cooie*, (1915) 1 K. B. 242; 84 L. J. K. B. 567).

See *Eaton v. Tapley*, (1899) 1 Q. B. 953; 68 L. J. Q. B. 638.

The Public Authorities' Protection Act, 1893, s. 1, is a statute of limitations, and should be so pleaded (*Gregory v. Torquay Corporation*, (1912) 1 K. B. 442; 80 L. J. K. B. 981). See also *Parson v. Nesbitt*, (1916) 85 L. J. K. B. 654, and notes, *ante*, p. 30.

The Statutes of Limitations do not bind the Crown, or a department the agents of the Crown (*Commissioners of His Majesty's Works and Public Buildings v. Pontypridd Masonic Hall Co., Ltd.*, (1920) 2 K. B. 233). As to pleading the statute where plaintiff was confined as a lunatic for years but subsequently held by a jury not to have been a lunatic during his confinement, see *Harnett v. Fisher*, (1927) A. C. 573; 96 L. J. H. L. 856.

Bankruptcy.

Form 85.

15. Where a defendant intends to rely on the defence of a release under any statute relating to bankrupts, he shall in his

statement set forth the date of his discharge, and the court by which such discharge was granted. O. X. r. 15.

16. Where in any action for libel or slander the defendant relies as a defence on the fact that the libel or slander is true, he shall in his statement set forth that the libel or slander complained of is true in substance. Defence that libel or slander is true.

If he relies upon an apology, or payment into court and apology under the provisions of sects. 1 and 2 of the Libel Act, 1843, he must give notice in writing (Forms 86, 87), signed by himself or his solicitor, five clear days at least before the day fixed for the trial (Order XXXIII. r. 4). Form 85.

17. Where in any action for libel or slander the defendant does not rely as a defence on the fact that the libel or slander is true, but relies in mitigation of damages on the circumstances under which the libel or slander was published, or on the character of the plaintiff, he shall in his statement give particulars of the matters relating thereto as to which he intends to give evidence. Facts in mitigation of damages in libel or slander. Forms 86, 87.

These cases can only arise where the parties agree to give the court jurisdiction, or where an action is transferred from the High Court.

18. When in any action the defendant relies on any statutory defence, or on any defence of which he is required by the Act or any statute to give notice, he shall in his statement (except in the case provided for by Rule 14 of this Order) set forth the year, chapter, and section of the statute, or the short title thereof, and the particular matter on which he relies, or otherwise sufficiently indicate the nature of the defence on which he relies. Statutory defence. Form 85.

See notes to sect. 82 of the principal Act, *ante*, p. 93.

(2) Nothing in this rule shall entitle a plaintiff to maintain an action contrary to the provisions of the Gaming Acts, 1845 or 1892, by reason of those Acts not having been pleaded as a defence. Proviso as to Gaming Acts, 8 & 9 Vict. c. 109, s. 18; 55 & 56 Vict. c. 9.

Gaming Act, 1835 (5 & 6 Wm. IV. c. 41, sect. 2.)—Bets on horse races for which a note, bill or mortgage has been given which has been actually paid to an indorsee, holder, or assignee of such note, bill or mortgage, were held to be recoverable by the payer, see *Dey v. Mayo*, (1920) 2 K. B. 346; *Robinson v. Marsh*, (1921) 90 L. J. K. B. 1317; *Sutters v. Briggs*, (1922) A. C. 1; 91 L. J. K. B. 1. These decisions, to the effect that bets on horse races for which a note, bill (which was held to include a cheque) or mortgage had been given which had been actually paid to an indorsee, holder or assignee of such note, bill or mortgage, were recoverable by the payer, are now repealed by the Gaming Act, 1922 (12 & 13 Geo. V. c. 19). No action may now be entertained by any court for recovery of such bets, but the Act does not apply where the cause of action arose before the Act was passed (*Henshall v. Porter*, (1923) 2 K. B. 193; 92 L. J. K. B. 866).

A partnership for the purpose of carrying on a betting and bookmaker's business is not *per se* illegal or impossible in law (*Michael Jeffrey & Co. v. Bamford*, (1921) 2 K. B. 351). But see *O'Connor v. Ralston*, (1920) 3 K. B. 451; (1921) 90 L. J. K. B. 261, and dictum of Moulton, L.J., in *Hyams v. King*, (1908) 2 K. B. 696, 718.

A partner with a bookmaker may sue his partner for an account, though he cannot recover anything which represents the profits of the business (*Keen v. Price*, (1914) 2 Ch. 98; 83 L. J. Ch. 865).

O. X. r. 18.

Money lent abroad for gaming purposes where gaming is lawful is recoverable by the lender in this country (*Societe Anonyme des Grands Etablissements du Touquet Paris-Plage v. Baumgart*, (1927) 96 L. J. K. B. 789); though cheques given for such a loan cannot be sued on here (*Moulis v. Owen*, (1907) 1 K. B. 746; 76 L. J. K. B. 398).

Equitable relief.
Form 85.

19. Where a defendant claims to be entitled as matter of defence to any equitable estate or right, or to relief on any equitable ground against the claim of the plaintiff, or any part thereof, he shall in his statement show concisely the circumstances which give rise to such defence, and set forth separately each of the grounds of equitable defence.

Equitable Defence.—This provision apparently obliges a defendant to give notice of the facts relied on by way of defence in all equitable actions, as if the relief claimed by the plaintiff be equitable, the defence will probably also be so.

See note to sect. 82 of the principal Act, *ante*, p. 94.

Tender.
Form 85.

20. Where the defence is a tender, such defence shall not be available unless, at the time of filing the notice of such defence, the defendant makes payment into court (which may be without costs) of the amount alleged to have been tendered.

Tender.—See note to sect. 82 of the principal Act, *ante*, p. 94.

Notice of defence to counter-claim.

21. Where in answer to a counter-claim the plaintiff intends to rely on any of the defences mentioned in Rules 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of this Order, he shall file notice thereof in accordance with the said rules. All the provisions of Rule 10 of this Order, *mutatis mutandis*, shall apply to such notice, except that the provision as to the time for giving such notice shall not apply unless the plaintiff, after receipt of notice of counter-claim, might, if he had used reasonable expedition, have filed his notice five clear days before the return day.

In cases under the extended jurisdiction, and in actions over 50*l.* transferred from the High Court, "ten clear days" is substituted for "five clear days" (Order XXIIA. r. 13 (2); Order XXXIII. r. 3B.).

The provisions of this rule apply to a person made defendant to a counter-claim in the same manner as to a person made defendant to an action, or to a plaintiff made defendant to a counterclaim (Order X. r. 22).

Notice of fraud or misrepresentation as defence to claim or counterclaim.

21A. Where a defendant, or a plaintiff in answer to a counterclaim, intends to rely on alleged fraud or misrepresentation, he shall file a notice in accordance with Rule 10 or Rule 21 of this Order, and shall in his statement set forth concisely the particulars of the fraud or misrepresentation on which he intends to rely.

As to what constitutes fraud or misrepresentation, see *Derry v. Peek*, (1889) 14 A. C. 337; 58 L. J. Ch. 864, and *Nocton v. Ashburton* (Lord), (1914) A. C. 932; 83 L. J. Ch. 784.

Where counter-claim affects other persons.

22. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person, he may apply to the court, under

Order XIV. Rule 2, to add the name of such person as a party to the counter-claim; and that rule, and the other provisions of Order XIV., and Rule 21 of this Order, shall apply to a person made defendant to a counter-claim in the same manner as to a person made defendant to an action, or to a plaintiff made defendant to a counter-claim. O. X. r. 22.

The cause of action must be joint, not alternative (*Times Cold Storage Co. v. Lowther*, (1911) 2 K. B. 100; 80 L. J. K. B. 901). See also *Smith v. Buskell*, *Buskell v. Smith and Great Western Rail. Co.*, (1919) 2 K. B. 362; 88 L. J. K. B. 985.

ORDER XI.

CLAIM FOR CONTRIBUTION OR INDEMNITY.

1.—(1) Where a defendant claims to be entitled to contribution or indemnity against any person not a party to the action, he shall, five clear days at least before the return day, file in duplicate a notice of his claim, according to the form in the Appendix, and the registrar shall seal such notices and deliver one of them to the defendant, who shall forthwith serve the same, together with a copy of the summons in the action and of the particulars annexed thereto, on the person against whom such claim is made, according to the rules relating to the service of default summonses. Notice of claim to contribution or indemnity. Filing and service. Form 88.

In actions under the extended jurisdiction, and in actions over 50*l.* transferred from the High Court, "ten clear days" is substituted for "five clear days." (Order XXII*a.*, r. 14; Order XXXIII, r. 3*B.*).

An alien enemy who is defendant in an action cannot bring in a third party for the purpose of claiming contribution or indemnity. See *Halsey v. Lowenfeld* (*Leigh & Curzon* third parties), (1916) 1 K. B. 143; 2 K. B. 707.

As to when third party procedure is available, see notes to Rule 4, *post*.

(2) Where the original action has been commenced by default summons, or special default summons, the defendant shall not be entitled to serve a notice under this rule before he delivers a notice or an affidavit of defence, as the case may be, or is let in to defend; and where after a notice or affidavit of defence has been delivered, or the defendant is let in to defend, the defendant files a notice under this rule, the registrar shall on the filing of such notice seal and deliver to the defendant a duplicate of the notice of the day on which the action will be tried, and the defendant shall serve the same with the notice of his claim. Where action commenced by default summons.

(3) Where, if the defendant desired to enter a claim and issue a summons against the person against whom he claims to be entitled to contribution or indemnity, leave to enter such claim would be required under section seventy-four of the Act, the defendant shall not be entitled to serve a notice under this rule without leave of the court, to be obtained in the manner in which leave to enter a claim is obtained. Leave, when required. 51 & 52 Vict. c. 43, s. 74.

See sect. 74 of the Act and notes thereto. Leave is not necessary if the claim is against a person who is already a defendant (r. 6 *infra*).

O. XI. r. 2.

Appearance
of third
party.

2. If any person served with a notice under the last preceding rule (hereinafter called the third party) desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, he must appear at the court on the return-day mentioned in the summons (or in case the original action is commenced by default summons on the day mentioned in the notice of trial), or on any day to which he may have received notice from the registrar that the trial has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the said notice.

Default of
appearance.

Provided that if it appears to the court that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the court may adjourn the proceedings against the third party, or the original action and the proceedings against the third party, on such terms, as to costs and otherwise, as may be just.

Proceedings
on default of
appearance
by third
party.

3. Where a third party fails to appear on the day mentioned in Rule 2 of this Order, or, if the proceedings are adjourned under that rule, on the day to which the proceedings are adjourned, then

- (a) if judgment in the original action is given in favour of the plaintiff on default of appearance by the defendant, the defendant may at any time after satisfaction of the judgment against himself, or before such satisfaction by leave of the court, apply to the judge to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice, and the judge may enter judgment accordingly: or
- (b) if the original action is tried, and results in favour of the plaintiff, the judge may, on the application of the defendant, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party; provided that execution thereon shall not be issued without leave of the judge until after satisfaction by such defendant of the judgment against him: or
- (c) if the original action is finally decided in favour of the plaintiff otherwise than by trial, the judge may, on application by the defendant, order such judgment as the nature of the case may require to be entered for the

defendant giving the third party notice against the third party, at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him. O. XI. r. 3.

Provided that the judge may set aside or vary any judgment entered against the third party under this rule upon such terms as may be just. (See R. S. C., Order XVI. rr. 50, 51.)

4. Any third party, or the defendant in the action, may apply at or before the trial to the judge for directions; and the judge, upon the hearing of the application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability as between the third party and the defendant giving the notice to be tried in such manner at or after the trial of the action as the judge may direct, and if not so satisfied may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party; or the judge may, if it appears desirable so to do, give the third party leave to defend the action upon such terms as may be just, or to appear at the trial and take such part therein as may be just, or he may order such person to be substituted for, or to be joined with, the defendant in the action, upon such terms as to security or otherwise as may be just, and generally may direct such proceedings to be taken or amendments to be made and give such directions as he may think proper for having the question most conveniently determined, and as to the mode or extent in or to which the third party shall be bound or made liable by the judgment in the action. Application for directions. What directions may be given.

For the practice in an application for directions, see Order XII. r. 11.

Object of Provisions.]—The object of these provisions is to enable a party primarily liable to bring in a person against whom he has a remedy over, and so bind him as to prevent him from afterwards disputing the propriety of the result of the action. But they do not enable a defendant against whom a claim is made to give notice to a third party whom he alleges to be liable instead of himself. Thus in an action for personal injuries the defendants were not allowed to bring in a third party who was alleged to have done the act complained of (*Horwell v. Lon. Gen. Omn. Co. (C. A.)*, (1877) 2 Ex. D. 365; 46 L. J. Ex. 700).

When available.]—If there is a *bond fide* claim for indemnity, leave ought to be given without then trying the question whether the case is one for indemnity (*Carshore v. N. E. Rail. Co. (C. A.)*, (1885) 29 Ch. D. 344; 54 L. J. Ch. 760); but if it is plain that it is not a case for indemnity the leave should not be given (*Speller v. Bristol Co. (C. A.)*, (1884) 13 Q. B. D. 96; 53 L. J. Q. B. 322); and in this case it appears to have been held that there could be no valid claim for indemnity without a contract, express or implied, between the defendant and the third party (see also *Birmingham Land Co. v. L. & N. W. Rail. Co. (C. A.)*, (1887) 34 Ch. D. 261; 56 L. J. Ch. 956). A contract of re-insurance is not a contract of indemnity within this rule (*Nelson v. Empress Assurance Co.*, (1905) 2 K. B. 281), nor can underwriters be brought in as third parties to a claim against the shipowners for

- O. XI. r. 4.** the cost of repairs (*Clover, Clayton & Co. v. Hessler*, (1925) 1 K. B. 1; 94 L. J. K. B. 42). The Court of Appeal has also held, reversing the judge of first instance, that in a running down action third party procedure should not be permitted for the purpose of bringing in an insurance company as third parties (*Gowar v. Hales*, (1928) 1 K. B. 191; 96 L. J. K. B. 1028). This decision seems to have turned somewhat on the point that an insurance company ought not to be brought in as a third party, at all events before a jury, as it is not right that a jury should know that eventually an insurance company would have to pay the damages (see *Grinham v. Davies*, (1928) 139; L. T. 379), but there were other reasons here for setting aside the judge's order, especially the fact that the policy of insurance contained an arbitration clause. The third party may counterclaim against the defendant. He may do so in the High Court, and the rules as to third parties are in substance the same. See *Barclays Bank v. Tom*, (1923) 1 K. B. 221; 92 L. K. J. B. 346.

Costs.

5. The judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other or others, or give such direction as to costs as the justice of the case may require.

Taxation of Costs ordered to be paid by or to Third Party.—Where an order for costs is made, any costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in addition to the costs of the original action by reason of the third party being brought in, in respect of the trial of the question of the third party's liability, as in preparing for trial, may be allowed; these costs are to be taxed as if the third party were a defendant and the party to or by whom they are ordered to be paid were a plaintiff, and as if the third party notice were a summons with particulars attached (Order LIII. r. 18A).

Claim to
contribution
or indemnity
against
co-defendant.

6. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall thereupon be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party: but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

Provided that leave of the court shall not be required for the issue of a notice to be served on a person who is already a defendant to the action.

See *Towse v. Loveridge*, (1883) 25 Ch. D. 76; 53 L. J. Ch. 499; see further on the subject of contribution and indemnity, Annual Practice, notes to Order XVI. r. 55, R. S. C.

ORDER XII.

INTERLOCUTORY AND INTERIM ORDERS AND PROCEEDINGS.

Where
defence is an
alleged right
to be re-
lieved of a
primâ facie
case of
liability.

1. When by any contract a *primâ facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court may make an order for the preservation or interim custody of the

subject-matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured. (R.S.C., Ord. L. r. 1). O. XII. r. 1.

2. The court may, upon the application of any party to any action or matter, make any order for the sale by any person named in such order, and in such manner and on such terms as the court may think desirable, of any goods, wares, or merchandise, which may be of a perishable nature or likely to injure from keeping, or which incur charges for food or keep, or which for any other just and sufficient reason it may be desirable to have sold at once.

Order for
sale of
perishable
articles, etc.

See *Lamb v. Beaumont*, (1884) 27 Ch. D. 356; 53 L. J. Ch. 1111, where an order was made to enter on land and dig for purpose of inspection.

Shares in a company may be ordered to be sold under this rule (*Evans v. Davies*, (1893) 2 Ch. 216; 62 L. J. Ch. 661).

3. The court may upon the application of any party to an action or matter, and upon such terms as may be just, make any order for the detention, preservation, inspection, surveying, measuring, or weighing of any property or thing, being the subject of such action or matter, or as to which any question may arise therein, and may for all or any of the purposes aforesaid authorise any persons to enter upon or into any land or building in the possession of any party to such action or matter, and authorise any samples to be taken, or any observation, plan, or model to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Order for
detention,
preservation,
etc.

Inspection cannot be obtained under this rule by one defendant against another when no right is in question as between them (*Shaw v. Smith* (C. A.) (1887) 18 Q. B. D. 193; 56 L. J. Q. B. 174).

An order cannot be made under this rule to inspect the property of several tenants in common, some of whom are not before the court (*Coomes and Son v. Hayward*, (1913) 1 K. B. 150; 82 L. J. K. B. 117; and see *Kearsley v. Phillips*, (1883) 10 Q. B. D. 465; 52 L. J. Q. B. 269).

Under rules similar to the above, in an action in the High Court for breach of warranty of a horse, the court ordered the horse to be sold without reserve (*Bartholomew v. Freeman* (C. A.), (1877) 3 C. P. D. 316); and in an action to recover possession of jewellery, ordered it to be deposited at a master's office (*Velati v. Braham*, (1877) 46 L. J. C. P. 415; see Annual Practice, notes to Order L. rr. 1, 3, R. S. C.).

4. Where an order is made for inspecting, surveying, measuring, weighing, or making any experiment, or for taking any sample, or making any plan or model, by any person to be named therein, such order may include an order for the registrar or some other person to be named therein, to examine upon oath and take the deposition of the person so named, as to such measure, weight, or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model, and such order may also empower any or

Order for
registrar to
take deposi-
tion of per-
son ordered
to weigh,
inspect, etc.

- O. XII. r. 4.** either party to give the deposition so taken in evidence upon any trial or proceeding.

Any deposition so ordered must be taken, it is believed, in the mode prescribed by Order XVIII. r. 18.

Any of the above orders may be obtained from the judge or registrar *ex parte* or on notice (Order XII. r. 11); or possibly under a notice for directions (Order XV. r. 1).

Order for
inquiries or
accounts
Form 304.

5. The judge may at any stage of the proceedings in an action or matter direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought or some special issue to be tried, as to which it may be proper that the action or matter should proceed in the ordinary manner. (R.S.C., Ord. XXXIII. r. 2.)

Accounts and Inquiries.]—An order for taking accounts or making inquiries may be obtained in all actions to which it is an appropriate remedy (*Rex v. Selfe*, (1908) 2 K. B. 121; 77 L. J. Q. B. 697). The general power is derived from sect. 89 of the Judicature Act, 1873 (now sect. 202 of Supreme Court of Judicature (Consolidation), Act, 1925), although, as equity judges, county court judges had previously the same power in equity proceedings (besides this equitable power, the judges have express power by sect. 92 of the principal Act, to refer mere matters of account to the registrars for inquiry and report). If on taking accounts or making inquiries in any equitable matter under sect. 67, it appears that the subject-matter of the action exceeds the jurisdiction, the action will be transferred to the High Court, pursuant to sect. 68 of the Act and Order XXXIII. r. 6.

An action for an account may be brought in a county court by a client against his solicitor though only a part of the matters in which the solicitor was instructed involved proceedings in the county court, but, *semble*, the plaintiff must accept the defendant's bills in matters which do not relate to the county court, see *Chambers v. Tabrum*, (1920) 1 K. B. 840.

The claim to have accounts taken or inquiries made should generally be included in the particulars of demand, but the order may be made whether so claimed or not (Order XII. r. 6; Form 304).

An order for taking accounts or making inquiries may be made by the judge before the trial (Order XII. r. 6; Form 304). He may make it at any stage of the proceedings in any action or matter, notwithstanding that it may appear that there is some special or further relief sought, or some special issue to be tried, as to which it may be proper that the action or matter should proceed in the ordinary manner (Order XII. r. 5; Form 304).

The order may, as will be seen hereafter, be also made at the trial, and the judge may make such order or give such direction as he may consider necessary, to enable him to give final judgment upon a day to which the trial may be adjourned (Order XXII. r. 13).

Where a judgment or order directs any account to be taken or inquiry made, the account must be taken and inquiry made by the registrar, and he has for that purpose all the powers of a master of the Chancery Division of the High Court, and all parties have the same power of summoning witnesses, including as witnesses any parties in the action, and of examining them on the accounts or inquiries and compelling the production of documents, as they would have upon the trial of an action; and the rules as to the summoning, swearing, and examining of witnesses and the production of documents at the trial are applicable to taking accounts and prosecuting inquiries (Order XXIV. r. 1). The registrar is to issue a summons (Form 318), returnable not less than seven days from the date of the order, addressed to all parties entitled to attend, directing them to attend at his office or at the court, for the purpose of proceeding with the inquiries or accounts. In

all cases in which advertisements are ordered, the return-day must not be less than twenty-one days after the date of the order, and the registrar must forthwith prepare and insert advertisements in conformity with the order, stating the time, place, and purpose of the proceedings, and insert them fourteen days previously to the day appointed (Order XXIV. r. 2). Upon the day appointed, or at any adjourned sitting, the registrar must sit at the time and place appointed, and hear all parties interested, their counsel or solicitors (Order XXIV. r. 3).

If at the hearing it appears that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for leaving the accounts in chambers, but the adjudication on the claims and accounts will not be proceeded with, nor any other proceeding taken, except for ascertaining the parties to be served, until all necessary parties have been served and are bound, or service has been dispensed with (Order XXIV. r. 4). At any time during the proceedings the judge may, if he thinks that the interests of the parties can be classified, require the parties constituting each class to be represented by the same solicitor, and in default of agreement by the parties may nominate the solicitor; any party insisting upon being represented by a different solicitor must pay his own costs and also any further costs occasioned to any of the other parties by his being so represented (Order XXIV. r. 5). Where the same solicitor is employed for two or more parties, the judge may require any party to appear separately in person or to be represented by a distinct solicitor, and may adjourn the proceedings for the purpose (Order XXIV. r. 6). Claimants not coming in to prove their claims within the time fixed by advertisement will be excluded from the benefit of the judgment or order (Order XXIV. r. 7).

In taking accounts under an order, any books of account in which the accounts required to be taken have been kept will, unless the judge otherwise directs, be taken as *prima facie* evidence, with liberty to the parties interested to take objections (Order XXIV. r. 8). Accounts, unless otherwise directed by the court, must be verified by the affidavit of the accounting party; the items on each side of the account are to be numbered consecutively, and the account is to be made an exhibit and left at the registrar's office (Order XXIV. r. 9). Notice of an intention to surcharge must be given to the accounting party, stating shortly and succinctly the amount sought to be charged and the particulars of it (Order XXIV. r. 10). A judgment or order for a general account of personal estate must, unless the court otherwise directs, contain a direction for an inquiry as to what parts of the estate are outstanding or undisposed of (Order XXIV. r. 11). Each direction to take accounts or make inquiries must be numbered, so that, as far as possible, each account and inquiry may be designated by a number (Order XXIV. r. 12). Every advertisement for creditors or other persons having any claim upon or interest in the distribution of any assets to be administered by the court, issued pursuant to an order, must direct every such creditor or other person, within a time thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the security (if any) held by him; and at the time of directing such advertisement a time must be fixed for adjudicating on the claims (Order XXIV. r. 13). The court must order in what newspaper any advertisements are to be inserted; and the expense of them must be paid to the registrar by the party requiring them before they are inserted (Order LIV. r. 9). All advertisements in the *London Gazette*, except as to proceedings under Order XXXIX. or Order XLI. r. 12, must be transmitted by the registrar for insertion to the registrar of county court judgments in London (Order LIV. r. 10). No creditor or other person need make any affidavit, or attend in support of his claim, except to produce his security, unless he is served with notice requiring him to do so (Order XXIV. r. 14). Every creditor must produce or transmit to the registrar any security held by him, at such time as is specified in the advertisement for that purpose

O. XII. r. 5
Notes.

as being the time appointed for adjudicating on the claims; and every creditor must, if required, by notice in writing given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office at the time specified in the notice (Order XXIV. r. 15). Every person claiming as heir-at-law, devisee, next of kin, or legatee must, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar any pedigree or proof mentioned in such notice within the time therein specified (Order XXIV. r. 16). If any creditor or other person neglects or refuses to produce any security, pedigree or proof when so required, he will not be allowed any costs of proving his claim, unless the registrar otherwise directs (Order XXIV. r. 17).

Allowance of Claims.—At the time appointed for adjudication upon the debts or claims, the registrar must take the evidence of the executor, administrator, or other accounting party upon them, and may allow any of the debts or claims without further proof, and may direct such investigation of all or any of those not allowed, and require such further particulars, information, or evidence relating thereto as he thinks fit, and may, if he thinks fit, require any creditor or other person to attend and prove his claim, or any part thereof (Form 319); and the adjudication on such claims as are not then allowed may be adjourned to a time to be then fixed (Order XXIV. r. 18).

Application
for inter-
locutory
injunction
or order.

Form 344.

Form 345.

6. Where any party desires, before the trial, an immediate order upon any of the matters following (that is to say), an order in the nature of an injunction, or for the appointment of a receiver, or for taking any accounts (whether the particulars pursuant to Order VI. Rule 2, claim such accounts, or the claim in the particulars involves taking such accounts), or for making any inquiries, he may file an application for such order, and apply to the judge, either in or out of court, upon affidavits setting forth the facts rendering such order immediately necessary; and the judge may upon such application make such order, and upon such terms, as he may think fit.

Where specific property other than land is sought to be recovered, but is claimed to be retained under lien or as security.

7. Where an action is brought to recover, or a defendant in his defence seeks, by way of counter-claim, to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the judge, upon being satisfied by affidavit or otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the judge may direct, and that upon such payment into court being made the property be given up to the party seeking to recover it. (R.S.C., Ord. L. r. 8).

Generally, as to the circumstances where a lien, in respect of work done on goods, exists, see *Cassils (Charles W.) & Co. and Sassoon & Co. v. Holden Wood Bleaching Co., Ltd.*, (1915) 112 L. T. 373.

The sum for which the lien is claimed must be ordered to be brought into court, even though it exceeds the value of the property (*Gebruder Naf v. Ploton* (C. A.), (1890) 25 Q. B. D. 13; 59 L. J. Q. B. 371).

The draft order must be prepared, sealed and filed as prescribed by the following rule.

O. XII. r. 7
Notes.

8. The draft of any order applied for under any of the preceding rules of this Order shall be prepared beforehand by the party making the application, and shall be settled by the registrar. Where the application is made to and heard by the registrar, he shall sign the draft order settled by him, and shall seal and file the same, and shall issue a copy thereof under the seal of the court to the bailiff or the applicant's solicitor for service; and, where the application is made to the judge, the applicant shall present the draft order settled by the registrar to the judge for his approval, and the judge shall sign the same if he approves thereof, or shall make such alterations as he may deem necessary, and sign the draft as so altered; and the draft so signed shall be transmitted by the applicant to the registrar, who shall seal and file the same, and issue a copy thereof under the seal of the court to the bailiff or the applicant's solicitor for service.

Settlement, signing, sealing, filing, and service of orders under preceding rules.

9.—(1) Where a defendant neither resides nor carries on business within a distance of twenty miles from the court in which the plaint is entered, he may make an application to the registrar in accordance with this rule for an order directing the plaintiff to deposit in court a sum of money as security for the costs of the defendant.

Deposit may be ordered where defendant neither residing nor carrying on business within 20 miles from court files affidavit of defence of merits.

(2) The application shall be in accordance with the form in the Appendix, and shall be filed with the registrar, by post or otherwise,

(a) Where a defendant to a default summons delivers a notice of defence, with such notice; or

(b) Where a defendant to a special default summons delivers an affidavit of defence, with such affidavit; or

Form 89.

(c) In any other case, seven clear days at least before the return day of the summons;

and shall in case (a) or case (c) be accompanied by an affidavit stating that the defendant intends to defend the action and has a good defence thereto on the merits, and stating shortly the grounds of his defence.

(3) The registrar shall duly consider the allegations in the affidavit filed by the defendant or in his affidavit of defence, and may in his discretion either refuse or grant the application.

(4) If the registrar refuses the application, he shall send notice to the defendant by post according to the form in the Appendix. Form 90.

(5) If the registrar grants the application, he shall send to the plaintiff by post a notice according to the form in the Appendix, calling upon him to deposit in court within three clear days from Form 91.

O. XII. r. 9. the date of the notice such a sum as the registrar, having regard to all the circumstances of the case, may direct.

(6) Where a deposit is required, then—

(a) If the deposit is duly made, the registrar shall send notice to the defendant according to the first paragraph of the form in the Appendix ;

Form 91A.

(b) If the deposit is not duly made, the registrar shall send notice to the defendant according to the second paragraph of the form in the Appendix, and in that case the action shall be struck out, and the plaintiff may be ordered to pay the costs of the defendant, such costs to be assessed by the Registrar.

(7) Provided that if the deposit is not duly made, the court may on good cause shown order the action to be reinstated on such terms as it may think just, and may adjourn the trial, and on the deposit being made the registrar shall send notice thereof to the defendant and direct him to attend on the day fixed for the trial.

An appeal lies to the judge against the decision of the registrar under this rule (*Warwick v. Butler & Lauritzen*, (1925) 2 K. B. 294).

A court fee of 5s. is payable on the application (C. C. Fees Order 1925, Fee No. 8).

In actions under the extended jurisdiction, "ten clear days" is substituted for "seven clear days" (Order XXIIA. r. 15).

The provision as to costs in para. 6 (b) added by County Court (No. 1) Rules, 1927.

Application for order that loss of bill shall not be set up.

45 & 46 Vict. c. 61, s. 70.

10. An application under section seventy of the Bills of Exchange Act, 1882, in an action or proceeding upon a bill, for an order that the loss of an instrument shall not be set up, may be made to the court at any time before the hearing of the action, on notice in writing in accordance with the next following rule, supported by affidavit, a copy of which shall be served with the notice. If not so made, it may, by leave of the judge, be made at the hearing. In dealing with any such application, the court shall take into consideration any offer of indemnity proved to have been made on behalf of the applicant, and may grant the application upon such terms as to payment of costs by the applicant, postponement of the trial, and otherwise, as may be just.

The offer of indemnity should be made before action, otherwise the applicant may be made to pay the costs as a term of the order under the above provisions (*King v. Zimmerman*, (1871) L. R. 6 C. P. 466 ; 40 L. J. C. P. 278).

The fact of the loss should be shown to be a defence in the affidavit for leave to defend (see *Charnley v. Grundy*, (1854) 14 C. B. 608 ; 23 L. J. C. P. 121 ; 98 R. R. 782).

If the plaintiff does not, after notice of such defence, obtain relief under the section, the loss of the instrument may be set up and the claim defeated.

11. Where by any statute or by these rules any interlocutory **O. XII. r. 11.** application is expressly or by reasonable intendment directed to be made to the court, or to the judge, or to the judge or registrar, or to the registrar, then, subject to the provisions of the particular statute or of the particular rule applicable thereto, and so far as the same shall not be inconsistent therewith, the following provisions shall apply :—

Practice on
interlocu-
tory appli-
cations.

- (1) The application may be made either in or out of court, and either *ex parte* or on notice in writing; when made on notice, the notice shall be served on the opposite party two days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.
- (2) No affidavit in support shall be necessary, but the judge or registrar, as the case may be, may, if he thinks fit, adjourn the hearing of the application and order affidavits in support to be filed.
- (3) The judge or registrar upon the hearing or adjourned hearing of the application may make an order absolute in the first instance, or to be absolute at any time to be ordered by him, unless cause be shown to the contrary, or may make such other order or give such directions as may be just.
- (4) The allowance of the costs of and incident to the application shall be in the discretion of the judge or registrar; and no such costs shall be allowed on taxation without special order.
- (5) The taxation of costs, when allowed, shall not take place until the general taxation of the costs of the action or matter in which the application is made, or the action or matter is determined, unless the judge or registrar on the hearing of the application for good cause otherwise orders.
- (6) When an earlier taxation is ordered, the word "recovered," wherever it occurs in the scales, shall be deemed for the purposes of taxation to mean "claimed," and column B shall apply to all cases exceeding twenty pounds to the exclusion of column C.

When the application may, under the particular statute or rule, be made to the registrar, and is so made, the following additional provisions shall apply :—

- (7) The registrar may, if in doubt as to the proper order to be made, refer the matter to the judge forthwith or at the next court day or at the trial.
- (8) The judge may vary or rescind any order made by the

O. XII. r. 11.

registrar, and may make such order as may be just, and if necessary adjourn the trial.

General Practice.]—The general practice on interlocutory applications is governed by sect. 9 of the County Courts Act, 1888, by Order XII. r. 11, and by Order XV. Sect. 9 enables the judge, whether within his district or not, to make any order, or to exercise on an *ex parte* application any jurisdiction which, if the action or proceeding had been in the High Court, could have been exercised by a judge at chambers. This practically enables the judge to make any interlocutory order *ex parte*, and it is believed that no rule of practice can take away his power.

The practice to be followed in an *ex parte* application, whether the power of the judge or the registrar to make the order be derived from the County Courts Act, or from any other statute, or from any other rule, is now prescribed by Order XII. r. 11. The rule also supplements the practice when a statute or another rule has only partially prescribed it. In such a case, the statute and the rule or the two rules must be read together, and those parts (if any) of Order XII. r. 11, which are inconsistent with the statute or the particular rule, must give way before it. The result is that nearly every interlocutory order may be obtained *ex parte*, and that very few cases exist in which Order XII. r. 11 is so entirely inconsistent with the prescribed practice as to be inapplicable.

Orders on Notice.]—There are many cases, however, in which no judge, even though he have the power to do it, will make the order without hearing the other side; and parties have therefore the option, under Order XII. r. 11, of applying on notice to the other party. Discretion should be used; trivial and pressing matters should be dealt with *ex parte*, but where the other side ought fairly to be heard, the application should be on notice if possible.

Every interlocutory application must be made to the court, or to the judge, or to the judge or registrar, or to the registrar, as provided by the particular statute or rule applicable to it; and subject to any provisions of the statute or rule inconsistent with them, the following provisions will apply to the application.

The application may be made either in or out of court, *ex parte*, or on notice in writing. If on notice, it must be served on the opposite party or his solicitor two days at least before the day of hearing, unless the judge or registrar gives leave for shorter notice.

No affidavit in support will be necessary, unless it is otherwise provided; but the hearing may be adjourned and affidavits in support ordered to be filed.

The order may be absolute in the first instance, or it may be ordered to be absolute at any time to be ordered, unless cause be shown to the contrary; or such other order may be made, or such directions given as may be just. Costs will be in the discretion of the judge or registrar, as the case may be; but no costs will be allowed on taxation without a special order, which must be obtained at the time unless the judge for good cause otherwise orders (Order LIII. r. 7).

No order need be drawn up or served unless the judge or registrar, as the case may be, so orders (Order XXIII. r. 5).

Where the application can be and is made to the registrar, he, if in doubt as to the proper order to be made, may refer the matter to the judge forthwith, or at the next court day, or at the trial. And if the registrar makes an order, the judge may vary or rescind it, and make such order as may be just, and, if necessary, adjourn the trial.

The taxation of costs, when costs are allowed, may not take place until the general taxation of the costs of the action or matter, or the action or matter is determined, unless the judge or registrar, on the hearing of the application, for good cause, otherwise orders.

When an earlier taxation is ordered, the word "recovered," wherever it

occurs in the scales, will be deemed, for the purpose of taxation, to mean "claimed," and column B will apply to all cases exceeding 20*l.*, to the exclusion of column C. It is believed that there is no power for either judge or registrar, on a mere interlocutory application, to certify under sect. 119 of the Act for costs on a higher scale than that applicable as above.

O. XII. r. 11
Notes.

Appeals from Interlocutory Decisions.—See note to sect. 120, *ante*, p. 141.

12. The court may at any time postpone the trial of any action or matter upon the joint application of the parties.

Postpone-
ment of trial
on joint
application
of parties.

No adjournment by the parties without the sanction of the court is operative (*Morgan v. Rees* (C. A.), (1881) 6 Q. B. D. 508).

13. Where in any action or matter interlocutory proceedings are contemplated or pending which cannot be concluded in time to enable the parties to prepare for the trial of such action or matter on the day fixed for the same, the court may, upon the application of any party, and upon being satisfied that such interlocutory proceedings are necessary and proper, make an order postponing such trial upon such terms as to costs or otherwise as may be just; and such order, if made in the absence of the other party, shall be served upon him.

Postpone-
ment of trial
pending
interlocutory
proceedings.

Form 92.

14. Where it appears that from the course of proceedings in any action or matter the trial cannot be held on the return-day, the court may postpone the trial until such other day as the state of the proceedings may require, and notice of such postponement shall be given by the registrar to all parties and persons interested who are not present when the order is made.

Postpone-
ment of trial
by court.

Form 93.

15. When anything required by the practice of the court to be done by either party, before or during the trial, has not been done, the court may, in its discretion, and on such terms as it shall think fit, adjourn the trial to enable such party to comply with the practice.

Adjourn-
ment to
enable party
to comply
with rules;

16. In any case not coming within the four preceding rules of this order, the court may, in its discretion, on the application of any party made on notice in accordance with Rule 11 of this Order, make an order postponing or adjourning for good cause the trial of any action or matter upon such terms, as to costs or otherwise, as may be just; and such order, if made in the absence of the other party, shall be served on him.

in other
cases.

Good Cause.—The pendency in the High Court of an action involving practically the same issue as that raised in the county court action may be good cause entitling the county court judge, in the exercise of his discretion, to postpone the trial of the action in his court till after the hearing of the High Court action, even though such action may not be between the same parties (*Hammond Bros. and Champness v. Jackson*, (1914) 1 K. B. 241; 83 L. J. K. B. 380).

ORDER XIII.

RECEIVER.

O. XIII. r. 1.

Receiver
may be
appointed
though not
asked for.

Forms 299,
300.

1. Where before, at, or after the trial of any action it appears to the judge expedient that a receiver be appointed, such appointment may be made whether the same be asked as part of the relief in the plaint or not.

Receiver.—County court judges, by virtue of the Judicature Acts, possess in all actions over which they have jurisdiction the same powers of appointing receivers which are possessed by the judges of the High Court (Judicature Act, 1925, ss. 45 & 202). The jurisdiction extends to the appointment of a receiver by way of execution against equitable interests in land (*Rex v. Selfe*, (1908) 2 K. B. 121; 77 L. J. K. B. 697). These powers enable them to make the appointment either at the trial or on an interlocutory application, and the appointment may be made whether asked for as part of the relief in the plaint or not.

It is better, however, to add a claim for a receiver, if it is a substantial object of the action (*Colebourne v. Colebourne*, (1876) 1 Ch. D. 690; 45 L. J. Ch. 749).

A court cannot appoint a receiver by way of equitable execution except where, by reason of the nature of the property, execution cannot be levied in the ordinary way (*Morgan v. Hart*, (1914) 2 K. B. 183; 83 L. J. K. B. 782).

By sect. 23 (2) of the Partnership Act, 1890, the court has power, on the application of any judgment creditor of a partner, to make a charging order on that partner's interest in the partnership property and profits, and to appoint a receiver of that partner's share in the profits.

Receiver to
give security.
Form 303.

2. Every receiver appointed by the judge, other than the high bailiff, shall, unless the judge otherwise orders, give such security to the registrar for the faithful discharge of his duties, and the payment over of money, as the judge shall direct.

For conditions as to security, see Form 303. But where a receiver is appointed by way of equitable execution, and the debt and costs do not exceed 50*l.*, the judge may, instead of directing the receiver to give security, direct that the applicant for his appointment shall be answerable for his acts and defaults, and that the receiver shall not, without leave of the judge, receive more than the amount of the debt and costs, the allowance to the receiver, and the allowed fees and costs of obtaining the appointment of the receiver (Order XIII. r. 14 (4)).

Remunera-
tion of
receiver.

3. Every receiver appointed by the judge shall, unless otherwise ordered, be allowed a proper salary or allowance.

As to the audit of the receiver's accounts, see Rules 4, 6, 7, 8, and 9 of this Order.

Audit of
receiver's
accounts at
close of
proceedings.

4. The receiver shall submit his accounts to the registrar, and the registrar shall audit the same, as soon as conveniently may be after the realisation of the assets, and immediately after such audit the receiver shall pay over to the registrar the balance found thereby to be in his hands. The account shall be written on foolscap paper bookwise, and the items shall be numbered consecutively, and the account shall be verified by affidavit and be therein referred to as an exhibit.

5. The registrar may require any receiver to produce any receipt, accounts, and vouchers necessary for verifying the account, and may disallow any item not proved to his satisfaction. **O. XIII. r. 5.**

Receiver to produce vouchers. Accounts may be ordered to be audited at any time.

6. The receiver shall, at any time before the complete realisation of the assets, produce his accounts to be audited upon receiving seven days' notice in writing from the registrar so to do, and such notice may be sent by post or otherwise to the address of the receiver.

Form 301

7. Where the duties of a receiver are continuous, no longer period than one year shall in any case be allowed to intervene between each audit.

Interval between audits.

8. The registrar shall after each audit of a receiver's accounts make and sign a certificate stating the result of such audit.

Certificate of result of audit.

9. In no case shall it be necessary for any party to attend at the audit of a receiver's account, but where a party is dissatisfied with a receiver's account he may apply to the judge for a revision of the registrar's allowances.

Attendance of party not required at audit.

Revision of allowances.

10. The judge may order the receiver to pay over, at such time or from time to time as he may think fit, to the party entitled to the beneficial interest therein, or to the guardian of any infant, any yearly or other accruing rents or interest, instead of paying the same into court, and to take credit for such payments in his accounts when audited.

Judge may direct receiver to pay moneys received to party entitled.

Form 302.

11. With respect to any receiver who neglects to submit his accounts to be audited or to pay over any balance in his hands, the judge may from time to time, when his subsequent accounts are produced to be audited, disallow the salary or allowance therein claimed by such receiver, and may also, if he thinks fit, charge him with interest at the rate of five per cent. per annum upon any balance so neglected to be paid by him during the time such balance shall appear to have remained in the hands of such receiver.

Neglect of receiver.

12. In case of any receiver failing to leave any account or affidavit, or to pass any account, or to make any payment or otherwise, the receiver or the parties, or any of them, may be required to attend before the judge to show cause why such account or affidavit has not been left, or such account passed or such payment made, or any other proper proceeding taken; and thereupon the judge may give such directions and make such orders as may be proper, including directions for the discharge of any receiver and the appointment of another, and any order as to costs.

Consequence of default by receiver.

O. XIII. r. 13. **13.** In every case in which an application is made for the appointment of a receiver by way of equitable execution, the judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt and costs claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if he thinks fit, direct any inquiries on these or other matters before making the appointment.

Fees and costs on appointment of receiver by way of equitable execution.

14. Where a receiver is appointed by way of equitable execution, costs may be allowed as on an interlocutory application in an equitable action or matter.

Provided that—

- (1) Where the amount of debt and costs due to the applicant exceeds fifty pounds (a), but does not exceed one hundred pounds, the total amount to be allowed for costs (exclusive of the allowance to the receiver and the fee payable on the application for his appointment, but including the costs of obtaining his appointment, completing his security, passing his accounts, and obtaining his discharge) shall not exceed two and a half per cent. of the amount of such debt and costs ;

(a) In determining the amount of debt and costs due to the applicant for the purpose of ascertaining the proper costs, the expenses of obtaining an interim injunction to prevent the property, as to which a receiver is asked for, being parted with ought not to be included (*Carrington v. Deane*, (1917) 1 K. B. 717 ; 86 L. J. K. B. 743).

- (2) Where the amount of such debt and costs exceeds twenty pounds, but does not exceed fifty pounds, the total amount to be allowed for costs shall not exceed one pound five shillings ; and
- (3) Where the amount of such debt and costs exceeds five pounds, but does not exceed twenty pounds, there may be allowed for costs such sums, not less than seven shillings and sixpence and not exceeding one pound, as the judge may direct ;
- (4) Where the amount of debt and costs does not exceed fifty pounds, the judge may, instead of directing the receiver to give security, direct that the applicant shall be answerable for the acts and defaults of the receiver, and that the receiver shall not receive more than the amount of the debt and costs due to the applicant, and the allowance to the receiver and the allowed fees and costs of obtaining the order appointing the receiver, without the leave of the judge. [1925.]

15. The forms in the Appendix, with such modifications as may be necessary, may be used for interim or final orders for the appointment of a receiver by way of equitable execution.

O. XIII. r. 15.

Forms of
orders for
appointment
of receivers.Forms 300A
300B.

ORDER XIV.

AMENDMENT.

1. Where an action or matter has been commenced in the name of the wrong person as plaintiff or otherwise, or where it is doubtful whether it has been commenced in the name of the right person, the court, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff or otherwise upon such terms, as to notice and otherwise, as may be just.

Change or
addition of
plaintiff.

A mistake of law will entitle a plaintiff to relief under this rule (*Duckett v. Gover*, (1877) 6 Ch. D. 82; 46 L. J. Ch. 407); but whether the mistake be of law or fact, it must be *bonâ fide* (*Clowes v. Hilliard*, (1877) 4 Ch. D. 413; 46 L. J. Ch. 271). Where the effect of the introduction of new plaintiffs would have been to make an entirely new case, leave to amend at the trial was refused (*New Brewery Co. v. Hannah* (C. A.), W. N. (1877) 35).

2. No action or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the judge may in every action or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before him. The court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties be added, whether as plaintiffs or defendants, who ought to have been joined, or whose presence before the judge may be necessary in order to enable him effectually and completely to adjudicate upon and settle all the questions involved in the action or matter. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability without his own consent in writing thereto. Every person whose name is so added as defendant shall be served with a notice in manner hereinafter mentioned, and the proceedings as against such party shall be deemed to have begun only on the service of such notice.

Action not
to be defeated
by misjoinder
or nonjoinder
of parties.

Form 95.

See *Tryon v. National Institution*, (1886) 16 Q. B. D. 678; 55 L. J. Q. B. 236; *Artizans, Labourers', &c. Dwellings Co. v. Clifford*, (1918) 87 L. J.

O. XIV. r. 2 K. B. 966. A joint defendant may be added in an action in contracts even without the consent of the plaintiff, if the defendant shows a *prima facie* case of another person being jointly liable upon the contract with him. He is entitled to have such person joined, if it can be done without prejudice to the plaintiff (see *Norbury Natzio & Co. v. Griffiths*, (1918) 87 L. J. K. B. 952).

Notes.

If the plaintiff has altogether mistaken the defendant, and sued the wrong person, or has omitted to join a material defendant, he will be in peril at the trial of being left to commence a new action; but the judge has power to amend under the above provisions, and might do so, and adjourn the trial on payment of costs (see *Hancocks v. Lablache*, (1878) 3 C. P. D. 197; 47 L. J. C. P. 514).

Where the plaintiff has signed judgment against one of two joint contractors, he cannot, by having the judgment set aside by consent, sue the other joint contractor in a fresh action, or by amending the proceedings (*Hammond v. Schofield*, (1891) 1 Q. B. 453).

See also notes to s. 97 of the Act, *ante*, p. 115.

Joinder of
defendant
under Air
Navigation
Act, 1920,
10 & 11
Geo. 5, c. 80.

2A.—(1) Where in any proceedings within section 9 of the Air Navigation Act, 1920, against the owner of an aircraft or a person to whom an aircraft has been demised, let, or hired out, such owner or person is desirous of joining any person as defendant in such proceedings pursuant to that section, an application for that purpose shall be made under and in accordance with the provisions of Order XII., Rule 11, on notice in writing to the opposite party not less than five clear days before the return day, and if not so made shall not subsequently be made except with the leave of the court or judge and on such terms as the court or judge may think fit.

(2) Such application may and if the court or judge requires it shall be supported by an affidavit of the facts on which the applicant relies as entitling him to the order.

(3) On the hearing of the application the court or judge may as a condition of the order require the applicant to give an undertaking to indemnify the plaintiff against the costs of and occasioned by the joinder of the other person as defendant and any costs which the plaintiff may be ordered to pay to such person and to abide by any order which the judge at the trial or the court or a judge in the event of there being no trial may make as to any costs which such judge or court or judge deem it reasonable that the applicant should pay to the plaintiff or the other person. Any such undertaking shall be embodied in the order made on the application and a copy thereof shall be signed by the applicant.

Rule dated August 1st, 1924.

Where too
few persons
made plain-
tiffs.

3. Where it appears at the trial that a less number of persons have been made plaintiffs than by law required, the name of any omitted person may, at the instance of either party, be added, by

order of the judge, on such terms as he may think fit, and thereupon the action shall proceed, in all respects, as if the proper persons had been originally made parties; and if such person, either at the trial or at some adjournment thereof, personally or by writing, consents to become a plaintiff in manner aforesaid, the judge may then pronounce judgment as if such person had originally been made a plaintiff; but if such person does not consent to become a plaintiff in manner aforesaid, either at the trial or at the adjournment thereof, the action or matter shall be struck out. O. XIV. r. 3.

4. Where a person other than the defendant appears at the trial, and admits that he is the person whom the plaintiff intended to charge, or ought to have charged, his name may be substituted for that of the defendant, if the plaintiff consents; and thereupon the action shall proceed, in all respects, as if such person had been originally named in the summons; and the costs of the person originally named as the defendant shall be in the discretion of the court. Change of defendant.

5. Where a party sues or is sued in a representative character, but it appears that he ought to have sued or been sued in his own right, the court may, at the instance of either party, on such terms as may be just, amend the proceedings accordingly; and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the summons. Where party wrongly sues or is sued in representative character.

6. Where a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative character, the court may, at the instance of either party, on such terms as may be just, amend the proceedings accordingly; and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the summons. Where party ought to have sued or been sued in representative character.

7. Where the name or description of a plaintiff in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the court, on such terms as may be just, and thereupon the action shall proceed, in all respects, as if the name or description had been originally such as it appears after the amendment has been made. Amendment of name or description of plaintiff.

An action by a local authority, under the Contagious Diseases (Animals) Act, 1869, was brought in the name of J. M., who sued as, and was described in the summons as, "inspector appointed by the local authority," etc. The judge, at the trial, amended the summons by substituting "the local authority for," etc., as plaintiff, and this amendment was held to have been a proper amendment of the description of the plaintiff (*Mills v. Scott*, (1873) L. R. 8 Q. B. 496; 42 L. J. Q. B. 234).

O. XIV. r. 8.

Amendment
of name or
description
of defendant.

8. Where the name or description of a defendant in the summons is insufficient or incorrect, it may be amended at the instance of either party by order of the court, on such terms as may be just; and thereupon the action shall proceed, in all respects, as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description the action may proceed, and in the judgment, and all subsequent proceedings founded thereon, the defendant may, subject to the provisions of Order XXV. Rules 7 and 25, be named and described in the same manner.

Where all
defendants
have not
been served.

9. Where two or more persons are made defendants and some of them have not been served, then subject and without prejudice to the provisions of Order VII., Rule 29D, the names of the defendants who have not been served may, at the instance of either party, be struck out by order of the court, on such terms as may be just; and thereupon the action shall proceed, in all respects, as if the parties whose names have not been struck out had alone been made defendants; or the action may be adjourned for service upon any defendant not served.

Amended by County Court Rules, 1926 (No. 1) rules.

The right of a joint contractor to have all joint contractors joined as defendants still remains in the High Court (*Kendall v. Hamilton, per Lord Blackburn*, (1879) 4 App. Cas. 504, 544; 48 L. J. C. P. 705). As to county courts, see s. 97 of the Act.

Application
to add or
strike out
parties.

Notice to an
added or
substituted
defendant.

Forms 94, 95.

10. Any application under any of the rules of this Order may be made before the trial to the court, or at the trial to the judge.

11. Where a defendant is added or substituted, except where a defendant is substituted under Rule 4 of this Order, an order shall be drawn up; and such order shall be served on the defendant, together with a copy of the summons, and a notice according to the form in the Appendix as to the day upon which he is to attend at the court, according to the rules applicable to the service of the original summons in the action.

Amendment
of particulars
and notice of
defence.

12. A plaintiff may file and deliver amended particulars of demand, and a defendant, whether by original action, counter-claim, or otherwise, may file and deliver an amended notice or particulars of any special defence set up or intended to be set up by him under Order X. Rule 10, at any time before the return day, without obtaining any order for the purpose; and either party may on such amended particulars increase the amount of his claim or counter-claim, as the case may be, on payment of the difference (if any) between the fees payable on the amount

Increase of
amount
claimed or
counter-
claimed.

originally claimed and those payable on the larger amount O. XIV. r. 12. claimed on such amendment; but the judge at the trial, if satisfied that the opposite party has not had a reasonable opportunity of preparing his case to meet any new matter introduced by such amendment, or for any sufficient cause, may disallow the amendment, or may adjourn the trial, and may make such order as to costs as he may think fit.

This does not take away the power of the judge to grant an amendment for some sufficient reason (see sect. 87 of the Act, *ante*, p. 105).

12A. The judge, or the registrar in cases within his jurisdiction, shall have power to amend the particulars of claim in an action commenced by a default summons or a special default summons by substituting or adding in the alternative or otherwise any claim or claims which could be added or substituted by amendment if the action had been commenced by an ordinary summons; and where any such amendment is made the action shall proceed as if it had been commenced by an ordinary summons, upon such terms, as to costs or otherwise, and subject to such conditions, as the judge or registrar may think just.

Amendment of default or special default summons. 51 & 52 Vict. c. 43, s. 87. 9 & 10 Geo. 5, c. 73, s. 8.

See notes to sect. 86 of principal Act.

13. The plaintiff may at any time before an action or matter is called on for trial, or in opening his case when called on, abandon any part of his claim, and such abandonment shall be entered on the particulars (if any), and in the minute book. Provided, that if the defendant succeeds the court may allow him costs on the scale which would have been applicable to the amount originally claimed; and in any case the court may allow the defendant any costs properly incurred by him in respect of that part of the plaintiff's claim which is abandoned.

Abandonment of part of claim; amendment of particulars; costs.

See notes to s. 81 of the Act, *ante*, p. 89. The abandonment of the excess must be entered at the end of the particulars attached to the summons (Order VI. r. 1).

14. The registrar when acting under the provisions of sections ninety and ninety-two of the Act shall have the same power as the judge has of amending the proceedings in any action or matter.

Powers of registrar to amend when acting under 51 & 52 Vict. c. 43, ss. 90 and 92.

15. Where upon taking an account, or by the verdict of a jury, or otherwise, it appears that the plaintiff is entitled to recover an amount larger than that mentioned in the particulars, but not exceeding 100*l.*, he may, by leave of the court, and on payment of the difference (if any) between the fees payable on the amount so mentioned and those payable on the larger amount,

Amendment of particulars where plaintiff entitled to more than amount claimed.

O. XIV. r. 15. amend his particulars so as to claim such larger amount, and thereupon judgment may be entered for the same.

Where plaintiff in case of account found entitled to more than 100l.

16. Where upon taking an account it appears that the plaintiff is entitled to a larger amount than 100l., and he has not by his particulars abandoned the excess over 100l., he may, by leave of the court, abandon such excess, and thereupon judgment may be entered for 100l. : and if the plaintiff does not abandon such excess, the action shall be struck out.

ORDER XV.

APPLICATION FOR DIRECTIONS.

Any party may apply for directions.

1. In any action or matter any party may at any time apply to the court for a postponement of the trial (if the day of trial has been fixed) and for general directions with respect to the following matters and proceedings, viz., particulars of claim or counter-claim, special defence, payment into court, discovery (including interrogatories), examination of witnesses before the trial, mode of trial and any other matter or proceeding in the action or matter previous to trial ; and the court, if satisfied that from the nature of the action or matter the directions asked for, or some of them, are necessary, may make an order giving such directions as to all or any of such matters or proceedings as may be just, whether applied for or not, and may if necessary postpone the trial. The order shall be according to the form in the Appendix, with such variations as circumstances may require.

Form 100.

For practice on interlocutory applications, see Order XII. r. 11, and notes thereto.

Notice of application.

2. An application under the last preceding rule shall be made upon giving at least three clear days' notice in writing to every party to the action or matter who may be affected thereby ; such notice shall be according to the form in the Appendix, with such variations as circumstances may require, and shall include, so far as is practicable, all the above-mentioned matters and proceedings, or as many thereof as, having regard to the nature of the action or matter, can conveniently be dealt with by the order of the court.

Form 99.

Applications for direction by any party served with notice.

3. Upon the hearing of the application any party who has been served with notice thereof may apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire ; and thereupon the court may either make such order and give such directions respecting the same as may be just,

or may adjourn the consideration of the same, and direct any necessary notice to be given. **O. XV. r. 3.**

4. If upon any other application as to any of the above-mentioned matters or proceedings it appears to the court that the application is one that could and ought to have been included in the general application for directions, such application shall be granted only at the costs of the party making the same. Costs on application for any matter which could have been asked for in application for directions.

5. If the trial is adjourned generally by the order giving directions, any party may apply, on giving at least three clear days' notice in writing to the other party, to have the action or matter set down for trial; or, by consent of all parties, the same may be set down at any time and for any court which the state of business, in the opinion of the registrar, may allow. Setting down action for trial after order for directions.

6. Whenever an action or matter is set down for trial under the last preceding rule, the registrar shall issue to the party applying to set the same down a notice according to the form in the Appendix, and as many sealed copies thereof as there are parties to be served; and such party shall serve the same upon all other parties to the action or matter eight clear days at least before the day fixed for the trial, unless otherwise ordered. Notice of day of trial. Form 101.

In actions under extended jurisdiction and in actions over 50*l.* transferred from the High Court, "ten clear days" is substituted for "eight clear days" (Order XXIIA. r. 16; Order XXXIII. r. 3B.).

ORDER XVI.

DISCOVERY AND INSPECTION.

1. Any party to any action or matter may, without filing an affidavit, by leave of the court deliver interrogatories in writing for the examination of any one or more of the opposite parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such parties is to answer: Provided that interrogatories which do not relate to any question in the action or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness. (R. S. C., Ord. XXXI. r. 1.) Interrogatories.

By the County Court Rules, the procedure with regard to interrogatories has been rendered substantially uniform with the procedure in the High Court, excepting that, in High Court actions, the deposit is 5*l.* For a full statement of the law as to discovery by means of interrogatories, see Annual Practice, notes to Order XXXI., r. 1, R. S. C.

In some cases a third party may interrogate the plaintiff (*Eden v. Weardale Co.* (C. A.), (1887) 35 Ch. D. 287; 56 L. J. Ch. 400).

O. XVI. r. 1
Notes.
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The sum payable into court as security for the costs of discovery by interrogatories is twenty shillings, and two shillings for every additional folio beyond five, but the court may order either a less, or a greater sum to be deposited or may dispense with security (Order XVI. r. 23).

There is no general rule in the High Court that interrogatories are not allowed in a running down action. Probably the same principle would apply to such an action brought in the county court. See *Griebart v. Morris*, (1920) 1 K. B. 659; 89 L. J. K. B. 397. In an action for forfeiture of land only, neither interrogatories nor discovery should be allowed (*Seddon v. Commercial Salt Co.* (1925) 1 Ch. 187; 94 L. J. Ch 225), and the same rule applies in an action for penalties by a common informer (*Martin v. Treacher*, (1886) 16 Q. B. D. 507).

Order to be
 drawn by
 registrar
 and served.
 Form 102.

2. If leave is granted, an order shall be drawn up by the registrar and served by the applicant on the party against whom the order is made. Such order shall be according to the form in the Appendix, and shall specify the number of days within which the interrogatories are to be delivered by the applicant, and also the time within which the affidavit in answer is to be filed.

Particular
 interroga-
 tories to be
 submitted.
 Matters to be
 considered.

3. On an application for leave to deliver interrogatories the particular interrogatories proposed to be delivered shall be submitted to the court. In deciding upon such application, the court shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the subject in question, or any of them; and shall also consider whether the application has been made too early in the proceedings in the action or matter, or too late to allow of the answers being used at the hearing; and leave shall be given as to such only of the interrogatories submitted as the court considers necessary either for disposing fairly of the action or matter, or for saving costs. (R. S. C., Order XXXI. r. 2.)

Costs of
 improper
 interroga-
 tories.

4. In adjusting the costs of the action or matter inquiry shall, at the instance of any party, be made into the propriety of exhibiting interrogatories, and if it is the opinion of the registrar on taxation, or of the judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault. (R. S. C., Order XXXI. r. 3.)

Interroga-
 tories, form
 of.

5. Interrogatories shall be according to the form in the Appendix, with such variations as circumstances may require.

Form 103.
 Corporations
 and joint
 stock
 companies.

6. If any party to an action or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in

its own name or in the name of any officer or other person, any **O. XVI. r. 6.** opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

7. Any objection to answer any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant, or not *bonâ fide* for the purpose of the action or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer. (R. S. C., Order XXXI. r. 6.) **Objection to answer.**

8. Interrogatories shall be answered by affidavit according to the form in the Appendix, with such variations as circumstances may require. Such affidavit shall be filed and a copy thereof delivered to the party interrogating within the time named in the order giving leave to interrogate. **Affidavit in answer. Form 104.**

9. If any person interrogated omits to answer, or answers insufficiently, the party interrogating, after giving to such person two clear days' notice of the time and place at which he intends to apply, may apply to the court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or to answer further, either by affidavit or by *vivâ voce* examination before the court, as the court may direct. (R. S. C., Order XXXI. r. 11.) **Further answer. Form 105.**

To found an application for attachment, the order to answer, or answer further, should be drawn up and served, with the notice in Form 346 endorsed (Order XXV. r. 58).

10. Any party to any action or matter may, without filing any affidavit, apply to the court for an order directing any other party to the action or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any question therein. On the hearing of such application the court may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the action or matter, or make such order, either generally or limited to certain classes of documents, as the court may in its discretion think fit. Provided that discovery shall not be ordered when and so far as the court is of opinion that it is not necessary either for disposing fairly of the action or matter, or for saving costs. If an order is made it shall be drawn up by the registrar and served by the applicant on the party against whom the order is made. Such order shall be according to the form in the Appendix, and shall specify the time within which the (affidavit in answer is to be filed. (R. S. C., Ord. XXXI. r. 12.) **Discovery of documents. Form 106.**

Application how made.—The application may be made by notice for directions (Order XV. rr. 1, 4), or *ex parte*, or on notice, in or out of court

O. XVI. r. 10 (Order XII. r. 11). In general the application should be made to the registrar.

Notes.

Appeal.—There was, before the Act of 1888, no appeal if the judge refused the order; but there is now (see notes to sect. 120, *ante*, p. 141). If refused by the registrar, application may be made to the judge pursuant to Order XII. r. 11.

Order.—An order for discovery must be drawn up and served with a copy of the receipt for the payment into court (if ordered) of the deposit for costs mentioned below; and it must state the amount ordered to be paid into court, or that payment into court is dispensed with (Order XVI. r. 23 (2); Form 106A). It must be drawn up by the registrar (Order XXIII. r. 7). If the party obtaining it acts by solicitor, he should serve it (Order XXIII. r. 6); if not, service must be by bailiff (51 & 52 Vict. c. 43, s. 35). If the party on whom the order is made acts by solicitor, service should be made on him (Order XXIII. r. 6). Service may be made by delivery at his office or by sending the order to him by prepaid postal letter (Order LIV. rr. 3, 20).

Service.—Service will count on the day of such delivery, or, if sent by post, on the day on which, in the ordinary course of post, delivery would be made (Order LIV. r. 3). If such party does not act by solicitor, service when by bailiff may be by prepaid postal letter or must be personal; and if by post, it will not be necessary to prove either posting or the receipt of the order (Order XXIII. r. 7; Order LIV. r. 20). When service is by solicitor on a party who does not act by solicitor, it seems that service should be personal. Probably in case of absence or for other sufficient cause, an order for substituted service may be made (Order VII. r. 40).

Deposit for Costs.—There must be served with the order for discovery a copy of a receipt for the sum which, upon making the application, the party applying for discovery may be ordered to pay into court (Order XVI. rr. 22, 23 (2)). The sum prescribed is twenty shillings (Order XVI. r. 23 (1)), but the court has now a discretion as to requiring security for the costs of discovery (Order XVI. r. 23 (2)). This sum will be retained in court as security for the costs of discovery; and such costs will only be allowed, where there is a trial, if the judge thinks that discovery was reasonably asked for; when there is no trial, if the registrar on taxation is of that opinion (Order XVI. rr. 22, 24). In the absence of service of a copy of the above-mentioned receipt, discovery need not be made (Order XVI. r. 23 (2)). The amount of security is ordinarily 1*l.*, but it may be more or less as the judge or registrar directs.

If the party paying in afterwards gets the costs of the action or matter, he or his solicitor will, when the action or matter is finally disposed of, be entitled to have the sum deposited paid out to him; but if the judge should think the discovery unnecessary, he may, it is conceived, order the amount to be applied in payment of the costs incurred by the opposite party in obedience to the order for discovery. If the party paying in be ordered to pay the costs of the action or matter, the amount paid in will be subject to a lien for such costs (Order XVI. r. 24). If no taxation of costs is required, the registrar must, by consent, or on being satisfied that the party who made the payment is entitled to the amount, pay it out to the party, or to his solicitor on his written authority (Order XVI. r. 24).

The party on whom an order for discovery is made is, in the absence of any order dispensing with the payment, not bound to comply with the order until the payment has been made, and a copy of the receipt for the payment into court served upon him (Order XVI. r. 23 (2)).

As a general rule in actions against several, one deposit suffices (*Eder v. Attenborough*, (1889) 23 Q. B. D. 130; 58 L. J. Q. B. 311; *Joyce v. Beall*, (1891) 1 Q. B. 459; 60 L. J. Q. B. 242); but if there are several defendants who appear separately and have independent rights, it seems that a separate deposit should be made for the costs of each one against whom the order for discovery is made (*Liverpool and Manchester Bread Co. v. Firth*, (1891) 1 Ch. 367; 60 L. J. Ch. 153; *Joyce v. Beall*, *supra*). When

money is paid in it must remain as security for the general costs of the action, and cannot be withdrawn, even if the order for discovery be abandoned (*Jubb v. Bibbs*, W. N. (1883) 208). The judge or registrar may in his discretion dispense with the deposit (*Newman v. L. & S. W. Rail. Co.*, (1890) 24 Q. B. D. 454; 59 L. J. Q. B. 341); but the parties by agreement cannot do so (*Aste v. Stumore* (C. A.), (1884) 13 Q. B. D. 326; 53 L. J. Q. B. 82).

O. XVI. r. 10
Notes.

By and against whom Order made.—An order for discovery may be made, not only against any real party, but also against a nominal party whose name has been used as plaintiff (*Wilson v. Raffalovitch* (C. A.), (1881) 7 Q. B. D. 553); or defendant, see *Cory v. Cory*, (1923) 1 Ch. 90; 92 L. J. Ch. 157; also against a third party who defends (*MacAllister v. Rochester*, (1880) 5 C. P. D. 194; 49 L. J. C. P. 443; *Eden v. Weardale Co.* (2) (C. A.), (1887) 35 Ch. D. 287; 56 L. J. Ch. 400). Where the action is by or against a sheriff or high bailiff or other like officer in respect of matters connected with the execution of his office, the officer actually concerned may be ordered to make the affidavit in answer (Order XVI. r. 18). Formerly an order could not be made against an infant plaintiff or defendant (*Mayor v. Collins*, (1890) 24 Q. B. D. 361; 59 L. J. Q. B. 199; *Curtis v. Mundy*, (1892) 2 Q. B. 178); nor against a next friend (*In re Corsellis*, (1883) 52 L. J. Ch. 399; *Dyke v. Stephens*, (1885) 30 Ch. D. 189; 55 L. J. Ch. 41; but see *Higginson v. Hall*, (1878) 10 Ch. D. 235; 48 L. J. Ch. 250), or guardian *ad litem* (*Ingram v. Little*, (1883) 11 Q. B. D. 251); but now Order XVI. as to discovery and inspection applies to infant plaintiffs and defendants and their next friends and guardians *ad litem* (Order XVI. r. 25).

When not Made.—The order cannot be made in a penal action; as in an action for treble damages under 2 W. & M., sess. 1, c. 5, s. 4 (*Jones v. Jones* (4), (1889) 22 Q. B. D. 425); or for double value of goods removed under 11 Geo. II. c. 19, s. 3 (*Hobbs v. Hudson* (C. A.), (1890) 25 Q. B. D. 232; 59 L. J. Q. B. 562); nor can it be obtained by one defendant against a co-defendant (*Brown v. Watkins*, (1886) 16 Q. B. D. 125; 55 L. J. Q. B. 126), unless there are rights to be adjusted between them (*Birchal v. Birch, Crisp & Co.* (1913) 2 Ch. Div. 375).

Costs of Discovery in Actions under 10l.—Where the amount recovered (or in the case of a defendant the amount claimed) does not exceed 10l., the amount of the deposit, or so much of it as may be directed by the court, may be allowed as costs to the party against whom discovery is ordered; but no further costs of discovery will be allowed, unless the judge certifies under sect. 119 of the Act of 1888 that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons, or of general or public interest, or unless the judge, upon consideration of the facts of the particular case, makes a special order, in either of which cases costs of discovery may be allowed on the scale specified in the certificate or order (Order XVI. r. 24A).

11. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made shall specify which, if any, of the documents therein mentioned he objects to produce, and on what grounds and it shall be according to the form in the Appendix, with such variations as circumstances may require. Such affidavit shall be filed and a copy thereof delivered to the party who obtains the order within the time named in the order.

Objection
discover
documents.

Form 107.

Identification of Documents.—The affidavit of documents should specify the documents with dates; but where they are numerous and of a particular class, such as letters, they ought to be numbered and tied up and marked and referred to as a bundle so marked and numbered (*Walker v. Poole*, (1882) 21 Ch. D. 835; 51 L. J. Ch. 840). All communications relevant to the

O. XVI. r. 11
Notes.

matter in dispute, received in the ordinary course of business, must be disclosed (*Woolley v. N. L. Rail. Co.*, (1869) L. R. 4 C. P. 602; 38 L. J. C. P. 137; *Cossey v. L. & Br. Rail. Co.*, (1870) L. R. 5 C. P. 146; 39 L. J. C. P. 174; *Skinner v. G. N. Rail. Co.*, (1874) L. R. 9 Ex. 298; 43 L. J. Ex. 150). Even if privilege be claimed, the documents must be set out or identified, and the ground of privilege stated (*Gardner v. Irvin* (C. A.), (1879) 4 Ex. D. 49; 48 L. J. Ex. 223). "Certain documents and letters which have passed between my legal advisers and myself, numbered 50 to 76 inclusive, and tied up in a bundle marked A, and initialled by me," has been held sufficient for the purpose of identity (*Taylor v. Batten* (C. A.), (1878) 4 Q. B. D. 85; 48 L. J. Q. B. 72; *Budden v. Wilkinson* (C. A.), (1893) 2 Q. B. 432; 63 L. J. Q. B. 32).

Grounds of Privilege.—The following are instances of privilege :—Documents which in the opinion of the proper authority cannot be disclosed without prejudice to the public interest (*Asiatic Petroleum Co., Ltd. v. Anglo-Persian Oil Co., Ltd.*, (1916) 85 L. J. K. B. 1075). Communications between solicitor and client of a professional and confidential character (*Gardner v. Irvin*, *supra*). Even where the solicitor is a trustee and the communications are between him and his co-trustees and allegations of fraud are made in the action against the trustees (*Whitworth, In re: O'Rourke v. Darbishire*, (1920) A. C. 581; 89 L. J. H. L. 162). Documents prepared for the purpose of being submitted to a legal adviser relating to pending or impending litigation (*Southwark Water Co. v. Quick* (C. A.), (1878) 3 Q. B. D. 315; 47 L. J. Q. B. 258); and see *Feuerheerd v. London General Omnibus Co., Ltd.*, (1919) 88 L. J. K. B. 15; or to a previous action (*Pearce v. Foster* (C. A.), (1885) 15 Q. B. D. 114; 54 L. J. Q. B. 432); reports procured by a solicitor for the purpose of an action (*Friend v. L. C. D. Rail. Co.* (C. A.), (1876) 2 Ex. D. 437; 46 L. J. Ex. 696), but it is not necessary that the affidavit should state that the information was obtained "solely" or "merely" or "primarily" for the solicitor if it was obtained for the solicitor in the sense of being procured as materials upon which professional advice should be taken in proceedings pending, or threatened, or anticipated (*Birmingham and Midland Motor Omnibus Co. v. London and North Western Rail. Co.*, (1914) 3 K. B. 850; 83 L. J. K. B. 474, followed in *Adam Steamship Co. v. London Assurance Corporation*, (1914) 3 K. B. 1256; 83 L. J. K. B. 1861); documents in the joint possession of defendant and a person not a party (*Kearsley v. Philips* (C. A.), (1882) 10 Q. B. D. 465; 52 L. J. Q. B. 581); documents asked for to assist the plaintiff in an action of forfeiture (*Mexborough v. Whitwood Urban Council*, (1897) 2 Q. B. 111; *Seddon v. Commercial Salt Co.*, (1925) 1 Ch. 187); title deeds of defendant in an action for the recovery of land (*New British, etc., Co. v. Peed*, (1878) 3 C. P. D. 196); but even title deeds must be sufficiently described and identified (*New British, etc., Co. v. Peed*, *supra*; *Lyell v. Kennedy*, (1882) 8 App. Cas. 217; 52 L. J. Ch. 385); and generally a party will be entitled to see them if they support his case (*Jenkins v. Bushby*, (1866) 35 L. J. Ch. 400; *Attorney-General v. Emerson* (C. A.), (1883) 10 Q. B. D. 191; 52 L. J. Q. B. 67).

Reports procured by a solicitor before litigation was contemplated are not privileged (*Wheeler v. Le Marchant* (C. A.), (1881) 17 Ch. D. 675; 44 L. T. 632); nor are the letters of a mercantile agent to his principal relating to threatened litigation (*Anderson v. Bk. of Columbia* (C. A.), (1876) 2 Ch. D. 644; 45 L. J. Ch. 449).

Short-hand reports of proceedings in an action in a county court made for the purpose of a High Court action relating to the same matters are not protected (*Lambert v. Home*, (1914) 3 K. B. 86; 83 L. J. K. B. 1091).

The affidavit of documents is conclusive, and a further affidavit cannot be ordered, unless it is insufficient on the face of it (*Morris v. Edwards*, (1890) 15 A. C. 309; 60 L. J. Q. B. 292). If, from the affidavit, the court infers that privilege has been erroneously claimed, or that other documents exist

inspection may, it seems, be ordered (*Attorney-General v. Emerson* (C. A.), (1883) 10 Q. B. D. 191; 52 L. J. Q. B. 67), or interrogatories permitted (*Jones v. Monte Video Gas Co.* (C. A.), (1880) 5 Q. B. D. 556; 49 L. J. Q. B. 627; *Hall v. Truman* (C. A.), (1885) 29 Ch. D. 307; 54 L. J. Ch. 717). Moreover, if on an application under Order XVI. r. 16, the judge be satisfied that the party making the affidavit of documents has admitted the possession of some other relevant document, he may make an order for its inspection (*Wiedemann v. Walpole*, (1890) 24 Q. B. D. 537).

O. XVI. r. 11
Notes.

Enforcing Order for Discovery.—Disobedience to an order for discovery is punishable by attachment (Order XVI. r. 21; *Richards v. Cullerne* (C. A.), (1881) 7 Q. B. D. 623; *Martin v. Bannister* (C. A.), (1879) 4 Q. B. D. 491; S. C., *R. v. Harrington*, (1879) 48 L. J. Q. B. 677). The order for discovery must be endorsed with a notice according to Form 346 and served before an application for attachment is made. In the case of interrogatories where the party in his answer objects or refuses to answer any interrogatory, in order to obtain an attachment it would probably be necessary that an order to answer or answer further should be obtained, and that it should be drawn up and served. For procedure to obtain attachment, see Order XXV. rr. 57—61. A plaintiff is also liable to have his action stayed until the order is complied with, or to have it dismissed for want of prosecution, and a defendant is liable to be debarred from defending until compliance; an order to that effect may be made by the judge or registrar (Order XVI. r. 21).

12. The court may, at any time during the pendency of any action or matter, order the production upon oath, by any party thereto, of such of the documents in his possession or power relating to any question in such action or matter as the court may direct; and the court may deal with such documents, when produced, in such manner as may be just. Production of documents.
Form 108.

R. S. C., O. XXXI., r 14.

An additional power to order discovery of documents is conferred by Order XVI. r. 19 (3).

13. Any party to an action or matter may at any time give notice in writing to any other party in whose particulars, notices or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, and to permit him to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or matter, unless he satisfies the court that such document relates only to his own title, he being a defendant to the action or matter, or that he had some other cause or excuse which the court deems sufficient for not complying with such notice; in which case the court may allow the same to be put in evidence on such terms as to costs and otherwise as the court may think fit. (R. S. C., Order XXXI. r. 15.) Inspection of documents referred to in particulars, notices, or affidavits.
Form 109.

Inspection of Documents.—The power of compelling production of documents for the purpose of inspection is now possessed by all judges of the High Court, and hence by all county court judges.

A party is entitled to inspection of all documents in the possession of his opponent, except such as are privileged; and a judge has no discretion to refuse inspection, except on a ground of privilege raised by the affidavit in

O. XVI. r. 13 answer (*Bustros v. White* (C. A.), (1875) 1 Q. B. D. 423; 45 L. J. Q. B. 642; *Anderson v. Bk. of Columbia* (C. A.), (1876) 2 Ch. D. 644; 45 L. J. Ch. 449; see also *Webb v. East* (C. A.), (1879) 5 Ex. D. 108; 49 L. J. Ex. 250).

Notes.

Notice to Inspect.—Any party may at any time give notice to any other party to produce for his inspection or that of his solicitor, and to permit him to take copies of any documents referred to in such other party's particulars, notices, affidavit of documents, or other affidavits. The notice must be in writing (Order XVI. rr. 13, 14; Form 109).

By Whom and to Whom given.—If the party wishing to give the notice acts by solicitor, the notice may (Order LIV. r. 3), and if the solicitor has given written notice that he is so acting must (Order LIV. r. 4), be given and served by him; if not, the notice may be given by such party or his *agent* (Order LIV. r. 1). The same rule applies to the party to whom notice is to be given. Service may be by delivery at his office, or by sending the notice to him by prepaid postal letter (Order LIV. rr. 3, 20). Service will count on the day of such delivery, or, if sent by post, on the day on which, in the ordinary course of post, delivery would be made (Order LIV. r. 3). If the party does not act by solicitor, service should be personal, or under order for substituted service (Order VII. r. 40), if it would be of any use.

Appointment to Inspect.—The party to whom such notice is given must by notice (Form 110), to be served in the same manner as the original notice, appoint a time and place for inspection in the manner and within the time named in Order XVI. r. 15, or must state which, if any, of the documents he objects to produce, and on what grounds (Order XVI. r. 15).

Order on Failure to give Inspection.—In the event of the party served failing to comply with the notice, or objecting to give inspection, or offering inspection elsewhere than at the office of his solicitor, the court may make an order for inspection in such place and in such manner as it may think fit; the order is not to be made if unnecessary either for disposing fairly of the action or matter, or for saving costs (Order XVI. r. 16; Form 108; see *Wiedemann v. Walpole*, (1890) 24 Q. B. D. 537). The application may be by notice for directions (Order XV. rr. 1, 4), or *ex parte*, or on notice, pursuant to Order XII. r. 11.

An affidavit will be necessary in support only when the documents of which inspection is sought are not disclosed in any particulars, notices, affidavit of documents, or other affidavits. The affidavit must then show of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. An order for inspection will not be made when and so far as the court is of opinion that it is not necessary either for disposing fairly of the action or matter or for saving costs (Order XVI. r. 16). To make the order of use for the purpose of attachment it should be drawn up and served, but without order to that effect no order need be drawn up or served (Order XXIII. r. 5). When drawn up and served the practice as to orders for discovery of documents should be followed.

Non-compliance with the notice to produce for inspection also entails another penalty, viz., that the party not complying will not be allowed to put any document included in the notice in evidence, unless he satisfy the court that it relates only to his own title, he being a defendant, or that he had some other just cause or excuse for non-compliance; in which case the court may allow the document to be put in evidence on such terms as it may think fit (Order XVI. r. 13).

Order to Produce for Inspection.—In addition to the above provisions for inspection, it is also provided that the court may at any time order the production, on oath, by any party of documents in his possession or power relating to any question in any action or matter (Order XVI. r. 12; Form 108; see *Annual Practice*, notes to Order XXXI. r. 14, R. S. C.). The application may be by notice for directions (Order XV. rr. 1, 4), or *ex parte* or on notice, pursuant to Order XII. r. 11.

The rule apparently contemplates inspection without the giving of the formal notice already mentioned; but the method should not be resorted to without some special reason.

O. XVI. r. 13
Notes.

Service of Order.—Any order for inspection required to be drawn up and served may be drawn up and served in the manner already mentioned for orders of discovery.

Deposit for Costs.—When the application for inspection does not follow an order for discovery, a deposit for costs pursuant to Order XVI. rr. 23A, 24, may be ordered, except when the document of which inspection is sought is one in which both parties have a common interest, *e.g.*, the contract on which the cause of action arises (*Brown v. Liell*, (1885) 16 Q. B. D. 229; 55 L. J. Q. B. 73). Costs of inspection will not be allowed, unless the registrar is satisfied that there was need for it (see item 57).

Attachment for Disobedience.—Disobedience to an order for inspection is also punishable by attachment, in the same manner as disobedience to an order for discovery (Order XVI. r. 21).

Court Rolls of Manor.—As to inspection of the court rolls of a manor, see Order XVI. r. 17.

Bankers' Books.—As to inspection and taking copies of entries in bankers' books, see 42 Vict. c. 11, ss. 7, 8, 10 (see, as to the effect of the Act, *Harding v. Williams*, (1880) 14 Ch. D. 197; 49 L. J. Ch. 661; *Howard v. Beall*, (1889) 23 Q. B. D. 1; 58 L. J. Q. B. 384; and as to the banking accounts of third persons, *Pollock v. Garle*, (1898) 1 Ch. 1; 66 L. J. Ch. 788). The application may be to the judge by notice for directions (Order XV. rr. 1, 4), or *ex parte* or on notice under County Courts Act, 1888, s. 9, and Order XII. r. 11.

Business Books.—Instead of ordering the inspection of business books, the court may order a copy of any entries in them to be furnished, and verified by the affidavit of a person who has examined the copy with the original entries, stating whether there are any and what erasures, interlineations, or alterations in the original; inspection may be ordered notwithstanding that this copy has been supplied (Order XVI. r. 19 (1)). Where on an application for inspection privilege is claimed, the court may inspect the document for the purpose of deciding on the claim (Order XVI. r. 19 (2)). The court may, on application made on affidavit, order the other party to state whether any specific documents are or have been in his possession or power, when he parted with them, and what has become of them; the affidavit must state the deponent's belief that the other party has, or has had, the specified documents in his possession or power and that they relate to the matters in question in the action or matter (Order XVI. r. 19 (3)). If the court is satisfied that the right to discovery or inspection depends on the determination of any issue or question in dispute in the action or matter, or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding upon the right to discovery or inspection, it may make an order that the issue or question be tried first, reserving the question as to discovery or inspection (Order XVI. r. 20).

14. Notice to any party to produce any documents under the last preceding rule shall be according to the form in the Appendix, with such variations as circumstances may require.

Notice under preceding rule.
Form 109.

15. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 11 of this Order, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such

Time within which inspection to be given.

O. XVI. r. 15. notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, or in case the party is not acting by a solicitor, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what grounds. Such notice shall be according to the form in the Appendix, with such variations as circumstances may require. (R. S. C., Order XXXI. r. 17.)

Place of inspection.

Form 110.

Order for inspection.
Form 108.

16.—(1) If any party served with notice under Rule 13 of this Order omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than is provided by Rule 15, the court may, on the application of the party desiring it, make an order for inspection at such place and in such manner as the court may think fit: Provided that the order shall not be made when and so far as the court is of opinion that it is not necessary either for disposing fairly of the action or matter, or for saving costs.

See *Wiedemann v. Walpole*, (1890) 24 Q. B. D. 537.

(2) Any application to inspect documents, except such as are referred to in the particulars, notices, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The court shall not make an order for inspection of such documents when and so far as the court is of opinion that it is not necessary either for disposing fairly of the action or matter, or for saving costs. (R. S. C., Order XXXI. r. 18.)

Inspection of court rolls.

17. In any pending action or matter an order upon the lord of a manor to allow limited inspection of the court rolls may be made on the application of a copyhold tenant supported by an affidavit that he has applied for inspection, and that the same has been refused. (R. S. C., Order XXXI., r. 19.)

Actions against or by sheriff or high bailiff.

18. In an action against or by a sheriff or high bailiff, or other officer discharging the like functions, in respect of any matters connected with the execution of his office, the court may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned. (R. S. C., Ord. XXXI. r. 28.)

19.—(1) Where inspection of any business books is applied for, **O. XVI. r. 19.** the court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations. Provided that, notwithstanding that such copy has been supplied, the court may order inspection of the book from which the copy was made. Verified copies.

(2) Where on an application for an order for inspection privilege is claimed for any document, the court may inspect the document for the purpose of deciding as to the validity of the claim of privilege. Privilege.

(3) The court may, on the application of any party to an action or matter at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents, or any class or classes of documents, specified or indicated in the application, is or are, or has or have at any time been in his possession, custody, or power; and, if not then in his possession, custody, or power, when he parted with the same, and what has become thereof. Such application shall be made on an affidavit, stating that, in the belief of the deponent, the party against whom the application is made has, or has at some time had, in his possession, custody or power the particular document, or documents, or the class or classes of documents, specified or indicated in the application, and that they relate to the matters in question in the action or matter, or to some or one of them. [1925.] (R. S. C., Order XXXI. r. 19A.) Inquiry as to present or past possession of specified documents.

20. If a party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, the court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or matter, or that for any other reason it is desirable that any issue or question in dispute in the action or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection. (R. S. C., Order XXXI. r. 20.) Premature discovery.

21. If any party fails to comply with an order to answer non-compulsory interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. Non-compliance with order.

He shall also, if a plaintiff, be liable to have his action stayed

O. XVI. r. 21. until the order is complied with, or dismissed for want of prosecution, and, if a defendant, *either be debarred from defending altogether or only be allowed to defend on such terms as the court may think fit*, and the party applying for discovery or inspection may apply to the court for an order to that effect, and an order may be made accordingly. (R. S. C., Order XXXI. r. 21.)

Form 346.

Where application is made for the issue of a warrant of attachment, the provisions of Order XXV., Rules 58 to 63, shall apply.

NOTE.—Words in italics were added by County Court (No. 1) Rules, 1922.

See *Richards v. Cullerne* (C. A.), (1881) 7 Q. B. D. 623 ; *Martin v. Bannister* (C. A.), (1879) 4 Q. B. D. 491 ; S. C., *R. v. Harrington*, (1879) 48 L. J. Q. B. 677.

The interrogating party has the option of proceeding at once for the contempt, in the event of insufficient answers being given, or of obtaining the order for oral examination.

Security for costs.

22. In every action or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the court, be secured in the first instance as provided by Rule 23 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs, where, and only where, such discovery appears to the judge at the trial, or, if there is no trial, to the registrar on taxation, to have been reasonably asked for.

See notes to Rule 10, *ante*, p. 460.

Security for costs of discovery.

Forms 102, 106.

23.—(1) Any party seeking discovery by interrogatories or otherwise may be ordered upon making application for discovery to pay into court, in the case of interrogatories, the sum of twenty shillings, and, if the number of folios exceeds five, the further sum of two shillings for each additional folio, or in the case of discovery otherwise than by interrogatories the sum of twenty shillings, or (in either case) any less sum, or such additional sum as the court shall direct.

(2) An order for discovery shall state the amount ordered to be paid into court, or that payment into court is dispensed with ; and where payment into court is ordered the party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the payment into court, and the party from whom discovery is sought shall not be bound to answer or make discovery unless and until the said copy has been served.

See *ante*, note to r. 10.

Payment out of amount paid in as security.

24. Unless the court otherwise orders, the amount paid in under the last preceding rule in any action or matter shall after the action or matter has been finally disposed of be paid out to the party by whom the same was paid in, on his request, or to his

solicitor on such party's written authority, except in the event of **O. XVI. r. 24.** his being ordered to pay costs, in which case the amount in court shall be subject to a lien for the costs ordered to be paid to any other party. Provided, that if after the action or matter has been finally disposed of, by consent or otherwise, no taxation of costs is required, the registrar shall, by consent of the parties, or on being satisfied that the party by whom the amount was paid in is entitled thereto, pay out the same to such party, or to his solicitor on such written authority as aforesaid.

24A. Where the amount recovered, or in the case of a defendant the amount claimed, does not exceed 10*l.*, the amount paid in under Rule 23 of this Order, or so much thereof as the court may direct, may be allowed as costs to the party against whom discovery is ordered, by interrogatories or otherwise; but no further costs of discovery shall be allowed, unless the judge certifies under section 119 of the Act, or by a special order of the judge made upon consideration of the facts of the particular case, in either of which cases such costs may be allowed on the scale specified in the certificate or order. Costs of discovery in actions under 10*l.* 51 & 52 Vict. c. 43, s. 119.

See *ante*, note to r. 10.

25. This order shall apply to infant plaintiffs and defendants and their next friends and guardians *ad litem*. (R. S. C., Ord. XXXI. r. 29.) Order to apply to infants.

ORDER XVII.

CHANGE OF PARTIES.

1. An action or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survives or continues, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*; and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death. (R. S. C., Ord. XVII. r. 1.) **Rule 1.**
When action not to abate.

Death.—“*Actio personalis moritur cum persona.*” At common law a purely personal action dies with the person entitled to bring it, or against whom it is brought (*Gillett v. Firbank* (1887), 3 T. L. R. 618). In case of death, in order to ascertain whether the cause of action survives or continues, the true test appears to be: Could the executors or administrators of the deceased plaintiff or defendant have sued, or would they have been liable to have been sued if the deceased had not himself sued or been sued in his lifetime? If so, the action will not abate. The power and liability of executors and administrators to sue and be sued in actions of *assumpsit* was fully established at an early period (*Pinchon's Case*, (1612) 9 Co. Rep. 86 b, 89 a); but an action for breach of promise of marriage is,

O. XVII. r. 1
Notes.

as regards all damage other than damage to property, a mere personal action, and executors and administrators can neither sue nor be sued in such an action for personal damages (*Finlay v. Chirney* (C. A.), (1888) 20 Q. B. D. 494; 57 L. J. Q. B. 247). There was no power to sue for the torts done to any of the property of a deceased until the 4 Edw. III. c. 7, which was followed by the 25 Edw. III. c. 5, and 31 Edw. III. c. 11.

Since those Acts, however, liberally interpreted as they have been, executors and administrators may sue for any damage to the personal property or estate of the deceased in respect of which he himself might have sued had he lived (1 Wms. Saund. 217 b; Sir W. Jones, 174; *Smith v. Colgay*, (1595) Cro. Eliz. 384; *Twycross v. Grant* (C. A.), (1879) 4 C. P. D. 40; *Bradshaw v. L. & Y. Rail.*, (1875) L. R. 10 C. P. 189; *Leggott v. G. N. Rail. Co.*, (1876) 1 Q. B. D. 599; 45 L. J. Q. B. 577); but they cannot sue for mere personal wrongs not within the above rule, e.g., assault and battery, libel, slander, false imprisonment, deceit (see the notes to *Pinchon's Case*, (1612) 9 Co. Rep. 89 a; 1 Wms. Saund. 217 b; and *Phillips v. Homfray* (C. A.), (1883) 24 Ch. D. 439; 52 L. J. Ch. 383, *per* Bowen, L.J.). They may also sue within a year for injuries to the real estate of the deceased, provided the injury took place within six months before the death, by virtue of the 3 & 4 Will. IV. c. 42, s. 2. And by the same Act the executors or administrators of a deceased wrong-doer may be sued for injuries done by the deceased to the real or personal property of another within six months of his decease. It seems, also, that executors may be sued in certain cases where the deceased has appropriated the property of another and added it to his own estate (*Phillips v. Homfray*, *supra*; *Powell v. Rees*, (1837) 7 A. & E. 426; 8 L. J. (N. S.) Q. B. 47; 35 R. R. 747).

The statutes 4 Edw. III. c. 7, 25 Ed. III. c. 5, 31 Edw. III. c. 11, and 3 & 4 Will. IV. c. 42, s. 2, are repealed as from January 1st, 1926, by the Administration of Estates Act, 1925 (15 Geo. V. c. 23), and the rights of action by and against personal representatives are consolidated in sect. 26 of that Act, which is as follows:—

26.—(1) For any debt (including arrears of rent) due to a deceased person, and for any injury to or right in respect of his personal estate in his lifetime, his personal representative shall have the same right of action as the deceased would have had if alive.

(2) The personal representative of a deceased person may maintain for any injury committed to the real estate of the deceased within six months before his death any action which the deceased could have maintained, but the action must be brought within one year after his death, and any damages recovered in the action shall be part of the personal estate of the deceased.

(3) A personal representative may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(4) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. Such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

(a) within six months after the termination of the lease or tenancy;

(b) during the continuance of the possession of the lessee or tenant from whom the arrears were due.

The statutory enactments relating to distress for rent apply to any distress made pursuant to this sub-section.

(5) An action may be maintained against the personal representative of a deceased person for any wrong committed by the deceased within six months before his death to another person in respect of his property

real or personal, but the action shall be brought within six months after the personal representative of the deceased has taken out representation. Any damages recovered in the proceedings shall be payable as a simple contract debt incurred by the deceased.

(6) Nothing in this section affects any right of action conferred by the Fatal Accidents Act, 1846, as amended by any subsequent enactment.

As to personal injuries by negligence causing death, see Fatal Accidents Acts, 9 & 10 Vict. c. 93, 27 & 28 Vict. c. 95, and 8 Edw. VII. c. 7. The statutes give a new cause of action. See *post*, Part IV.

In the cases to which the above sect. 26 applies, if the plaintiff dies more than six months after the accruing of the cause of action, the action abates, for the executors or administrators could not have sued or been sued in respect of that cause of action (*Kirk v. Todd* (C. A.), (1882) 21 Ch. D. 484; 52 L. J. Ch. 224).

Where the action would otherwise abate, an interlocutory order or judgment will not preserve it (*Phillips v. Homfray* (C. A.), (1883) 24 Ch. D. 439; *Smith v. Eyles*, (1742) 2 Atk. 385). The last clause of Order XVII. r. 1, embodying the provisions of the 17 Car. II. c. 8, s. 1, now in R. S. C., Order XVII. r. 1, will prevent abatement if a verdict be obtained before the death, although judgment may not have been delivered, even in cases in which executors or administrators could not have sued or been sued for the cause of action (*Palmer v. Cohen*, (1831) 2 B. & Ad. 966; *Kramer v. Waymark*, (1866) L. R. 1 Ex. 241; 35 L. J. Ex. 148).

Death before Return-day.—Where the plaintiff or defendant in an action or matter dies and the cause of action survives, but the person entitled to proceed fails to do so, the defendant (or the person against whom the action or matter is continued) may apply to the court for an order directing the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; in default of such proceeding the action or matter may be struck out and costs awarded by the court as in other cases of striking out. In such case, if the plaintiff be dead, execution may issue as provided by Order XXV. r. 14 (Order XVII. r. 7).

Bankruptcy.—The bankruptcy of the plaintiff in any action in the county court which the trustee might maintain for the benefit of the creditors does not cause the action to abate if the trustee elects to continue the action, and gives security for costs, within such reasonable time as the judge may order, but the hearing may be adjourned until such election is made. In default of such election and security, the bankruptcy may be relied on as a defence (C. C. Act, 1888, s. 94; Order XVII. r. 9); or an order to stay may be obtained if the bankrupt proceeds with it (*Warder v. Saunders*, (1882) 10 Q. B. D. 114). If the trustee refuses to continue the action the stay is absolute against all subsequent assignees of the cause of action (*Selig v. Lion*, (1891) 1 Q. B. 513; 60 L. J. Q. B. 403). When the trustee elects to continue the action, he should, it is believed, apply to be joined as plaintiff under the rules hereafter mentioned; where he has been so added (in a case commenced in the High Court, but ordered to be transferred to the county court) before the original writ or order has been lodged with the registrar of the county court, the judge of the county court has no jurisdiction to order security for costs under sect. 94 (*Hemming v. Davies*, (1898) 1 Q. B. 660; 67 L. J. Q. B. 458).

The right to maintain actions for breaches of contract resulting in direct injury to the bankrupt's person or feelings does not pass to his trustee, *e.g.*, for a breach of promise of marriage (*Beckham v. Drake*, (1849) 2 H. L. Cas. 579; 81 R. R. 301); nor for personal wrongs, *e.g.*, libel, assault, personal injuries, etc. (*Howard v. Crowther*, (1841) 8 M. & W. 601; 10 L. J. Ex. 335; 58 R. R. 823). In such cases there is no abatement, but security for costs will be ordered (*Brocklebank v. King's Lynn*, (1878) 3 C. P. D. 365; 47 L. J. C. P. 321).

Where bankruptcy takes place after judgment, the provisions of Order

O. XVII. r. 1 XXV. r. 14 presumably apply (see *East End Building Society v. Sluck*, (1891) 60 L. J. Q. B. 359).

Notes.

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If a defendant becomes bankrupt, and the trustee continues the defence and fails, he may be ordered to pay costs personally, even if he has not been added as defendant (*London School Board v. Wall* (C. A.), (1891) 7 T. L. R. 566).

Marriage.—At common law it might be pleaded in abatement that the plaintiff, or one of several plaintiffs, took husband pending the writ; *aliter* in the case of a defendant (*King v. Jones*, (1727) 2 Ld. Raym. 1525); but marriage after verdict or judgment did not cause an abatement (Com. Dig. "Abatement," H. 42).

The rule above mentioned preserves an action brought by a woman who marries *pendente lite* from abating, if the cause of action survives or continues. This is, it is believed, since the Married Women's Property Acts, and the decisions thereon, almost equivalent to stating that marriage *simpliciter* shall never cause abatement. Where a settlement is made in contemplation of marriage of property in respect of which an action is pending, it is not the marriage which affects the right of action, but the devolution of interest by the settlement.

Where marriage takes place after judgment the provisions of Order XXV. r. 14, *post*, will presumably apply.

Practice Generally.—Where by reason of any of the events above mentioned or any other event occurring after the commencement of any action or matter, there is any assignment, creation, change, transmission, or devolution of the interest, estate, or title of any plaintiff in any such action or matter before judgment, the person to or upon whom such interest, estate, or title has come or devolved may give notice thereof to the registrar (Form 115), with his name and address, together with an affidavit of the truth of the facts stated in such notice. And thereupon the registrar may adjourn the hearing to a day to be named by him, and must cause a copy of the notice to be served by post upon the defendant, and a further notice (Form 117) that unless upon the day named therein he appears and shows cause against the same, the person to or upon whom such interest, estate, or title has come or devolved will be substituted for, or made a joint plaintiff with, the plaintiff named in the original summons; unless cause is so shown, the person may be added or substituted as plaintiff (Order XVII. r. 2 (1)). Where the change of title affects more actions and matters than one, and is caused by the same event, one notice only need be given specifying in a schedule the actions and matters in respect of which the notice is given; the copy of such notice served on any defendant need only set forth the part affecting such defendant (Order XVII. r. 2 (2); Form 116). On notice to the registrar of a change in the defendant's title, accompanied by an affidavit of the truth of the facts stated, the registrar may take similar proceedings, and the successor to the interest, or liability of a defendant may be substituted or added in like manner (Order XVII. r. 3 (1)); but where the notice is given by any person other than the person proposed to be substituted or added as defendant, a copy of the summons must be affixed to the notice to be served on the proposed defendant, and the notice and summons must be served on him ten clear days at least before the hearing, and the hearing may be adjourned to enable service to be made (Order XVII. r. 3 (2)).

Adding New Parties.—Where, in any case not provided for by Order XVII. rr. 1—3, by reason of any event occurring after the commencement of any action or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained, before or at the trial, on application to the

court, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence (Order XVII. r. 4; Form 118; see notes to Order XVII., R. S. C., in Annual Practice).

O. XVII. r. 1
Notes.
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Service of Order.]—The above rule seems to supplement the practice prescribed by the preceding rules, and to provide for cases of infants born *pendente lite* (see *Peter v. Thomas Peter*, (1884) 26 Ch. D. 181; 53 L. J. Ch. 514). An order obtained under this rule must, unless otherwise directed, be served on the continuing parties, and also on each new party, unless the person applying be the only one, according to the rules as to the service of ordinary summonses, ten clear days at least before any further proceedings are taken; and in the case of a person not already a party, a copy of the summons or petition and a notice (Form 119) of the order are to be served with the order; and the order subject to Rule 6 will be binding on the persons served. Every person served, not already a party, will be bound to appear at the trial, and in the same manner as if served with a summons or petition. An order for adjournment may be made in order to give effect to the rule (Order XVII. r. 5).

Variation of Order.]—Where any person not already a party to the action or matter is served with an order on change or transmission of interest, either under Rule 4 or Rule 5 of Order XVII., he may on or before the day fixed for proceeding with the action or matter apply to the court to vary the order (Order XVII. r. 6).

Alteration of Title.]—Where a plaintiff or defendant is substituted or added under any of the above rules, the minute-book must be altered, and subsequent proceedings carried on under the altered title (Order XVII. r. 8).

2.—(1) Where by reason of any event occurring after the commencement of any action or matter there shall be any assignment, creation, change, transmission, or devolution of the interest, estate, or title of any plaintiff in such action or matter before judgment, the person to or upon whom such interest, estate, or title has come or devolved may give notice thereof to the registrar according to the form in the Appendix, with his name and address, together with an affidavit of the truth of the facts stated in such notice. And thereupon the registrar may adjourn the hearing to a day to be named by him, and shall cause a copy of such notice to be served by post upon the defendant in the action or matter, and a further notice that unless upon the day named therein he appears and shows cause against the same, the person to or upon whom such interest, estate, or title has come or devolved will be substituted for or made a joint plaintiff with the plaintiff named in the original summons; and unless cause is so shown such person may be added or substituted as plaintiff accordingly.

Proceedings on change of plaintiff's title before judgment.

Form 115.

Form 117.

(2) Where by reason of one and the same event, any person becomes entitled to give notice under the last preceding paragraph in more actions or matters than one, such person may give one notice only in respect of all or any of such actions or matters, specifying in a schedule to such notice all the actions or matters in respect of which such notice is given; and in serving a copy of such notice on any defendant in any such action or matter, it

Provision for cases where change affects more actions than one.

Form 116.

O. XVII. r. 2. shall be sufficient to set forth such part only of such notice as affects such defendant, without setting forth the rest of such notice.

Proceedings on change of defendant's title.

3.—(1) Where by reason of any event occurring after the commencement of any action or matter there shall be any assignment, creation, change, transmission, or devolution of the liability, interest, estate, or title of any defendant in such action or matter before judgment, the plaintiff or the defendant or the person to or upon whom such liability, interest, estate, or title has come or devolved may in like manner give notice thereof to the registrar, in accordance with the last preceding rule, together with an affidavit of the truth of the facts stated in such notice ; and the registrar shall take proceedings thereon similar to those prescribed by the last preceding rule ; and a defendant may be substituted or added, as the case may be, in manner similar to that provided in such rule for the substitution or addition of a plaintiff.

(2) Where the notice mentioned in the last preceding paragraph is given by any person other than the person proposed to be substituted or added as a defendant, a copy of the summons in the action shall be annexed to the notice to be served on the person proposed to be substituted or added as a defendant, and such notice and summons shall be served on such person, according to the rules applicable to the service of the original summons in the action, ten clear days at least before the day fixed for the hearing, and the hearing shall be adjourned for such time as may be necessary to enable such notice and summons to be so served.

Change or transmission of interest.

4. Where, in any case not provided for by the preceding rules of this Order, it becomes necessary or desirable, by reason of any event occurring after the commencement of any action or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of any action or matter, that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained, before or at the trial, on application to the court, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

Form 118.

See *Peter v. Thomas Peter*, (1884) 26 Ch. D. 181 ; 53 L. J. Ch. 514, and notes to R. S. C., Order XVII. r. 4, in Annual Practice.

Service of order on change or transmission of interest.

5. An order obtained as in the last preceding rule mentioned shall, unless the court otherwise directs, be served upon the con-

tinuing parties, and also upon each new party, unless the person making the application be himself the only new party, according to the rules as to service of ordinary summonses, ten clear days at least before any further proceedings are taken in the action or matter; and in the case of a person who is not already a party, a copy of the summons or petition in the action or matter, and a notice according to the form in the Appendix shall be annexed to the order and served therewith. The order shall from the time of such service, subject nevertheless to the next following rule, be binding on the persons served therewith; and every person served therewith who is not already a party to the action or matter shall be bound to appear in the same manner as if he had been served with a summons or petition. Such order for adjournment shall be made as shall be necessary to give effect to this rule. (Cf. R. S. C., Ord. XVII. r. 5.)

Form 119.

6. Where any person not already a party to the action or matter is served with such order as is mentioned in the two last preceding rules, such person may on or before the day fixed for proceeding with the action or matter apply to the court to discharge or vary such order. (Cf. R. S. C., Ord. XVII. r. 6.)

Application to discharge or vary order by person not already a party.

7. When the plaintiff or defendant in an action or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the action or matter may be continued) may apply to the court for an order directing the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding the action or matter may be struck out, and the court may award costs to the defendant or (as the case may be) to the person against whom the action or matter might have been continued, in the same manner as in other cases of striking out; and in such case, if the plaintiff has died, execution may issue for such costs as provided by Order XXV. Rule 14. (R. S. C., Order XVII. r. 8.)

Where person entitled to proceed on death of plaintiff or defendant fails to do so.

8. Where a plaintiff or a defendant is substituted or added under any of the rules of this Order, the minute book shall be altered, and all subsequent proceedings shall be carried on under the altered title.

Alteration of records on change of parties.

9. This Order shall not apply to any case expressly provided for by section ninety-four of the Act.

Saving.
51 & 52 Vict.
c. 43, s. 94

ORDER XVIII.

EVIDENCE.

O. XVIII. r. 1.

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Evidence to
be taken
orally.

1. Except where otherwise provided by these rules, the evidence of witnesses on the trial of any action or hearing of any matter shall be taken orally on oath; and where by these rules evidence is required or permitted to be taken by affidavit such evidence shall nevertheless be taken orally on oath if the court, on any application before or at the trial or hearing, so directs.

The judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any particular witness may be read at the trial or hearing, on such conditions as he thinks reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before an examiner; where, however, it appears to the judge that the other party *bonâ fide* desires the production of a witness for cross-examination, an order authorising his evidence to be given by affidavit is not to be made (Order XVIII. r. 2). The term affidavit, when used in the rules, includes statutory declarations, affirmations and attestations upon honour (Order LV.). Where a party desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts, as to which no order has been made by the judge under Order XVIII. r. 2, he may, not less than four clear days (in actions under the extended jurisdiction eight clear days) before the trial, give notice, with a copy of the affidavit annexed, to the party against whom it is to be used; and unless he within two clear days (in actions under the extended jurisdiction four clear days) at least before the trial gives notice that he objects, he will be taken to have consented to its use, unless the judge otherwise orders; and the judge may make such order as to costs incident to the objection as he thinks fit (Order XVIII. r. 11; Order XXIIA. r. 18). Affidavits and depositions are read as the evidence of the person by whom they are used (Order XVIII. r. 17).

When the affidavit is in answer to interrogatories, one or more of the answers, or any part of an answer, may be used without the remainder; but the judge may look at the whole and may direct other answers to be put in, if of opinion that they are so connected with them that they ought not to be used without them (Order XVIII. r. 16).

Affidavits may be sworn before any judge or registrar, or any registrar's clerk nominated by the judge, without fee, or before a commissioner to administer oaths in the Supreme Court or the Court of Chancery of the County Palatine of Lancaster (not being a registrar), or before a justice of the peace (County Courts Act, 1888, s. 83; Commissioners for Oaths Amendment Act, 1890, s. 1).

Affidavits must be expressed in the first person, and drawn up in paragraphs and numbered (Order XIX. r. 1; for heading, see Form 3). All affidavits other than those for which forms are given must state the deponent's occupation, quality, and place of residence, and also what facts or circumstances deposed to are within his own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what those sources are (Order XIX. r. 2). The costs of an affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, are to be paid by the party filing it (Order XIX. r. 2). Every affidavit must be intitled in the action or matter in which it is sworn; but if there are more plaintiffs or defendants than one the full name of the first only must be given, with a statement that there are others (Order XIX. r. 3). It must be stated in a

note at the foot on whose behalf it is filed, and that note must appear in all copies (Order XIX. r. 4). The costs of affidavits not in conformity with the preceding rules will be disallowed on taxation, unless the court otherwise directs (Order XIX. r. 5). In an affidavit made by two or more deponents, the names of the several deponents are to be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it will be sufficient to state that it was sworn by both (or all) of the "above-named" deponents (Order XIX. r. 6).

All affidavits must be delivered to the registrar, and must be filed by him before use, and it is his duty to distinguish them by the number of the plaint in respect of which they are filed, and from each other, by a distinctive letter of the alphabet (Order XIX. r. 7; Order II. r. 3). He is entitled to require also the delivery of copies to him pursuant to Order LIV. r. 13.

The rule as to filing does not hinder a judge from making an order in an urgent case upon the undertaking of the applicant to file an affidavit already sworn, provided that the order be not issued until the affidavit has been filed (Order XIX. r. 7).

An affidavit will not be filed which has been sworn before a commissioner who was at the time of the swearing of the same the solicitor acting for the party on whose behalf such affidavit is to be used, or the agent, correspondent, partner, or clerk of such solicitor, or who is the party himself (Order XIX. r. 8).

No affidavit which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in the body or jurat of which there is any interlineation, alteration, or erasure, unless the person before whom it is sworn has initialled the interlineation or alteration, and in case of an erasure, shall have re-written and signed in the margin the words or figures appearing to be written on the erasure, or which is so imperfect upon the face by reason of blanks or otherwise that it cannot easily be read or understood, is to be filed or used, unless the court otherwise orders (Order XIX. r. 9).

Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer must certify in the jurat that the affidavit was read in his presence to the deponent, and that the deponent made his signature in the presence of the officer. No such affidavit can be used in evidence in the absence of this certificate, unless the court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent (Order XIX. r. 10).

The court may receive an affidavit sworn for the purpose of being used in any action or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in its form, and may direct a memorandum of its reception to be made upon it (Order XIX. r. 11).

Where a registrar rejects an affidavit, he must give notice (Form 133), by post or otherwise, to the party offering it for filing, of the rejection and the reasons, but no such notice is necessary if the party offering the same is present when the registrar rejects the affidavit (Order XIX. r. 14).

The above rules apply to all cases in which any evidence may be given, or matter proved, by affidavit; but, even in cases in which evidence is required or permitted to be taken by affidavit, such evidence may be taken orally on oath, if the judge or registrar shall, at or before the trial, so direct (Order XVIII. r. 1).

On taxation of costs instructions for special affidavits will not be allowed, unless in the opinion of the registrar the facts on which they were grounded had not become known to the solicitor or his clerks in the course of the business (item 23).

Affidavits of service, when required, must state when, where, how, and by whom service was effected (Order XIX. r. 12).

Witnesses.—The attendance of witnesses for the purpose of giving evidence orally on oath is enforced by means of summonses, to be served either

O. XVIII. r. 1
Notes.

in the home or in any foreign district; they may be issued without leave, and are then served by bailiff. They may, also, by leave of the court, be issued in blank and served by the party applying for the same or some person in his permanent and exclusive employ or by his solicitor or a solicitor acting as agent for such solicitor, or by some person in the employ of either of them, or some person employed by either of them to serve such summonses who might be so employed to serve a summons in an action in the High Court. In no case may more than one name be placed on any summons (County Courts Act, 1888, s. 110; Order XVIII. r. 3; Forms 123 124, 124A). A summons to a witness may be issued by post. The plaintiff or his solicitor must transmit to the registrar (a) the plaint note, or summons, or a duplicate; (b) a request for the issue of summonses to witnesses, and (where the service is to be by bailiff) their names and addresses, or (if service is not to be by bailiff) a request to serve them in accordance with Order XVIII. r. 3; (c) a money order for the fees, and (where service is to be by bailiff) the amount to be tendered to each witness for expenses; (d) a stamped addressed envelope (Order XVIII. r. 3A). It is sufficient if a summons to a witness is served within a reasonable time; it may be served by delivering it to the witness personally, or to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the witness, or in the cases mentioned in Order VII. rr. 18, 19, 21, and 22, in the manner prescribed by those rules for the service of an ordinary summons (Order XVIII. r. 4; for affidavit of service, see Form 125). For the purposes of this rule a place of business is not deemed to be the place of business of a witness unless he is the master or one of the masters of it (Order XVIII. r. 4). The parties themselves and their wives are competent witnesses (Evidence Act, 1851, s. 2).

The summons may be issued with or without a clause requiring the production of books, deeds, papers, and writings, in the possession or control of the person summoned as a witness (sect. 110; Form 124).

Where a witness served with a summons containing such a clause does not produce the documents at the trial, the judge may, upon admission or proof that the summons was served within a reasonable time, and that such documents are in the possession or power or under the control of the witness, and that they relate to the matter then pending, make an order for their production by the witness, and may deal with them, when produced, and with all costs occasioned by their non-production, as may be just. This rule does not affect the rules as to the admission of secondary evidence of such documents (Order XVIII. r. 3; Form 126).

If a witness who is duly summoned, and to whom at the same time payment or a tender of payment of his "expenses" has been made according to the prescribed scale, refuses or neglects, without sufficient cause, to appear, or to produce any books and papers, or writings, required by the summons to be produced, or to be sworn, or give evidence, or if a person in court, who is required to give evidence, refuses to be sworn and give evidence, he is liable to forfeit and pay such fine, not exceeding 10*l.*, as the judge may direct. The whole or part of this fine, in the discretion of the judge, after deducting the costs, is applicable towards indemnifying the party injured by the refusal or neglect of the witness; the remainder is to be accounted for by the registrar to the treasurer (sect. 111; *ante*, p. 133. Order LII. r. 7; Form 126).

Expenses.—Judges differ as to the meaning of "expenses"; some hold "expenses" to include an allowance according to scale for loss of time, others that "expenses" simply means travelling expenses, and that allowance for loss of time must be claimed in court before being sworn. The latter seems the better course, as a litigant could not reasonably be expected to determine what the allowance should be.

A fine on a witness for non-attendance may be remitted on cause shown. The practice is, under Order LII. r. 6, the same as in the case of a juror (Order LII. r. 7A). A judgment summons is to be deemed a summons to

a witness for the purposes of the section (s. 111) of the Act (Order XXV. r. 31 (3)), but where a fine is inflicted on a judgment debtor for refusing or neglecting without reasonable cause to appear at the hearing of a judgment summons, the judge has no jurisdiction to apply the fine in reduction of the judgment debt, but only thereout to recoup the judgment creditor for any expense occasioned to him by the non-attendance (*Rex v. Snagge*, (1909) 1 K. B. 644; 78 L. J. K. B. 562). The payment of the fine may be enforced on the order of the judge as a summary judgment, or as money adjudged to be paid under the Summary Jurisdiction Acts, *post*, pp. 909—911 (C. C. Act, 1888, s. 167; Forms :—Warrant of Execution against Goods, Form 127; Commitment in Default of Distress, Form 128; Commitment in Lieu of Distress, Form 129).

O. XVIII. r. 1
Notes.

Foreign Law.]—It is for the judge, not the jury, to decide what is the law of any foreign country which for the purpose of the trial of any action or matter it is necessary to ascertain. Administration of Justice Act, 1920, sect. 15, which has not been repealed so far as it relates to inferior courts. See Supreme Court of Judicature (Consolidation) Act, 1925, 6th Sched.

2. The judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the trial or hearing, on such conditions as he may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before an examiner; provided that, where it appears to the judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit. (R. S. C., Order XXXVII. r. 1.)

Power to order particular facts to be proved by affidavit, or witnesses to be examined before examiner.

Where a party desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts, as to which no order has been made by the judge under Order XVIII. r. 2, he may, not less than four clear days (in actions under the extended jurisdiction eight clear days) before the trial, give notice, with a copy of the affidavit annexed, to the party against whom it is to be used; and unless he within two clear days (in actions under the extended jurisdiction four clear days) at least before the trial gives notice that he objects, he will be taken to have consented to its use, unless the judge otherwise orders; and the judge may make such order as to costs incident to the objection as he thinks fit (Order XVIII. r. 11; Order XXIIA. r. 18). Affidavits and depositions are read as the evidence of the person by whom they are used (Order XVIII. r. 17).

When the affidavit is in answer to interrogatories, one or more of the answers, or any part of an answer, may be used without the remainder; but the judge may look at the whole and may direct other answers to be put in, if of opinion that they are so connected with them that they ought not to be used without them (Order XVIII. r. 16).

Affidavits may be sworn before any judge or registrar, or any registrar's clerk nominated by the judge, without fee, or before a commissioner to administer oaths in the Supreme Court or the Court of Chancery of the County Palatine of Lancaster (not being a registrar), or before a justice of the peace (County Courts Act, 1888, s. 83; Commissioners for Oaths Amendment Act, 1890, s. 1).

3.—(1) Summonses to witnesses, to be served either in the home or in any foreign district, may be issued without leave, and may also, by leave of the court, be issued in blank.

Summonses to witnesses and service.

O. XVIII. r. 3. (2) Summonses to witnesses may be served—

- (a) by a bailiff of a court ;
or, when so requested on the issue of the summonses,
 - (b) by the party applying for the same, or some person in his permanent and exclusive employ ; or
 - (c) by the solicitor of the party applying for the same, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve the summonses who might be so employed to serve a summons in an action in the High Court.
- (3) In any case only one name shall be inserted in any such summons.

Forms 123,
124, 124A.

- (4) Summonses to witnesses shall be according to the forms in the Appendix, and, where served by a bailiff, shall be indorsed according to the form in the Appendix.

Form 125.

- (5) Affidavits of service of summonses served otherwise than by a bailiff shall be according to the form in the Appendix.

Issue of
summonses
by letter.

- 3A.** A party to an action or his solicitor may, instead of attending at the office of the court, transmit, by prepaid post, to the registrar—

- (a) The plaint note or summons issued in the action, or a duplicate thereof ;
- (b) A request for the issue of summonses to witnesses, with, where the summonses are to be served by a bailiff, the names and addresses of the witnesses to be served, or if the summonses are to be served otherwise than by a bailiff, a request for leave to serve the same in accordance with the last preceding rule ;
- (c) A money order for the fees payable upon the issue of summonses to witnesses, and, where the summonses are to be served by a bailiff, the amount which the party requesting the issue of the summonses desires to be paid or tendered to each of the witnesses for his expenses, payable to the registrar at the post office of the town or place at which the court is held ;
- (d) An envelope addressed to himself, with a penny postage stamp thereon ;

And upon receipt of the above the registrar shall issue the summonses, and shall forward in the addressed envelope—

- (i.) If the summonses are to be served by a bailiff, the plaint note or summons or duplicate, with a note thereon that the summonses have been issued ; or
- (ii.) If the summonses are to be served otherwise than by a

bailiff, the plaint note or summons or duplicate, and the summonses to witnesses for service.

O. XVIII.
r. 2a.

4. It shall be sufficient if a summons to a witness is served within a reasonable time; and such summons may be served by delivering the same to the witness personally, or to some person apparently not less than sixteen years old at the house or place of dwelling or place of business of the witness, or in the cases mentioned in Rules 18, 19, 21, and 22 of Order VII. in the manner prescribed by those rules for the service of an ordinary summons. Provided that for the purposes of this rule a place of business shall not be deemed to be the place of business of a witness unless he is the master or one of the masters thereof.

Time and
mode of
service.

5. Where a witness served with a summons containing a direction for the production of any documents at the trial does not produce the same, the judge may, upon admission or proof that the summons was served within a reasonable time, and that such documents are in the possession or power or under the control of the party so served, and that they relate to the matter then pending before him, make an order for their production by the witness, and may deal with them, when produced, and with all costs occasioned by their non-production, as may be just: Provided that nothing herein shall prevent the receiving of secondary evidence where admissible.

When wit-
ness does
not produce
documents,
order for
production
may be made.

6. Where a party desires to give in evidence any document, he may, not less than five clear days before the trial, give notice to any other party in the action or matter who is competent to make admissions requiring him to inspect and admit such document; and if such other party does not within three days after receiving such notice make such admission, any expense of proving the same at the trial shall be paid by him, whatever may be the result, unless the court otherwise orders; and no costs of proving any document shall be allowed unless such notice has been given, except in cases where, in the opinion of the judge at the trial, or of the registrar on taxation, the omission to give such notice has been a saving of expense.

Admission
of docu-
ments.

In actions under the extended jurisdiction, and in actions over 50*l.* transferred from the High Court, "ten clear days" and "five days" are substituted for "five clear days" and "three days" respectively (Order XXIIA. r. 17; Order XXXIII. r. 3b).

An affidavit by the party, his solicitor, or of some person in the permanent and exclusive employ of either of them, of service of the notice, and of the time when it was served, with a copy of the notice, will in all cases be sufficient evidence of service, and of the time of service (Order XVIII. r. 7).

If a notice to admit comprises documents which are not necessary, the costs occasioned thereby must be borne by the party giving the notice (Order XVIII. r. 8).

A plan of the *locus in quo* prepared for and used in the trial of a running

O. XVIII. r. 6. down action is not a "document" within the meaning of the above rule, and consequently the costs of proving the same may be allowed though no notice to admit the same has been given under this rule (*Hayes v. Brown*, (1920) 89 L. J. K. B. 63; 1 K. B. 250).

Notes.

See also Part II., "Costs and Court Fees," p. 1069.

Notice to admit or produce.

7. Notices to admit or to produce documents shall be according to the forms in the Appendix, with such variations as circumstances may require.

Forms 111, 112.

An affidavit of the party, or his solicitor, or of some person in the permanent and exclusive employ of either of them, of the service of any notice to admit or to produce, and of the time when it was served, with a copy of the notice to admit or to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Costs of notice to admit or produce.

8. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

Documents produced from proper custody to be read without proof unless objected to.

9. Where any documents which would, if duly proved, be admissible in evidence are produced to the court from proper custody, they shall be read without further proof, if, in the opinion of the court, they appear genuine, and if no objection is taken thereto; and if the admission of any documents so produced is objected to, the court may adjourn the hearing for the proof of the documents, and the party objecting shall pay the costs caused by such objection, in case the documents shall afterwards be proved, unless the court otherwise orders.

An unstamped or insufficiently stamped instrument to be given in evidence only where receipt of registrar for unpaid duty and penalty is produced.

10. Where an instrument which may be legally stamped after its execution is produced as evidence, and the same is unstamped or insufficiently stamped, it shall not be received in evidence until the party desirous of giving the instrument in evidence produces to the court the receipt of the registrar for the amount of the unpaid duty, and the penalty payable by law on stamping the same, and the sum of one pound.

It should be noted that this rule only applies where the document is one which may be legally stamped after execution.

No appeal lies from the ruling of a county court judge holding that the stamp on a document is sufficient (*Mander v. Ridgway*, (1898) 1 Q. B. 501; 67 L. J. Q. B. 335); nor from the admission of an unstamped document without exacting a penalty (*Lowe v. Dorling*, (C. A.), (1906) 2 K. B. 772; 75 L. J. K. B. 1019).

Where it is desired to use an affidavit, notice may be given. Costs of objection.

11. Where a party desires to use at the trial an affidavit by any particular witness, or an affidavit as to particular facts as to which no order has been made under Rule 2 of this Order, he may, not less than four clear days before the trial, give a notice, with a copy of such affidavit annexed, to the party against whom such affidavit is to be used; and unless such last-mentioned party

shall two clear days at least before the trial give notice to the other party that he objects to the use of such affidavit, he shall be taken to have consented to the use thereof, unless the judge otherwise orders; and the judge may make such order as he may think fit as to the costs of or incidental to any such objection.

O. XVIII.
r. 11.
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In actions under the extended jurisdiction, and in actions over 50*l.* transferred from the High Court, "eight clear days" and four clear days" are substituted for "four clear days" and "two clear days" respectively (Order XXI*a.* r. 18; Order XXXIII. r. 3*B.*).

12. All evidence taken at the trial of any action or matter may be used in any subsequent proceedings in the same action or matter.

Use of evidence taken at trial in subsequent proceedings. Evidence taken after trial.

13. Evidence taken subsequently to the trial or hearing of any action or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial or hearing. (R. S. C., Order XXXVII. r. 21.)

14. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any action or matter at any stage. (R. S. C., Order XXXVII. r. 22.)

Practice as to taking evidence at any stage of action or matter.

15. The practice of the court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the court or other person in any action or matter after the trial or hearing, shall be subject to any special directions which may be given in any case. (R. S. C., Order XXXVII. r. 23.)

Special directions as to taking evidence after trial.

16. Any party may, at the trial of an action or matter, use in evidence any one or more of the answers, or any part of an answer, of the opposite party to interrogatories, without putting in the others, or the whole of such answer: Provided that in such case the judge may look at the whole of the answers, and if he is of opinion that any others of them are so connected with those put in that the last mentioned answers ought not to be used without them, he may direct them to be put in. (R. S. C., Order XXXI. r. 24.)

Use of answer to interrogatories at trial.

17. Affidavits and depositions shall be read as the evidence of the person by whom they are used.

Affidavits, evidence of person using them.

EXAMINATIONS.

18. The court may, in any action or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before the court or any officer of the court, or any other person and at any place in England or Wales, of any witness or person, and may empower any party to any such

Examination of witnesses before trial. Form 132.

**O. XVIII.
r. 18.**

action or matter to give such deposition in evidence therein on such terms, if any, as the court may direct.

Oral Examinations out of Court.—Judges of county courts have power in certain cases to order the examination of witnesses out of court, and that their depositions may be given in evidence instead of their attending the trial. Under the Judicature Act, 1925, s. 202, they appear to have the same power in this respect as a judge of the High Court, and the rules substantially adopt the High Court procedure.

The grounds upon which these examinations can be ordered appear to be—that a witness is upwards of seventy years old, or is dangerously ill, or about to go abroad, or is the only person who can prove a fact of great importance (see *Warner v. Mosses* (C. A.), (1881) 16 Ch. D. 100; 50 L. J. Ch. 28; Story, Equity Jurisprudence, sects. 1513, 1514). But the fact of being over seventy, although sufficient to raise a *prima facie* case, is not conclusive; and where a number of witnesses to the same fact were just over seventy, the order was refused (*Bidder v. Bridges* (C. A.), (1885) 29 Ch. D. 29; 53 L. J. Ch. 479; Annual Practice, R. S. C., Order XXXVII. r. 5, and notes thereon).

Except where otherwise directed by the judge, no deposition may be given in evidence at the trial without the consent of the opposite party, unless the judge is satisfied that the deponent is dead, or out of England and Wales, or unable from sickness or other infirmity to attend (Order XVIII. r. 31).

When registrar of foreign court may be appointed examiner.

19. Where any witness or person mentioned in the last preceding rule resides out of the district of the court, the judge may appoint the registrar of the court in the district of which such witness or person resides to take the examination.

It is extremely doubtful whether a judge could compel an examination to be made before any judge but himself, or any officer (except the registrar) in any other court than his own.

Order for attendance of persons to be examined or produce documents.
Form 132.
Service of order.

20. The court may in any action or matter, at any stage of the proceedings, order the attendance of any person for the purpose of being examined or of producing to or before any examiner any writings or other documents which the court may think fit to be produced, and any person served with any such order shall be bound to attend accordingly: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the trial. Any such order may be served in accordance with the provisions of section one hundred and eleven of the Act, and Rules 3 and 4 of this Order, with respect to the service of summonses to witnesses.

Disobedience to order for such attendance.

21. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document to or before an examiner shall be deemed guilty of contempt of court, and may be dealt with accordingly. (R. S. C., Ord. XXXVII. r. 8.)

It seems doubtful whether the remedy is by fine or attachment.

Expenses of persons attending

22. Any person required to attend before an examiner for the purpose of being examined or of producing any document shall

be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court. (R. S. C., Ord. XXXVII. r. 9.)

O. XVIII.
r. 22.

before
examiner.

23. Where any witness or person is ordered to be examined before any officer of a county court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the summons and particulars and of the defence (if any), and with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties. (R. S. C., Ord. XXXVII. r. 10.)

Examiner to
be furnished
with certain
documents.

The examiner has power to administer oaths, whether he be an officer of the court or not (Order XVIII. r. 32).

24. The examination shall take place in the presence of the parties, or their counsel or solicitors, or the agents of such solicitors, and the witnesses shall be subject to cross-examination and re-examination. (R. S. C., Ord. XXXVII. r. 11.)

Who entitled
to be present
on examina-
tion.

25. The depositions taken before an officer of a county court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner not ordinarily by question and answer, but so as to represent as nearly as may be the statements of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there appears to be any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which are objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question. (R. S. C., Ord. XXXVII. r. 12.)

Depositions,
how taken.

26. If any person duly summoned to attend for examination or to produce any document refuses to attend, or, if having attended, he refuses to be sworn or to answer any lawful question or to produce any document, a certificate of such refusal, signed by the examiner, shall be filed with the registrar, and thereupon the party requiring the attendance of the witness may apply to the judge for an order directing the witness to attend, or to be sworn, or to answer any question, or to produce such document, as the case may be. (R. S. C., Ord. XXXVII. r. 13.)

Failure to
comply with
summons,
or refusal to
be sworn or
answer.

**O. XVIII.
r. 27.**

Objection
to answer.

27. If any witness objects to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the registrar to be filed, and the validity of the objection shall be decided by the judge. (R. S. C., Ord. XXXVII. r. 14.)

Witness may
be ordered to
pay costs.

28. In any case under the two last preceding rules, the judge may order the witness to pay any costs occasioned by his refusal or objection.

Filing of
depositions.

29. When the examination of any witness before any examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the registrar to be filed.

Special
report by
examiner.

30. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the court touching such examination and the conduct or absence of any witness or other person thereon; and the judge may direct such proceedings and make such order as upon the report he may think just. (R. S. C., Ord. XXXVII. r. 17.)

When depo-
sitions may
be given in
evidence.

31. Except where otherwise provided by this order, or directed by the judge, no deposition shall be given in evidence at the trial of the action or matter without the consent of the party against whom the same may be offered, unless the judge is satisfied that the deponent is dead, or out of England and Wales, or unable from sickness or other infirmity to attend the trial, in any of which cases the depositions certified under the hand of the examiner shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate. (R. S. C., Ord. XXXVII. r. 18.)

Power to
administer
oaths.

32. Any officer of the court, or other person directed to take the examination of any witness or person, may administer oaths.

Application
for examina-
tion of
witnesses
abroad.

33. An application for an order for a commission, request or order for the examination of witnesses out of England and Wales shall be made to the High Court in manner prescribed by Rules of the Supreme Court.

This rule was made pursuant to sect. 17 of the County Courts Act, 1919. For High Court rule, see *ante*, p. 244. See also note, "Examination of witnesses abroad," to sect. 100 of the Act.

ORDER XIX.**AFFIDAVITS.**

Affidavits to
be expressed
in the first
person.

1. All affidavits shall be expressed in the first person, and shall be drawn up in paragraphs and numbered.

For heading, see Form 3.

An affidavit for use in the county court may be sworn before any judge or registrar, or clerk to the registrar nominated by the judge, or before a commissioner for oaths or a justice of the peace. See sect. 83 of the Act and notes thereto.

O. XIX.
r. 1
Notes.

2. All affidavits, other than those for which forms are given in the Appendix, shall state the deponent's occupation, quality, and place of residence, and also what facts or circumstances deposed to are within the deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are. Sources of knowledge to be stated.

The costs of every affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. (R. S. C., Order XXXVIII. r. 3.)

3. Every affidavit shall be intituled in the action or matter in which it is sworn ; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be ; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the registrar on taxation. (R. S. C., Ord. XXXVIII. r. 2.) Affidavits, how to be intituled.

4. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be copied on every office or other copy furnished to a party. Affidavits to show on whose behalf filed.

5. The costs of affidavits not in conformity with the preceding rules of this order shall be disallowed on taxation, unless the court otherwise directs. Costs of affidavits, when disallowed.

6. In any affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents. (R. S. C., Order XXXVIII. r. 9.) Affidavits made by two or more deponents.

7. Before any affidavit is used it shall be filed in the office of the registrar, but this rule shall not hinder a judge from making an order in an urgent case upon the undertaking of the applicant to file any affidavit sworn before the making of such order, provided that such order shall not be issued until such affidavit has been filed. Filing of affidavits.

O. XIX. r. 8.

Affidavits
not to be
filed if sworn
before party's
solicitor.

8. An affidavit shall not be filed which has been sworn before a commissioner who was at the time of the swearing of the same the solicitor acting for the party on whose behalf such affidavit is to be used, or the agent, correspondent, partner, or clerk of such solicitor, or who is the party himself. (Cf. R. S. C., Ord. XXXVIII. rr. 16, 17.)

Erasure,
blotting, in-
terlineation,
etc., in affi-
davits.

9. No affidavit or other document shall be filed or used in any action or matter, unless the court otherwise orders, which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in the body or jurat of which there is any interlineation, alteration, or erasure, unless the person before whom the same is sworn has duly initialled such interlineation or alteration, and in the case of an erasure has re-written and signed in the margin of the affidavit or document the words or figures appearing to be written on the erasure, or which is so imperfect upon the face thereof by reason of having blanks thereon or otherwise that it cannot easily be read or understood.

Illiterate
or blind
deponent.

10. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent. (R. S. C., Ord. XXXVIII. r. 13.)

Use of
defective
affidavit.

11. The court may receive any affidavit sworn for the purpose of being used in any action or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. (R. S. C., Order XXXVIII. r. 14.)

Affidavits of
service.

12. Affidavits of service, when required, shall state when, where, how, and by whom service was effected. (R. S. C., Order LXVI. r. 9.)

Verification
of new
trustee's
consent to
act.

Form 332.

13. The consent of any person to act as a trustee or new trustee shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor. The form in the Appendix hereto shall be used, with such variations as circumstances may require. (R. S. C., Order XXXVIII. r. 19A.)

Notice of
rejection of
imperfect

14. Whenever a registrar rejects an affidavit or other document, he shall give notice, according to the form in the Appendix, by

post or otherwise, to the party offering the same for filing, of O. XIX. r. 14. such rejection and the reasons thereof; but no such notice shall be necessary if the party offering the same is present when the registrar rejects the affidavit.

affidavits or
documents.
Form 133.

ORDER XX.

ARBITRATION.

1. At any time after an action is commenced the judge may, with the consent of the parties, as well in cases within the ordinary jurisdiction of the court as in cases of agreement under section sixty-four of the Act, make an order for a reference, under the provisions of section one hundred and four of the Act; and all the provisions in the last-mentioned section contained as to references shall apply to a reference proceeding under such an order: Provided that the same fees shall be paid as would have been payable on entering judgment under a default summons, but where any reference is ordered to the registrar or any other officer of the court the same hearing fee shall be paid as if the action had been tried.

Arbitration.
51 & 52 Vict.
c. 43, ss. 64,
104.
Forms 134,
134A.

Arbitration.—See sect. 104 of the principal Act, and the notes thereto, *ante*, p. 124.

Staying Proceedings.—It has not yet been definitely decided how far the provisions of the Judicature Acts justify a stay of proceedings before judgment. A county court judge was held justified in refusing to try, and in staying proceedings, until the plaintiff had paid the costs of a previous High Court action decided in favour of the defendant, which involved substantially the same questions as the county court action (*R. v. Bayley*, (1881) 8 Q. B. D. 411; 51 L. J. Q. B. 244); and there are strong grounds for believing that a judge may stay proceedings in his own court in any case in which, if the action were in the High Court, an order to stay might be made (see *King v. Hawkesworth*, (1879) 4 Q. B. D. 371; 48 L. J. Q. B. 484; *Poyser v. Minors* (C. A.), (1881) 7 Q. B. D. 329; 50 L. J. Q. B. 555).

Under sect. 4 of the Arbitration Act, 1889 (which reproduces sect. 11 of the Common Law Procedure Act, 1854), a county court judge has power to stay proceedings where the action has been commenced notwithstanding the existence of a submission to arbitration by the parties; this seems to follow from the definition of "court" in that Act when read in conjunction with sect. 202 of the Judicature (Consolidation) Act, 1925, and has been decided to be the law (*Morrison Tinplate Co. v. Brooker*, (1908) 1 K. B. 403; 77 L. J. K. B. 197). But it is very doubtful whether the registrar of a county court, as such, has jurisdiction to make the order; and the safest course would appear to be to make the application to the judge.

ORDER XXA.

REFERENCE FOR INQUIRY AND REPORT.

1.—(1) Where pursuant to section 6 of the County Courts Act, 1919, the judge, with the consent of the parties, refers any

Reference
of action or

O. XXa. r. 1.

matter for
inquiry and
report.

9 & 10 Geo.
5, c. 73, s. 6.
Form 134b.

action or matter or any question arising therein to the registrar or a referee for inquiry and report, the order of reference shall be according to the form in the Appendix.

(2) Subject to any order of the judge as to the conduct of the reference.

- (a) the registrar shall hold the inquiry at the court house or at his office, or may hold it at or adjourn it to any place which he may deem most convenient to the parties;
- (b) a referee other than the registrar may hold the inquiry at or adjourn it to any place which he may deem most convenient to the parties;
- (c) the registrar or referee may have any inspection or view which he may deem expedient;
- (d) evidence shall be taken and the attendance of witnesses may be enforced by subpoena, and the inquiry shall be conducted in the same manner, as nearly as circumstances will permit, as trials are conducted before the judge;
- (e) the registrar or referee shall have the same authority, with respect to discovery and production of documents and in the conduct of the inquiry, as the judge;
- (f) nothing in this rule shall authorise the registrar or referee to commit any person to prison or to enforce any order by attachment or otherwise;
- (g) the registrar or referee may submit any question arising in the reference for the decision of the judge, or state any facts specially with power to the judge to draw any inferences therefrom, and in such case the order to be made on such submission or statement shall be entered as the judge shall direct; and the judge may require any explanation or reasons from the registrar or referee, and may remit the action or matter or any part thereof to him for further consideration, or decide the question referred on the evidence taken before the registrar or referee, with or without additional evidence, as the judge may direct;
- (h) the report shall be made in writing and filed in the court, and shall be open to inspection by the parties, and the registrar or referee shall as soon as the report is filed give notice to all parties by post;
- (i) where the report has been made and the further consideration of the action or matter has been adjourned to a day named, any party may apply on the day named to the judge to adopt the report, or may give four days' notice of an application to come on on that day to vary the

report or remit the same or any part thereof for further inquiry or report; or if the further consideration has not been adjourned to a day named any party may on four days' notice apply to the court to adopt the report or to vary the same or remit the same or any part thereof for further inquiry and report. O. XXa.r. 1.

(3) On consideration of the report or the further report, if any, the judge may give such judgment and make such order in the action or matter as may be just, without prejudice to any right of appeal.

See note, *ante*, p. 125.

ORDER XXI.

ASSESSORS.

1. The registrar of each court shall, from time to time, at the request of the judge submit to him the names of as many persons as the judge may direct, whom, having regard to the nature of the ordinary business of the court, and to their fitness from ability and reputation, the registrar believes to be qualified to act as assessors under section one hundred and three of the Act; and the judge shall from the names so submitted frame a list of persons to act as assessors for each court of which he is judge. Registrar at request of judge to frame list of assessors for approval. 51 & 52 Vict. c. 43, s. 103.

Appointment of Assessors.—See sect. 103 of the Act and the notes thereto.

2. The registrar shall apply to such persons as the judge may approve to know if they are willing to act as assessors and to attend any court which they may be summoned to attend a reasonable time beforehand. Consent of assessors to act.

3. When the judge has completed the list of assessors for any court the registrar shall cause a printed list of their names in alphabetical order to be hung up in the court and office. List of assessors. Form 135.

4. Every assessor named in the printed list shall continue to be an assessor until a new list of assessors has been framed and approved as aforesaid, or until he gives to the registrar notice in writing that he is unwilling to act as an assessor from and after a day to be named in such notice. Duration of power of assessors.

5. Upon the receipt of notice of resignation from an assessor the registrar shall remove the name of such assessor from the list. Assessor resigning to be removed from list.

6. Every assessor shall receive for each day's attendance one guinea or two guineas, according as the subject matter of the action does or does not exceed twenty pounds in value, together with such sum, if any, for his expenses as the judge may order. Remuneration of assessors.

O. XXI. r. 7.

Application
for assessors
to act with
judge.

Form 136.

Assessors
to be sum-
moned if
judge ap-
proves.

Form 137.

Form 141.

Notice
where oppo-
site party
has not
consented to
assessors
proposed.

Form 138.

Proceedings
where party
served with
notice does
not accept
proposed
appointment.

Form 139.

Form 140.

Summoning
of assessors.

Where asses-
sors or any
of them fail
to attend.

7. A party who desires assessors to be summoned to assist the judge shall six clear days at least before the return-day file an application therefor according to the form in the Appendix, giving the names of the assessors he wishes to be summoned, and if he has obtained the consent of the other party to the assessors named he shall file such consent with his application.

In actions under the extended jurisdiction, and in actions over 50*l.* transferred from the High Court, "twelve clear days" is substituted for "six clear days" (Order XXIIA. r. 19; Order XXXIII. r. 3B.).

8. Upon receipt of an application for assessors the registrar shall forward a copy of the same to the judge, who, if he thinks fit, shall return the same with his approval, and thereupon the registrar shall forthwith summon the assessors named. If the judge does not think fit that assessors shall be summoned, notice thereof shall be given by the registrar to all parties, according to the form in the Appendix.

9. Where the party applying does not file with his application the consent of the other party to the appointment of the assessors proposed by him, the registrar shall, after obtaining the consent of the judge to the appointment of assessors as prescribed in the last preceding rule, forthwith cause to be served on the other party notice of the application according to the form in the Appendix; and the party so served shall, as soon as may be after receipt of the notice, inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in such notice, or any of them, and shall give the names of such assessors as he is willing should be summoned.

10. Where the party served with the notice mentioned in the last preceding rule does not accept the proposed appointment, he shall forthwith after receipt of such notice inform the registrar in writing of his non-acceptance and of the reasons thereof, and the registrar shall thereupon fix a time and place for hearing such objection and selecting the assessors to be summoned. Such objection may be heard either on the return-day of the summons, or before the judge acting under the powers conferred on him by section nine of the Act, or, if the judge so directs, before the registrar. Notice of the time and place at which the objection will be heard shall be given to all parties interested. On the hearing such order shall be made as the judge or registrar shall think just, and any costs occasioned by the objection or consequent thereon may be ordered to be paid by the party objecting. When assessors are appointed they shall be summoned by the registrar.

11. If at the time and place appointed for the trial any of the assessors summoned do not attend, the judge may either proceed

to try the action, with the assistance of such of the assessors, **O. XXI. r. 11.** if any, as do attend, or, if none attend, without assistance, or he may adjourn the trial.

12. Every person applying for assessors shall at the time of applying pay to the registrar the sum of two guineas if the amount of the subject matter of the action does not exceed twenty pounds, and four guineas if it does exceed that amount; and such payments shall be considered as costs in the action, unless otherwise ordered by the judge.

Payment on application for assessors by party.

13. Where an action is adjourned, the plaintiff shall pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the court.

Assessors' fees on adjournment.

ORDER XXII.

TRIAL.

1. Notice of demand for a jury shall be given in writing to the registrar, according to the form in the Appendix, ten clear days at least before the return-day, and the registrar shall forthwith give notice thereof to the other party, according to the form in the Appendix; and the summonses to the intended jurors shall be delivered to the bailiff forthwith, and shall be served six clear days at least before the return-day. The deposit to be paid on a demand for a jury shall be eight shillings.

Notice of demand for jury.

Forms 142, 143, 144.

Deposit.

In addition to the jury fee of 8s., there is a court fee of 10s. payable (County Court Fees Order, 1925, Fee No. 10).

As to actions under Employers' Liability Act, 1880, see Order XLIV. r. 4.

2. Where a summons has not been served, or notice of trial has not been given, in time to enable a party served with such summons, or to whom such notice has been given, who desires a jury to be summoned, to give notice of demand for a jury in due time, the court may, on the application of such party, adjourn the trial in order that due notice for a jury may be given. And in any other case in which notice of demand for a jury has not been given in due time, or where no notice of demand has been given, but at the trial all parties desire to try by a jury, and no jury is then in court, the judge may, on such terms as he may think fit, adjourn the trial in order that notice for a jury may be given.

Adjournment in order, by jury.

If an adjournment is granted for other reasons, a party who has not given due notice for a jury cannot give notice for a jury on the adjourned hearing (*Fletcher v. Baker*, (1873) L. R. 9 Q. B. 370; 43 L. J. Q. B. 112; *R. v. Leeds C. C.*, (1885) 16 Q. B. D. 691; 55 L. J. Q. B. 365).

O. XXII. r. 3.

Applications
for trial
with or
without a
jury.

3. An application for an order for trial with a jury under paragraph (a) of section 19 of the Administration of Justice Act, 1925, or for an order for a trial without a jury under paragraph (c) of that section, may be made under and in accordance with the provisions of Order XII., Rule 11, on notice in writing to the opposite party at any time not less than ten clear days before the return day in the case of an application for trial with a jury, and not less than six clear days in the case of an application for a trial without a jury, and if not so made, shall not subsequently be made except with the leave of the court or judge and on such terms as the court or judge may think fit, and where the order is made for a trial with a jury, the registrar shall on payment by the applicant of the deposit of eight shillings proceed to summon a jury as directed by Rule 1 of this Order, and if necessary for that purpose the trial shall be adjourned. The requirement by a party for trial with a jury under paragraph (b) or paragraph (c) of that section shall be by notice of demand under Rule 1 or Rule 2 of this Order. [1925.]

For text of sect. 19 (*supra*), and notes thereon, see *ante*, p. 119.

Number of
jurymen to
be sum-
moned.

4. The number of jurors summoned to attend at a court for the trial of actions shall be sixteen, unless the judge otherwise orders.

Persons to be
summoned.

4A. All persons qualified and liable to serve as jurors shall be summoned to serve on juries without distinction of sex but otherwise as heretofore, provided that a husband and wife shall not both be summoned to serve on the same occasion.

Proportion
of men and
women to be
summoned.

4B. The number of women summoned to attend a court to serve as jurors shall be in the same proportion, as near as may be, to the number of men so summoned as the total number of women is to the total number of men in the list of jurors from which the persons summoned are taken.

Applications
for exemp-
tion from
attendance
for medical
reasons.

Form 144c.

4C. Upon every jury summons served upon a woman there shall appear a notice that she may apply to the registrar for exemption from attendance as a juror on account of pregnancy or other feminine condition or ailment provided that such application is received by the registrar within two days of the receipt of the jury summons by the applicant.

Exemption
from attend-
ance for
medical
reasons.

4D. The registrar may in his discretion exempt from attendance any woman who has been summoned to serve as a juror if he is satisfied by medical certificate or otherwise that on account of pregnancy or some other feminine condition or ailment she is, or will be, unfit to serve.

4E. An application under sect. 1 (b) of the Sex Disqualification (Removal) Act, 1919, that the jury shall be composed of men only or of women only shall be made to the judge upon notice to be served not less than two clear days before the hearing of the application; or if such application by notice is not practicable, application may be made to the judge on the return-day, and may be granted by him subject to such conditions as the judge may see fit to impose.

O. XXII. r. 4e.
Applications that the jury may be composed of men only or of women only.

5.—(1) Where a jury has been summoned, but before the return-day the action or matter is settled or withdrawn, it shall be the duty of the party at whose instance the jury was summoned to inform the registrar of the fact; and the registrar shall thereupon return the deposit, and shall, unless the attendance of the persons summoned as jurors is required in any other action or matter, forthwith send notice by post to such persons that their attendance will not be required according to the form in the Appendix; and where in like case the action or matter is adjourned before the return-day, the registrar shall forthwith send notice by post to the persons summoned as jurors of the adjournment, and of the day on which their attendance will be required, according to the form in the Appendix.

Notice to jurors where action settled, or adjourned before return-day.

Forms 144A, 144B.

(2) Where an action or matter in which a jury has not been summoned is settled or withdrawn before the return-day, it shall be the duty of the parties to inform the registrar of the fact.

Notice of settlement or withdrawal of non-jury action.

(3) Where notice is given under this rule three clear days before the return-day, and costs in the action or matter are taxed under any column of the higher scale, item 97 in the scale may be allowed for such notice.

Costs of notice.

(4) In the event of an order being made for trial of the action or matter without a jury after a jury has been summoned, the registrar shall act as hereinbefore provided in paragraph (1) of this Rule in the case of settlement or withdrawal.

5A.—(1) Where on the trial of an action or matter a jury has been impanelled, and the hearing is adjourned, the registrar shall, unless the adjournment is to the next day, or to the next day but one, forthwith give or send by post to the jurors impanelled notice of the adjournment, and of the day on which their further attendance will be required, according to the form in the Appendix.

Notice to jurors where jury impanelled and action adjourned, or action adjourned on return-day before jury impanelled.

Form 144B.

(2) Where a jury has been summoned, but the action or matter is adjourned on the return-day before a jury has been impanelled, the registrar shall, unless the judge orders the persons summoned

O. XXII.
r. 5a.

Where plaintiff does not appear.

as jurors to be discharged, and a fresh jury to be summoned, forthwith give or send by post to the persons summoned as jurors notice of the adjournment, and of the day on which their attendance will be required, according to the form in the Appendix.

6. If when an action is called on for trial the plaintiff does not appear, and the defendant appears, and does not admit the plaintiff's claim, the court may, in its discretion, award costs to the defendant in the same manner, and to the same amount, as to counsel, solicitor, witnesses, and other matters, as if the action had been tried, but no hearing fee shall be charged.

The costs may be recovered by the ordinary means for recovering any sum ordered to be paid by the court.

If the defendant appears and admits the claim, and pays the court fees payable in the first instance by the plaintiff, the judge may give judgment for the plaintiff (County Courts Act, 1888, s. 88). These provisions apply to actions by and against executors and administrators (Order XXX. r. 2). If the plaintiff does not appear, and the cause is struck out, and the judge refuses to restore it, the case is at an end, and the court above cannot interfere (*Jennings v. London Omnibus Co.* (2), (1874) 30 L. T. 640; 22 W. R. 757).

If the defendant has given notice of a counterclaim and the plaintiff does not appear he may prove it and get judgment; but the judgment may be set aside on terms pursuant to sect. 91 of the Act (Order XXII. r. 8).

Where a case was adjourned for the attendance of a witness, and after the adjournment the defendant appeared but the plaintiff did not, and the judge directed judgment to be entered for the defendant, it was held that the judge had no jurisdiction to hear the case in the absence of the plaintiff, and that he should have ordered the case to be struck out (*Jordan v. Jones*, (1884) 44 J. P. 800).

Where neither party or one party only appears on default or special default summons:

7. Where a default summons or a special default summons has been issued and a notice or an affidavit of defence has been delivered, and neither the plaintiff nor the defendant appears when the action is called on, the action shall be struck out; and where the defendant appears and the plaintiff does not appear, the action, subject to the proviso to section eighty-eight of the Act, shall be struck out, and costs may be ordered against the plaintiff as in the last preceding rule mentioned; and where the plaintiff appears and the defendant does not appear, judgment may be entered for the plaintiff without further proof, and, subject to the provisions of these rules as to admissions, the amount shall be ordered to be paid at such time or times and by such instalments as the court shall think fit, or, where judgment is entered for a sum exceeding twenty pounds, exclusive of costs, the amount for which judgment is entered shall be ordered to be paid either forthwith or within fourteen days, or at such time or times and by such instalments as the plaintiff may have already agreed to accept or may agree to accept at the time of entering judgment.

See notes to sect. 86 of Principal Act.

It appears from the judgments of the Court of Appeal in *Hooper v. Hill*, (1894) 1 Q. B. 659; 63 L. J. Q. B. 598, that these actions are subject to the provisions of sect. 90 of the Act of 1888, and that in default of appearance by the defendant, the judge alone has power under this rule to enter judgment without further proof, if notice of defence has been given. Where the registrar deals with the case, it appears that proof ought to be given in accordance with sect. 90 (see, however, the definition of "court" in sect. 186 of the Act of 1888, and in Order LV.).

Where both parties appear, the action will be tried, and personal service need not be proved (*Davis v. Pearce*, (1870) L. R. 5 C. P. 435).

O. XXII. r. 7
Notes.

8. If when an action is called on for trial the plaintiff does not appear, and the defendant has given notice of a counter-claim, he may prove such counter-claim so far as the burden of proof lies upon him, and have judgment accordingly: Provided that any judgment obtained under this rule may be set aside upon the application of the plaintiff in like manner as a judgment obtained under section ninety-one of the Act.

Judgment on counter-claim where plaintiff does not appear.
51 & 52 Vict. c. 43, s. 91.

9. Where any action or matter has been struck out under section eighty-eight or section ninety of the Act or under Rule 7 of this Order, the court may order such action or matter to be restored to the list for hearing on the same day or any subsequent day, and may set aside any order awarding costs to the opposite party which may have been made under section eighty-nine of the Act or Rule 6 or Rule 7 of this Order, upon such terms as to payment of costs of the day, adjournment of the hearing, notice to the opposite party, and otherwise, as may be just.

Restoring case struck out for non-appearance of plaintiff.
51 & 52 Vict. c. 43, ss. 88—90.

10. If after the judge has directed a nonsuit under section eighty-eight or section ninety-three of the Act, or after an action has been struck out, a subsequent action is brought for the same or substantially the same cause of action before payment of the costs (if any) allowed on such nonsuit or striking out, the judge may, if he thinks fit, order a stay of such subsequent action until such costs have been paid.

Subsequent action after nonsuit or striking out.
51 & 52 Vict. c. 43, ss. 88, 93.

11. Where at the trial it appears that an action for the same cause at the suit of the same plaintiff is pending in any other court of record, the court shall order the trial to stand adjourned to a certain day, and unless before such day the action in such other court has been discontinued, the action shall be struck out.

Action pending in another court for same cause.

12. The judge may in all cases disallow any question put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the action or matter. (R. S. C., Order XXXVI. r. 38.)

Disallowance of vexatious questions in cross-examination.

13. At the trial the judge may try the whole matter of the action and give judgment thereon, or grant any relief, redress, or remedy, or may make any order or give any direction which he

General jurisdiction of judge on trial of action.

O. XXII. r. 13. may consider necessary to enable final judgment to be given upon a day to which the trial may be adjourned, and may also make such order as to costs as he may think fit.

This rule is especially applicable to cases in which accounts are ordered to be taken or inquiries made.

Decision of questions at issue without general order for execution of trusts or administration.

14. It shall not be obligatory on the judge in any action for the execution of any trust, or for the administration of the estate of any deceased person, to pronounce or make a judgment or order for the general execution of the trust or administration of the estate, if the questions between the parties can be properly determined without such judgment or order, but the judge may make such order as may be necessary for determining such questions without pronouncing or making such general judgment or order. (R. S. C., Order LV. r. 10.)

See notes, *ante*, p. 63, "Claim for Partial Administration."

This and the next rule give the judge a discretion in all cases to make or refuse a general order for administration (*Pearson v. Pearson*, (1883) 56 L. T. 445).

Orders which may be made on applications for administration or execution of trusts, where no accounts or insufficient accounts have been rendered.

15. Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the judge may, in addition to the powers already existing:—

(a) Order that the application shall stand over for a certain time, and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings:

(b) When necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the judge in person. (R. S. C., Order LV. r. 10A.)

Injunction, application for.

16. In any action or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any wrongful act or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the judge may, in addition to giving judgment for such damages

and costs as the plaintiff may be entitled to, grant the injunction, O. XXII. r. 16. either upon or without terms, as may be just.

An application under this rule may be made—

- (a) before the trial or hearing, in which case it shall be made in accordance with Order XII. Rule 6 :
- (b) at or immediately after the trial or hearing, in which case the order, if any, shall be included in the judgment : or
- (c) subsequently to judgment, in which case it shall be made in accordance with Order XII. Rule 11, on notice supported by affidavit.

Injunctions.—The provisions of sect. 89 of the Judicature Act, 1873 (36 & 37 Vict. c. 66) (now sect. 202 of the Supreme Court of Judicature (Consolidation) Act, 1925), enable county court judges in all causes of action within their jurisdiction to grant injunctions in as full and complete a manner as if they were judges of the High Court (*Martin v. Bunnister* (C. A.), (1879) 4 Q. B. D. 491; 48 L. J. Q. B. 676). They had, prior to the Judicature Acts, power, when a decree for administration had been made in a county court, to restrain proceedings in any court to recover a debt provable under the decree (this power they had under the County Courts Act, 1865, s. 1, which was not re-enacted). This power was held to be taken away even prior to the late Act (*Cobbold v. Pryke*, (1879) 4 Ex. D. 315; 49 L. J. Ex. 8), and it is believed they have no power in any case to restrain an action pending in another court (see *In re Alison's Trusts* (C. A.), (1878) 8 Ch. D. 1; 47 L. J. Ch. 755).

The cases in which injunctions will usually be necessary are expressed in a rule which in substance provides that the judge may in any action or matter in which an injunction has been, or might have been claimed, grant an injunction, either before or at the trial, against the repetition or continuance of a wrongful act or breach of contract, or the commission of any injury or breach of contract of a like kind, relating to the same property or right, or arising out of the same contract. And that the injunction may be granted in addition to damages (Order XXII. r. 16). An application under this rule may be made, (a) before the trial or hearing, in which case it must be made in accordance with Order XII. r. 6; (b) at or immediately after the trial or hearing, in which case the order (if any) will be included in the judgment; or (c) subsequently to judgment, when it will be made in accordance with Order XII. r. 11, on notice supported by affidavit (Order XXII. r. 16).

An injunction is a remedy and not a cause of action; and the opinion was long entertained that a county court could not grant an injunction if that were the only remedy claimed. The jurisdiction to try the action for damages was derived from the County Courts Act, 1846, as a "personal action," and the judge having thus acquired seisin of it, had, by sect. 89 of the Judicature Act, 1873, all the powers of a judge of the High Court in regard to it. The judges in the Court of Appeal mentioned, but expressly declined to decide, the question, whether when no damage had been suffered, a plaintiff would lie to restrain a mere threatened injury, *e.g.*, a threatened nuisance, a threatened distress for rent (see *Shaw v. Jersey* (C. A.), (1879) 4 C. P. D. 359), a threatened infringement of a patent (see *Frearson v. Loe*, (1878) 9 Ch. D. 48; *Lichfield-Speer v. Queen Anne's Gate Syndicate*, (1919) 1 Ch. 407). It was formerly held that the county court has jurisdiction where an injunction only is claimed, if a claim for damages (supposing it to have been made) must necessarily have been within the jurisdiction in point of amount (*Stiles v. Ecclestone* (1903) 1 K. B. 544; 72 L. J. K. B. 256). This case

O.XXII.r.16**Notes.**

has however been overruled by the Court of Appeal in *De Vries v. Smallbridge*, (1928) 1 K. B. 482; 97 L. J. K. B. 244. See also *Rex v. Cheshire (Birkenhead) County Court Judge and United Society of Boiler-makers, Malone, Ex parte*, (1921) 2 K. B. 694; 90 L. J. K. B. 772. This case decides that the county court has no jurisdiction to hear an action brought for an injunction *simpliciter*, but if a claim is made in addition which the county court has jurisdiction to hear and determine, it may also grant an injunction, but the money claim must appear on the particulars of demand, and should state the amount of the money claim, so as to show that it is within the court's jurisdiction to try the action. (Decision of Court of Appeal reversing that of the divisional court.) See also *Simpson v. Crowle*, (1921) 3 K. B. 243, to same effect as case last mentioned, and *Davey v. Robinson*, (1923) 1 K. B. 563; 92 L. J. K. B. 336, where the action was brought for 150*l.* liquidated damages and an injunction in the High Court, and on the plaintiff's application sent to the county court for trial he reducing the claim for damages to 90*l.* so as to be within the county court jurisdiction. Held that the county court could entertain the action, for the rule (*supra*) that an action cannot be brought in the county court for an injunction *simpliciter*, does not apply where the action is remitted.

An injunction may be granted to restrain breaches of contract which are in restraint of trade, made between partners, or masters and servants or others, if the restraint is reasonable in respect of time and distance, and reasonably required for the protection of the interests of the complaining party. The whole of such a contract must be regarded, and a mere verbal evasion of its spirit will not be permitted (*Hadsley v. Dayer-Smith*, (1914) A. C. 979; 83 L. J. Ch. 770. As to onus of proof, see *Goldsoll v. Goldman*, (1915) 1 Ch. 292; 84 L. J. Ch. 228; see also generally *Nordenfelt v. Maxim-Nordenfelt Gun Co.*, (1894) A. C. 535; *Mason v. Provident Clothing and Supply Co.*, (1913) A. C. 724; 82 L. J. K. B. 1153; *Herbert Morris, Ltd. v. Saxelby*, (1915) 84 L. J. Ch. 149; (1916) 85 L. J. Ch. 210; *Konski v. Peet*, (1915) 1 Ch. 530; 84 L. J. Ch. 515; *Whitmore v. King*, (1918) 87 L. J. Ch. 647; *McEllistrim v. Ballymacelligot Co-operative Society*, (1919) A. C. 548; 88 L. J. (H. L.) 59; *Hepworth Manufacturing Co. v. Wenham Ryott*, (1919) 88 L. J. Ch. 432; 89 L. J. Ch. 69; (1920) 1 Ch. 1; *Ropeways, Ltd. v. Hoyle*, (1919) 88 L. J. Ch. 446; *Attwood v. Lamont*, (1920) 2 K. B. 146; 3 K. B. 571; 90 L. J. K. B. 121; *Bosworth-Smith v. Gwynnes, Ltd.*, (1920) 89 L. J. Ch. 368; *Dewes v. Fitch*, (1920) 2 Ch. 159; 89 L. J. Ch. 499; *Spence v. Mercantile Bank of England*, (1921) 37 T. L. R. 745; *Fitch v. Dawes*, (1921) 90 L. J. (H. L.) 436; *British Reinforced Concrete Engineering Co. v. Schelff & Co., Ltd.*, (1921) 2 Ch. 563; (1922) 91 L. J. Ch. 114; *Rely-a-Bell Fire and Alarm Co. v. Gisler*, (1926) L. J. Ch. 345; *Putsman v. Taylor*, (1927) 1 K. B. 637; 96 L. J. K. B. 317).

The plaintiff is not entitled to recover liquidated damages under the contract and to obtain an injunction in addition. He must make his election (*General Accident Assurance Corpn. v. Noel*, (1902) 1 K. B. 377).

It appears that the power to grant the same remedies as judges of the High Court must enable county court judges to grant mandatory, perpetual, or interlocutory injunctions, according as the relief sought could be aided by such injunctions if the action were in the High Court (Supreme Court of Judicature (Consolidation) Act, 1925, sect. 45). Obedience to the injunction may be enforced by attachment (*Martin v. Bannister* (C. A.), (1879) 4 Q. B. D. 491).

The remedy by injunction having hitherto been sparingly used in county courts, it may be useful to describe here the nature of the remedy and the extent of the power to grant it.

"A writ of injunction may be described as a judicial process whereby a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ. The process, however, was rather preventive than restorative, though it was by no means confined to the former object. When commanding an act to be done, it

issued after decree, and was in the nature of an execution to enforce the same. **O. XXII. r. 16**
Under the present procedure no writ of injunction is to issue." **Notes.**

Perpetual and Interlocutory Injunction.]—"Injunctions are either interlocutory or perpetual. Interlocutory injunctions are such as are to continue until the hearing of the cause upon the merits, or generally until further order. Perpetual injunctions are such as form part of the decree made at the hearing upon the merits, whereby the defendant is perpetually inhibited from the assertion of a right, or perpetually restrained from the commission of an act which would be contrary to equity and good conscience. The perpetual injunction is in effect a decree, and concludes a right. The interlocutory injunction is merely provisional in its nature, and does not conclude a right. The effect and object of the interlocutory injunction is merely to preserve the property in dispute *in statu quo* until the hearing or further order. . . . A man who comes to the court for an interlocutory injunction is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges, and can satisfy the court that the property should be preserved in its present actual condition, until such question can be disposed of" (see r. 16, *ante*, p. 498).

Mandatory Injunctions.]—"Though a court of equity had (*i.e.*, before the Judicature Acts) no jurisdiction to compel the performance of a positive act tending to alter the existing state of things, such as the removal of a work already executed, it could, by framing the order in an indirect form, compel a defendant to restore things to their former condition, and to effectuate the same results as would be obtained by ordering a positive act to be done. The order when framed in such a form is called a *mandatory injunction*" (Kerr on Injunctions). A mandatory injunction appears to be, in fact, a *mandamus* under another name. For instances where mandatory injunctions were granted, see *Smith v. Smith*, (1875) L. R. 20 Eq. 500, and *Krehl v. Burrell* (M. R.), (1879) 7 Ch. D. 551; 47 L. J. Ch. 353; 11 Ch. D. 146; 48 L. J. Ch. 252; see also *Smith v. Day* (C. A.), (1880) 13 Ch. D. 651; *Kenward v. Cory Brothers*, (1922) 91 L. J. Ch. 452.

The courts can grant damages in place of injunction when it appears right to do so. This power was first given by Lord Cairns' Act (21 & 22 Vict. c. 27), but as an injunction is always a matter of judicial discretion the power still exists. Though Lord Cairns' Act is repealed, the Courts of Chancery, by virtue of sect. 18 of the Judicature Act, 1925, still possess the power given by this statute. The House of Lords has recently decided that damages may be given where an injury is threatened only (*Leeds Industrial Co-operative Society v. Slack*, (1924), A. C. 851; 93 L. J. Ch. 436).

When Injunction may be granted.]—The courts are not, since the Judicature Acts, confined to giving such relief by injunction as could formerly have been obtained in equity. Their power was enlarged by the provisions of the Common Law Procedure Act, 1854, which enacted that "in all cases of breach of contract or other injury, where the party injured is entitled to maintain, and has brought an action, he may claim an injunction against the repetition or continuance of the breach of contract or injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right" (17 & 18 Vict. c. 125, s. 79). "In my opinion," says Jessel, M.R. (*Beddow v. Beddow*, (1878) 9 Ch. D. 89, 93; 47 L. J. Ch. 588; "having regard to these two Acts of Parliament" (*i.e.*, the Judicature Act, 1873, and the Common Law Procedure Act, 1854), "I have unlimited power to grant an injunction in any case where it would be right or just to do so; and what is right or just must be decided, not by the caprice of the judge, but according to sufficient legal reasons or on settled legal principles."

Appeal.]—Where an injunction has been granted or claimed an appeal lies without leave even though the damages claimed do not exceed 20*l.* (*Brune v. James*, (1898) 1 Q. B. 417; 67 L. J. Q. B. 283).



O. XXII. r. 17.

Inspection
of property
by judge
or jury.
Costs of
inspection.

Absent parties may be added on hearing.

Counter-claim where action stayed, discontinued, or dismissed.

Counter or other claim may be ordered to be tried by an independent action.

When a person brought in does not appear at the trial.

Judgment may be given for balance found due to defendant.

Form 152.

17. The judge may, in his discretion, inspect, or order the jury to inspect, any property or thing concerning which any question may arise in any action or matter. The expenses of any inspection under this rule shall be paid in the first instance by the party on whose application such inspection is made or ordered, or if inspection is made or ordered without such application, by the plaintiff; but the court shall have power to direct by whom such expenses shall be ultimately borne.

18. Where at the trial it appears to the judge that there are claims, estates, titles, or rights, or any equitable duties or liabilities, which cannot be disposed of by reason of all the proper parties not being before the court, the judge may order such parties as may be necessary to be made plaintiffs or defendants, upon such terms as to adjournment, notices, and costs as he may think fit. Where a defendant is added, the provisions of Order XIV. Rule 11, shall apply.

The provisions of Order XIV. r. 11, referred to are those for service upon the defendant of the order, copy summons, and notice of day of hearing.

19. If in any case in which the defendant sets up a counter-claim the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.

See *McGowan v. Middleton* (C. A.), (1883) 11 Q. B. D. 464; 52 L. J. Q. B. 355.

20. In any case of counter-claim or otherwise, or where any incidental claim arises at the trial, if the judge thinks that such claim can be better disposed of by an independent action, he may order such claim to be excluded, whether any application for that purpose be made or not.

21. If a person not originally a party to the action who has been served with a notice of counter-claim does not appear at the trial, the judge may proceed with the trial notwithstanding, and give such judgment or make such order as may be just against the person so served and not appearing, or may adjourn the trial and give such directions and make such order as to costs as he may think fit.

If the plaintiff does not appear at the trial, the defendant may prove and get judgment on his counter-claim (Order XXII. r. 8).

22. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

In the absence of such judgment, judgment ought to be entered for the plaintiff in the action and for the defendant on the counter-claim (*Shrapnel v. Laing* (C. A.), (1887) 20 Q. B. D. 334, 338; 57 L. J. Q. B. 195, *per* Lord Esher, M.R.).

23. Where any of the parties to an action are officers of the court, the judge, if he thinks fit, may, and where an action is brought by an officer of the court, except as official receiver, he shall, at the request of the defendant, direct the trial to take place at some convenient court of which he is not the judge; and where any such direction is given the provisions of section forty-two of the Act shall apply.

O. XXII. r. 23.
Transfer of action by or against officer of court.
51 & 52 Vict. c. 43, s. 42.

Where an action is brought by an officer of the court, the registrar shall annex to the summons a copy of section forty-two of the Act.

The request of the defendant may be made in writing, and if made in writing shall be signed by the defendant in the presence of a witness and addressed to the registrar.

Where an action is brought by an officer of a county court in the court of which he is an officer, except as *official* receiver, the judge, at the request of the defendant, must order that the action be sent for trial to the court of some convenient district of which he is not the judge (sect. 42; Form 120).

24. Where by the Act the leave of the judge is required for the exercise of any powers or jurisdiction by the registrar, such leave may be either general or special.

Leave to registrar to exercise jurisdiction.

25. Where a registrar is authorised by the judge to hear and determine any disputed case in which the sum claimed or the amount involved does not exceed five pounds, he shall, when any such case is called on before him, ascertain whether the parties consent to have the case heard by him.

Where registrar authorised to hear disputed claims.

9 & 10 Geo. 5, c. 73, s. 5 (1).

See notes to sect. 92, "Jurisdiction of Registrar."
Any mere matter of account may be referred by the judge to the registrar for inquiry and report (sect. 92).

ORDER XXIIA.

Order XXIIA. was made for the due working of the County Courts Act, 1903.

THE COUNTY COURTS ACT, 1903.

[3 Edw. VII. c. 42.]

GENERAL PROVISIONS AS TO PROCEDURE.

1. Subject to the following rules of this Order, the procedure in actions brought under the extended jurisdiction conferred by the County Courts Act, 1903, shall be the same as in other actions.

General provisions as to procedure

Provided, that where an ordinary summons is issued in any action brought under such extended jurisdiction, Rules 2 to 19 of this Order shall have effect.

in actions under 3 Edw. VII. c. 42.

SPECIAL PROVISIONS AS TO PROCEDURE.

2. An ordinary summons shall (subject to the proviso to Rule 9 of Order VII.) be issued, where it is to be served in the home dis-

Time for issue and service of

- O. XXIIa. r. 2.** strict twenty-five clear days at least, and where it is to be served in a foreign district twenty-eight clear days at least before the return day, and shall in either case be served twenty clear days at least before the return day thereof.
- ordinary summons.
Order VII.
r. 9.
- Mode of service.
- Amended by County Court Rules 1926 (No. 1) Rules.
- 3.—(1)** Service of an ordinary summons may be effected—
 (a) by delivering the same to the defendant personally; or
 (b) in the cases mentioned in Rules 12 to 22, 24, 26, and 27 of Order VII., in the manner prescribed by those rules; or
 (c) under an order for substituted service as prescribed by Order VII. Rule 40.
- By whom service may be effected.
- (2)** Service may be effected in accordance with Order VII. Rule 33.
- Præcipe to state how service to be made.
- (3)** Where the plaintiff wishes the summons to be served otherwise than by a bailiff, he shall so request in the præcipe; and the proviso to Order VII. Rule 33, shall apply.
- Indorsement and proof of service made otherwise than by bailiff.
Form 37.
- 4.** Where service is effected otherwise than by a bailiff, a copy of the summons, with the date and place and mode of service indorsed thereon, and an affidavit of service according to the form in the Appendix, with such modifications as the circumstances may require, shall within three clear days after the day of service, or such further time as may be allowed by the registrar, be delivered or transmitted to the registrar by the plaintiff.
- Return of summons served in foreign district.
High bailiff's list of summonses:
Further particulars:
- 5.—(1)** Order II. Rule 27, shall be read as if the words "eighteen clear days" were substituted therein for the words "eight clear days."
- (2)** Order II. Rule 30, shall be read as if the words "seventeen clear days" were substituted therein for the words "seven clear days."
- 6.** A notice requiring further particulars under Order VI. Rule 7, shall be given not later than fifteen clear days before the return day.
- Guardian *ad litem*:
- 7.** Order VII. Rule 50, paragraph (1), as to appointment of guardians *ad litem*, shall be read as if the words "twelve clear days" were substituted therein for the words "six clear days"; and paragraph (3) of the same rule shall be read as if the words "twelfth day before the return day" were substituted therein for the words "sixth day before the return day."
- Admissions:
- 8.** Order IX., Rule 2, paragraph 2, and Rule 5, as to admissions, shall be read as if the words "ten clear days" were substituted therein for the words "five clear days."

9. Order IX. Rule 8, as to notices to admit, shall be read as if the words "twelve clear days" and "six clear days" respectively were substituted therein for the words "six clear days" and "three clear days" respectively.

O. XXIIa.
r. 9.

Notice to
admit facts.

10. Order IX. Rule 12, paragraphs (1), (3) and (4), as to payment into court, shall be read as if the words "ten clear days" were substituted therein for the words "five clear days."

Payment
into court.

11. Order X. Rules 4 and 5, as to actions of ejectment or for recovery of possession of tenements, shall be read as if the words "ten clear days" and "eight clear days" respectively were substituted therein for the words "five clear days" and "three clear days" respectively.

Appearance
of party not
named as
defendant in
ejectment or
action for
recovery of
possession.

Amended, C. C. (No. 3) Rules, 1928.

12. Order X. Rule 6, shall be read as if the words "ten clear days" were substituted therein for the words "five clear days."

Objection to
jurisdiction.

13.—(1) A defendant intending to rely on any ground of defence, set-off, or counter-claim, as mentioned in Order X. Rule 10, shall file the notice required by that rule ten clear days at least before the return day.

Defence,
set-off, or
counter-
claim

(2) Order X. Rule 21, as to notice of defence to a counter-claim, shall be read as if the words "ten clear days" were substituted therein for the words "five clear days."

Defence to
counter-
claim.

14. Where a defendant claims to be entitled to contribution or indemnity against any person not a party to the action, he shall file the notice required by Order XI. Rule 1, ten clear days at least before the return day.

Claim to
contribution
or indemnity.

15. Order XII. Rule 9, paragraph 2, shall be read as if the words "ten clear days" were substituted therein for the words "seven clear days."

Where a
defendant
resident
more than
twenty miles
from court
shows
defence on
merits.

16. Notice of trial under Order XV. Rule 6, shall be served ten clear days at least before the day fixed for the trial, unless otherwise ordered.

Shows
defence on
merits.

17. Order XVIII. Rule 6, as to notices to inspect and admit, shall be read as if the words "ten clear days" and "five days" respectively were substituted therein for the words "five clear days" and "three days" respectively.

Notice of
trial under
Order XV.
r. 6.

18. Order XVIII. Rule 11, as to use of affidavits, shall be read as if the words "eight clear days" and "four clear days" respectively were substituted therein for the words "four clear days" and "two clear days" respectively.

Notices to
inspect and
admit.
Notice of
intention to
use affidavit.

**O. XXIIa.
r. 19.**

Application
for assessors.

19. Order XXI. Rule 7, as to assessors, shall be read as if the words "twelve clear days" were substituted therein for the words "six clear days."

WHERE ACTION COMMENCED IN ONE COURT IS TO BE TRIED IN ANOTHER COURT.

Where
action com-
menced in
one court is
to be tried
in another.

20. Where under any Order in Council made under section 5 of the County Courts Act, 1903, an action commenced in one court is to be tried in any other court, the following provisions shall have effect.

For Order in Council, see *ante*, p. 254.

3 Edw. VII.
c. 42, s. 5.

Fixing day
for trial of
ordinary
summons.

Form 41A(1)

Form 41B.

21. Where an ordinary summons is to be issued, the registrar of the court in which the action is commenced (in these rules referred to as "the home court") shall on the filing of the *præcipe* send to the registrar of the court in which it is to be tried (in these rules referred to as "the foreign court") a letter according to the form in the Appendix, requesting him to fix a day for the trial; and immediately on the receipt of such letter the registrar of the foreign court shall fix a day accordingly, such day to be so fixed as to allow the summons to be served in accordance with these rules, and shall send to the registrar of the home court a letter according to the form in the Appendix, informing him of the day on which he has fixed that the trial shall take place; and on the receipt of such letter the registrar of the home court shall enter the plaint and issue the summons, and shall insert in the plaint note and in the summons the date and place of trial, and shall annex to the plaint note and summons a notice according to the form in the Appendix.

Form 41c.

Successive
summons.

When the summons has not been served, and a successive summons may be issued, the registrar of the foreign court shall on request fix another day for the trial, and the procedure prescribed by this rule shall be followed.

Fixing day
for trial of
special
default
summons.

Form 41A
(2).

Form 41B.

22.—(1) Where a special default summons is issued and the defendant delivers an affidavit of defence, or is let in to defend, the registrar of the home court shall on the delivery of the affidavit, or on the making of the order letting the defendant in to defend, send to the registrar of the foreign court a letter according to the form in the Appendix, requesting him to fix a day for the trial; and immediately on the receipt of such letter the registrar of the foreign court shall fix a day accordingly, such day to be so fixed as to allow at least ten clear days' notice to be given of the day so fixed, and shall send to the registrar of the home court a letter according to the form in the Appendix, informing him of the day on which he has fixed that the trial shall take place; and on

the receipt of such letter the registrar of the home court shall send to the plaintiff and defendant notice of trial according to the forms in the Appendix, and shall annex to such notice a notice according to the form in the Appendix.

O. XXIIa.
r. 22.

Forms 39,
40 (2).
Form 41c.

(2) Provided that where the defendant instead of delivering an affidavit of defence delivers an admission of the whole of the plaintiff's claim, the action shall not be sent for trial to the foreign court, but shall remain and be disposed of in the home court. And where after the registrar of the home court has requested the registrar of the foreign court to fix a day for the trial of a special default summons, but before notice has been sent to the parties, the defendant delivers an admission of the whole of the plaintiff's claim, the action shall not be sent for trial to the foreign court, but shall remain and be disposed of in the home court, and the registrar of the home court shall send a letter to the registrar of the foreign court informing him that the admission has been delivered and that the action will be retained and disposed of in the home court.

Rule dated March 19th, 1920.

23. When an ordinary summons has been served, and the copy returned to the registrar of the home court, or when notice of trial of a default summons has been sent, the registrar of the home court shall transmit all documents filed in the action to the registrar of the foreign court, who shall enter the action for trial in his court.

Transmission
of documents
to court of
trial.

On the action being sent to the foreign court, the registrar of the home court shall make in red ink, against the entry of the action in the plaint book, an entry of its having been so sent, with the name of the foreign court, and the date when the action is sent there for trial; and shall send a copy of the entries in the plaint book, under the seal of the court, to the registrar of the foreign court; and the registrar of the foreign court shall enter the particulars and proceedings in the action in a book to be kept for that purpose in accordance with the form in Part II. of the Appendix.

Appendix,
Part II.

24. All proceedings in the action subsequent to the service of an ordinary summons, or the sending of notice of trial in the case of a default summons, and previous to the trial, shall be taken in, and payment into court before trial shall be made into, the foreign court.

Proceedings
before trial.

25. When the action has been tried or otherwise disposed of, the registrar of the foreign court shall tax any costs directed to be taxed, and shall settle the judgment or order (if any) of the court, and shall transmit all documents in the action, with the judgment or order and the certificate of taxation (if any), and a

Proceedings
when action
tried or dis-
posed of.

O. XXIIa.
r. 25.
 —

Judgment
and subse-
quent pro-
ceedings.

Disposal of
moneys in
court.

copy of the entries made in the book kept by the registrar of the foreign court, under the seal of the court, to the registrar of the home court, who shall fill up the entry of the action in his plaint book in accordance with the copy of the entries made in the book kept by the registrar of the foreign court; and the judgment or order shall be entered, filed, and served, and subsequent proceedings in the action shall be taken, in the home court, as if the action had been tried or otherwise disposed of in that court; and where any money paid into the foreign court has not been paid out, the registrar of that court shall transmit to the registrar of the home court the amount remaining in court and shall certify how the same is to be applied; and such money shall be transmitted in accordance with the directions given by the Lord Chancellor as to the transmission of money received by virtue of any warrant against the goods issued from a foreign court.

Amended, C. C. (No. 1) Rules, 1928).

Application
for new trial.

26.—(1) An application for a new trial in an action sent for trial to a foreign court shall be made to the foreign court, and if such application is granted the new trial shall take place in that court.

(2) A notice of an application for a new trial shall not operate as a stay of proceedings unless the judge otherwise orders.

(3) If notice of an application for a new trial is given before the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court in accordance with the last preceding rule, the registrar of the foreign court shall, unless proceedings are stayed, proceed in accordance with that rule, and shall transmit the notice to the registrar of the home court with the other documents in the action; and if proceedings are stayed, the registrar of the foreign court shall retain the documents in the action until the application is disposed of.

(4) If notice of an application for a new trial is given after the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court in accordance with the last preceding rule, the registrar of the foreign court shall forthwith transmit the notice to the registrar of the home court; and if proceedings are stayed, he shall give notice of such stay to the registrar of the home court.

(5) Where the documents in the action have been transmitted to the registrar of the home court, he shall in sufficient time before the hearing of the application for a new trial re-transmit the documents to the registrar of the foreign court for use on such application.

(6) When an application for a new trial has been heard or otherwise disposed of, then— O. XXIIa.
r. 26.

(a) if the application is refused or abandoned, the registrar of the foreign court shall proceed in accordance with the last preceding rule, and that rule shall apply to the subsequent proceedings in the action; and

(b) if the application is granted, the registrar of the foreign court shall retain the documents in the action; and when the action has been re-tried or otherwise disposed of, he shall proceed in accordance with the last preceding rule, and that rule shall apply to the subsequent proceedings in the action.

(7) Where notice of an application for a new trial is given, if any money paid into the foreign court and certified to the registrar of the home court, or any money paid into the home court under any execution or order in the action has not been paid out by the registrar of the home court at the time when he receives notice of the application, the registrar of the home court shall retain the same to abide the result of the application, or until the judge otherwise orders; and if the application is not made, such money shall, if required, be paid by the registrar of the home court to the parties entitled thereto, unless the judge otherwise orders; and the provisions of the last preceding rule as to money paid into the foreign court shall apply accordingly.

APPEALS.

27.—(1) Where an appeal is brought in an action sent for trial to a foreign court, a copy of the notice of motion shall be lodged by the appellant with the registrar of the foreign court. Appeals.

(2) If such copy is lodged before the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court in accordance with Rule 25 of this Order, the registrar of the foreign court shall, unless proceedings are stayed, proceed in accordance with that rule, and shall transmit such copy to the registrar of the home court with the other documents in the action; and if proceedings are stayed, the registrar of the foreign court shall retain the documents in the action until the appeal is disposed of.

(3) If such copy is lodged after the registrar of the foreign court has transmitted the documents in the action to the registrar of the home court in accordance with Rule 25 of this Order, the registrar of the foreign court shall forthwith transmit such copy to the registrar of the home court; and if proceedings are stayed, he shall give notice of such stay to the registrar of the home court.

(4) When an appeal has been heard or otherwise disposed of,

O. XXIIa.
r. 27.

either party may deposit the judgment of the Court of Appeal, or an office copy thereof, or a memorandum signed by the parties and showing how the appeal is disposed of, with the registrar of the foreign court; and thereupon the like proceedings shall be taken as are prescribed by these rules to be taken when an application for a new trial has been heard or otherwise disposed of; and the provisions of the last preceding rule, and of Rules 2 to 4 of Order XXXII., shall, with the necessary modifications, apply accordingly.

COSTS.

Costs.

28. The costs of actions brought under the extended jurisdiction conferred by the County Courts Act, 1903, shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject-matter of such actions.

ORDER XXIIb.

REGISTRAR'S COURTS.

What
action may
be entered
at registrar's
courts.

51 & 52 Vict.
c. 43, ss. 90,
92.

9 & 10 Geo.
5, c. 73,
s. 5 (1).

1.—(1) Subject to the provisions of this rule, and to any general or special directions of the judge,

- (a) any action founded on contract and commenced by ordinary summons, in which the registrar may by leave of the judge, or in case of the judge's death or unavoidable absence enter judgment under section ninety or section ninety-two of the Act if the defendant does not appear, or appears and admits the claim; and
- (b) any action commenced by ordinary summons in which the sum claimed or the amount involved does not exceed five pounds, if the judge has given leave to the registrar under sub-section one of section five of the County Courts Act, 1919, to hear and determine such cases on the application of the parties,

may be entered for hearing at a registrar's court.

Provided that—

- (i.) where a registrar's court is appointed to be held at a place other than the place at which the court is held by the judge, the registrar shall, before entering any action for hearing at that court, have regard to the comparative convenience to the parties of access to that place or to the place where the court is held by the judge; and
- (ii.) Where at the time of the entry of a plaint for a sum exceeding five pounds the registrar is informed or has reason to believe that the action is likely to be defended, the

action shall be entered for hearing at a court to be held by the judge. O. XXIIb.
r. 1.

(2) The preceding paragraph of this rule shall apply to the fixing of the day for the hearing of any action for a sum not exceeding five pounds commenced by a default summons in which the defendant has delivered a notice of defence, or for disposing of any action commenced by a default or special default summons in which the defendant has delivered an admission of the whole of the plaintiff's claim.

2.—(1) Where an action is entered or fixed for hearing at a registrar's court, the registrar shall, in the case of an ordinary summons, annex to the plaint note and include in the summons, and in the case of a default or special default summons, annex to the notices of trial, a notice according to the form in the Appendix that the court will be held before the registrar only. Notice to parties of trial at registrar's court.
Form 46A.
Form 22A.

(2)—(a) Where the claim exceeds five pounds and any defendant intends to dispute the claim, or

(b) Where the claim does not exceed five pounds and—

(i) the plaintiff does not consent to the action being tried by the registrar in the event of the claim being disputed, or

(ii) any defendant intends to dispute the claim and does not consent to the action being tried by the registrar,

the plaintiff or defendant, as the case may be, shall give notice to the registrar accordingly within four clear days after the receipt of the notice prescribed by paragraph (1) of this Rule. Form 46B.

(Revised, C. C. (No. 1) Rules, 1928).

3.—(1) Where in an action for a sum exceeding five pounds entered or fixed for hearing at a registrar's court, Adjournment from registrar's court for trial before judge.

(a) any defendant gives notice under Rule 2 that he intends to dispute the claim ; or

(b) any defendant gives notice of any defence or of any set-off or counter-claim exceeding the sum of five pounds ; or

(c) any defendant pays into court a sum less than the full amount claimed in satisfaction of the claim, or delivers an admission of liability for a part only of the amount claimed, and the plaintiff does not before or at the hearing give notice that he accepts the amount paid into court or admitted in satisfaction of his claim ; or

(d) any defendant files a notice of claim to contribution or indemnity against a person not a party to the action ; or

(e) any party gives notice of demand for a jury ; or

(f) the registrar is otherwise informed that the action is likely to be defended ; or

(g) any defendant disputes the claim at the hearing,

O. XXIIb.
r. 3.

the registrar shall adjourn the hearing of the action to the next convenient court at which the judge will be present, and shall give notice to the parties of the place at which and the day and hour on and at which the hearing is to take place.

(2) Where in any action entered or fixed for hearing at a registrar's court the sum claimed or the amount involved does not exceed five pounds, and

(a) the claim is disputed and either party does not consent to the action being tried by the registrar ; or

(b) any defendant gives notice of any set-off or counterclaim exceeding five pounds ; or

(c) any defendant files a notice of claim to contribution or indemnity against a person not a party to the action ; the registrar shall adjourn the hearing in accordance with the last preceding paragraph of this rule.

(3) Provided that if any party states at the hearing that he desires to have the action tried by the judge without having given the notice prescribed by the last preceding rule, he may be ordered to pay any costs properly incurred by the other party in consequence of such notice not having been given.

(Amended, C. C. (No. 1) Rules, 1928.)

Other
business at
registrar's
courts.

4. The registrar may at a registrar's court hear any application and transact any business and exercise any other jurisdiction which he is authorised to hear or transact or exercise at a court at which the judge is present, or at his office ; but before fixing any such business for any such court appointed to be held at a place other than the place where the court is held by the judge, the registrar shall have regard to the comparative convenience to the parties of access to that place or to the place where the court is held by the judge.

See notes to sect. 92, "Jurisdiction of Registrar."

ORDER XXIII.

JUDGMENTS AND ORDERS.

Entries to be
made in
minute book.

1. The registrar shall enter in the minute book a minute of all ordinary judgments and orders for the payment of any debt or damages or costs (a). Where the party against whom an order is made is a married woman, a note thereof shall be made.

NOTE.—(a) A county court judge cannot on certain findings deliver an oral judgment and afterwards give a different judgment on the same facts (*Higginson v. Blackwell Colliery Co.*, (1915) 84 L. J. K. B. 1189).

Form of
ordinary
judgment.
Form 151.

2. An ordinary judgment for debt or damages shall be according to the form in the Appendix.

Where judgment is given against a married woman, or against a widow or a divorced woman, in respect of a contract or tort before or during coverture, such judgment shall be according to the Form 151 in the Appendix, with the addition of such one of the paragraphs in Form 151A of the Appendix as shall be applicable to the circumstances of the case.

O. XXIII.
r. 2.

See notes to Ord. III. r. 11, *ante*, p. 358, as to the effect of the Married Women's Property Acts.

A contract by a married woman under sect. 1 of the Married Women's Property Act, 1893, can be enforced only against such of her separate property as neither at the time of making the contract, nor at any subsequent date, has been subject to restraint against anticipation (*Wood v. Lewis*, (1914) 3 K. B. 73; 83 L. J. K. B. 1046). As to costs, see *infra*.

Judgment against married woman, etc., in respect of contract, etc., before or during coverture.
Forms 151, 151A.

Where the form of judgment against a married woman does not follow the forms provided it cannot be corrected as being an accidental slip or omission (*Oxley and Others v. Link*, (1914) 2 K. B. 734; 83 L. J. K. B. 602).

3. Where in any action or proceeding by a married woman judgment is given or an order made for payment by such married woman of any costs of the opposite party, the judgment or order shall be according to the form applicable in the circumstances of the case to a judgment against a married woman who is a defendant; and, unless the judge otherwise orders, there shall be added to the judgment or order words reserving liberty to the opposite party to apply under section 2 of the Married Women's Property Act, 1893, for payment of such costs out of any property of the married woman which is subject to a restraint on anticipation.

Judgment for costs against married woman who is plaintiff.
Form 151A.
56 & 57 Vict. c. 63, s. 2.

Section 2 of the Married Women's Property Act, 1893, gives the Court this power. See notes, *ante*, p. 359.

3A. A judgment for the delivery of goods shall be according to the form in the Appendix.

Judgment for delivery of goods.
Form 292.
Preparation of special judgment.

4. Every special judgment or order in the nature of a decree shall be prepared by the registrar, and the draft thereof shall be delivered by him to the successful party, together with an appointment to settle the same. The successful party shall submit the draft to his opponent for approval, and give notice of the appointment to settle. In case of disapproval by either party the registrar shall finally settle the draft in the presence of such of the parties as attend. Either party dissatisfied with the judgment or order as so settled may apply to the judge on not less than four days' notice to vary and finally settle the same, but, except by leave of the court, such notice shall not operate as a stay of proceedings. The judge on the hearing of such application may refuse to make any order if the application has not been made at

- O. XXIII.** the next sitting of the court available after the judgment or order has been settled by the registrar. The judgment or order when finally settled shall be sealed with the seal of the court, and filed of record, and a minute of such filing, with the date thereof, shall be entered in the minute book.

r. 4.

Such special judgments or orders as in this rule mentioned shall not be subject to the provisions of Rule 11 of this Order; and any money payable in respect of costs or otherwise under any such special judgment or order shall, unless otherwise ordered, be payable forthwith.

The judgment or order clearly requires to be served (see Order XXIII. r. 7).

Certain orders need not be drawn up or served.

5. Except where otherwise provided by statute or by these rules, no order giving leave to take any proceeding and no interlocutory order need be drawn up or served unless the court otherwise orders.

Service by or on solicitor.

6. When a party acts by a solicitor, service of any judgment or order in the nature of a decree, and of any interlocutory order, or any notice relating to any such order, when directed to be served, may be made by or upon such solicitor, as the case may be.

See Order LIV. rr. 3, 4.

Mode of service of judgments and orders.

7. Any judgment or order for the payment of money or costs or both, or any other order, shall, subject to any special order by the court, and subject to the provisions of these rules, be prepared by the registrar and delivered to the bailiff, who shall, within twenty-four hours, send the same, by post or otherwise, to the party on whom service has to be made: Provided that it shall not be necessary for the party in whose favour any such judgment or order has been made to prove, previously to his taking proceedings thereon, that it was posted or reached the opposite party.

Where a solicitor undertakes service, he must make the necessary copies and get them sealed by the registrar (Order LIV. r. 5).

All judgments must be served, except that in the case of a default summons the judgment need not be served unless the order is for payment by instalments, or to the other party or his solicitor, or unless the plaintiff has abandoned part of his claim. See r. 8, *infra*.

Where money under judgment or order to be paid to the other party.
9 & 10 Geo. 5,
c 73, s. 18.

7A. Where pursuant to section eighteen of the County Courts Act, 1919, money payable under a judgment or an order is at the time when the judgment or order is given or made directed to be paid by one party to the other party or his solicitor instead of being paid into court, a direction to that effect shall be inserted in the judgment or order. Any such direction, if not given at that time, may be given subsequently, in which case an order shall be prepared and served in accordance with the last preceding rule.

8. Where judgment is entered against a party served with a default or special default summons no order need be drawn up or served unless the judgment is for payment by instalments or for payment to the other party or his solicitor, or unless the plaintiff has abandoned part of his claim under Order XIV. Rule 13.

**O. XXIII.
r. 8.**

When order on default summons need not be served.

9. Every judgment or order given or made in any action or matter requiring any person to do an act thereby ordered, other than the payment of money or costs, shall state the time, or the time after service of the judgment or order, within which the act is to be done, and a copy of the judgment or order shall be served personally upon the person required to obey the same, on which copy shall be indorsed a memorandum according to the form in the Appendix. (R. S. C., Order XLI. r. 5.)

Time to be stated for doing any act ordered to be done.

Memorandum to be indorsed.

Form 346.

10.—(1) Any person requiring a certificate of any judgment or order shall state in writing whether such certificate is required for the purpose of taking proceedings thereon in any other court, or for the purpose of evidence only; and in such latter case the registrar shall state thereon the purpose for which it is required.

Purposes for which certificate of judgment required, to be stated.

Form 155.

(2) Where a person applying for a certificate of any judgment or order is not a party to the proceeding in which the judgment or order was given or made, he shall state in writing, with particulars, the purpose for which the certificate is required, and the capacity in which he applies for the same, and shall satisfy the registrar that it may properly be granted; and the registrar may in any case refer the application to the judge.

Application for certificate by a person not a party to the proceedings.

11. Money payable under an ordinary judgment shall be paid within fourteen days from the date of the judgment, unless the court at the time of giving judgment otherwise orders. Where judgment is given for payment by instalments, such instalments shall be payable at such periods as the order directs; and if no period is mentioned, the first shall become due on the twenty-eighth day from the day of making the order, and every successive instalment shall become due at a like period of twenty-eight days from the day of the last previous instalment becoming due; and such instalments shall be paid into court in accordance with section one hundred and five of the Act.

Money payable under ordinary judgment, how payable. 51 & 52 Vict. c. 43, s. 105.

See sect. 105 of the Act and notes thereto.

12. Where judgment is given or an order made for the recovery or payment of a sum of money exceeding twenty pounds and costs, such judgment or order may direct such sum of money to be paid forthwith or within fourteen clear days from the date of the

Order for payment of money recovered, and of costs to be taxed.

**O. XXIII.
r. 12.**

Order for
earlier pay-
ment of
money pay-
able within
14 days.

judgment or order, and may direct the costs to be taxed and paid forthwith or within fourteen clear days after taxation.

12A. Where under any judgment or order any money is payable within fourteen days from the date of the judgment or order, or in the case of costs within fourteen days after taxation, the judge may in his discretion at any time before the expiration of such period of fourteen days, for good cause shown on application made on oath or affidavit in accordance with the rules as to interlocutory applications, make an order for payment at an earlier date. Any order so made shall be served in accordance with Rule 7 of this Order; and if the order was made *ex parte*, any party affected thereby may within two days after service thereof apply to set it aside.

Payment
into court of
less than
amount due,
when
allowed.

12B. Subject to the provisions of this rule, a person liable to pay money under a judgment or an order may at any time pay money into court in reduction of the amount payable by him. Provided, that where the judgment or order is for payment of a sum exceeding twenty pounds, exclusive of costs, and no order has been made for payment by instalments, the registrar shall not receive any sum less than the full amount payable, if the person entitled to the benefit of the judgment or order has, at or before the time when such sum becomes payable, directed him in writing not to receive any less sum than such full amount; and if in any such case any less sum is paid into court and is inadvertently received, the registrar shall, if so directed in writing by the person entitled to the benefit of the judgment or order, place the sum so paid to the credit of the person by whom it was paid, and shall on request return the amount to him.

This rule was made to meet the point raised in *In re Miller*, (1913) 3 K. B. 1.

Set-off of
cross judg-
ments or
orders in
county
courts and
High Court.
9 & 10 Geo. 5,
c. 73, s. 19.

12C.—(1) Where one person has obtained a judgment or an order in a county court against another person, and that other person has obtained a judgment or an order against the first-mentioned person in the same or in another county court, or in the High Court, an application under section nineteen of the County Courts Act, 1919, for leave to set off any sums including costs payable under the several judgments or orders may be made in accordance with the provisions of this rule.

(2) Where the judgments or orders have been obtained in the same county court, the application shall be made to that court on notice in writing in accordance with the rules for the time being in force as to interlocutory applications.

(3) Where the judgments or orders have been obtained in different county courts the application may be made to either of

such courts on notice in writing as aforesaid, and the applicant shall give notice in writing of his intended application to the registrar of the other court.

O. XXIII.
r. 12c.

(4) In any such case the registrar of the court, or the registrars of the respective courts, as the case may be, shall on notice of application being filed or received stay execution on the several judgments or orders, or on the judgments or orders obtained in their respective courts, and retain any money paid into court under any execution or order in either of the actions or matters to abide the event of the application.

(5) The order made on the application shall direct how any money paid into either court is to be dealt with, and a copy of the order shall, where the judgments or orders have been obtained in different courts, be sent by the registrar of the court in which the order is made to the registrar of the other court, who shall deal with any money paid into that court in accordance with the directions contained in the order.

(6) Where any sums are ordered to be set off satisfaction shall be entered for the same, and execution or other process shall issue only in respect of the balance remaining payable.

(7) Where one judgment or order has been obtained in a county court and the other in the High Court, the application shall be made to the High Court in manner prescribed by rules of the Supreme Court. (See R. S. C., Order LIV. rr. 12b & 12e.)

The applicant shall give notice in writing of his intended application to the registrar of the county court, who shall proceed in accordance with paragraph 4 of this rule.

A copy of the order made on the application shall be sent by the applicant to the registrar of the county court, who shall deal with any money paid into that court in accordance with the order, and shall, where any sums are ordered to be set off, act in accordance with paragraph 6 of this rule.

(8) Where under any order made under this rule any money paid into one county court is to be dealt with by another court, the registrar of the first court shall certify to the registrar of the second court the amount to be so dealt with, and shall account for and pay over that amount as the treasurer of his court shall require; and the registrar of the second court shall out of any moneys in his hands pay the amount so certified in manner directed by the order, and shall be allowed by the treasurer of his court, at his audit, the amount so paid.

13. The registrar shall give notice by post, according to the form in the Appendix, to the party in whose favour it is made, of every payment made into court, whether by instalments or

Notice of
payment
into court.

O. XXIII.**r. 13.**

Form 156.

otherwise, in pursuance of a judgment or order, where the payment exceeds twenty shillings, provided that notice need not be given of a payment transmitted from a foreign court.

Altered from ten to twenty shillings by County Court (No. 1) Rules, 1926. Proviso added by C. C. (No. 2) Rules, 1928.

Money in court cannot be attached under a garnishee summons as a debt due from the registrar or other officer of the court (*Dolphin v. Layton*, (1879) 4 C. P. D. 130; 48 L. J. C. P. 426). The procedure provided by Ord. XXVI. r. 16 should be adopted.

Fresh order
for payment
by instal-
ments on
application
of plaintiff.
Form 157.

14.—(1) Where there is an unsatisfied judgment or order the party entitled to enforce it may apply *ex parte* to the court in which the same was given or made to order that the amount due and unpaid be paid by instalments, or, if payable by instalments, by the like or smaller instalments; and the court may thereupon make an order accordingly.

(2) An application under this rule may be made at any sitting of the court: or it may be made at any other time by request in writing, giving the letter and number of and the names of the parties to the action or matter in which the judgment or order was given or made, and the instalments by which the applicant desires that the amount due and unpaid may be ordered to be paid. Such request shall be left at or sent by post to the office of the registrar, accompanied by the plaint note or the duplicate mentioned in Order VII. Rule 1, or where a defendant is entitled to enforce a judgment or order, by the summons issued in the action, or the duplicate mentioned in Order LIV. Rule 26, and a stamped and directed envelope; and when the request has been dealt with the registrar shall return such note, summons or duplicate, with a minute of the order made, in such envelope.

(3) The registrar may, by leave of the judge, deal with any application under this rule out of court, and without requiring the attendance of the applicant; but he may, and, where no payment has been made within six years before the date of the application, he shall, refer such application to the judge, who may make such order in the matter as he shall think right, and may require the attendance of the applicant.

(4) An order made on an application under this rule shall be entered in the minute book, and prepared and served in accordance with Rule 7 of this Order, and shall have the same effect as a fresh order for payment by instalments made on the hearing of a judgment summons.

The costs of an abortive execution must not be included in a fresh order made under this rule (Order XXV. r. 56).

As to increasing the amount of the instalments, see r. 15 (2), *infra*. Such an order can only be made by the judge.

Fresh order
for payment
of sum not
exceeding

15.—(1) Where a judgment has been given or an order made for the payment of any sum, by instalments or otherwise, and it

appears to the satisfaction of the judge that the person liable under the judgment or order is unable to pay the sum ordered to be paid at the time or by the instalments ordered, he may, on the application of such person, made on notice served on the party entitled to enforce the judgment or order two days at least before the hearing of the application, order the amount due and unpaid under the judgment or order to be paid by instalments, or, if already payable by instalments, by the like or smaller instalments, and may from time to time vary such order.

O. XXIII.
r. 15.

207. on application of defendant.
Form 157.

(2) In like manner, if it appears to the satisfaction of the judge that the person liable under any judgment or order is able to pay the sum ordered to be paid either in one sum or by larger instalments than those ordered, he may, on the application of the person entitled to enforce the judgment or order, made on the like notice to the person liable thereunder, order the amount due and unpaid to be paid in one sum, or by larger instalments than those previously ordered, and may from time to time vary such order.

Fresh order for payment in one sum or by increased instalments on application of plaintiff.
Form 157.

(3) An order made on an application under this rule shall be entered in the minute book, and prepared and served in accordance with Rule 7 of this Order, and shall have the same effect as a fresh order for payment made on the hearing of a judgment summons.

Amended, C. C. (No. 2) Rules, 1927.

15A.—(1) Form 153 is hereby annulled, and an order under section twenty-three of the County Courts Act, 1919, to suspend or stay any judgment, order, or execution, or for the discharge of a debtor, may be according to the form in the Appendix.

Order staying execution or ordering discharge of debtor.

(2) Where any such order is made, then

9 & 10 Geo. 5,
c. 73, s. 23.

(a) if execution has issued the warrant shall be returned, but the judge may order the debtor to pay the costs of the warrant and any fees or expenses incurred by the high bailiff before the recall of the warrant, and may authorise the high bailiff to sell a portion of the goods seized sufficient to realise such costs, fees and expenses and the expenses of the sale : and

Form 153.

any such warrant may be re-issued by leave of the judge ;
(b) if the debtor is arrested or confined in prison under an order issued in the action, a sealed copy of the order of discharge, signed by the registrar, shall be delivered to the bailiff or gaoler in whose custody the defendant is, who on receipt thereof shall forthwith discharge the debtor ;

(c) if a debtor is ordered to be discharged on terms which include liability to re-arrest if the terms are not complied with, the party entitled to the benefit of the judgment or

O. XXIII.
r. 15a.

order may if the terms are not complied with apply to the judge, who may in his discretion order the debtor to be re-arrested and imprisoned for the remainder of the term of imprisonment which was unexpired at the time of his discharge ;

- (d) if the judge so orders, a duplicate order of commitment shall be issued, and a certificate shall be indorsed thereon and signed by the registrar, stating that it is in substitution for the original order of commitment, and has been issued by order of the judge by reason of the failure of the debtor to comply with the terms imposed by the order of discharge ; and such duplicate shall be delivered to the bailiff and shall be an authority to him to re-arrest the debtor and to the gaoler to receive and detain him for the remainder of the term of imprisonment, or until he shall be sooner discharged by due course of law.

Judgment in action of ejectment or for recovery of possession, or relating to land, where plaintiff's title existed when plaint entered but has since expired.

Form 260.

Where order directs a deed to be prepared.

Sale of real property.
 Forms 304,
 306.

16. Where in an action of ejectment, or for the recovery of possession of a tenement, or of damages in respect of any right relating to land, the title of the plaintiff shall appear to have existed, as alleged in the summons, at the time of the entry of the plaint, but to have expired before the return day, the plaintiff shall be entitled to judgment according to the fact that he was so entitled and for his costs of the action, unless the judge otherwise orders.

17. Where a judgment or order directs any deed to be prepared and executed, it shall state by which party the said deed shall be prepared, and to whom it shall be submitted for approval ; and if the parties cannot agree upon the form thereof, the judge may, upon the application of either party, settle the same himself, or name a conveyancing counsel by whom the same shall be settled, subject to the final approval of the judge.

18. Subject to the provisions of these rules, where real property is ordered to be sold, the judgment or order shall direct who shall have the conduct of the sale, and by whom the conditions and contracts of sale, and the abstract of title, shall be prepared, and the registrar shall have all the powers of a master of the Chancery Division of the High Court to settle such conditions and contracts, and to fix reserved biddings. And where any conditions or contracts are ordered to be settled by a conveyancing counsel, the order shall name the counsel to whom they are to be submitted.

The court has a general power to order a sale where expedient or necessary (see Annual Practice, notes to R. S. C., Order LI. r. 1). The person conducting the sale if by auction requires no licence (Supreme Court of Judicature (Consolidation) Act, 1925, sect. 221).

The ordinary conveyancing charges are to be allowed (Order LIII. r. 28).

19. Where any real estate is ordered to be sold, any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be directed. (R. S. C., Order LI. r. 1.)

**O. XXIII.
r. 19.**

Delivery up of real estate ordered to be sold.

20. Where a judgment or order is given or made directing any property to be sold, the same shall, unless otherwise ordered, be sold, with the approbation of the judge, to the best purchaser that can be got, and all proper parties shall join in the sale and conveyance as the judge shall direct. (R. S. C., Order LI. r. 3.)

Sale with approbation of judge.
Forms 304,
306.

21. Affidavits for the purpose of enabling the court to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed. (R. S. C., Order LI. r. 4.)

Form of affidavit of value.

22. In the case of sales under the direction of the court the particulars of sale shall be signed by and the result of the sale shall be certified under the hands of the auctioneer and the solicitor of the party having the conduct of the sale. It shall not be necessary to file any affidavit verifying the particulars or the result of the sale. (R. S. C., Order LI. r. 6A.)

Certificate of result of sale in lieu of affidavit.

23. Where an order directs any personal property to be sold, the same shall be sold by public auction or private contract, as the court shall direct; and it shall be the duty of the high bailiff, if the court so directs, to superintend such sale, or to see that the directions of the court are duly carried out in accordance with Order II., rule 38.

Sale of personal property.
Form 305.

The person conducting the sale requires no licence as auctioneer (see note to r. 18, *supra*).

ORDER XXIV.

ACCOUNTS AND INQUIRIES.

Accounts and Inquiries.]—See note to Order XII. r. 5, for summary of procedure.

1. Where a judgment or order directs that any account be taken or inquiry made, such account shall be taken and inquiry made by the registrar, and he shall for that purpose have all the powers of a master of the Chancery Division of the High Court; and all parties shall have the same power of summoning witnesses, including as witnesses any parties in the action, and of examining them on such accounts or inquiries, and of compelling the production of documents, as they would have upon the trial of an action; and all rules as to the summoning, swearing, and examining of witnesses, and the production of documents at the

Accounts, how to be taken.

O. XXIV.

r. 1.

trial, shall be applicable (as far as may be) to such summoning, swearing, examining, and production on taking any such accounts, or prosecuting any such inquiries.

Registrar to
appoint time
and place for
inquiries and
taking ac-
counts.

Form 318.

2. Where the registrar is directed to make inquiries or to take accounts, he shall by summons, according to the form in the Appendix, returnable not less than seven days from the date of the order, addressed to all parties entitled to attend, direct such parties to attend at his office or at the court, for the purpose of proceeding with such inquiries or accounts. In all cases in which advertisements are ordered, the return-day shall be not less than twenty-one days after the date of the order, and the registrar shall forthwith prepare and insert advertisements in conformity with such order, stating the time, place, and purpose of the proceedings, and shall insert the same fourteen days previous to the day appointed.

Hearing
before
registrar.

3. Upon the day so appointed, or at any adjourned sitting, the registrar shall sit at the time and place appointed, and shall hear all parties interested, their counsel or solicitors.

Stoppage of
proceedings
where all
necessary
parties have
not been
served with
notice of
judgment or
order.

4. If on the hearing of the summons to proceed it appears that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for leaving the accounts in chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties have been served, and are bound, or service has been dispensed with. (R. S. C., Order LV. r. 36.)

Classifying
interests of
parties.
Costs of
party
appearing
separately.

5. Where at any time during the prosecution of the proceedings under a judgment or order it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings; and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings before him; and where any one of the parties constituting such class declines to authorise the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings with respect to which such nomination has been made, and all such further costs as shall be occasioned to any of

the parties by his being represented by a different solicitor from the solicitor so nominated. (R. S. C., Order LV. r. 40.)

O. XXIV.
r. 5.

6. Whenever, in any proceeding under a judgment or order, Judge may the same solicitor is employed for two or more parties, the judge require may at his discretion require that any of the said parties shall distinct appear separately in person or be represented by a distinct solicitor to represent parties, and adjourn such proceedings until such requirement is parties. complied with. (R. S. C., Order LV. r. 41.)

7. Where a judgment or order is given or made directing an account of debts, claims, or liabilities, or an inquiry for heirs, Claimants next of kin, or other unascertained persons, unless otherwise in not coming ordered, all persons who do not come in and prove their claims etc., excluded. within the time which may be fixed for that purpose by advertisement shall be excluded from the benefit of the judgment or order. (R. S. C., Order LV. r. 44.)

8. Where an order directs accounts to be taken, any books of Books of account in which the accounts required to be taken, or any of accounts to them, have been kept, shall, unless the court otherwise directs, be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised. be *prima facie* evidence.

9. Where any account is directed to be taken, the accounting party shall, unless the court otherwise directs, make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left at the registrar's office. (R. S. C., Order XXXIII. r. 4.) Accounts to be verified by affidavit, numbered, and left at registrar's office.

10. Any party seeking to charge any accounting party beyond Surchage. what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner. (R. S. C., Order XXXIII. r. 5.)

11. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the court otherwise directs. Inquiry as to outstanding personal estate. (R. S. C., Order XXXIII. r. 6.)

12. Where by any judgment or order any accounts are directed Accounts and inquiries to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and numbered. inquiry may be designated by a number; and such judgment or Form 304.

O. XXIV.
r. 12.
 —

order shall be in the form in the Appendix, with such variations as the circumstances of the case may require. (R. S. C., Order XXXIII. r. 7.)

Advertisements for creditors in administration.

13. Every advertisement for creditors or other persons having any claim upon or interest in the distribution of any assets to be administered by the court, which shall be issued pursuant to any order, shall direct every such creditor or other person, within a time to be thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest, and a statement of his account, and the nature of the security (if any) held by him, and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

Creditors need not prove unless required.

14. No creditor or other person need make any affidavit, or attend in support of his claim, except to produce his security, unless he is served with a notice requiring him to do so, as hereinafter provided.

Creditors holding security to produce same.

15. Every creditor shall produce or transmit to the registrar any security held by him, at such time as shall be specified in the advertisement for that purpose as being the time appointed for adjudicating on the claims; and every creditor shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office at such time as shall be specified in such notice.

Pedigree, if required, to be produced.

16. Every person claiming as heir-at-law, devisee, next of kin or legatee shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar any pedigree or proof mentioned in such notice within such time as shall be therein specified.

Creditor, etc. refusing, to have no costs.

17. In case any creditor or other person neglects or refuses to comply with the two last preceding rules, he shall not be allowed any costs of proving his claim, unless the court otherwise directs.

Adjudication on debts or claims.

18. At the time appointed for adjudication upon the debts or claims, the registrar shall take the evidence of the executor, administrator, or other accounting party upon such debts or claims, and may thereupon, in his discretion, allow any of such debts or claims without further proof, and may direct such investigation of all or any of the debts or claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he thinks fit, require any creditor or other person to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed may be adjourned to a time to be then fixed.

19. Notice of allowance shall be given by the registrar to every creditor or other person whose claim, or any part thereof, has been allowed, and notice shall also be given by him to every creditor or other person whose claim or any part thereof has not been allowed to attend and prove his claim or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and also to attend at a time to be therein named, being the time to which the adjudication thereon has been adjourned; and in case any creditor or other person shall not comply with such notice, his claim, or such part thereof as aforesaid, may be disallowed.

O. XXIV.
r. 19.

Notice of allowance or non-allowance of claim.
Form 320.
Form 319.

20. Any creditor or other person who has not previously sent in the particulars of his claim pursuant to advertisement, may do so two days before any day to which the adjudication is adjourned.

Claim may be sent in before adjudication.

21. If any claim is sent in after the time fixed by advertisement (except as in this order provided in case of an adjournment), the registrar may, upon special application, entertain the same, upon such terms and conditions as to costs and otherwise as he may think fit.

Where claim sent in after time fixed.

22. A creditor who has come in and established his debt under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the court, and shall be added to the debt so established. (R. S. C., Order LV. r. 58.)

Costs of creditor establishing debt.

23. In taking any account, all just allowances shall be made without any directions for that purpose in the order to take such account.

Just allowances.

24.⁵ Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the judgment or order. (R. S. C., Order LV. r. 62.)

Computation of interest on debts.

25. A creditor whose debt does not carry interest, who comes in and establishes the same under a judgment or order, shall be entitled to interest upon his debt at the rate of four per cent. per annum from the date of the judgment or order, out of any assets which may remain after satisfying the costs of the action or matter the debts established, and the interest on such debts as by law carry interest. (R. S. C., Order LV. r. 63.)

Allowance of interest on debts not carrying interest.

**O. XXIV.
r. 26.**

Interest on
legacies.

26. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of four per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will. (R. S. C., Order LV. r. 64.)

Registrar's
certificate.
Form 321.

27. The result of the proceedings before the registrar under any judgment or order shall be stated in the shape of a certificate in writing, signed by the registrar, and presented to the judge. (R. S. C., Order LV. r. 65.)

Reference to
judgment,
etc.

28. The certificate of the registrar shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons, but shall refer to the judgment or order, documents, and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded. (R. S. C., Order LV. r. 66.)

Contents of
certificate in
case of
accounts.

29. Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise; and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be retained by the registrar. No copy of any such account shall be required to be taken by any party. (R. S. C., Order LV. r. 68.)

Transcript.
Filing of
accounts and
transcripts.

Taking
opinion of
judge.

30. Any party may, before the proceedings before the registrar are concluded, take the opinion of the judge upon any matter arising in the course of the proceedings. (R. S. C., Order LV. r. 69.)

Notice that
certificate
may be
inspected.

31. The registrar shall prepare his certificate seven days before the day appointed for presenting the same, and shall give notice by post to all parties to the action or matter that the same lies in his office for the inspection of any parties interested therein or affected thereby; and he shall deliver a copy thereof to any person requiring the same, upon payment of the costs of such copy.

Form 322.

- 32.** Every certificate, with the accounts (if any) to be filed therewith, shall be binding on all the parties to the proceedings unless discharged or varied upon application to be made in accordance with the next following rule. (R. S. C., Order LV. r. 70.) **O. XXIV. r. 32.**
 When certificate becomes binding.
- 33.** Where any party interested in or affected by the registrar's certificate desires to have the same varied, he shall apply at the court on the day appointed for presenting the same, and the judge shall thereupon hear and determine such application, and shall confirm or vary the certificate, and make such further order thereupon and on further consideration of the action or matter, as he may think fit. **Variation or confirmation of certificate.**
Order on further consideration. Form 323.
- 34.** If no application is made to vary the certificate, it shall be taken as confirmed, unless the judge otherwise orders; and the judge shall, on the day appointed for the presentation of the same, make such order on further consideration of the action or matter as he may think fit. **Where no application to vary certificate. Form 323.**
- 35.** The judge may, if the special circumstances of the case require it, upon an application for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties. (R. S. C., Order LV. r. 71.) **Discharge or variation of certificate which has become binding.**
- 36.** Notes shall be kept of all proceedings before the registrar under any judgment or order, so that all such proceedings in each action or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing. (R. S. C., Order LV. r. 73.) **Notes of proceedings before registrar under judgment or order.**
- 37.** Where the registrar, high bailiff, receiver, or any party has by any order been directed to do any act, for doing which it may be found necessary to have further directions or an order of the court, the registrar shall apply to the judge for such directions or order, and upon such application the judge may give such directions or make such order as he may think fit, or may appoint a time to hear all parties upon the application so made by the registrar; and if the judge makes such appointment for hearing, the same shall operate as a stay of proceedings in the action until the day so appointed, unless otherwise directed. **Application to judge for further directions.**

ORDER XXV.

ENFORCEMENT OF JUDGMENTS AND ORDERS.

- 1.** Every order for the payment of money may be enforced in the same manner as a judgment for debt or damages may be enforced under section one hundred and forty-six of the Act. **Enforcement of orders for payment of money. 51 & 52 Vict. c. 43, s. 146.**

O. XXV. r. 1
Notes.

Execution.—See sect. 146 of the Act and the notes to that section, *ante*, pp. 189—205, for a summary of the law and practice relating to execution against goods.

Oral Examination.—The party entitled to enforce the judgment or order may also apply to the court for an order for the oral examination of the debtor, or in case the debtor be a corporation, of any of its officers, as to whether the debtor has any and what property or means of satisfying the judgment or order. And an order may be made for the attendance and examination of the debtor, or of any other person, and for the production of any books or documents (Order XXV. r. 71 (1)). The examination may be taken, if necessary, as prescribed by Order XVIII. r. 18. The order may be made for the examination of a married woman as to her separate estate (*Aylesford v. G. W. Rail. Co.*, (1892) 2 Q. B. 626).

Time for Execution.—Execution may not issue after the expiration of twelve years from the date of the original judgment, unless there has been a part payment, or payment of interest, or an acknowledgment in writing given. If there has been such payment or acknowledgment, execution may not issue after twelve years from the date of such payment or acknowledgment, or, if more than one, from the last (37 & 38 Vict. c. 57, s. 8; *Hebblethwaite v. Peever*, (1892) 1 Q. B. 124; *Jay v. Johnstone* (C. A.), (1893) 1 Q. B. 189; 62 L. J. Q. B. 128).

Orders enforceable like judgments.

2. Every order of the court in any action or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect. (R. S. C., Order XLII. r. 24.)

See *Savill v. Dalton*, (1915) 3 K. B. 174.

Enforcing judgment or order against corporation.

3. Any judgment or order against a corporation wilfully disobeyed may, by leave of the judge, be enforced by attachment against the directors or other officers thereof. (R. S. C., Order XLII. r. 31.)

To found an application for an attachment it is essential that a sealed copy of the order which gives rise to the application (endorsed with a notice in accordance with Form 346) should first have been duly served (Order XXV. r. 58), and even after such service the attachment can be obtained by express order of the court only (*Abud v. Riches* (M. R.), (1870) 2 Ch. D. 528; 45 L. J. Ch. 649). The order requiring the act to be done must state the time, or the time after its service, within which the act is to be done (Order XXIII. r. 9).

Costs of married woman.

4. When a married woman sued only in her own name obtains a judgment or order on the ground of coverture, and is awarded costs, she may enforce payment of such costs in her own name.

Where difficulty arises in execution.

5. In case of any judgment or order, other than for the recovery or payment of money, if any difficulty arises in or about the execution or enforcement thereof, any party interested may apply to the court, and the court may make such order thereon for the attendance and examination of any party or otherwise as may be just.

Date, duration, and renewal of warrants of execution.
 Form 163A.

6. A warrant of execution against goods shall bear date on the day on which it is issued, and if unexecuted shall remain in force for one year only from and exclusive of such date, unless

renewed in manner hereinafter provided ; but such warrant may, **O. XXV. r. 6.**
 at any time before its expiration, by leave of the court be re-
 newed by the party issuing it for one year from the date of such
 renewal, and so on from time to time during the continuance of
 the renewed warrant. The fact of the renewal of any warrant
 shall be indorsed thereon according to the form in the Appendix ;
 and a warrant so renewed shall have effect and be entitled to
 priority according to the time of the application to the registrar
 for the original issue thereof. Any fees payable on renewal of a
 warrant may be allowed as costs of the execution, and if so
 allowed the amount and the fact of such allowance shall be
 entered on the warrant. Fees on
renewal.

The precise time when the warrant is applied for must be entered by the
 registrar in the warrant-book and on the warrant (sect. 146). He must
 insert in or indorse on it the amount to be levied, and the fees for the execu-
 tion of the warrant, distinguishing the amount adjudged to be paid and
 remaining due, and the amount of the fee for issuing and executing the
 warrant (sect. 155, Order XXV. r. 17).

7. A person requiring a warrant of execution to be issued shall Applicant to
produce
plaint note
or summons
and furnish
præcipe.
Form 161A.
 produce the plaint note or summons issued in the action, or a
 duplicate thereof, and shall furnish a præcipe according to the
 form in the Appendix, containing the number of the plaint, and
 stating the full names and address of or otherwise sufficiently
 identifying every person against whom the warrant is to be
 issued. Where the name or address of any such person as given
 in the præcipe differs from the name or address as given in the
 judgment or order, and the applicant satisfies the registrar that
 such amended description is properly applicable to the person
 against whom judgment has been obtained, both descriptions
 shall be inserted in the warrant as follows, viz. :—

C. D. , of (name and address as given in
 the præcipe), sued as A. D. , of (name and
 address as given in the judgment or order).

(Amended, C. C. (No. 1) Rules, 1928.)

8.—(1) Where a defendant has made default in payment of the Where de-
fault made
execution
may issue.
 whole amount awarded by the judgment or order, or where the
 judgment or order was for payment by instalments of an instal-
 ment thereof, a warrant of execution may issue against his goods
 without leave ; and such execution shall be for the whole amount
 of the judgment or order and costs then remaining unsatisfied, or
 in the case of an order for payment by instalments, for such
 portion thereof as the court shall order, either at the time of
 making the original order or at any subsequent time. Amount for
which it
may issue.
51 & 52 Vict.
c. 43, s. 149.

(2) Warrants of execution against the goods of—

(a) A defendant ;

Forms 163,
164, 165.

**O. XXV.
r. 8.**

- (b) A defendant who is a married woman, a widow, or a divorced woman, in respect of an ante-nuptial contract or tort, or a contract or tort during coverture; or
(c) A plaintiff,

shall be according to the forms in the Appendix.

Separate
executions
for money
recovered
and for
costs.

9. Where judgment is given or an order made for the recovery or payment of a sum of money exceeding twenty pounds and costs, and directs such sum of money to be paid forthwith or within fourteen clear days from the date of the judgment or order, and the costs to be taxed and paid forthwith or within fourteen clear days after taxation, a warrant of execution may, in default of payment, issue for the recovery of the sum and costs after the latter have been taxed; or, if default is made in payment of the sum of money before the costs have been taxed, separate warrants may issue for the recovery of such sum on default in payment thereof, and for the recovery of the costs after the same have been taxed and default has been made in payment thereof; but a second warrant shall only be for costs, and shall not be issued before the expiration of eight days from the issue of the first warrant.

Where no
payment
on judgment
for two years
leave to
issue execu-
tion must be
obtained.

10. No warrant against goods, except by leave of the court, shall issue on a judgment or order unless some payment into court has been made thereon by the judgment debtor within twenty-four months previously, but no notice to the debtor before applying for such leave shall be necessary; and such leave shall be expressed on the warrant under the seal of the court.

Execution
not to issue
without
leave where
judgment
summons
or order of
commitment
issued and
outstanding.
Issue of
execution
letter.

10A. Where a judgment summons has been issued or an order of commitment has been made against a debtor, and is outstanding, a warrant of execution against the goods of the debtor shall not be issued in the action except by leave of the judge, and on such terms as he may impose.

10B.—(1) Where a party to an action in a court within the district of which such party does not reside or carry on business desires execution to issue in such action, he or his solicitor (if the solicitor has no office within the district) may, in any case in which the leave of the court is not required before the issue of a warrant, instead of attending at the office of the court, transmit, by prepaid post, to the registrar—

- (a) The plaint note or summons issued in the action, or a duplicate thereof;
(b) A præcipe in accordance with Rule 7 of this Order:

(c) A money order for the fees payable upon the issue of the warrant, payable to the registrar at the post office of the town or place at which the court is held :

O. XXV.
r. 10B.

(d) An envelope addressed to himself, with a penny postage stamp thereon ;

And upon receipt of the above the registrar shall issue the warrant, and forward the plaint note or summons, or duplicate, with a note thereon of the issue of the warrant and the date of issue, in the addressed envelope.

(2) For the purposes of this rule the registrar shall on receipt of a written request from the party or his solicitor, together with a stamped and addressed envelope for reply, forward to the party or his solicitor in the addressed envelope such information as he may ask for to enable him to ascertain whether execution may be issued.

(3) Provided that if a party or his solicitor desires execution to issue or requests information in more than twenty actions at any one time, the registrar may require such party or his solicitor to attend at the office of the court.

(4) For the purposes of this rule the several districts of the metropolitan courts shall be considered *inter se* as one district only.

11. Where a judgment or order is against a firm, execution may issue in manner following :

Execution
on judgment
against a
firm.

(a) Against any property of the partnership :

(b) Against any person who has admitted before the court in the proceedings in which the judgment or order was obtained that he was a partner at the time of the accruing of the cause of action, or who has been adjudged to be liable as a partner :

(c) Against any person who was individually served with the summons as a partner or a person sought to be made liable, and if there is a trial who failed to appear at the trial.

If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as a member of the firm, he may, after giving to such person two clear days' notice of his intention, apply to the court for leave so to do ; and the court may give such leave if the liability is not disputed, or, if such liability is disputed, may order that the liability of such person be tried and determined in an action to be commenced by plaint and summons in the ordinary way (a). If leave to enter a plaint under this rule is required under section seventy-four of the Act, the court may grant such leave without requiring an affidavit under Order V. Rule 13 ; and in that

**O. XXV.
r. 11.**

51 & 52 Vict.
c. 43, s. 74.

case the order shall state that leave is so granted, and a copy of the order shall be annexed to the summons and served therewith.

Except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of England and Wales when the summons was issued, unless he has been made a party to the action under Order VII. Rule 41, or has been served within England or Wales after the summons in the action was issued. (Cf. R. S. C., Ord. XLVIII. r. 8.)

As to judgment summons on judgment against a firm, see Order XXV. r. 27, and as to charging orders on partnership property for the separate debt of a partner, see Order XXV. rr. 12, 13.

It seems that, instead of applying for leave, the creditor might bring an action on the judgment (*Clark v. Cullen*, (1882) 9 Q. B. D. 355).

NOTE. (a)—Where the matter has been transferred from the High Court or the High Court has directed any issue necessary for determining the matter to be tried in the county court, see *ante*, p. 55.

Application
for charging
order on
interest of
partner.
53 & 54 Vict.
c. 39, s. 23.

12. An application by a separate judgment creditor of a partner for an order charging his interest in the partnership property and profits under section twenty-three of the Partnership Act, 1890, and for such other orders as are thereby authorised to be made, shall be made to the court on notice. Such notice shall be served in the case of a partnership other than a cost book company on the judgment debtor and on his partners, or such of them as are in England or Wales, or in the case of a cost book company on the judgment debtor and the purser of the company; and such service shall be good service on all the partners or on the cost book company, as the case may be, and all orders made on such application shall be similarly served. (Cf. R. S. C., Ord. XLVI. r. 1A.)

Redemption of Charge.—The other partners will be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase it (Partnership Act, 1890, s. 23). See note to Order XIII. r. 1.

The application by a partner should be made to the court on notice. The notice must be served on the judgment creditor and on the judgment debtor, and on such of the partners as do not concur in the application and are in England or Wales. If the partnership is a cost-book company the notice must be served on the judgment creditor and judgment debtor and on the purser of the company. All orders made on the application must be similarly served (Order XXV. r. 13).

Applications
by partners
under 53 &
54 Vict. c. 39,
s. 23.

13. An application by a partner of the judgment debtor under section twenty-three of the Partnership Act, 1890, shall be made to the court on notice. Such notice shall be served in the case of a partnership other than a cost book company on the judgment creditor and on the judgment debtor, and on such of the other partners as do not concur in the application and are in England or Wales, or in the case of a cost book company on the judgment

creditor and on the judgment debtor, and on the purser of the company; and such service shall be good service on all the partners or on the cost book company, as the case may be, and all orders made on such application shall be similarly served. (R. S. C., Ord. XLVI. r. 1B.)

O. XXV.
r. 13.

14. In the following cases, viz.:

- (1) Where any change has taken place after judgment by death, assignment or otherwise in the parties entitled to take proceedings to enforce a judgment or order, or in the parties liable to such proceedings;
- (2) Where a husband is entitled or liable to proceedings upon a judgment or order for or against a wife;
- (3) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

Application for leave to issue process on changes of parties after judgment, etc.

Forms 158, 160.

the party alleging himself to be entitled to enforce the judgment or order may apply on affidavit to the court for leave to issue the necessary process accordingly. And the court may, if satisfied that the party so applying is entitled to issue such process, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties be tried and determined in an action to be commenced by plaint and summons in the ordinary way. And in either case the court may impose such terms as to costs or otherwise as may be just.

Order thereon.

If leave to enter a plaint under this rule is required under section seventy-four of the Act, the court may grant such leave without requiring an affidavit under Order V. Rule 13; and in that case the order shall state that leave is so granted, and a copy of the order shall be annexed to the summons and served therewith.

51 & 52 Vict. c. 43, s. 74.

See Forms 158 to 161 and Form 265. Cf. R. S. C., Order XLII. r. 23.

If a defendant becomes bankrupt, and the trustee continues the defence and fails, he may be ordered to pay costs personally, even if he has not been added as defendant (*London School Board v. Wall* (C. A.), (1891) 7 T. L. R. 566).

15. Any order made under the last preceding rule *ex parte* shall be drawn up and served by post or otherwise on the persons to be affected thereby, and proceedings thereon shall not issue until six clear days at least after the service of the order.

Service of order.

16. Where, in any case mentioned in the two last preceding rules, a party alleges himself to be entitled by reason of one and the same change or other cause to enforce the judgments or orders in more actions or matters than one, or to enforce a judgment or order against more persons than one, he may make one application only for leave to issue the necessary process in all or

Joinder of several actions or persons in one application, and

O. XXV.r.16. any of such actions or matters, or against all or any of such persons, specifying in a schedule to such application all the actions or matters in respect of which such application is made, or all the persons in respect of whom such application is made; and one order only may be made on such application in respect of all or any of such actions or matters, or all or any of such persons; and in serving notice of any such order on any person affected thereby, it shall be sufficient to set forth such part only of such order as affects such person, without setting forth the rest of such order.

Indorsement
on warrant
of execution.
Form 163.

Notice to be
left with
debtor.
Form 162.

17. The registrar shall, on issuing a warrant of execution against the goods, insert in or indorse on such warrant the amount to be levied, and the fees for the execution of the warrant, distinguishing the amount adjudged to be paid, and remaining due, and the amount of the fee for issuing the warrant, and the fees for the execution thereof, and shall prepare and deliver to the bailiff with the warrant a notice according to the form in the Appendix; and the bailiff, upon levying, shall deliver such notice to the party against whom the execution has issued, or leave the same at the place where the execution is levied.

In the event of the high bailiff being himself the judgment debtor, the warrant may be issued to a bailiff specially appointed to execute it (*Bellamy v. Hoyle*, (1874) L. R. 10 Ex. 220; 44 L. J. Ex. 169).

The procedure prescribed by the above rule should be adopted in the case of an execution received under the Borough and Local Courts of Record Act, 1872 (see *ante*, p. 204).

Concurrent
warrants.

18. Warrants of execution against goods may be issued concurrently into one or more districts, provided that the costs of more than one warrant shall not be allowed against the execution debtor unless by order of the court.

Withdrawal
of execution
by execution
creditor.

18A. Where an execution creditor requests the high bailiff to withdraw from possession, then, unless such withdrawal is requested in pursuance of an arrangement made between the execution creditor and the execution debtor, and communicated to the high bailiff, that the high bailiff shall be at liberty to re-enter, the execution creditor shall be deemed to have abandoned the execution, and the high bailiff shall return the warrant as withdrawn by order of the execution creditor, and the execution creditor shall not be entitled to require the same to be re-issued; but nothing in this rule shall prejudice any right of the execution creditor to apply for a fresh warrant to be issued.

As to priority of warrants, see note, *ante*, p. 193.

Costs of
warrants.

19. Except as otherwise provided by these rules, the costs of warrants, whether executed or unexecuted or unproductive, shall be allowed against the execution debtor, unless the judge otherwise directs.

But costs of an abortive execution are not to be included for the purposes of a judgment summons or of an application for a fresh order for payment under Order XXIII. r. 14. Nor is money paid into court otherwise than under execution to be attributed to payment of such costs (see Order XXV. r. 56).

O. XXV.
r. 19
Note.
—

See Part II., "Costs and Court Fees," p. 1053.

20. No possession fee shall be payable where an execution is paid out at the time of the levy; but if the bailiff necessarily remains in possession for more than half an hour, and the execution is paid out on the day of levy, the possession fee for that day shall be charged.

Possession
fees.

Where execution is levied under several warrants, and the same goods are seized to satisfy all the warrants, only one possession fee can be charged; but if different goods are seized and appropriated to each warrant, a possession fee is chargeable under each warrant, although possession is held simultaneously under all the warrants by one person only (*In re Morgan, Ex parte Board of Trade*, (1904) 1 K. B. 68; 72 L. J. K. B. 948; see *Glasbrook v. David*, (1905) 1 K. B. 615; 74 L. J. K. B. 492, as to sheriff's right to possession money in High Court).

20A. Whenever any money is levied or paid to a bailiff under any execution or other process, the bailiff shall give a receipt for the same, and retain a carbon copy of such receipt, according to the form in the Appendix, which is hereby substituted for Form 166. [1918.]

Receipt for
money paid
to bailiff
under process
and copy.

Form 166.

21. No appraisalment shall be made until the fifth day of the bailiff's holding possession of the goods under an execution, unless the goods are of a perishable nature, or are sold at the request of the party before the expiration of four days, or are removed.

Appraise-
ment.

22. Where goods taken in execution are removed, the high bailiff shall give to the execution debtor a sufficient inventory of the goods so removed, and shall also give to the execution debtor notice in writing, signed by the high bailiff, of the time when and place where such goods will be sold. Such inventory and notice shall be given to the execution debtor personally, or sent to him by post to his place of residence, if known, or if such residence is not known, they shall be left at or sent by post addressed to the execution debtor at the place from which the goods are removed. The inventory shall be given or sent at the time of or immediately after the removal of the goods; and the notice shall be given or sent at least twenty-four hours before the time fixed for the sale.

Inventory
and notice of
sale of goods
removed
under
execution.

23. Where goods are sold in execution the high bailiff shall, on the request of the execution debtor, furnish him with a detailed account in writing of the sale, and of the application of the proceeds thereof.

Account of
sale under
execution.

O. XXV.
r. 23A.

Pay-
ment after
issue of
warrant of
execution.

51 & 52 Vict.
c. 43, s. 158.

23A.—(1) Where after the issue of a warrant of execution, but before sale, money is paid into the home court, or into any foreign court to which the warrant has been sent for execution under sect. one hundred and fifty-eight of the Act, or to the bailiff holding the warrant, the following provisions shall apply.

See *In re Miller*, (1913) 3 K. B. 1; 81 L. J. K. B. 1180.

(2) Where payment is made into the home court and the warrant is to be executed in the district of that court, the registrar shall receive the amount so paid, and shall as soon as may be after such receipt,

- (a) if he is high bailiff as well as registrar, notify the fact and amount of such payment to the bailiff holding the warrant; or
- (b) if he is not high bailiff, notify the fact and amount of such payment to the high bailiff, who shall as soon as may be after receiving such notification notify the same to the bailiff holding the warrant.

(3) Where payment is made into the home court after the warrant has been sent for execution to any foreign court, the registrar of the home court shall receive the amount so paid, and shall as soon as may be after such receipt notify the fact and amount of such payment by post to the high bailiff of the foreign court, who shall as soon as may be after receiving such notification notify the same to the bailiff holding the warrant.

(4) Where payment is made into a foreign court to which the warrant has been sent for execution, the registrar shall—

- (a) if he is high bailiff as well as registrar, receive the same in his capacity of high bailiff and as soon as may be notify the fact and amount of such payment to the bailiff holding the warrant.
- (b) if he is not high bailiff, hand the payment to the high bailiff, who shall as soon as may be notify the same to the bailiff holding the warrant.

(5) The bailiff holding the warrant, on receiving any payment or notice of any payment, shall forthwith enter in ink on the face of the warrant, at the foot or in the margin thereof the amount of such payment, and shall sign the entry; and if the amount paid is not sufficient to satisfy the amount to be levied and the costs of execution incurred before payment or notice of payment is received, the execution, unless withdrawn by the plaintiff, shall proceed only for the balance of the original amount to be levied and the costs of execution calculated on that amount, less the amount so paid.

(Amended and paragraph (4) (*supra*) added by C. C. (No. 2) Rules, 1928.)

23B. Where under a warrant of execution money is paid in part satisfaction of the execution, or in order to avoid sale, but is paid into the home court, it shall be deemed to have been received by the high bailiff of the court (whether home or foreign) in the district of which the warrant is to be executed, and the following provisions shall apply :—

**O. XXV.
r. 23B.**

Where under execution part of the money is paid into court.
4 & 5 Geo. 5,
c. 59.

- (a) Where, if the money had been received by the high bailiff, it would be his duty to pay over the same to the registrar of the court of which he is high bailiff, or to transmit it in accordance with Order XXVIII., the money paid into court shall be dealt with as if it had been so received and paid over or transmitted, and the provisions of Order II. Rule 34A, paragraphs (ii.) and (iii.), shall apply :
- (b) Where, if the money had been received by the high bailiff, it would be his duty, under subsection two of section forty-one of the Bankruptcy Act, 1914, to retain the same, the money paid into court shall be retained in court :
- (c) Where the execution creditor becomes entitled to receive the amount so retained, the money paid into court shall be dealt with as if it had been received by the high bailiff and paid over by him to the registrar of the court of which he is high bailiff or transmitted in accordance with Order XXVIII. ;
- (d) Where, if the money had been received by the high bailiff it would be his duty to pay over the same, after deducting the costs of the execution, to the official receiver or trustee in bankruptcy, the high bailiff shall pay to the official receiver or trustee the amount paid into court, after deducting such costs ; and the registrar of the court into which the payment is made shall pay or transmit to the high bailiff the amount so paid into court.

(Revised, C. C. (No. 2) Rules, 1928.)

NOTE.—As to retention of the proceeds of an execution under sect. 41 (2) of the Bankruptcy Act, 1914, see notes to that section, *post*, Part V., at p. 1760.

24.—(1) An application under section one hundred and forty-five of the Bankruptcy Act, 1883, and section twelve of the Bankruptcy Act, 1890, for an order that a sale under an execution may be made otherwise than by public auction, shall be made to the court on notice in writing according to the form in the Appendix, stating shortly the grounds of the application.

Application for private sale.
46 & 47 Vict.
c. 52, s. 145.
53 & 54 Vict.
c. 71, s. 12.
Form 170.
High bailiff to deliver list of executions to applicant.

(2) The high bailiff shall, on the demand of any applicant desirous of making such application as aforesaid, deliver to him a written list of the names and addresses of every person at

**O. XXV.
r. 24.**

Service of
notice of
application.

High bailiff's
list to be
produced.
Persons who
may appear
on applica-
tion.

Stay of pro-
ceedings on
warrant
issued with-
out leave
after ad-
ministration
order.
46 & 47 Vict.
c. 52, s. 122.
Forms 192A,
193A.

Where
warrant
issued to
foreign court.

Certificate
that ad-
ministration
order has
been made.

Form 193.
Application
of money
received
under
execution.

whose instance any warrant or writ of execution against the goods of the debtor has been lodged with him.

(3) The notice shall be served four clear days at least before the day appointed for the hearing of the application on the high bailiff and on every person named in such list as aforesaid other than the applicant.

(4) On the hearing of the application the applicant shall produce such list as aforesaid to the court.

(5) Every person upon whom the notice is served may attend the hearing and be heard in opposition to or in support of the application, and the court may on the hearing direct that all or any part of the costs may be borne by any of the persons attending or otherwise as may be just.

For text of sect. 145 of the Bankruptcy Act, 1883, and sect. 12 of the Bankruptcy Act, 1890, see *post*, Part V., p. 1757.

24A. Where after a warrant of execution has issued against the goods of a debtor the debtor files in the court out of which the warrant issued an affidavit according to the form in the Appendix, stating that an order for the administration of his estate (in these rules called an administration order) has been made under section one hundred and twenty-two of the Bankruptcy Act, 1883, and that the debt in respect of which the warrant issued has been notified to the court in which the administration order was made, and that the judgment creditor has not obtained leave to proceed from that court, annexing to such affidavit a certificate of the registrar of the court in which the administration order was made, and forthwith upon such affidavit being so filed gives notice to the judgment creditor of the filing thereof, further proceedings under the execution shall be stayed.

Where in any such case the warrant has been sent for re-issue to a foreign court, the registrar of the court in which the affidavit is filed shall forthwith give notice thereof to the registrar of the foreign court.

Administration Orders.—See *ante*, pp. 285–312.

24B. For the purposes of Rule 24A of this order, the registrar of the court in which an administration order has been made shall, upon the application of the debtor, issue to him a certificate according to the form in the Appendix.

24C. In any case coming within Rule 24A of this order, or where proceedings under an execution are stayed under section one hundred and twenty-two of the Bankruptcy Act, 1883, or under the rules made under that section, any money received under

the execution shall, when received by the registrar of the home court, be dealt with as follows :—

O. XXV.
r. 24c.

- (a) If the administration order was made in or the proceedings stayed by the home court, the money shall be dealt with as the judge of that court shall direct ; and
- (b) If the administration order was made in or the proceedings were stayed by any other court, the money shall, by such means as the Lord Chancellor with the concurrence of the Treasury shall direct, be transmitted by the registrar of the home court to the registrar of such other court, and the registrar of that court shall pay the amount so transmitted as the judge of that court shall direct.

Where in any such case the costs of the execution incurred by the creditor are not allowed out of the money received, the creditor shall be liable for such costs ; but they may be allowed as against the debtor, and may on application be added to the debt.

Costs.

(Revised, C. C. (No. 2) Rules, 1928.)

24D. In any such case as in the last preceding rule mentioned the judge may, if he thinks fit, on application by the high bailiff made in accordance with Order XXVII. Rule 1, make an order for payment by the execution creditor to the high bailiff of any fees or expenses incurred by the high bailiff which are not allowed under the last preceding rule out of the money (if any) received under the execution.

Order for
possession
fees.

JUDGMENT SUMMONS.

25.—(1) No order of commitment under the Debtors Act, 1869, shall be made unless a summons to appear and be examined on oath, hereinafter called a judgment summons, has been personally served upon the judgment debtor.

Judgment
summons to
be served
personally.
32 & 33 Vict.
c. 62.

Judgment Summons.—For a summary of the law and practice relating to judgment summonses, see under *tit.* "Debtor's Act, 1869," *ante*, pp. 266-284.

The costs of an abortive execution must not be included in a judgment summons (r. 56, *infra*).

Although personal service of the judgment summons is required, it is not necessary that the order of the court for payment shall be served personally on the judgment debtor (*Haydon v. Haydon*, (1911) 2 K. B. 191 ; 80 L. J. K. B. 672).

(2) A person requiring a judgment summons to be issued shall file a *præcipe* according to the form in the Appendix, stating the full names and address of or otherwise sufficiently identifying every person against whom it is to be issued. Where the name or address of any such person as given in the *præcipe* differs from the name or address as given in the judgment or order, both

Præcipe for
judgment
summons.
Form 176.

O. XXV. r. 25. descriptions shall be inserted in the judgment summons, and in the order of commitment (if any), as follows, viz. :—

“ C. D. , of (name and address as given in the *præcipe*), sued as A. D. , of (name and address as given in the judgment or order).”

Summons where two or more defendants.

(3) Where a judgment has been given or an order made against two or more persons, the person entitled to enforce the judgment or order may require a judgment summons to be issued against all or any one or more⁵ of the persons liable under the judgment or order.

Issue of summons against debtor in the district.

26.—(1) A judgment summons may be issued without leave by the court within the district of which the debtor against whom the summons is issued resides or carries on business or is employed.

Application for leave for judgment summons to issue out of the district.

(2) Where a debtor does not reside and neither carries on business nor is employed within the district of the court in which the judgment or order was obtained, a judgment summons shall not be issued from that court without the leave of the judge. The application for leave shall be made upon affidavit according to the form in the Appendix, and leave shall not be granted unless the judge is satisfied that the evidence afforded by such affidavit, if uncontradicted, would justify the making of an order of commitment against the debtor. If leave is granted, a copy of the affidavit shall be lodged with the registrar and annexed to the judgment summons and served therewith. The districts of the metropolitan courts shall be deemed to be one district, so far as relates to the issuing of judgment summonses, but where the court in which the judgment or order was obtained is a metropolitan court no judgment summons shall issue in respect of that judgment or order out of any other metropolitan court.

Form 177.

(Last three lines added by C. C. (No. 1) Rules, 1928.)

See notes, *ante*, p. 271.

The affidavit must strictly follow the form, and is insufficient unless it states, where a business is being carried on by the debtor, circumstances showing that the business was profitable, also whether the debtor is unmarried or a married man with children (*McIntosh v. Simpkins* (C. A.), (1901) 1 K. B. 487; 70 L. J. K. B. 268), and the debtor cannot waive the objection to the sufficiency of the affidavit (*Alderson v. Palliser* (C. A.), (1901) 2 K. B. 833; 70 L. J. K. B. 935).

No leave required if travelling expenses deposited or undertaking given to pay or tender same.

(3) Provided that no affidavit or leave under the preceding paragraph of this rule shall be required if the person requiring a judgment summons to be issued either

(a) When such summons is to be served by a bailiff, deposits with the registrar, to be paid or tendered to the judgment debtor with the summons, or

(b) When such summons is to be served otherwise than by a

bailiff, gives an undertaking in writing to pay or tender **O.XXV.r.26.**
to the judgment debtor with the summons,

a sum reasonably sufficient to cover the travelling expenses of the debtor to attend the court, the amount to be fixed by the registrar.

These expenses must include not only the expenses incident to bringing the judgment debtor to the court, but the expense also which he will have to incur in returning from the court to the place from which he is to be brought. If the registrar fails to include such expenses, the subsequent proceedings are illegal, and the court will be prohibited from proceeding in the matter (*Ward v. Nield*, (1917) 2 K. B. 882; (1918) 87 L. J. K. B. 54).

See rule 28 of this Order, para. 5.

27. Where a judgment or order is against a firm, or against a person carrying on business in any name other than his own in such other name, and the person entitled to enforce the judgment or order desires to do so by judgment summons against any person whom he alleges to be liable under the judgment or order as a partner in or the sole member of the firm, or as the person carrying on business in such other name as aforesaid, he shall file an affidavit, together with a copy thereof, according to one of the forms in the Appendix, and thereupon a judgment summons may issue according to the form in the Appendix, directed to the person alleged to be liable as aforesaid, and there shall be annexed to such judgment summons, and served therewith, a copy of the said affidavit sealed with the seal of the court.

See notes, *ante*, p. 273.

Even where one of two or more persons jointly and severally liable has, subject to suspension, been committed, the plaintiff may so proceed against the other person or persons liable on the judgment (*Rex v. Birmingham C. C. Judge*, (1902) 2 K. B. 283; 71 L. J. K. B. 881).

Provided that where such person neither resides nor carries on business within the district of the court the summons shall not be issued unless the leave of the judge is obtained in accordance with the last preceding rule, or the proviso to that rule is complied with.

If such person does not appear on the return day of the judgment summons, he shall be deemed to admit his liability as a partner in or the sole member of the firm, or as the person carrying on business in such other name as aforesaid, to pay the amount due and payable under the judgment or order. But if such person appears and denies his liability, the judge may decide the question on the evidence then before him, or may order the question to be tried and determined in an action to be commenced by plaint and summons in the ordinary way.

28.—(1) A judgment summons, not being a successive summons, shall not issue after the expiration of twenty-four months from the date on which the last payment into court, if any, under

Judgment summons on judgment against a firm, etc.
Forms 182, 183.
Form 184.

No judgment summons to be issued after a certain

**O. XXV.
r. 28.**

time from judgment, etc., unless leave obtained on affidavit in proof of means.

the judgment or order was made, or if no payment into court has been made, then from the date on which default was made, unless—

(a) the delay has been occasioned by an attempt to levy execution on the goods of the debtor; or

(b) leave of the court for the issue of the summons is obtained.

(2) An application for leave shall be made to the registrar upon affidavit stating the date of the judgment or order, the date on which the last payment, if any, was made, or on which default was made, and the debtor's place of residence and place of business or employment, and his profession or trade or employment (if any), and any facts known to the deponent showing the means which the debtor has or since the date of the judgment or order has had to pay or to have paid the debt or instalments due under the judgment or order.

(3) If the registrar is not satisfied that the evidence afforded by the affidavit would, if uncontradicted, justify the making of an order of commitment against the debtor, or if no payment has been made within six years before the date of the application, the registrar shall refuse to issue the summons and shall refer the applicant to the judge, who may make such order in the matter, and upon such terms, as to costs or otherwise, as he may think fit.

(4) If leave is granted, a copy of the affidavit shall be lodged with the registrar, and annexed to the judgment summons and served therewith.

(5) Paragraph 3 of Rule 26 of this Order shall not apply to cases in which leave for the issue of the summons is required by this rule.

Note.—Twenty-four months substituted for four months in para. (1) by County Court (No. 1) Rules, 1927.

Where judgment summons applied for at a court in which judgment was not obtained.
Form 155.

29. Where a judgment creditor desires to apply for a judgment summons to a court other than the court in which the judgment or order was obtained, he shall obtain from the registrar of the court in which the judgment or order was obtained a certified copy of the judgment or order in the action, according to the form in the Appendix, and file the same with his application. Such copy shall state the date on which the last payment into court, if any, under such judgment or order was made, or if no payment into court has been made, the date upon which default was made; and the issue of a judgment summons under this rule shall be subject to the provisions of Rule 27 or Rule 28 of this Order, as the case may be.

Where judgment summons required on judgment

30. Where a party desires to enforce by commitment in any court a judgment or order of any competent court other than a county court, he shall obtain from such other court an office copy of the judgment or order he desires so to enforce, and shall file such

office copy, together with an affidavit of the sum then due thereon, with the registrar of the court of the district in which the party, against whom the same is to be enforced resides or carries on business, or is employed, and the registrar shall thereupon issue a judgment summons. The issue of a judgment summons under this rule shall be subject to the provisions of Rule 27 of this Order in cases to which that rule applies ; but Rule 28 of this Order shall not apply to the issue of a judgment summons under this rule.

**O. XXV.
r. 30.**

of court
other than
a county
court.
Forms 180,
181.

(2) Where more persons than one are liable under the judgment or order, the office copy may be filed with the registrar of the court of the district in which any of such persons resides or carries on business or is employed ; but a judgment summons shall not be issued in that court against a person who does not reside or carry on business or who is not employed in the district, unless the leave of the judge is obtained in accordance with Rule 26 of this Order, or the proviso to that rule is complied with.

Where there
are several
defendants.

30A.—(1) Where a party to an action desires a judgment summons to be issued in such action in a court within the district of which such party does not reside or carry on business, he or his solicitor (if the solicitor has no office within the district) may, in any case in which the leave of the court or the deposit of or an undertaking to pay a sum to cover the travelling expenses of the debtor to attend the court is not required by these rules before the issue of a judgment summons, instead of attending at the office of the court, transmit, by prepaid post, to the registrar—

Issue of
judgment
summons by
letter.

- (a) The plaint note or summons issued in the action, or a duplicate thereof :
- (b) A præcipe in accordance with paragraph 2 of Rule 25 of this Order :
- (c) In any case coming within Rule 27, Rule 29, or Rule 30 of this Order, the affidavit and copy thereof, certified copy, or office copy and affidavit, required by those rules respectively :
- (d) A money order for the fees payable upon the issue of the judgment summons, payable to the registrar at the post office of the town or place at which the court is held :
- (e) An envelope addressed to himself, with a penny postage stamp thereon ;

And upon receipt of the above the registrar shall issue the judgment summons and forward in the addressed envelope—

- (i.) If the summons is to be served by a bailiff, the plaint note or summons issued in the action, or the duplicate thereof, and a note of the issue of the summons and the date of

**O. XXV.
r. 30A.**

issue, and of the day on which the summons is to be heard; or

- (ii.) If the summons is to be served in accordance with the provisions of paragraph 2 of Rule 31 of this Order, the documents mentioned in paragraph (i.), and the judgment summons and a copy thereof.

(2) For the purposes of this rule the registrar shall on receipt of a written request from the party or his solicitor, together with a stamped and addressed envelope for reply, forward to the party or his solicitor in the addressed envelope such information as he may ask for to enable him to ascertain whether a judgment summons may be issued.

(3) Provided that if a party or his solicitor desires judgment summonses to be issued or requests information in more than twenty actions at any one time, the registrar may require such party or his solicitor to attend at the office of the court.

(4) For the purposes of this rule the several districts of the metropolitan courts shall be considered *inter se* as one district only.

Issue and
service of
judgment
summons.

Forms 178,
181, 184.

31.—(1) A judgment summons shall be according to such one of the forms in the Appendix as shall be applicable to the circumstances of the case, and shall be issued not less than ten clear days and be served not less than five clear days before the day on which the judgment debtor is required to appear, except in the case provided for by the next following rule.

(2) A judgment summons may be served in accordance with the provisions of Order VII. Rule 33; and that rule shall apply to such service with the substitution of the words “on the filing of the præcipe” for the words “on the entry of the plaint under Order V. Rule 9.” If served otherwise than by a bailiff, an affidavit of service according to the form in the Appendix by the person who actually effected service must be lodged with the registrar before or on the return-day.

Form 185.

Judgment
summons
deemed to
be a sum-
mons to a
witness.

(3) A judgment summons shall be deemed to be a summons to a witness within the meaning of section one hundred and eleven of the Act; and a notice according to the form in the Appendix shall be printed at the foot of or annexed to the summons.

51 & 52 Vict.
c. 43, s. 111.

See notes to sect. 111 of the Act and to Order XVIII. r. 1.

Form 178A.

Where judg-
ment debtor
about to
remove.

32. Where the person applying for a judgment summons states to the registrar that the judgment debtor is about to remove from his residence or place of business, or is keeping out of the way to avoid service, the judgment summons may be issued and served at any time before the hearing: Provided that the court shall not act upon a summons issued under this rule in the absence of the

judgment debtor, unless at the hearing the judge is satisfied, by evidence on oath, that at the time of the application for the judgment summons such party was either about to remove from his residence or place of business, or was keeping out of the way to avoid service. **O. XXV. r. 32.**

33. Where a judgment summons has not been served in due time, a successive summons may be issued, without fee, at any time within three months from the date of the summons; but if such successive summons is not served in due time, no further successive summons shall be allowed, but a fresh summons may be issued on payment of the fee. Any successive or subsequent judgment summons may be served by such person as the court may direct. If served otherwise than by a bailiff, an affidavit of service according to the form in the Appendix by the person who actually effected service must be lodged with the registrar before the return-day. **Successive judgment summons. Form 185.**

34. The hearing of a judgment summons may, by leave of the judge, be adjourned from time to time. **Adjournment.**

35. Witnesses may be summoned to prove the means of a judgment debtor in the same manner as witnesses are summoned to give evidence upon the hearing of a plaint; and the expenses of any person examined, whether summoned or not, may, subject to these rules, be allowed. **Witnesses may be summoned to prove means.**

Where the judgment debtor does not appear at the hearing, or pays into court the amount in payment of which he has made default, expenses paid to him with the judgment summons, or with a summons to appear as a witness, may, if the judge so directs, be allowed as expenses of a witness; and where the judgment debtor appears at the hearing, expenses so paid to him may, if the judge so directs, be allowed as expenses of a witness in any case in which the costs of witnesses may be allowed under these rules. **When expenses paid to judgment debtor may be allowed.**

36. In Book H referred to in the Appendix there shall be entered the name of every witness who has been examined as to the means of the debtor; and whenever an order of commitment is made there shall also be entered in the column "order" of the said book a note or minute showing whether such order has been made on account of the past or of the present ability of the debtor to obey the order of the court. **Name of witness to be entered in Book H, and whether proof made of past or present means.**

37. Where a judgment creditor at whose instance a judgment summons is issued, or a judgment debtor summoned to appear by a judgment summons, does not reside within the district of the court in which the summons is to be heard, he may forward to the registrar of the court from which the summons is issued an affi- **Evidence by affidavit, where creditor or debtor not resident in**

O. XXV. r. 37 davit, setting forth any facts which he may wish to be before the court prior to any order being made on the summons. And the judge may, if he thinks fit, on the hearing of the judgment summons admit the affidavit as the evidence of the person by whom the same is made. Notice of this rule, according to the form in the Appendix, shall be printed at the foot of or annexed to every judgment summons issued pursuant to leave granted under Rule 26 of this Order.

district of
co r
issuing
judgment
summons.
Form 179.

Warrant of
execution to
be lodged in
court before
issue of
judgment
summons.

38. Where a party who has issued a warrant of execution against the goods of any party upon a judgment or order desires to issue a judgment summons against such party, the high bailiff of the court shall lodge the warrant of execution in court, and a judgment summons shall not issue until the warrant has been so lodged; but any such warrant, if not fully executed, may be re-issued by leave of the judge.

Where order
issued to
foreign court.

Where in any such case the warrant has been sent for re-issue to a foreign court, the high bailiff of the foreign court shall on request of the high bailiff of the home court return the warrant to him to be lodged in court.

Order for
possession
fees.

In any such case the judge, or where the warrant has been sent for re-issue to a foreign court, the judge of that court, may, if he thinks fit, on application by the high bailiff make an order for payment by the execution creditor to the high bailiff of any fees or expenses incurred prior to the recall of the warrant, on application made in accordance with Order XXVII. Rule 1, paragraph 2.

Where a judgment summons or order of commitment is outstanding, a warrant of execution may not be issued in the same action without the leave of the judge (Order XXV. r. 10A).

Minute that
certificate
of judgment
has been
given to be
made.

39. Where a certified copy of a judgment or order is obtained from a registrar for the purpose of taking proceedings thereon in any other court, the registrar shall make on the minute of the judgment or order a memorandum of such certified copy having been given, and the bailiff of the court issuing such certified copy shall lodge in court any warrant of execution against the goods or judgment summons or order of commitment which may have been issued by such court upon such judgment or order; and no such warrant, summons, or order shall be re-issued, nor shall any subsequent warrant of execution against the goods or judgment summons upon such judgment or order be issued by such court, nor shall any order be made under Order XXIII. Rule 14, in such court, unless it is shown to the satisfaction of the court that no order has been made against the person liable under such judgment or order in any other court upon such certified copy.

Restriction
on proceed-
ings in court
issuing
certificate.

40.—(1) Where a judgment summons is heard in a court other than that in which the judgment or order was obtained, a memorandum of the result of such hearing shall be sent by the registrar to the registrar of the court in which the judgment or order was obtained, and shall be entered by such last mentioned registrar on the minute of the judgment or order.

**O. XXV.
r. 40.**

Where order of commitment made or order altered by another court, proceedings to be transferred to and continued in that court.

(2) If on such hearing an order of commitment or an order altering the terms of the judgment or order is made, the proceedings shall be thereby transferred to the court in which such order is made; and all payments whether under the order of commitment or under the original judgment or order, or under the new order shall be made into, and execution or other process for enforcing either the order of commitment or the original judgment or order, or the new order, shall be issued by, the court making such order of commitment or new order.

(3) In any such case the certified copy of the judgment or order filed in the court pursuant to Rule 29 of this Order shall for the purposes of that rule and for all other purposes be deemed to be a judgment or order of the court in which the judgment summons is heard; and if the judgment creditor subsequently desires to apply for a judgment summons to another court pursuant to the last-mentioned rule, he shall obtain from the registrar of the court in which the order of commitment or new order was made a copy, certified by the registrar to be a correct copy, of the certified copy of the judgment or order filed in that court pursuant to the last-mentioned rule, and a certified copy of the order made on the hearing of the judgment summons, containing the particulars required by the said rule, according to the form in the Appendix, Form 155, and shall file the same with his application.

(4) If on such hearing no order is made, the judgment or order shall remain in the court in which it was obtained, and the certified copy thereof shall be returned to that court; and subsequent payments thereunder shall be made into, and subsequent proceedings for the enforcement thereof may be taken in, such last mentioned court.

40A. Where a judgment summons is heard in a county court on a judgment or order of any competent court other than a county court, a memorandum of the result of such hearing shall be sent by the registrar to the registrar or other proper officer of the court in which the judgment or order was obtained.

Where order of commitment or new order made in county judgment summons on judgment or order of a court other than a county court.

If on such hearing an order of commitment or an order altering the terms of the judgment or order is made, then until such order is discharged all payments, whether under the order of commitment or under the new order, shall be made into, and execution

**O. XXV.
r. 40A.**
—

or other process for enforcing either the order of commitment or the new order may be issued by, the court making the order of commitment or the new order. In any such case the office copy of the judgment or order filed in the court pursuant to Rule 30 of this Order shall be deemed to be a judgment or order of the court in which the judgment summons is heard; and if the judgment creditor subsequently desires to apply for a judgment summons to another court pursuant to Rule 29 of this Order, he shall obtain from the registrar of the court in which the order of commitment or new order was made a copy, certified by the registrar to be a correct copy, of the office copy of the judgment or order filed in that court pursuant to Rule 30 of this Order, and a certified copy of the order made on the hearing of the judgment summons, containing the particulars required by Rule 29 of this Order, according to the form in the Appendix, and shall file the same with his application.

Form 155.

Where order of commitment sent to a foreign court.

51 & 52 Vict. c. 43, s. 158.
Form 188.

41. Where an order of commitment is sent to a foreign court under the provisions of section one hundred and fifty-eight of the Act, the registrar of the foreign court shall indorse on it a notice, according to the form in the Appendix, addressed to the governor of the prison used by that court, and shall affix the seal of the court thereto.

The order is issued to the high bailiff (see sect. 158).

No commitment after bankruptcy in respect of debt provable thereunder.

42. Where upon the return day of a judgment summons the judgment debtor satisfies the judge that a receiving order has been made for the protection of his estate, or that he has been adjudicated bankrupt, and that the debt was provable in the bankruptcy, no order of commitment shall be made.

See *In re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420.

Commitment not to be enforced where receiving order made after order of commitment.
Form 192.

43. Where a judgment debtor after the making of an order of commitment against him files in the court in which the order was made an affidavit according to the form in the Appendix, stating that a receiving order has been made for the protection of his estate, or that he has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy, and forthwith upon such affidavit being so filed gives notice to the judgment creditor of the filing thereof, the order of commitment shall not be issued, and if issued and not executed it shall be recalled.

Where order issued to foreign court.

Where in any such case the order has been sent for re-issue to a foreign court, the registrar of the court in which the affidavit is filed shall forthwith give notice thereof to the registrar of the foreign court.

Discharge of judgment

44. Where a judgment debtor is arrested, he may file in the court within the district of which he is in custody, an affidavit as

mentioned in the last preceding rule, and thereupon he shall be discharged out of custody upon the certificate of the registrar of that court, who shall forthwith give notice to the judgment creditor of such discharge.

45. Where upon the return day of a judgment summons the judgment debtor satisfies the judge that an order for the administration of his estate (in these rules called an administration order) has been made under section one hundred and twenty-two of the Bankruptcy Act, 1883, and that the debt in respect of which the summons issued has been notified to the court in which the administration order was made, no order shall be made on such judgment summons except on proof that the creditor has obtained leave to proceed from the court in which the administration order was made, and in accordance with the terms, if any, imposed by that court.

See *Pearson v. Wilcock*, ante, p. 288.

45A. Where a judgment debtor after the making of an order of commitment against him files in the court in which the order was made an affidavit according to the form in the Appendix, stating that an administration order has been made, and that the debt in respect of which the order of commitment was made has been notified to the court in which the administration order was made, and that the judgment creditor has not obtained leave to proceed from that court, annexing to such affidavit a certificate of the registrar of the court in which the order was made, and forthwith upon such affidavit being so filed gives notice to the judgment creditor of the filing thereof, the order of commitment shall not be issued, and if issued and not executed it shall be recalled.

Where in any such case the order has been sent for re-issue to a foreign court, the registrar of the court in which the affidavit is filed shall forthwith give notice thereof to the registrar of the foreign court.

45B. Where a judgment debtor is arrested, he may file in the court within the district of which he is in custody an affidavit as mentioned in the last preceding rule, and thereupon he shall be discharged out of custody upon the certificate of the registrar of that court, who shall forthwith give notice to the judgment creditor of such discharge.

45C. For the purposes of the three last preceding rules the registrar of the court in which an administration order has been made shall, upon the application of the debtor, issue to him a certificate according to the form in the Appendix.

45D. In any case coming within Rule 45A or Rule 45B of this Order, or where proceedings under a judgment summons or an

O. XXV.
r. 44.

debtor on
filing affi-
davit as to
bankruptcy.
Forms 192,
194.

No commit-
ment on
judgment
summons
issued with-
out leave
after ad-
ministration
order.

46 & 47 Vict.
c. 52, s. 122.

Recall of
commitment
after
administra-
tion order.
Forms 192A,
193.

Where order
issued to
foreign
court.

Discharge of
judgment
debtor on
filing
affidavit as
to adminis-
tration order.
Forms 192B,
193A, 194.

Certificate
that ad-
ministration
order has
been made.
Form 193A.
Application
of money

**O. XXV.
r. 45d.**

received
under
judgment
summons or
commitment.

Costs.

Order on
judgment
summons.

Suspension
of order of
commitment.
Form 191A

Payments
to be made
into court.

Form, date,
duration,
and exten-
sion of order
of commit-
ment.

Forms 187,
189, 191.

order of commitment are stayed under section one hundred and twenty-two of the Bankruptcy Act, 1883, or under the rules made under that section, any money received under the judgment summons or order of commitment shall be dealt with as provided by Rule 24c of this Order with respect to money received under an execution.

Where in any such case the costs of the judgment summons or order of commitment incurred by the creditor are not allowed out of the money received, the creditor shall be liable for such costs ; but they may be allowed as against the debtor, and may on application be added to the debt.

Where the debt is not provable, such as alimony ordered to be paid by the Probate Division, on proof of means the order may still be made (*Kerr v. Kerr*, (1897) 2 Q. B. 439 ; 66 L. J. Q. B. 838).

46.—(1) On the hearing of a judgment summons the judge, if he is of opinion that an order of commitment ought not to be made, may refuse to make any order, or may make a fresh order for payment of the amount remaining due and unpaid under the judgment or order, either at a specified time, or by instalments.

(2) If an order of commitment is made, the judge may direct the execution of such order to be suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made, by instalments or otherwise ; and a note or minute of such direction shall be entered in the column " order " in Book H referred to in the Appendix. When such direction is given, notice shall be sent to the debtor according to the form in the Appendix.

(3) Subject to the provisions of Rules 48 and 49 of this Order, all payments under a fresh order or order of commitment shall be paid into court.

(4) An order of commitment shall be according to such one of the forms in the Appendix as shall be applicable to the circumstances of the case, and shall, on whatever day it may be issued from the registrar's office, bear date on the day on which the order of commitment was made, and shall, if unexecuted, remain in force for one year only from and exclusive of such date, unless renewed in manner hereinafter provided ; but the judge may at any time before or after the expiration of such year extend the time within which the order may be executed for any time not exceeding one year from the date on which it would otherwise have ceased to be in force, and so on from time to time before or after the expiration of the last period of extension. An order of extension may be made either before or after the order of commitment is issued : and the fact of an order of extension having been made

shall be indorsed on the order of commitment according to the form in the Appendix. **O. XXV. r. 46.**

As to mode of issuing and executing orders of commitment, see sect. 161 of the Act.

Form 163A.

Any fees payable on the extension of an order of commitment may be allowed as costs of that order, and if so allowed the amount and the fact of such allowance shall be entered on that order. **Fees on extension.**

47. Where a judgment or order has been given or made for payment by instalments, and an order of commitment is made in respect of the non-payment of one or more of such instalments before the whole of such instalments have become due, then, if the judge orders the execution of the order of commitment to be suspended to enable the debtor to pay the amount in respect of the non-payment of which the order is made, by instalments or otherwise, he may, if he thinks fit, order that the judgment or order for payment of instalments shall also be suspended for so long as the execution of the order of commitment is suspended, or for any less period. If the judge makes such order as last mentioned, he may at any subsequent time order that the suspension of the judgment or order for payment of instalments shall cease; and if the plaintiff withdraws or abandons the order of commitment, the suspension of the judgment or order for payment of instalments shall cease to operate on such withdrawal or abandonment. **Power to suspend order for payment of future instalments during suspension of order of commitment in respect of past instalments.**

47A.—(1) Where a party to an action has obtained an order of commitment in such action in a court within the district of which such party does not reside or carry on business, and desires such order of commitment to issue, he or his solicitor (if the solicitor has no office within the district) may, instead of attending at the office of the court, transmit, by prepaid post, to the registrar— **Issue of order of commitment by letter.**

(a) a praecipe containing the number of the plaint, and stating the full names and address of or otherwise sufficiently identifying every person against whom the order of commitment is to be issued;

(b) a money order for the fees payable upon the issue of the order of commitment payable to the registrar at the post office of the town or place at which the court is held;

(c) an envelope addressed to himself, with a penny postage stamp thereon;

and on receipt of the above the registrar shall issue the order of commitment and forward in the addressed envelope a note of the issue of the order and the date of issue.

(2) Paragraphs 2, 3, and 4 of Rule 30B of this Order shall apply to the issue of orders of commitment under this rule.

O. XXV.
r. 48.

Payment on
arrest.

48. When an order of commitment for non-payment of money is issued, the debtor may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount entered on the order as that on payment of which he is to be discharged; and on receiving such amount the bailiff shall discharge the debtor, and shall within twenty-four hours after receiving such amount pay over the same to the high bailiff of the court of which he is a bailiff.

Part pay-
ment after
issue of
order of
commitment.
51 & 52 Vict.
c. 43, s. 158.

48A.—(1) Where after the issue of an order of commitment for non-payment of money, but before the body of the debtor is delivered into the custody of the gaoler, money is paid into the court out of which the order issued, or into any foreign court to which the order has been sent for re-issue under section one hundred and fifty-eight of the Act, or to the bailiff holding the order, the following provisions shall apply.

(2) Where payment is made into the court in the district of which the order is to be executed, the registrar shall receive the amount so paid, and shall as soon as may be after such receipt,

- (a) if he is high bailiff as well as registrar, notify the fact and amount of such payment to the bailiff holding the order; or
- (b) if he is not high bailiff, notify the fact and amount of such payment to the high bailiff, who shall as soon as may be after receiving such notification notify the same to the bailiff holding the order.

(3) Where payment is made into the court out of which the order issued (in this rule referred to as "the home court") after the order has been sent for re-issue to any foreign court, the registrar of the home court shall receive the amount so paid, and shall as soon as may be after such receipt notify the fact and amount of such payment by post to the high bailiff of the foreign court, who shall as soon as may be after receiving such notification notify the same to the bailiff holding the order.

(4) The bailiff holding the order, on receiving any payment or notice of any payment, shall forthwith enter in ink on the face of the order, at the foot or in the margin thereof, the amount of such payment, and shall deduct the same from the amount indorsed on the order as that on payment of which the debtor may be discharged, and shall sign such entry, according to the form in the Appendix; and the order of commitment, unless withdrawn by the plaintiff, shall thenceforth operate as an order of commitment for non-payment of the amount remaining due after such deduction.

Form 188A.

Payment
after debtor

49.—(1) Where a prisoner has been delivered into the custody of the gaoler, the amount entered on the order of commitment as

that upon payment of which the prisoner is to be discharged may be paid into the court out of which the order of commitment issued, or into the court in the district of which the order was executed, or to the gaoler in whose custody the prisoner is. O. XXV.
r. 49.

(2) Where payment is made into the court in the district of which the order was executed, the registrar shall sign and seal a certificate thereof, and shall forward the same by post or otherwise to the gaoler in whose custody the prisoner then is, who on receipt thereof shall forthwith discharge the prisoner. lodged in
gaol.
Form 195.

(3) Where payment is made into the court out of which the order of commitment issued (in this rule referred to as "the home court") after the order has been sent for re-issue to any foreign court, the fact of such payment shall forthwith be notified by post by the registrar of the home court to the registrar of the foreign court, who shall forthwith sign and seal a certificate thereof, and forward the same by post or otherwise to the gaoler in whose custody the prisoner then is, who on receipt thereof shall forthwith discharge the prisoner. Form 195.

(4) Where payment is made to the gaoler he shall, upon payment to him of the amount entered on the order of commitment as that on payment of which the prisoner is to be discharged, together with costs sufficient to pay for transmitting such amount, transmit such amount forthwith by money order to the registrar of the court under the order of which the prisoner was committed, and he shall sign a certificate of such payment, and discharge the prisoner, and such costs of transmission shall be part of the prescribed costs. Form 195.

49A.—(1) Where, after a prisoner has been delivered into the custody of the gaoler, money is paid into the court out of which the order of commitment issued, or into the court in the district of which the order was executed, but the amount paid is less than that entered on the order of commitment as that upon payment of which the prisoner may be discharged, the following provisions shall apply. Part pay-
ment after
debtor
lodged in
gaol.

(2) Where payment is made into the court in the district of which the order was executed, the registrar shall receive the amount so paid, and shall as soon as may be after such receipt notify the fact and amount of such payment by post or otherwise to the gaoler.

(3) Where payment is made into the court out of which the order of commitment issued (in this rule referred to as "the home court") after the order has been sent for re-issue to any foreign court, the registrar of the home court shall receive the amount so paid, and shall as soon as may be after such receipt notify the fact

O. XXV.
r. 49A.

and amount of such payment by post to the registrar of the foreign court, who shall as soon as may be after receiving such notification, notify the same by post or otherwise to the gaoler.

Form 188A.

(4) The gaoler on receiving notice of any payment shall forthwith enter in ink on the face of the order, at the foot or in the margin thereof, the amount of such payment, and shall deduct the same from the amount entered on the order as that on payment of which the prisoner is to be discharged, and shall sign such entry, according to the form in the Appendix.

Form 195.

(5) Upon payment to the gaoler of the balance of the amount entered on the order of commitment as that on payment of which the prisoner is to be discharged, after deducting the amount notified to the gaoler as having been paid into court, together with costs sufficient to pay for transmitting such balance, the gaoler shall transmit such balance forthwith by money order to the registrar of the court under the order of which the prisoner was committed, and he shall sign a certificate of such payment, and discharge the prisoner, and such costs of transmission shall be part of the prescribed costs.

Discharge of
prisoner on
request of
judgment
creditor.

Form 196.

Form 197.

50. Upon the judgment creditor lodging with the registrar a request in writing, according to the form in the Appendix, that the judgment debtor, if in prison, may be discharged from custody, the registrar shall issue a certificate according to the form in the Appendix, and transmit the same by post to the gaoler in whose custody the judgment debtor is; and the gaoler shall upon receipt of such certificate forthwith discharge the prisoner.

In order to obtain a judgment debtor's discharge by payment, the above mode of proceeding must be strictly followed; for where a judgment debtor paid the debt and costs to the execution creditor, but no application was made to the court, and he was subsequently arrested by the bailiff of the court under the warrant of commitment, it was held that the arrest was legal (*Davies v. Fletcher*, (1853) 2 E. & B. 271; 22 L. J. Q. B. 429; 95 R. R. 538).

Certificate
of payment.
Form 195.

51. A certificate of payment by a prisoner shall be according to the form in the Appendix.

Costs on de-
fault of ap-
pearance of
judgment
creditor.

52. If a judgment debtor appears on the return day, but the judgment creditor fails to appear, the judge may award costs to the judgment debtor.

What costs
allowable to
solicitor on
judgment
summons.

53. No costs shall be allowed to a solicitor for attending at the hearing of a judgment summons, unless the party for whom he appears resides out of the district of the court at which the summons is heard, or unless such summons is on a judgment or order of a court other than a county court, in either of which cases the judge may, if he thinks fit, allow the costs specified in the scale

for attending in court to make or oppose an interlocutory application, or, where the amount for which the judgment summons is issued does not exceed ten pounds, a fee not exceeding five shillings. **O. XXV. r. 53.**

54. Where on the hearing of a judgment summons on a judgment or order of a county court the judge, in lieu of making an order of commitment, makes a fresh order for payment of the amount remaining due and unpaid under the judgment or order, no costs for fees or witnesses shall be allowed to the judgment creditor, unless the judge is satisfied that the debtor has had since the date of the original judgment or order the means to pay the sum in payment of which he has made default, and a minute to that effect is entered in Book H. Where no costs are to be allowed on judgment summons.

55. Where on the hearing of a judgment summons the judge, in lieu of making an order of commitment, makes a fresh order for payment of the amount remaining due and unpaid under the judgment or order, or where an order for payment by instalments is made under Order XXIII. Rule 14, there shall be included in the amount payable under such order, for the purpose of any proceedings under such order otherwise than by way of judgment summons, the amount (if any) in respect of which an order of commitment has been made, and in respect of which the debtor has been imprisoned, but so that the debtor shall not be liable to be imprisoned a second time for non-payment of such last-mentioned amount. On any subsequent judgment summons on default in payment of any instalments payable under such order, the amount (if any) in respect of which the debtor has been imprisoned before the date of the order shall be deducted on the face of the summons from the amount payable under the order; but in calculating for the purposes of any such subsequent summons the amount in payment of which the debtor has made default, the instalments payable under the order shall be considered as attributable in the first instance to the discharge of the amount payable under the order other than the amount in respect of which the debtor has been so imprisoned, and the summons may be issued for the full amount of the instalments in arrear, if such amount does not exceed the balance which remains payable under the order after deducting the amount in respect of which the debtor has been so imprisoned, or if the instalments in arrear exceed such balance, then for the amount of such balance. Provisions as to amount for which debtor has been imprisoned, where fresh order made on judgment summons or under Order XXIII. r. 14. and as to subsequent judgment summons under such order. Form 178.

Where the judgment or order is for the payment of a sum not exceeding 20*l.*, exclusive of costs, by instalments or otherwise, and the judge is satisfied that the person liable is unable to pay at the time or by the instalments ordered, he may, upon the application of the person liable, made upon notice

O. XXV. r. 55
Notes.

to the person entitled to enforce the judgment or order, two days at least before the hearing, order the amount due and unpaid to be paid by instalments, or, if already payable by instalments, by the like or smaller instalments; the order may be varied from time to time. The judge may also, on the application of the person entitled to enforce the judgment or order made on the like notice to the person liable, order the amount to be paid in one sum or by larger instalments than those previously ordered, and may vary his order. An order made under this rule is entered in the minute book and prepared and served in accordance with Order XXIII. r. 7, and has the same effect as a fresh order for payment made on the hearing of a judgment summons (see Order XXIII. r. 15).

If the order or judgment be for payment by instalments, a power of committal arises on default of payment for each instalment (*Evans v. Wills*, (1876) 1 C. P. D. 229; 45 L. J. C. P. 420; and *Horsnail v. Bruce*, (1873) L. R. 8 C. P. 378; 42 L. J. C. P. 140).

If the creditor waits, however, until after the date for payment of all the instalments, the debtor can then doubtless be committed for one term only. If the order of commitment has never been executed, and by reason of lapse of time the order is inoperative, it seems that a fresh commitment may be made (*R. v. Stonor* (1), (1888) 57 L. J. Q. B. 510).

Costs of
 abortive
 execution
 not to be
 included in
 judgment
 summons or
 fresh order
 under Order
 XXIII. r. 14.

56. Costs incurred in endeavouring to enforce a judgment or order by way of execution against the goods, and not recovered under such execution, shall not be included in the amount due under such judgment or order for the purposes of a judgment summons, or of an application for a fresh order for payment under Order XXIII. Rule 14, nor shall money paid into court otherwise than under execution against the goods be attributed to payment of such costs.

WARRANT OF ATTACHMENT.

Orders
 enforceable
 by attach-
 ment.
 15 & 16 Geo. 5,
 c. 49, s. 202.
 Form 349.

57. Orders in the nature of an injunction, and all orders interlocutory or otherwise, within the competence of the court, which, if the same were made in an action or matter pending in the High Court, could in such court be enforced by attachment of the person or committal, may be enforced by order of the judge by warrant of attachment, which shall be according to the form in the Appendix.

See notes, *ante*, p. 171.

Indorse-
 ment and
 service of
 order.
 Form 346.

58. Before any application is made for the issue of a warrant of attachment, a sealed copy of the order sought to be so enforced, indorsed with a notice in the form in the Appendix, shall be served upon the person to be bound thereby. The copy so indorsed shall be issued by the registrar for service, on the application of the party entitled to the benefit of the order. By leave of the registrar it may be issued to the applicant or his solicitor, and served by any person by whom a default summons may be served under Order VII. Rule 33, but in default of such leave it shall be issued to and served by a bailiff. Service shall in all cases be personal, unless the judge for good cause makes an order for substituted service pursuant to Order VII. Rule 40.

Even after such service, the attachment can be obtained by express order of the court only (*Abud v. Riches* (M.R.), (1870) 2 Ch. D. 528; 45 L. J. Ch. 649).

O. XXV. r. 53
Note.

59. If the person bound by the order fails to obey it, the registrar, on the application of the party entitled to the benefit of the order, shall, not less than three days after service of the copy indorsed as provided by the preceding rule, issue for service a notice under the seal of the court requiring the person who has failed to obey the order to attend the court on a day and at an hour to be named in such notice, to show cause why he should not be committed for his contempt in neglecting to obey such order. The notice shall be issued for service and served in the same manner and under the same conditions as the indorsed copy mentioned in the last preceding rule. By leave of the judge the notice may be issued and served at an earlier period than as above prescribed.

Issue and service of notice of attachment on failure to obey order after service of copy thereof.
Form 347.

60. On the day named in the notice mentioned in the last preceding rule, the judge, on proof of service of the copy order duly indorsed as provided by Rule 58, and of the above notice as provided by the last preceding rule of this Order, and of the disobedience of the person in default, may order a warrant of attachment to issue, either unconditionally or on such terms as may be just, and may make such order as to costs as he may think fit. Provided that if the party in default appears proof of service of the copy order and notice shall not be necessary, unless the judge otherwise orders.

Order of judge for attachment.
Forms 348, 349.

The order must set out the particular ground of committal, in order that the person committed may know exactly what he ought to do to purge his contempt (*R. v. Lambeth C. C.* (2), (1887) 36 W. R. 475).

The warrant authorises the high bailiff to take the body of the person in default, and all constables and peace officers in their jurisdiction must aid in its execution, and the governor of the prison must receive and keep such prisoner until duly discharged (sect. 161 of the Act). The officer charged with the execution of a warrant of attachment for contempt may break open the outer door of the house in order to execute it (*Harvey v. Harvey*, (1884) 26 Ch. D. 644).

61. The order of the judge authorising the issue of the warrant shall be drawn up and a sealed copy thereof shall be served on the person in default either before or at the time of the execution of the warrant, unless the judge otherwise orders.

Order to be drawn up and copy served.

62. Any person in custody under any order (other than an order under the Debtors Act, 1869), in which it is directed that the application for his discharge shall be made to the judge, may make such application at the court, or by leave of the judge at any place which he may appoint, on filing an affidavit showing that he has cleared or is desirous of clearing his contempt, and giving

Discharge of person in custody by judge.
Form 350.

O.XXV.r.62. to the party at whose instance he was committed notice in writing of his intention so to apply, with a copy of such affidavit, two clear days at least before making the application, and such discharge, if granted, shall be given according to the form in the Appendix.

Form 351.

On the return, the judge or registrar, as the case may be, can now, by virtue of the Debtors Act, 1878, s. 1, in case of failure to purge the contempt by paying money, inquire into the case, and exercise a judicial discretion in deciding whether or not the prisoner should be kept in custody. This was not the case before the Act just cited (*Ransom v. Boyd*, (1877) W. N. 236).

In other cases of contempt not purged, the discharge cannot generally be granted. An appeal would possibly lie from the registrar to the judge where the order directs that the application for discharge be made to the registrar, which it is thought should only be done where the judge cannot hear the application himself. If the judge declined to hear the application, an order in the nature of a mandamus would lie; but if the case were decided on the merits and the discharge refused, there would appear to be no remedy except perhaps by *habeas corpus* from the High Court.

Discharge of person in custody by registrar.

Form 350.

Form 351.

63. Any person in custody under any order (other than an order under the Debtors Act, 1869), in which it is not directed that the application for his discharge shall be made to the judge, may apply to the registrar to be discharged, on filing an affidavit showing that he has cleared or is desirous of clearing his contempt, and giving to the party at whose instance he was committed notice in writing of his intention so to apply, with a copy of such affidavit, two clear days at least before making the application; and such discharge, if granted, shall be given according to the form in the Appendix.

If application to the judge was directed, it must be made accordingly, the same practice being followed. The judge may hear the application at any place which he may appoint (Order XXV. r. 62).

WARRANT OF POSSESSION.

Recovery of land or possession to be enforced by warrant of possession. Forms 251, 263, 264, 265. Execution on judgment in action of ejectment.

64. A judgment or order for the recovery or for the delivery of the possession of land, or for the recovery of possession of a tenement, whether made in an action of ejectment or in any other action or matter, may be enforced by warrant of possession, which shall be according to such of the forms in the Appendix as shall be applicable to the case.

65. Where in an action of ejectment judgment is given for the plaintiff, execution may issue upon the day named in the judgment; and if no day is named, then it may issue after the expiration of fourteen clear days from the day on which judgment is given.

Separate warrants for possession and costs on judgment in ejectment.

66. Where in an action of ejectment under section fifty-nine of the principal Act or in an action for the recovery of possession under section one hundred and thirty-eight or section one hundred and thirty-nine of the same Act judgment is given for the recovery of possession (with or without rent or mesne profits) and costs,

there may be either one warrant or separate warrants of execution **O. XXV.r. 66.** for recovery of possession, for rent and mesne profits and for costs, at the election of the plaintiff.

67. Where in an action of ejectment judgment is given for the defendants or any of them with costs, execution may issue for the costs on the day named in the judgment; and if no day is named, then at the expiration of fourteen clear days from the day on which judgment is given. Execution for costs against plaintiff in action of ejectment.

68. When an order is made for the recovery or for the delivery of the possession of land to any person (other than an order in an action for the recovery of possession of a tenement under section one hundred and thirty-eight or section one hundred and thirty-nine of the Act), the warrant of possession shall not be issued by the registrar without evidence by affidavit of service of the order and disobedience thereto. (Cf. R. S. C., Ord. XLVII. r. 2.) Warrant for recovery of land not to issue till service of and disobedience to order proved.

WARRANT OF DELIVERY.

69. Where a judgment or order is for the recovery of any property other than land or money, the court may, upon the application of the plaintiff, order in default of delivery that a warrant shall issue for the delivery of the property, without giving the defendant the option of retaining the same upon payment of the value assessed, if any, and that if the property cannot be found, and unless the court otherwise orders, the bailiff shall distrain the defendant by all his lands and chattels within the district of the court of which he is bailiff, till the defendant delivers the property; or, at the option of the plaintiff, that the bailiff shall cause to be made of the defendant's goods the assessed value, if any, of the property. (R. S. C., Ord. XLVIII. r. 1.) Execution for delivery of property other than land or money.

See *Bryant v. Herbert*, (1877) 3 C. P. D. 189; 47 L. J. C. P. 354; (C. A.), 389; 47 L. J. C. P. 760; *Corbett v. Lewin*, (1884) W. N. 62.

An attachment may be granted where the defendant wilfully refuses to comply with the judgment, and this, notwithstanding that the bailiff, on failing to find the chattel, has abstained from distraining under the warrant; the value of the chattel need not be assessed as a condition precedent to the making by the county court judge of the order for delivery (*Hymas v. Ogden* (C. A.), (1905) 1 K. B. 246; 74 L. J. K. B. 101).

The County Court has jurisdiction under this rule to order the specific delivery of a chattel in an action of detinue, notwithstanding that the judgment gave defendant the option of returning the chattel, or paying the value at which it was assessed, if he has not satisfied the judgment in either alternative (see County Court Forms 293 and 295); *Bailey v. Gill*, (1919) 1 K. B. 41; 88 L. J. K. B. 591.

70. Warrants of delivery shall be according to the forms in the Appendix; and when a warrant of delivery is issued, the plaintiff shall, either by the same or a separate warrant of execution, be Warrants of delivery.
Forms 293, 294, 295, 297.

O. XXV. r. 70. entitled to have made of the defendant's goods the damages and costs awarded.

MISCELLANEOUS PROVISIONS.

Examination
of debtor
when judg-
ment, etc.,
for recovery
of money.

71.—(1) Where a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court on notice in accordance with the rules as to interlocutory applications for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before the court, as the court shall appoint; and the court may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents. (R. S. C., Ord. XLII. r. 32.)

By the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 60, power was conferred on the superior courts to order the examination of a judgment debtor as to debts owing to him for the purpose of attachment of such debts to answer the judgment, and the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), amplifies this power. This procedure was extended to county courts by orders in council. The same procedure is now expressly provided by the rule *supra*.

The order may be made for the examination of a married woman as to her separate estate (*Aylesford v. G. W. Rail. Co.*, (1892) 2 Q. B. 626). See sub-s. 4.

The words "any other person" in the above rule do not extend the rule to persons other than the debtor and past and present officers of a corporation (*Hood-Barrs v. Heriot*, (1896) 2 Q. B. 338).

Form 346.

(2) Where an order is made under this rule a sealed copy of the order, indorsed with a notice in the form in the Appendix, shall be served upon the person to be bound thereby. The copy so indorsed shall be issued by the registrar for service, on the application of the party entitled to the benefit of the order. By leave of the registrar it may be issued to the applicant or his solicitor, and served by any person by whom a default summons may be served under Order VII. Rule 33, but in default of such leave it shall be issued to and served by a bailiff. Service shall in all cases be personal, unless the judge for good cause makes an order for substituted service pursuant to Order VII. Rule 40.

(3) Any person wilfully disobeying an order for attendance and examination or the production of any books or documents under this rule, to whom payment or a tender of payment shall have been made of a sum reasonably sufficient to cover travelling expenses, not exceeding the scale of allowances for the travelling expenses of witnesses prescribed by these rules, shall be deemed guilty of contempt of court, and may be dealt with accordingly.

Following *Rendell v. Grundy*, (1895) 1 Q. B. 16; 64 L. J. Q. B. 135.

(4) In this rule the expression "debtor liable under such judgment or order" includes a married woman against whom judgment has been obtained in respect of her separate estate. **O. XXV. r. 71.**

(5) Where the debtor or other person for whose attendance and examination an order is made does not reside or carry on business within the district of the court, the court may make an order for the attendance and examination of such debtor or other person before the registrar of any court within the district of which such debtor or other person resides or carries on business, at such time and place as such last-mentioned registrar shall appoint. **Examination before registrar of court in district in which debtor resides.**

(6) In any such case the sealed copy of the order for attendance and examination to be served upon the person to be bound thereby shall be sent by the registrar of the court in which the order is made to the registrar before whom the examination is to take place, and such last-mentioned registrar shall insert therein a notice of the time and place appointed for the examination, and shall issue the copy for service in accordance with paragraph 2 of this rule.

(7) Rules 25 to 30 of Order XVIII. shall, with the necessary modifications, apply to examinations under this rule; and in the application of those rules to cases in which the examination is to be held before the registrar of another court the word "examiner" shall mean the registrar of that court, and the word "registrar" shall mean the registrar of the court in which the order for examination is made. **Application of Order XVIII., Rules 25 to 30.**

72. The costs of any application under Rules 5 and 71 of this Order, or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the court, and paragraphs 4 to 6 of Order XII. Rule 11, shall apply to such costs. **Costs of applications under Rules 5 and 71.**
(R. S. C., Order XLII. r. 34.)

73. Impounded documents while in the custody of the court are not to be parted with; and are not to be inspected, except on a written order signed by the judge. Such documents shall not be delivered out of the custody of the court except upon an order made on application to the judge, or upon an order of the High Court. Provided that impounded documents in the custody of the court shall, upon the request in writing of the Law Officers of the Crown, or either of them, or of the Director of Public Prosecutions representing the Crown, be given into the custody of such Law Officers, or of the Director of Public Prosecutions. **Impounded documents.**
(R. S. C., Order XLII. r. 33A.)

74.—(1) An application to the judge to suspend or stay any judgment, order, or execution, or to order the discharge of any **Application to judge to**

O. XXV. r. 74. debtor confined in prison by order of a court, under section one hundred and fifty-three of the Act, shall be made in accordance with the rules as to interlocutory applications.

suspend judgment, etc.

51 & 52 Vict. See Order XII., r. 11.

c. 43, s. 153. Sect. 23 of the C. C. Act, 1919, has now been substituted for sect. 153 of the principal Act, see *ante*, p. 208.

Application to registrar pending application to judge.

(2) When any person desires to apply to the judge under the said section to suspend or stay any judgment, order, or execution, he may in the absence of the judge apply to the registrar who may in his discretion, and on such terms as he shall think fit, suspend or stay such judgment, order, or execution until application can be made to the judge.

ORDER XXVI.

ATTACHMENT OF DEBTS.

Rule 1.

Proceedings against garnishee.

Form 198.

51 & 52 Vict.
c. 43, s. 74.

Form 199.

Where debt sought to be attached

1.—(1) Any person who has obtained a judgment or order for the recovery or payment of money may, either before or after any oral examination of the debtor liable under such judgment or order, upon lodging with the registrar of the court in which the judgment or order was given or made an affidavit by himself or his solicitor stating that judgment has been recovered or an order made, and that it is still unsatisfied, and to what amount, and that any other person (hereinafter called the garnishee) is indebted to such debtor, and is in respect of such debt within the jurisdiction of the court, and could be or has been sued therein with or without leave under section seventy-four of the Act or under section eighty-four, enter a plaint to obtain payment to him of the amount of the debt due to the said debtor from the garnishee, or so much thereof as may be sufficient to satisfy the said judgment or order, together with the costs of the garnishee proceedings; and thereupon a summons in the form in the Appendix, calling upon the garnishee to show cause why he should not pay to the person who has obtained such judgment or order (hereinafter called the judgment creditor) the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid, shall be issued by the registrar; and the name and address of the person entering the plaint, or of his solicitor, shall be entered on the summons. In this rule the expression "debtor" includes a married woman against whom judgment has been obtained in respect of her separate estate.

(2) For the purposes of this rule the garnishee shall be deemed to be within the jurisdiction of the court in respect of the debt due from him to the debtor, or so much thereof as may be sufficient

to satisfy the judgment or order, together with the costs of the garnishee proceedings, notwithstanding the fact that the debt due from him to the debtor, or the amount thereof required to satisfy the judgment or order and the costs of the proceedings, exceeds the amount for which an action can be brought in the county court, in any case in which he could be sued in the court with or without leave under section seventy-four of the Act or section eighty-four in respect of such debt, or so much thereof as aforesaid, if it did not exceed that amount.

O. XXVI. r. 1.

exceeds the amount for which an action could be brought.

NOTE.—This sub-section was added by the rules of 1917. It makes debts attachable irrespective of the amount being within the jurisdiction of the county court, if, assuming the debt had been a sum within the jurisdiction of the court, the garnishee could have been sued for it, with or without leave under sect. 74 of the Act.

A debt is not “unsatisfied” within the meaning of the rules until the time has elapsed within which it ought to be paid; therefore where judgment was recovered on September 20th, but the judgment debtor had until October 13th to pay the amount into court, it was held that a garnishee summons issued on September 29th was wrongly issued (*White, Son and Pill v. Stennings* (C. A.), 1911) 2 K. B. 418; 80 L. J. K. B. 499).

The affidavit will be sufficient if it states on information and belief that the garnishee is indebted (*Vinall v. De Pass*, (1892) A. C. 90; 61 L. J. Q. B. 507).

Under the County Courts Act, 1919, sect. 3, where an application is made to the High Court for the attachment of any debt, to answer a judgment or order of the High Court, and the debt sought to be attached does not exceed 100*l.*, the court or judge may either (a) transfer the matter to a convenient county court, or (b) direct that any issue necessary for determining the matter be tried in such county court. The procedure or transfer is regulated by sect. 4 (1) of the Act and Order XXXIII. rr. 1—3. If an issue only is directed the procedure is regulated by sect. 4 (2) of the Act and Order XXXIII. rr. 4A, 4B, and 4C.

After the matter or issue is transferred it is dealt with as a county court matter and the various rules of this order (Order XXVI.) apply.

If an issue only is directed the county court judge who tries it certifies the result of the trial and sends his certificate to the High Court, with the documents, and any report he may think fit to make as to costs or otherwise. Order XXXIII. r. 4c.

2. Where the garnishee is not in respect of such debt within the jurisdiction of the court in which the judgment or order was obtained, the judgment creditor, upon lodging with the registrar of the court in the district of which the garnishee resides or carries on business a certificate of the judgment or order, and also an affidavit similar to that prescribed by the last preceding rule, may enter a plaint against the garnishee in such last-mentioned court; and thereupon a summons shall be issued and all proceedings shall be had and taken thereon as if the judgment or order had been obtained in that court.

When garnishee not within jurisdiction.

Form 155.

Form 198.

Form 199.

O. XXVI. r. 3. 3. The summons shall be personally served on the garnishee, by any person by whom a default summons may be served under Order VII. Rule 33, or on the solicitor of the garnishee in accordance with Order VII. Rule 12; and when so served it shall bind in the hands of the garnishee all debts due, owing, or accruing from him to the debtor liable under the judgment or order.

Service and
effect of
garnishee
summons.

Examination of Debtor.—A creditor who has obtained a judgment or order for payment of money may apply to the court for an order that the judgment debtor, or in case of a corporation, any officer thereof, be orally examined before the court as to any and what debts are owing to the debtor, and the court may make an order for the attendance and examination of the judgment debtor, or of any other person, and for the production of any books or documents (Order XXV. r. 71 (1)). The assignee of a judgment debt may obtain an attachment (*Goodman v. Robinson*, (1887) 18 Q. B. D. 332; 56 L. J. Q. B. 392).

A sealed copy of the order for attendance and examination, indorsed with a notice (Form 346) must be served upon the person to be bound by it, the copy so indorsed being issued by the registrar for service on the application of the party entitled to the benefit of the order. By leave of the registrar it may be issued to the applicant or his solicitor, and served by any person by whom a default summons may be served under Order VII. r. 33, but in default of leave, it must be issued to and served by a bailiff. The service must in all cases be personal, unless the judge for good cause makes an order for substituted service pursuant to Order VII. r. 40 (Order XXV. r. 71 (2)). A person wilfully disobeying such an order, to whom payment or tender of payment has been made of a sum reasonably sufficient to cover travelling expenses (not exceeding the scale of allowances for travelling expenses of witnesses under the rules) will be deemed guilty of contempt of court, and may be dealt with accordingly (Order XXV. r. 71 (3)). This rule applies to a married woman against whom judgment has been obtained in respect of her separate estate (Order XXV. r. 71 (4)).

Costs of any such application are in the discretion of the court, and the provisions of Order XII. r. 11 (4), (6), apply to them (Order XXV. r. 72).

Garnishee Proceedings.—The jurisdiction of the county court in proceedings for attachment of debts is derived from the Common Law Procedure Acts, 1854 and 1860. By sect. 105 of the Act of 1854 it is provided that an Order in Council may direct that all or any part of the Act shall apply to any court or courts of record in England and Wales, and by an Order in Council of November 18th, 1867, the powers given by sects. 60—67 of that Act were made exerciseable by judges of county courts. Under a like provision in the Act of 1860, an Order in Council of May 18th, 1870, extended the provisions of sects. 28—31 of that Act to those courts. The respective sections of the Acts of 1854 and 1860 have not been repealed so far as regards their application to county courts, but are preserved by sect. 7 of the Statute Law Revision Act, 1883, and sect. 209 of the Supreme Court of Judicature (Consolidation) Act, 1925. See generally as to attachment of debts the notes to R. S. C., Order XLV., in Annual Practice.

Plaint.—Any person who has obtained a judgment or order for the recovery or payment of money may either before or after any such oral examination as above mentioned, upon lodging with the registrar of the court in which the judgment or order was given or made an affidavit by himself or his solicitor, stating that the judgment or order has been obtained and is unsatisfied and to what amount, and that another person (called the garnishee) is indebted to the debtor (which expression includes a married woman against whom judgment has been obtained in respect of her separate estate), and is in respect of such debt within the jurisdiction of the court, and could be or has been sued therein, either with or without

leave, under section seventy-four of the Act or section eighty-four (Form 198), enter a plaint for the amount of the debt due to the debtor from the garnishee, or so much thereof as may be sufficient to satisfy the judgment or order together with the costs of the garnishee proceedings (Order XXVI. r. 1). But a debt is not "unsatisfied" within the meaning of the rules until the time has elapsed within which it ought to be paid; therefore where judgment was recovered on September 20th, but the judgment debtor had until October 13th to pay the amount into court, it was held that a garnishee summons issued on September 29th was wrongly issued (*White, Son & Pill v. Stennings* (C. A.), (1911) 2 K. B. 418; 80 L. J. K. B. 499). The affidavit will be sufficient if it states on information and belief that the garnishee is indebted (*Vinall v. De Pass*, (1892) A. C. 90; 61 L. J. Q. B. 507).

Where the garnishee is not in respect of such debt within the jurisdiction of the court, the person who has obtained such judgment or order, upon lodging a certificate (Form 155) of the judgment or order and an affidavit similar to that above mentioned with the registrar of the court in the district of which the garnishee resides or carries on business, may enter a plaint there (Order XXVI. r. 2).

It is not necessary that the debt should be for a sum within the county court jurisdiction if the garnishee himself is within the jurisdiction of the court (Order XXVI. r. 1 (2)).

Summons and Service.—A summons then issues, calling upon the garnishee to show cause why he should not pay to such person the debt due to the debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings; the name and address of the person entering the plaint, or of his solicitor, must be entered on the summons (Order XXVI. rr. 1, 2; Form 199).

The summons must be personally served on the garnishee by any person by whom a default summons may be served (Order VII. r. 33), or on the garnishee's solicitor (Order VII. r. 12), and when so served it will bind in his hands all debts due, owing, or accruing from him to the debtor liable under the judgment or order (Order XXVI. r. 3). Notice must be given to the judgment debtor (*post*, r. 41B; Form 199A). Where the garnishee summons has been served otherwise than by a bailiff, an affidavit of service must be made and sent to the registrar of the court out of which the summons issues (*post*, r. 4A; Form 37).

Where the garnishee is a firm or corporation, the summons need not be served personally, but in the same way as an ordinary summons (Order XXVI. r. 4).

Payment into Court by Garnishee.—The garnishee may at any time before the return-day pay into court the amount admitted by him to be due, less the costs (if actually incurred) allowed by the scales; if the amount, after deduction of costs, is more than sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied together with the fees and solicitor's costs indorsed on the garnishee summons, he need only pay into court a sum sufficient to satisfy such amount, fees, and costs (Order XXVI. r. 5 (1)). The registrar will send notice of the payment into court to the person who obtained the order, and if the latter elects to accept the money in satisfaction of his claim against the garnishee, he must send notice of acceptance to the registrar and the garnishee, whereupon all further proceedings against the garnishee will abate, except as provided by Order XXVI., and the person who obtained the judgment or order will not be liable to the garnishee for any costs incurred after the receipt of the notice (Order XXVI. r. 5 (2), (3), (4); Forms 73, 74, 76).

If the garnishee pays into court five clear days before the return-day, he is not liable for any further costs incurred by the person who obtained the judgment or order; but if he does so less than five clear days before the return-day, the court has a discretion to order him to pay such fees and costs,

O. XXVI. r. 3
Notes.

O. XXVI. r 3 beyond those paid into court by him, as the person who obtained the judgment or order has properly incurred for work done before receipt of the notice of payment into court and in attending the court to obtain the order, but no hearing fee will be charged. Notice of intention to apply for such costs must be given in the notice of acceptance; but where the time of payment into court does not permit of notice of acceptance being given, costs may be applied for without giving such notice (Order XXVI. r. 5 (5); Forms 76, 77). If notice of acceptance is not given, the money may still be accepted at any time before the case is called on and opened, subject to payment of costs reasonably incurred by the garnishee since the payment into court and allowed by the court (Order XXVI. r. 5 (6)). In default of acceptance, the proceedings against the garnishee may proceed (Order XXVI. r. 5 (7)).

Notes.

Payment out of Court.]—Money paid into court, and accepted by the person who obtained the judgment or order, may be paid out to him under the following conditions (Order XXVI. r. 6 (1)) :—The court must first be satisfied that the person who obtained the judgment or order has not already been paid from any other source, and has not obtained an order for payment under any other garnishee proceedings; if he has received payment or obtained an order for payment of any part, only so much will be paid out as will make up the full amount payable under the judgment or order and any fees or costs allowed, the balance being dealt with under the direction of the court (Order XXVI. r. 6 (2) (a)). Before payment out, the court may send to the debtor notice of the issue of the garnishee summons (together with a copy of the summons) and of the payment into court, together with a notice informing him that the money will be paid out unless he appears and shows cause to the contrary (Order XXVI. r. 6 (2) (b); Form 200). The notice may be delivered or sent by post to the debtor's usual residence or place of business; the debtor may appear and show cause, and the court may thereupon make such order as to the money paid into court and as to costs as may be just (Order XXVI. r. 6 (2) (c)). If it appears, upon the suggestion of the debtor or otherwise, that the money paid into court belongs to, or is claimed by, a third person, or that any third person has, or claims to have, a lien or charge on it, the court may determine the question under Order XXVI. r. 10 (Order XXVI. r. 6 (2) (d)). No hearing fee is payable on an application for payment out, unless notice is directed to be given under Rule 6, and the debtor to whom it is given appears and shows cause, or unless it appears to the court that the money belongs to, or is claimed by, a third person, or that a lien or charge is claimed upon it, and the court proceeds in accordance with Order XXVI. r. 10; in those cases a hearing fee is payable on the amount paid into court (Order XXVI. r. (6) (2) (e)).

Return-Day.]—Upon the return-day, if no amount is paid into court, or if the amount paid into court is not accepted, and the garnishee appears and disputes his liability, the judge will determine as to the liability of the garnishee to pay any sum or further sum on account of the debt claimed, and as to the party by whom the costs of the garnishee proceedings must be paid, and make order accordingly (Order XXVI. r. 8; Form 201), or he may, instead of giving judgment, order that any issue or question necessary for determining his liability to pay any sum or further sum be tried or determined in any manner in which any issue or question in an action may be tried or determined. The garnishee must, besides showing that he disputes the particular debt alleged, show that he owes no debt whatever to the judgment debtor (*Vinall v. De Pass*, (1892) A. C. 90; 61 L. J. Q. B. 507).

If the garnishee does not pay into court the money admitted by him to be due, or so much as is sufficient to satisfy the amount due in respect of the judgment or order, with fees and solicitor's costs, and does not dispute the debt, or if he does not appear on the return-day, the judge may give judgment for the person who obtained the judgment or order, and order execution to issue (Order XXVI. r. 7; Form 201).

Costs.]—The costs of any application for attachment of debts and of any proceedings arising from or incidental thereto are in the discretion of the court. Costs allowed to the judgment creditor, and not ordered to be paid by the garnishee personally, are (unless otherwise directed) to be taxed by the registrar and retained by the judgment creditor out of the money recovered by him on the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him against the debtor (Order XXVI. r. 12).

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Notes

Entries by Registrar.]—The registrar is to make a memorandum in the books of the amounts paid or ordered to be paid by the garnishee (exclusive of costs ordered to be paid by him personally), and of the costs allowed to the judgment creditor and allowed to be retained by him out of the money required (Order XXVI. r. 13).

Foreign Court.]—Where the court in which the garnishee is sued is not the court in which the judgment or order upon which he is garnished was given, the registrar of such court must forthwith send a certificate (Form 155) of the order of his court to the court in which such judgment was given, and must also from time to time send notice of any payment made on, before, or after the return-day (Order XXVI. r. 9).

Enforcing Order.]—The order for payment may be enforced in the same manner as a judgment for debt or damages (Order XXV. r. 1).

Payment.]—Payment made by, or execution (Form 202) levied upon the garnishee will be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied (inclusive of any amount allowed to the garnishee for costs, and which he is by the rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceeding may be set aside, or the judgment or order reversed (Order XXVI. r. 11; *Randall v. Lithgow*, (1884) 12 Q. B. D. 525; 53 L. J. Q. B. 518).

It seems that the garnishee is not protected if he pays the debt to the judgment creditor before an order upon him has been obtained (*Turner v. Jones*, (1857) 1 H. & N. 878; 26 L. J. Q. B. 262; 108 R. R. 872). A judgment debtor, who had been served with a garnishee summons, paid, before the return-day, the amount of the judgment debt sought to be attached to the sheriff, under an execution levied on his goods in respect of such debt; it was held that he was justified in so doing (*Turnbull v. Robertson*, (1878) 47 L. J. C. P. 294).

The judge may, in proceedings under the above-mentioned provisions, refuse to interfere where, from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious (Order XXVI. r. 14).

Whenever it is suggested by the garnishee or by the debtor liable under the judgment or order, or is otherwise made to appear to the judge, that the debt sought to be attached belongs to, or is claimed by, some third person, or that any third person has, or claims to have, a lien or charge upon it, the judge may order such third person to appear and state the nature and particulars of his claim upon such debt, and after hearing the allegations of such third person and of any other person whom by the same or any subsequent order the judge may order to appear, or in case of such person not appearing, the judge may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between the third person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as the judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reasonable (Order XXVI. r. 10).

O. XXVI. r. 4. 4. Where the garnishee is a firm or a person carrying on business in a name or style other than his own, or a company or other corporation, the summons may be served as provided by Order VII. with respect to the service of an ordinary summons.

Where service effected otherwise than by bailiff.
Form 37.

4A. Where a garnishee summons has been served otherwise than by a bailiff, a copy of the summons, with the date and place of service indorsed thereon, and an affidavit of service according to the form in the Appendix, shall within three clear days after the day of service, or such further time as may be allowed by the registrar of the court issuing the summons, be delivered or transmitted to such registrar by the judgment creditor; and the costs of such affidavit may be included in the costs entered on the summons.

Notice to judgment debtor.
Form 199A.

4B.—(1) On the return of the copy of the garnishee summons, if served by a bailiff, or the filing of an affidavit of service of the garnishee summons, if served otherwise than by a bailiff, the registrar shall issue a copy of the summons for service on the debtor liable under the judgment or order (hereinafter called the judgment debtor) with a notice according to the form in the Appendix, that if he has any cause to show why the court should not order the garnishee to pay to the judgment creditor the debt alleged to be due from the garnishee to the judgment debtor, or so much thereof as may be sufficient to satisfy the sum due from the judgment debtor to the judgment creditor, with the costs of the garnishee proceedings, he must appear at the court on the return day of the summons and show such cause accordingly.

Service of notice.

(2) The copy and notice mentioned in the preceding paragraph shall be delivered for service to a bailiff of the court, or where service of the garnishee summons is to be effected by the judgment creditor or his solicitor, to the judgment creditor or his solicitor, and shall be served on the judgment debtor five clear days at least before the return day of the summons. Service may be effected in accordance with Order LIV., Rules 2 and 3; and where service is effected otherwise than by a bailiff an affidavit of service must be lodged with the registrar on or before the return day; and the costs of service and proof of service shall be deemed to be costs in the garnishee proceedings, and may be included in the costs entered on the summons.

Adjournment where notice to judgment debtor cannot be served in due time.

(3) Where the copy of a garnishee summons served by a bailiff is not returned, or the affidavit of service of a garnishee summons served otherwise than by a bailiff is not filed, in sufficient time to allow the copy and notice mentioned in paragraph 1 of this rule to be served on the judgment debtor five

clear days before the return day in accordance with paragraph 2 of this rule, the registrar shall adjourn the hearing of the garnishee summons to enable such service to be effected, and shall enter in the notice to be served on the judgment debtor the day of the adjourned hearing as the day on which he must appear, and shall give notice of such adjournment to the judgment creditor and to the garnishee.

O. XXVI.
r. 4b.

5.—(1) The garnishee may at any time before the return-day of the summons pay into court the amount admitted by him to be due from him to the debtor liable under the judgment or order, less the costs allowed by the scales in Part IV. of the Appendix in respect of such payment, if such costs are actually incurred; or if the amount so admitted, after deduction of such costs, is more than sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied, and the fees and solicitor's costs (if any) indorsed on the garnishee summons, the garnishee may pay into court a sum sufficient to satisfy such amount, fees, and costs. Payment into court by garnishee.

(2) The registrar shall send notice of any payment into court to the judgment creditor, according to the form in the Appendix. Form 199B.

(3) The registrar shall also send notice of such payment to the judgment debtor, according to the form in the Appendix, warning him that the money paid into court will be ordered to be paid out to the judgment creditor unless the judgment debtor appears on the return day of the summons and shews cause to the contrary. Form 200.

(4) If the judgment creditor elects to accept the money paid into court in satisfaction of his claim against the garnishee, he shall send notice of such acceptance to the registrar and the garnishee, as in the case of payment into court in an action. Form 76.

(5) Thereupon all further proceedings against the garnishee shall abate, except as herein provided, and the judgment creditor shall not be liable to any costs incurred by the garnishee after receiving such notice.

(6) If payment into court is made by the garnishee five clear days before the return-day, he shall not be liable for any further costs incurred by the judgment creditor; but if it is made less than five clear days before the return-day, the court may, in its discretion, order the garnishee to pay such fees and costs, beyond the fees and costs (if any) paid into court by the garnishee, as the judgment creditor may have properly incurred for work done before receipt of the notice of payment into court, and in attending the court to obtain the order for the same: and if the judgment creditor intends to apply for such Form 77. Form 76.

O. XXVI. r. 5. costs, he shall give notice of his intention in his notice of acceptance of the sum paid in; or where the time of payment into court by the garnishee does not permit of notice of acceptance being given, he may apply for such costs without giving such notice.

(7) Where the judgment creditor has not given notice of acceptance in accordance with paragraph 4 of this rule, he may nevertheless accept the money paid into court at any time before the case is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the garnishee since the date of payment into court, and which may be allowed by the court.

(8) In default of acceptance by the judgment creditor, the proceedings against the garnishee may proceed.

Payment
out of court
of money
paid in by
garnishee.
Form 202.

6.—(1) Subject to the provisions of this rule, money paid into court by the garnishee, and accepted by the judgment creditor shall, on application made by the judgment creditor on the return-day of the summons be ordered to be paid out to him.

(2) Provided as follows :—

- (a) Before such money is paid out the court shall be satisfied by evidence on oath or affidavit, or otherwise, that the judgment creditor has not received payment of the amount payable under the judgment or order from any other source, and has not obtained an order for payment of such amount under any other garnishee proceedings : And if it appears that he has received payment or obtained an order for payment of any part of such amount, so much only of the money paid into court shall be paid out to him as will, with the amount so received or for payment whereof an order has been obtained, make up the full amount payable under the judgment or order, and any fees or costs allowed to the judgment creditor in the garnishee proceedings ; and the balance of the money paid into court shall be dealt with as the court shall direct ;
- (b) If the judgment debtor appears and shews cause, according to the notice sent to him, why the money should not be paid out to the judgment creditor, the court may thereupon make such order as to the money paid into court, and as to costs, as may be just ;
- (c) If the judgment debtor suggests, or it is otherwise made to appear to the court, that the money paid into court belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge

on it, the court may proceed in accordance with Rule 10 O. XXVI. r. 6. of this Order.

- (d) If the judgment creditor does not intend to apply for an order against the garnishee for payment of any further costs, and obtains the consent in writing of the judgment debtor to the payment out of the money paid into court, he may apply for an order for payment out on any day earlier than the return-day, and on the production of such consent to the registrar the money shall, subject to the last preceding paragraph and to Rule 10 of this Order, be ordered to be paid out accordingly.
- (e) The costs of any application for payment out under this rule, including the costs of any affidavit required under paragraph (a), or of obtaining any consent under paragraph (d), may be allowed as costs in the garnishee proceedings, and may be retained by the judgment creditor out of the money recovered by him in accordance with Rule 12 of this Order.
- (f) No hearing fee shall be payable on an application for payment out of money paid into court by a garnishee, unless the judgment debtor appears and shews cause, in which case a hearing fee shall be payable by him on the amount paid into court, or unless the judgment debtor suggests, or it is otherwise made to appear to the court, that the money paid into court belongs to or is claimed by a third person, or that any third person has or claims to have a lien or charge on it, and the court thereupon proceeds in accordance with Rule 10 of this Order, in which case, if the third person appears, a hearing fee shall be payable by him on so much of the amount so paid into court as is claimed by him.

7. If the garnishee does not before the return-day of the summons pay into court the amount admitted by him to be due from him to the judgment debtor, or so much thereof as shall be sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied, and the fees and solicitor's costs (if any) indorsed on the garnishee summons, and does not on the return-day dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear on the return-day, the judge may, if the judgment debtor does not appear and shew cause to the contrary, give judgment for the judgment creditor against the garnishee for the amount due from him to the judgment debtor, or so much thereof as shall be sufficient to satisfy the judgment or order, and any costs allowed, and in

return-day if garnishee does not appear or dispute liability.
Form 201.
Form 202.

O. XXVI. r. 7. default of payment execution may issue to levy such amount; or if the judgment debtor appears and shews cause, the judge may make such order in the garnishee proceedings, and as to the party by whom the costs of the proceedings shall be paid, as may be just.

Proceedings
on return-
day, if
garnishee
disputes
liability.
Form 201.

8. If no amount is paid into court, or the amount (if any) paid into court under Rule 5 of this Order is not accepted, and the garnishee appears on the return-day and disputes his liability, the judge may, after hearing the judgment creditor and the garnishee, and the judgment debtor if he appears, determine as to the liability of the garnishee to pay any sum or further sum on account of the debt claimed to be due from him to the judgment debtor, and as to the party by whom the costs of the garnishee proceedings shall be paid, and make such order as may be in accordance with such determination; or he may, instead of giving judgment, order that any issue or question necessary for determining the liability of the garnishee to pay any sum or further sum be tried or determined in any manner in which any issue or question in an action may be tried or determined.

The garnishee must, besides showing that he disputes the particular debt alleged, show that he owes no debt whatever to the judgment debtor (*Vinall v. De Pass*, (1892) A. C. 90; 61 L. J. Q. B. 507).

Certificate
where gar-
nishee sued
in court
other than
that in which
judgment
obtained.

9. Where the court in which the garnishee is sued is not the court in which the judgment or order upon which he is garnished was given or made, the registrar of such first-mentioned court shall send forthwith a certificate of the order of his court to the court in which such judgment or order was given or made, and shall also send notice from time to time of any payment made on, before, or after the return-day.

Where debt
is stated to
belong to a
third per-
son, or there
is a lien
thereon.

10. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee or the debtor liable under the judgment or order, or is otherwise made to appear to the judge, that the debt sought to be attached belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge upon it, the judge may order such third person to appear, and state the nature and particulars of his claim upon such debt. After hearing the allegations of such third person, and of any other person whom the judge by the same or any subsequent order may order to appear, or in case of such person not appearing when ordered, the judge may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between such third

person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge may think just and reasonable.

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r. 10.

Debts Attachable.—These provisions only apply to *debts*, and they must be due and payable, so that an action could be maintained for them, or they must be existing debts which will become payable at some future time (*Tapp v. Jones*, (1875) L. R. 10 Q. B. 591; 44 L. J. Q. B. 127; *Webb v. Stenton* (C. A.), (1883) 11 Q. B. D. 518; 52 L. J. Q. B. 584). Thus rent due from a tenant and payable constitutes an existing debt (*Mitchell v. Lee*, (1867) L. R. 2 Q. B. 259); but rent accruing and not yet payable does not constitute either a debt due or accruing (*Jones v. Thompson*, (1858) E. B. & E. 63; 27 L. J. Q. B. 234; 113 R. R. 545, *per* Crompton, J.); nor does salary accruing but not fully earned (*Hall v. Pritchett*, (1877) 3 Q. B. D. 215; 47 L. J. Q. B. 15); nor does income accruing from a trust fund, but the time for payment of which has not arrived (*Webb v. Stenton*, *supra*); nor does an instalment of an annuity not due (*Jones v. Thompson*, *supra*); nor fees due by a solicitor to counsel, for they are not debts (*Wells v. Wells*, (1914) P. 157; 83 L. J. P. 81); but a debt due from an insurance committee to a panel doctor under the National Insurance Act, 1911, is attachable (*O'Driscoll and Another v. Sweeney* (Manchester Insurance Committee), (1915) 3 K. B. 499; 85 L. J. K. B. 83). A mere claim for unliquidated damages secured by a bond does not constitute a debt (*Johnson v. Diamond*, (1855) 11 Ex. 73; 24 L. J. Ex. 217); and even when ascertained by verdict, in the High Court, if anything is required to be done to perfect the judgment there is no debt until that is done (*Jones v. Thompson*, *supra*).

Attachment of Judgment Debts.—Where the debt sought to be attached is a judgment debt in the county court, the procedure to be adopted depends upon whether the debt has or has not been paid into court. If it has not been paid into court, the case comes within the very words of Order XXVI. r. 1, which gives a judgment creditor power to take garnishee proceedings where the garnishee "could be or has been sued" in the court. But when once the judgment debt has been paid into court (and all payments under a judgment are required by sect. 105 of the County Courts Act, 1888, to be made into court) garnishee proceedings in the strict sense of the term cannot be taken, for moneys when in court are not attachable in the hands of the registrar (*Dolphin v. Layton*, (1879) 4 C. P. D. 130; 48 L. J. C. P. 426). In such case the judgment creditor's remedy is to apply to the judge under Order XXVI. r. 16, to order the money to be paid out to him by the registrar. The procedure under that rule is as follows:—

Nothing in Order XXVI. is to be taken to authorise a person who has obtained a judgment or order (which by a recent order (Order XXVI. r. 16, para. 2, passed to meet the decision in *Llewellyn v. Rowland*, (1907) 97 L. T. 433) means not only a judgment or order in a county court, or inferior court, but also includes a judgment or order in the High Court) to take proceedings to obtain an attachment of any sum which is due to the debtor from any other person under a judgment or order obtained by the debtor, and which has been paid into court under such last-mentioned judgment or order for the use of the debtor; but in any such case the person who has obtained the judgment or order against the debtor may, on giving two days' notice in writing to the debtor and to the registrar, apply to the judge to order the sum to be paid to him. On receipt of the notice the registrar will retain the money in court until the hearing, and the judge may on the hearing make such order as to the money in court and as to costs as he may think just: a memorandum is to be made in the books relating to the judgment or order

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obtained by the debtor and the judgment or order obtained against him of the manner in which the money is ordered to be applied (Order XXVI. r. 16).

The following provisions apply to cases where the amount due from the garnishee to the debtor is due under a judgment or order obtained by the debtor. The garnishee is not to be liable to pay the amount due from him to the debtor to the person who obtained the judgment or order against the debtor by larger instalments than those by which he is liable to pay the debtor, unless the judge for good cause otherwise orders (Order XXVI. r. 15 (a)). The registrar is to enter in the books a memorandum of the amounts paid or ordered to be paid by the garnishee in the garnishee proceedings (inclusive of any amount allowed to him for costs, and which he is by the rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount of any costs ordered to be paid by the garnishee personally), and the judgment or order will be deemed to be satisfied to the amount paid by or levied by execution on the garnishee in the garnishee proceedings (inclusive of the amount of costs allowed to be deducted as aforesaid, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceedings may be subsequently set aside, or the judgment or order obtained against the debtor may be subsequently reversed, and shall be deemed to be satisfied to the amount (exclusive as aforesaid) ordered to be paid in the garnishee proceedings, unless such proceedings are subsequently set aside, or the judgment or order obtained against the debtor is subsequently reversed, in which latter case the liability of the garnishee to the debtor under the judgment or order obtained by the debtor against him will be revived to the amount (exclusive as aforesaid) ordered to be paid in the garnishee proceedings which remains unpaid at the time of such setting aside or reversal, and a memorandum to that effect is to be made in the books relating to such judgment or order (Order XXVI. r. 15 (b)).

Money paid into court in an administration action by the executors of a person indebted to the judgment debtor is not attachable (*Stevens v. Phelps*, (1875) L. R. 10 Ch. 417; 44 L. J. Ch. 689); nor is a dividend in a bankruptcy in the hands of an official receiver (*Prout v. Gregory*, (1889) 24 Q. B. D. 281; 59 L. J. Q. B. 118).

Where judgment is recovered against several defendants, a debt due to one of them may be attached (*Miller v. Mynn*, (1859) 1 E. & E. 1075; 28 L. J. Q. B. 324; 117 R. R. 582). But a debt due to a judgment debtor and another, not a party to the action, cannot be attached (*Macdonald v. Tacquah Co.*, (1884) 13 Q. B. D. 535; 53 L. J. Q. B. 376). Where the judgment is against an executor, a debt due to the testator's estate may be attached (*Burton v. Roberts*, (1861) 6 H. & N. 93; 29 L. J. Ex. 484; 123 R. R. 403).

The wages of servants, labourers or workmen cannot be attached (Wages Attachment Abolition Act, 1870 (33 & 34 Vict. c. 30), s. 1, *post*, Part V.; see *Jones v. Thompson*, (1858) 27 L. J. Q. B. 234; *Dresser v. Jones*, (1859) 28 L. J. C. P. 281), nor can compensation money due to an injured workman be attached (W. C. Act, 1925, sect. 40). This will not prevent the attachment of the quarterly salary of a secretary to a company (*Gordon v. Jennings*, (1882) 9 Q. B. D. 45; 51 L. J. Q. B. 417), nor of a superannuation allowance (*Booth v. Trail*, (1880) 12 Q. B. D. 8; 53 L. J. Q. B. 24), nor of a pension (*Willcock v. Terrell* (C. A.), (1878) 3 Ex. D. 323). By the Merchant Shipping Act, 1894, seamen's wages, whether due or accruing, cannot be attached (57 & 58 Vict. c. 60, s. 163).

Debts owing from a Firm.—Debts owing from a firm carrying on business in England or Wales may be attached, although one or more of the members of the firm is resident abroad, provided that any person having the control or management of the partnership business, or any member of the firm within England or Wales, is served with the garnishee summons (Order XXVI. r. 17).

Effect of Order.]—A prior equitable assignment of a debt will have priority over an order of attachment (*Ex parte Whitehouse*, (1886) 32 Ch. D. 512; 55 L. J. Ch. 608; 54 L. T. 898; *Badeley v. Cons. Bank* (C. A.), (1888) 38 Ch. D. 238; 57 L. J. Ch. 468). An order attaches the whole of the moneys in the hands of the garnishee, but once the order is satisfied an assignment by the judgment debtor of the balance over and above the amount of the judgment debt is valid, and must be satisfied before an order of attachment obtained subsequent to the assignment (*Yates v. Terry* (C. A.), (1902) 1 K. B. 527; 71 L. J. K. B. 282; see as to garnishee order *nisi* in High Court, *Rogers v. Whiteley*, (1892) A. C. 118; 61 L. J. Q. B. 512; as to garnishee order absolute, see *Geisse v. Taylor*, (1905) 2 K. B. 658; 74 L. J. K. B. 912).

An order of attachment creates no debt as between garnishor and garnishee (*Re Combined Weighing Co.* (C. A.), (1889) 43 Ch. D. 99; 59 L. J. Ch. 26); but gives garnishor a cause of action for the amount attached (*Pritchett v. English & Colonial Syndicate*, (1899) 2 Q. B. 428; 68 L. J. Q. B. 801) (these two decisions are difficult to reconcile; they are both in the Court of Appeal); the action is not to be resorted to if the amount can be recovered by execution.

After an order of attachment, the garnishee has no right to set-off a debt from the judgment debtor accruing after the attachment, although it seems he would have a right to set-off a cross-debt due at the date of the order (*Tapp v. Jones*, (1875) L. R. 10 Q. B. 591, 593; 44 L. J. Q. B. 127, *per* Blackburn, J.).

Bankruptcy Act, 1914.]—Under the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 40, a creditor who has attached a debt due to the debtor cannot retain it against the trustee unless the attachment has been completed by receipt of the debt before the date of the receiving order and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

An attachment of a debt is completed by receipt of the debt (*ib.*, sect. 40 (2)).

The actual receipt of the debt is essential, the undertaking of the garnishee to pay will not suffice (*In re Trehearne* (C. A.), (1890) 60 L. J. Q. B. 50).

Deposit in Post Office Savings Bank.]—Where a judgment creditor seeks to obtain payment to himself of a sum of money deposited by the judgment debtor in the post office savings bank, he must obtain the award of the registrar of friendly societies, whose jurisdiction to decide a dispute “between the Postmaster-General and any depositor or other person claiming from or under a depositor” arises under 39 & 40 Vict. c. 52 (The Savings Bank (Barrister) Act, 1876). In applying to the registrar for an award, the judgment creditor should give the reference number to the account, and must claim to be entitled to the money by virtue of the judgment recovered by him; at the same time he should give notice to the comptroller of the post office savings bank to prevent the money being dealt with. The registrar will give an appointment to the claimant and the depositor, and will, if satisfied as to the claim, make his award declaring that the judgment creditor is entitled to the money. This procedure is, of course, not strictly attachment. Consult *Bailey v. Bailey*, (1926) 135 L. T. 431.

Appeal.]—It was held (*Mason v. Wirral Highway Board*, (1879) 4 Q. B. D. 459; 48 L. J. Q. B. 679) under the County Courts Act, 1850, that a garnishee had no right of appeal against a garnishee order, on the ground that he was not an original party to the action within the ruling of the court in *Beswick v. Boffey*, (1854) 9 Ex. 315; 23 L. J. Ex. 89. The County Courts Act, 1888, gives an appeal to any party in any action or matter (sect. 120); and the interpretation of party (sect. 186), so clearly includes a garnishee that these cases are no longer binding.

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Notes.

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r. 11.**

Payment by
or execution
levied on
garnishee
a discharge
against
debtor.

11. Payment made by or execution levied upon the garnishee under any such proceedings as aforesaid shall be a valid discharge to him as against the debtor liable under the judgment or order, to the amount paid or levied (inclusive of any amount allowed to the garnishee for costs, and which he is by these rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceedings may be set aside, or the judgment or order reversed. (R. S. C., Ord. XLV. r. 7.)

See *Randall v. Lithgow*, (1884) 12 Q. B. D. 525; 53 L. J. Q. B. 518. It seems that the garnishee is not protected if he pays the debt to the judgment creditor before an order upon him has been obtained (*Turner v. Jones*, (1857) 1 H. & N. 878; 26 L. J. Ex. 262; 108 R. R. 872). A judgment debtor, who had been served with a garnishee summons, paid, before the return-day, the amount of the judgment debt sought to be attached to the sheriff, under an execution levied on his goods in respect of such debt; it was held, that he was justified in so doing (*Turnbull v. Robertson*, (1878) 47 L. J. C. P. 294).

Costs.

12. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court. Any costs allowed to the judgment creditor, which are not ordered to be paid by the garnishee personally, shall, unless otherwise directed, be taxed by the registrar, and retained by the judgment creditor out of the money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him against the debtor. (See R. S. C., Order XLV. r. 9.)

Entry of
amount re-
covered
from gar-
nishee in
books
relating to
judgment
against
debtor.

13. The registrar shall enter in the books relating to the judgment or order obtained against the debtor a memorandum of the amounts paid or ordered to be paid by the garnishee (exclusive of the amount of any costs ordered to be paid by the garnishee personally) and of the costs allowed to the judgment creditor and allowed to be retained by him out of the money recovered by him in the garnishee proceedings. (Conf. R. S. C., Order XLV. r. 8.)

Judge may
refuse to
interfere.

14. In proceedings to obtain an attachment of debts, the judge may, in his discretion, refuse to interfere, where from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

Provisions
as to money
due from

15. Where the amount due from the garnishee to the debtor liable under the judgment or order is due under a judgment or

order obtained by the debtor against the garnishee, the following provisions shall apply :—

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r. 15.

- (a) The garnishee shall not be liable to pay the amount due from him to the debtor to the person who obtained the judgment or order against the debtor by any larger instalments than those by which he is liable to pay such amount under the judgment or order obtained by the debtor against him, unless the judge for good cause otherwise orders.
- (b) The registrar shall enter in the books relating to the judgment or order obtained by the debtor against the garnishee a memorandum of the amounts paid or ordered to be paid by the garnishee in the garnishee proceedings (inclusive of any amount allowed to the garnishee for costs, and which he is by these rules or by order of the court allowed to deduct from the amount due from him to the debtor, but exclusive of the amount of any costs ordered to be paid by the garnishee personally), and such judgment or order shall be deemed to be satisfied to the amount paid by or levied by execution upon the garnishee in the garnishee proceedings (inclusive of the amount of costs allowed to be deducted as aforesaid, but exclusive of the amount paid or levied in respect of any costs ordered to be paid by the garnishee personally), although such proceedings may be subsequently set aside, or the judgment or order obtained against the debtor may be subsequently reversed, and shall be deemed to be satisfied to the amount (exclusive as aforesaid) ordered to be paid in the garnishee proceedings, unless such proceedings are subsequently set aside, or the judgment or order obtained against the debtor is subsequently reversed, in which latter case the liability of the garnishee to the debtor under the judgment or order obtained by the debtor against him shall be revived to the amount (exclusive as aforesaid) ordered to be paid in the garnishee proceedings which remains unpaid at the time of such setting aside or reversal, and a memorandum to that effect shall be made in the books relating to such judgment or order.

16. Nothing in this order shall be taken to authorise a person who has obtained a judgment or order to take proceedings to obtain an attachment of any sum which is due to the debtor liable under such judgment or order from any other person under a judgment or order obtained by the debtor against such other person, and which has been paid into court under such last-mentioned judgment or order.

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r. 16.**

obtained
by debtor
against third
person.

mentioned judgment or order for the use of the debtor; but in any such case the person who has obtained such judgment or order against the debtor may, on giving two days' notice in writing to the debtor and to the registrar to whom such sum has been paid, apply to the judge to order such sum to be paid to him. On the receipt of any such notice the registrar shall retain the money in court until after the application has been heard, and the judge on the hearing of the application, may make such order as to the money so paid into court, and as to costs, as he may think just; and a memorandum shall be made in the books relating to the judgment or order obtained by the debtor and the judgment or order obtained against him of the manner in which such money is ordered to be applied.

This rule shall, with the necessary modifications, apply to any case in which a person has obtained a judgment or order against the debtor either in the High Court or in the county court into which money has been paid under a judgment or order obtained by the debtor, or in any other county court or inferior court.

Attachment
of debts
owing from
a firm.

17. Debts owing from a firm carrying on business within England and Wales may be attached under this order, although one or more members of such firm may be resident abroad; provided that any person having the control or management of the partnership business or any member of the firm within England or Wales is served with the garnishee summons. (R. S. C., Order XLVIII A. r. 9.)

ORDER XXVII.**INTERPLEADER.**

Notice of
claim to
execution
creditor.
Form 203.

1.—(1) Where a claim is made to or in respect of any goods or chattels taken in execution under the process of a court it shall be in writing; and thereupon the high bailiff shall forthwith send notice to the execution creditor, according to the form in the Appendix.

Interpleader.]—See notes to sect. 157 of the Act, *ante*, p. 210.

Notice by
execution
creditor of
admission of
claim or to
withdraw
from
possession.

Form 204.

(2) If within four days after receiving the notice mentioned in paragraph (1) of this rule the execution creditor gives notice to the high bailiff that he admits the title of the claimant to the goods or chattels, or requests the high bailiff to withdraw from possession, according to the form in the Appendix, or to the like effect, he shall only be liable to the high bailiff for any possession fees or expenses incurred by the high bailiff prior to the receipt of such notice; and the judge may, if he thinks fit, on application by the high bailiff, make an order for payment of any such fees or expenses by the execution creditor to the high bailiff. Any

such application shall be made in writing, and intituled in the matter of the execution, and three clear days' notice in writing thereof shall be given by the high bailiff to the execution creditor.

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r. 1.

This rule enables the judge to order payment of the fees and expenses which *Thomas v. Peek*, (1888) 20 Q. B. D. 727; 57 L. J. Q. B. 497, decided he had power to award. There is an appeal from the judge's decision here, as the decision is "a matter" within sect. 120 of the Act (*A. W., Ltd. v. Cooper and Hall*, (1925) 94 L. J. K. B. 831). See judgment of Salter, J. as to position of high bailiff, who has "walking possession" only.

Order for possession fees.

(3) The high bailiff shall also forthwith send notice to the claimant, according to the form in the Appendix, requiring him to make deposit or give security in accordance with section one hundred and fifty-six of the Act.

Notice to claimant to make deposit or give security.

2. Where the execution creditor gives notice in due time to the high bailiff, as directed by Rule 1 of this Order, that he admits the title of the claimant to the goods or chattels or requests the high bailiff to withdraw from possession, the high bailiff may thereupon withdraw from possession, and may apply for an order protecting him from any action in respect of the seizure and possession of the said goods and chattels, and the judge may make any such order as may be just and reasonable in respect of the same. Any such application shall be made in writing, and intituled in the matter of the execution, and three clear days' notice in writing thereof shall be given by the high bailiff to the claimant, who may, if he desires it, attend the hearing of the application; and if he attends, the judge may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable.

Form 205.
51 & 52 Vict. c. 43, s. 156.
Power to make order protecting high bailiff from action by claimant, where execution creditor admits claim or requests bailiff to withdraw before interpleader summons issued.

3. Where the execution creditor does not in due time, as directed by Rule 1 of this Order, admit the title of the claimant to the goods or chattels, or request the high bailiff to withdraw from possession, and the claimant persists in his claim, the high bailiff shall apply for an interpleader summons to be issued; and if before the return day of such summons the claimant files notice that he withdraws his claim, and at the same time gives notice of such withdrawal to the execution creditor, or the execution creditor files an admission of the title of the claimant, and at the same time gives notice of such admission to the claimant, the goods and chattels taken in execution or the proceeds of sale thereof, or the money paid into court (as the case may be), shall be dealt with and disposed of as if such claim had not been made, or as if the execution had been withdrawn (as the case may be), and the judge may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses as may be just and reasonable.

Issue of summons where execution creditor does not admit claim or requests bailiff to withdraw.
Forms 206—210.

O. XXVII.**r. 3A.**

Security or
undertaking
for costs
where
claimant not
resident in
England or
Wales.

3A. Where it appears that the claimant does not reside in England or Wales, the execution creditor or the high bailiff may apply to the court on notice in writing in accordance with Order XII. Rule 11, for an order directing the claimant to give security for costs, and the court may make an order accordingly : and if such order is made, and security is not given within the time limited by the order, the claimant shall be debarred from appearing to support his claim, unless the judge otherwise orders. Where an order is made, an undertaking by the claimant's solicitor to be responsible for the costs shall be sufficient, and Order V. Rule 10, shall apply.

Proceedings
generally.

51 & 52 Vict.
c. 43, s. 156.

4. Where any claim is made to or in respect of any goods or chattels taken in execution, or in respect of the proceeds or value thereof, and summonses have been issued on the application of the high bailiff, such summonses shall be served in such time and mode as by these rules directed for the service of an ordinary summons to appear to a plaint, and the case shall proceed as if the claimant were the plaintiff, and the execution creditor the defendant : Provided that where the claimant has not made deposit or given security in accordance with section one hundred and fifty-six of the Act, the time of service may, if the high bailiff so desires, by leave of the court, be such as will obtain a speedy decision on the claim.

Claimant to
lodge par-
ticulars and
grounds of
claim.

Forms 211,
212.

5. The claimant shall, five clear days at least before the return day, or, if the time for service of the summons has been abridged under the last preceding rule, then within such reasonable time before the return day as the time of service of the summons permits, deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of any goods or chattels alleged to be the property of the claimant, and of the grounds of his claim, or in case of a claim for rent of the amount thereof, and for what period and in respect of what premises the same is claimed to be due ; and the name, address, and description of the claimant shall be fully set forth in such particulars, and the high bailiff shall forthwith send by post to the execution creditor one of the copies of such particulars. Any money paid into court under the execution shall be retained by the registrar until the claim has been adjudicated upon : Provided that by consent of all parties, or without such consent if the judge so directs, an interpleader claim may be tried, although this rule has not been complied with.

The particulars ought to state how, and by what right, the claimant asserts his title ; and where a notice stated only that the goods were the property of the claimant, but omitted to state any grounds of claim, it was held insufficient (*R v Chilton*, (1850) 15 Q. B. 220 ; S. C., *Ex parte Tanner*,

19 L. J. Q. B. 318; 81 R. R. 564). Where, however, the particulars stated that the goods were assigned to the claimant by an indenture (giving the date and the parties), but without specifying them in a schedule, it was held sufficient (*R. v. Richards*, (1851) 2 L. M. & P. 263; 20 L. J. Q. B. 351; 86 R. R. 898). It is not necessary that the claim should specify the goods or set them forth in the schedule if they are identified (*Heslop v. McGeorge*, (1851) 18 L. T. (O. S.) 109). The court was equally divided as to whether particulars describing the goods, etc., seized, as "the goods and money seized by virtue of the warrant," were sufficient or not (*Richardson v. Wright*, (1875) L. R. 10 Ex. 367; 44 L. J. Ex. 230). Where the address of the claimant was stated as "Elizabeth Street," instead of "Terrace," "Islington," it was held that, not being calculated to mislead, it was sufficient (*Ex parte McFee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700).

In all cases the judge is bound to adjudicate at some time upon a claim, although the particulars delivered by the claimant are insufficient, or have not been delivered in time. In such a case the judge should amend the particulars, or, if the particulars have not been delivered in time, order a new summons to issue, so that he may decide the case on the merits (*Beswick v. Boffey*, (1855) 9 Ex. 315; 23 L. J. Ex. 89; *R. v. Stapylton*, (1851) 2 L. M. & P. 603; 21 L. J. Q. B. 8; *Fraser v. Fothergill*, (1854) 14 C. B. 298; 23 L. J. C. P. 53). Still, the insufficiency justifies the judge in refusing to hear it in its then form (*R. v. Chilton*, *supra*).

Where a judge of a county court, upon an interpleader summons, erroneously decides against a claimant, on the ground that the notice of claim is insufficient, the High Court may direct him to hear and adjudicate upon the claim (*Churchward v. Coleman*, (1866) L. R. 2 Q. B. 18; 36 L. J. Q. B. 57).

So the High Court may in such a case by writ of prohibition, prohibit him from proceeding on the original plaint until the interpleader has been determined (*Ex parte McFee*, (1854) 9 Ex. 261; 23 L. J. Ex. 57; 96 R. R. 700).

6. The judge upon the hearing shall adjudicate upon any claim of the high bailiff for fees, and may, if he thinks fit, order the same, or such part thereof as he may think just, to be paid by the claimant or by the execution creditor. High bailiff's fees.

See *Goodman v. Blake*, (1887) 19 Q. B. D. 77; 56 L. J. Q. B. 441.

It was formerly held that if the bailiff neglected to retain his costs, he could not, after paying over the proceeds, recover them from the execution creditor (*Bloor v. Huston*, (1854) 15 C. B. 266; 24 L. J. C. P. 26).

7. In the event of the claimant of any goods taken in execution not making, in accordance with the provisions of section one hundred and fifty-six of the Act, a deposit with the bailiff either of the amount of the value of the goods claimed, or of the sum which the bailiff is allowed to charge as costs for keeping possession of such goods until a decision can be obtained, and not giving security for such value, the bailiff may, in his discretion, delay selling such goods until the judge has adjudicated on the claim; and for the keeping of such continued possession he shall be allowed such costs out of pocket only as the judge may order. Power to delay sale where claimant fails to comply with provisions of 51 & 52 Vict. c. 43, s. 156.

Where the bailiff pays into court the sum of money deposited with him by the claimant, he must be deemed to have taken it on the assumption that it represented the value of the goods, and he has therefore no right to remain

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in possession, or to possession fees, after the date of the deposit (*Newsum, Sons & Co. v. James*, (1909) 2 K. B. 384; 78 L. J. K. B. 761). Where a creditor, who has assigned a debt together with all securities for the same, subsequently recovers judgment against his debtor in the county court, and the goods of the judgment debtor are taken in execution, the assignee of the debt cannot claim the proceeds of sale under sects. 156 and 157 of the Act (*Plant v. Collins*, (C. A.) (1913) 1 H. B. 242; 82 L. J. K. B. 467).

Claim of
 damages by
 claimant.
 Form 211.

8.—(1) Where the claimant to goods taken in execution claims damages from the execution creditor or from the high bailiff for or in respect of the seizure of the goods, he shall in the particulars of his claim to the goods state the amount he claims for damages, and the grounds upon which he claims damages.

It is probably necessary that where damages are claimed from the execution creditor or high bailiff that the claim should be made in the interpleader proceedings, and not by independent action; but if a claim for damages is made against a stranger to the proceedings, *e.g.*, the solicitor of the execution creditor who has given express instructions for the seizure of the goods, this, as it is not contemplated by the rule, may probably be enforced by an independent action. See opinion of Lush, J. in *Salbstein v. M. Isaacs & Sons, Ltd., and Another*, (1916) 85 L. J. K. B. 112.

Where
 damages not
 claimed
 until filing
 of par-
 ticulars.

(2) Where the claimant has not claimed damages before the issue of the interpleader summons, but claims such damages in his particulars of claim, he may be ordered to pay the costs of any adjournment which may be necessary to enable the execution creditor or the high bailiff to prepare his defence to the claim so made.

NOTE.—Formerly no claim for damages could be made in the trial of an interpleader issue remitted for trial by the High Court, but Order XXXIII. r. 11, is now superseded by the Rules of 1917 (Order XXXIII. r. 11), which, where there are no directions to the contrary in the Order transferring the proceedings to the county court, allows such a claim to be made against the execution creditor, as in ordinary interpleader proceedings. See *Salbstein v. M. Isaacs & Sons, Ltd., and Another*, *supra*.

Claim of
 damages
 by execution
 creditor
 against high
 bailiff.

51 & 52 Vict.
 c. 43, s. 157.
 Form 222.

9. Where under section one hundred and fifty-seven of the Act an execution creditor claims damages against a high bailiff arising out of the execution of any process, he shall five clear days at least before the return-day of the interpleader summons give notice in writing of such claim to the registrar and to the high bailiff, stating the grounds and amount of such claim, according to the form in the Appendix; and he may thereupon apply to the judge at the hearing of the interpleader summons to adjudicate upon such claim. For the purposes of fees and costs such claim shall be deemed to be a claim in an interpleader.

For forms of orders, see Forms 223—225; and warrant of execution, Form 221.

See sect. 15 of the Bankruptcy and Deeds of Arrangement Act, 1913, and notes thereto, *post*, Part V.

10. Where a claim for damages under section one hundred and fifty-seven of the Act is made against any high bailiff and execution creditor, or either of them, they or either of them may pay into court money in satisfaction of such claim for damages; and such payment into court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies, as they would respectively have if the proceeding were an action in which the claimant was plaintiff, and the high bailiff and execution creditor were defendants. A high bailiff may in like manner pay money into court in satisfaction of a claim for damages made against him by an execution creditor.

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Payment into court where damages claimed under 51 & 52 Vict. c. 43, s. 157.

11. Interpleader summonses shall be issued by the registrar, on the application of the high bailiff, without leave of the judge, and shall be served on the solicitor of any party who acts by a solicitor.

Interpleader summons.

12. Interpleader summonses shall be issued from the court of the district in which the levy was made, and the execution creditor and claimant shall be summoned to such court.

From what court issued.

13.—(1) When goods or chattels have been seized in execution under process of the court, and any claimant alleges that he is entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt, the judge may order a sale of the whole or part thereof, and may direct the application of the proceeds of such sale in such manner and upon such terms as may be just. A duplicate of such order shall be delivered by the registrar to the high bailiff, who shall thereupon forthwith sell the goods or chattels pursuant to the order, and after deducting the expenses of the sale and the taxes and rent, if any, directed by the order to be paid, shall pay the balance of the proceeds into court, and such balance shall thereupon be applied by the registrar in accordance with the directions contained in the order of the court.

Judge may direct sale of goods claimed under bill of sale, etc.

(2) An order for sale under this rule shall be according to the form in the Appendix, with such modifications as may be necessary and as the judge shall direct.

Form of order.
Form 212A.

(3) The costs of an application for sale under this rule shall be borne as between the parties to the application as the judge shall direct.

Costs of application.

The order may be made, although the execution creditor cannot contest the title of the bill of sale holder (*Miller & Co. v. Solomon*, (1906) 2 K. B. 91; 75 L. J. K. B. 671).

This provision is intended to prevent an execution from being defeated by a claimant under a bill of sale by way of security for a sum less than the

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value of the goods. In *Scarlett v. Hanson*, (1884) 12 Q. B. D. 213; 53 L. J. Q. B. 62, the Court of Appeal held that the *sheriff* in such a case could withdraw and make a return of *nulla bona*. It is submitted that in the county court the position is different. See note "Order for Sale," *ante*, p. 215. The order for sale may be made on the hearing of the interpleader summons.

A secured claimant is not entitled to receive out of the balance any sum not included in his particulars or mentioned in the order (*Hockey v. Evans* (C. A.), (1887) 18 Q. B. D. 390; 56 L. J. Q. B. 253).

Order on
interpleader.
Forms 213—
220, 223—
225.

14. The order made upon the hearing of an interpleader summons shall contain directions as to how any money paid into court in the proceeding is to be disposed of. A minute of every such order shall be entered in the minute book, but no order need be drawn up or served unless any of the parties shall require it, or the court otherwise orders. The order, if drawn up, shall be according to such one of the forms in the Appendix as shall be applicable to the case.

As between the execution creditor, the claimant, and the high bailiff, the order will not only dispose of claims actually brought forward, but will also bar claims which might have been brought forward and adjudicated upon (*Death v. Harrison*, (1871) L. R. 6 Ex. 15; 40 L. J. Ex. 26; *Hills v. Renny*, (1880) 5 Ex. D. 313; 49 L. J. Ex. 710), whether they exceed 50*l.* or not, the judge's jurisdiction as to them being unlimited (*Smith v. Benskin*, (1893) 94 L. T. (Journal) 285). Therefore a claimant, who does not claim damages in the interpleader proceedings, can maintain no subsequent action for damages.

Where the execution creditor is successful, he will be entitled to the whole sum deposited by the claimant with the bailiff and paid into court by the latter, although some of the goods seized may admittedly be the property of another and subsequent claimant (*Wells v. Hughes*, (1907) 2 K. B. 845; 76 L. J. K. B. 1125).

The claimant must succeed by the strength of his own title to the goods, not by showing that he has some interest in the goods, or that they belong to some one else than the judgment debtor. Where a claimant only satisfied the jury that goods which he claimed as his absolute property belonged to a partnership of which he was a member, it was held by the Court of Appeal (reversing the decision of the Divisional Court) that the execution creditors were entitled to judgment (*Flude, Ltd. v. Goldberg* (*Isaacs claimant*), (1916) 85 L. J. K. B. 219. But in *Peake v. Carter*, (1916) 85 L. J. K. B. 761, *Flude, Ltd. v. Goldberg* is explained and distinguished. See note, *ante*, p. 214.

Goods were seized under an execution, and claimed by a third person; the value being assessed at 25*l.*; the claimant paid the money into court to avoid a forced sale, and the bailiff withdrew. On an interpleader, the judge found for the execution creditor, and the 25*l.* was paid to him. His debt being still unsatisfied, he levied the same goods again which remained on the same premises, and the claimant again claimed and paid 25*l.* The judge again found for the execution creditor, and ordered the 25*l.* to be paid to him; but the High Court held that the execution creditor was debarred from denying as against the claimant that the goods were his, and he could not therefore take them in execution a second time (*Haddow v. Morton* (C. A.), (1894) 1 Q. B. 565; 63 L. J. Q. B. 431).

But by payment into court a claimant acquires no property in the goods, and if they are again seized by a different creditor, must again pay the full value into court on the condition of an interpleader issue (*Kotchie v. Golden Sovereigns, Ltd.*, (1898) 2 Q. B. 164; 67 L. J. Q. B. 722).

15.—(1) Where the defendant in an action brought by the assignee of a debt or chose in action has had notice that the assignment is disputed, as to the whole or any part of such debt or chose in action, by the assignor or any one claiming under him, or where the defendant in any such action, or in any other action for any debt, chose in action, money, goods, or chattels, has had notice of any other opposing or conflicting claims to the whole or any part of such debt, chose in action, money, goods, or chattels, the defendant may, within five days of the service of the summons, apply to the registrar for a summons against the assignor or the person making such opposing or conflicting claim, hereinafter called the claimant.

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r. 15.

Interpleader in action by assignee, where assignor disputes assignment or in action for debt, chose in action, or chattel, where defendant has notice of conflicting claims.

There must be inconsistent claims, and they must arise with respect to a debt, money, goods or chattels before interpleader proceedings can be taken (*Sun Insurance Office v. Galinsky and Others*, (1914) 2 K. B. 545; 83 L. J. K. B. 633).

Costs recovered in a judgment and taxed may be legally assigned though not entered upon the record (*Hambleton v. Brown*, (1917) 2 K. B. 93; 86 L. J. K. B. 1223).

(2) The defendant must satisfy the registrar, by affidavit according to the form in the Appendix, that he claims no interest in the subject matter in dispute other than for charges or costs, and does not collude with either the plaintiff or the claimant, and is willing to pay or transfer the subject matter into court, or dispose of it as the court may direct. On filing such affidavit the defendant shall lodge with the registrar copies thereof for the plaintiff and the claimant.

Form 226.

(3) The defendant shall not be disentitled to relief by reason only that the titles of the plaintiff and the claimant have not a common origin, but are adverse to and independent of each other.

(4) The registrar shall, on being satisfied as aforesaid, issue for service on the claimant an interpleader summons according to the form in the Appendix, returnable as soon as conveniently may be, and shall annex thereto a copy of the original summons and of the defendant's affidavit, and shall adjourn the trial of the action to the day on which the interpleader summons is made returnable, and shall give notice to the plaintiff and defendant of the issue of the interpleader summons and of the adjournment of the trial of the action, according to the forms in the Appendix.

Form 227.

Forms 228, 229.

The interpleader summons shall be served in such time and mode as by these rules directed for the service of an ordinary summons to appear to a plaint.

(5) The claimant shall, five clear days at least before the return-day of the interpleader summons, leave at the office of the registrar either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on

Claimant to file notice of relinquishment, or

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r. 15.**

particulars
of claim.

Form 230.

Payment
into court
by defendant.

Interpleader,
how disposed
of.

Where
plaintiff does
not appear.

Where
claimant
does not
appear.

Where both
appear.
Forms 231—
233.

Discovery,
trial, costs
and inciden-
tal matters
in inter-
pleader pro-
ceedings.

which he disputes the assignment or founds his claim to the subject matter in the action ; and the registrar shall forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant. Provided that by consent of all parties, or without such consent if the judge so directs, the interpleader may be tried although this rule has not been complied with.

(6) On filing his affidavit, or at any time after the issue of the interpleader summons, the defendant may pay the debt or money or bring the chose in action, goods, or chattels into court, to abide its decision.

(7) Upon the return day of the interpleader summons—

(a) If the plaintiff does not appear, the action and interpleader summons shall be struck out, and the judge may make such order as to costs as may be just.

(b) If the claimant does not appear, the judge shall hear and determine the action as between the plaintiff and the defendant, and may make an order declaring the claimant and all persons claiming under him for ever barred against the defendant and all persons claiming under him, and may make such order as to costs against the claimant as may be just, but the order shall not affect the rights of the plaintiff and the claimant between themselves ; or if the claimant has filed notice that he relinquishes his claim, the judge may make an order declaring him and all persons claiming under him for ever barred against both the plaintiff and the defendant and all persons claiming under them, and may make such order against the claimant as to costs incurred by the other parties before the receipt of notice of relinquishment as may be just.

(c) If both the plaintiff and the claimant appear, the judge shall, whether the defendant does or does not appear, hear the cases of the plaintiff and the claimant (and the case of the defendant if he appears), and shall give such judgment thereon as shall finally determine the rights and claims of all parties ; but the judge shall not make any order in favour of the claimant against the defendant unless the claimant requests him so to do.

16.—Orders XVI. and XXII. shall, with the necessary modifications, apply to interpleader proceedings ; and the judge may in and for the purposes of any such proceedings make all such orders as to costs and all other matters (including, in the case of proceedings under the last preceding rule, the repayment to the

defendant of any costs paid by him into court, and the disposal of any money, chose in action, goods or chattels paid or brought by the defendant into court) as may be just and reasonable.

O. XXVII.
r. 16.

ORDER XXVIII.

TRANSMISSION OF PROCEEDS OF WARRANTS FROM FOREIGN DISTRICTS.

1.—(1) In all cases of warrants against the goods or orders of commitment to be executed in a foreign district, the high bailiff of the court from which the warrant or order issued shall send the same with a warrant according to the form in the Appendix, under the seal of the court, to the registrar of the foreign court, as required by section one hundred and fifty-eight of the Act ; and the registrar of the foreign court shall immediately on the receipt of the warrant or order make an entry of the receipt thereof in the “ Foreign Executions Re-issued Book.”

Transmission and entry of warrants, etc., to be executed in a foreign district.

Form 173.
51 & 52 Vict.
c. 43, s. 158.

(2) In the case of a warrant against goods, the high bailiff of the court from which the warrant issued shall also annex to the notice to be left with the debtor pursuant to Order XXV. Rule 17, a notice according to the form in the Appendix, under the seal of the court, that all payments under the warrant should be made and all notices or claims in respect of the execution or the goods taken in execution should be given or sent to the high bailiff of the court of the district in which the levy is made, and not to the high bailiff of the court out of which the warrant originally issued.

Notice to be annexed to warrant that payment should be made or notices or claims given or sent to high bailiff of foreign court.

(Amended, C. C. (No. 3) Rules, 1928.)

Form 173A.

2.—(1) Subject to the provisions of Order II., Rules 34A, 35 and 36, where by virtue of any warrant against the goods sent to a foreign district, any money has been received or levied by the high bailiff of the foreign court, such high bailiff shall within twenty-four hours from the receipt of such money, unless an interpleader summons as to such money is pending, transmit the same to the high bailiff of the home court by such means as the Lord Chancellor, with the concurrence of the Treasury, shall direct, and with such money shall transmit a return in writing according to the form in the Appendix, and shall also give to the execution creditor notice in writing of such return according to the form in the Appendix, and the high bailiff of the home court shall within twenty-four hours from the receipt of such money and return, deliver both to the registrar of his court.

Transmission of money received under execution sent to foreign district.

Form 175.

Form 175A.

(Amended, C. C. (No. 1) Rules, 1928.)

**O. XXVIII.
r. 2.**

Where
proceeds of
execution are
to be held
for 14 days.

4 & 5 Geo. 5,
c. 59, s. 41 (2).

Where
interpleader
pending.

(2) Provided that where the bailiff is by subsection two of section forty-one of the Bankruptcy Act, 1914, required to hold the proceeds of sale under an execution, or the money paid in order to avoid sale, for fourteen days, he shall proceed in accordance with Order II. Rule 35, and shall not proceed under paragraph one of this rule until such period of fourteen days has expired.

(3) And where an interpleader is pending as to the amount received, the high bailiff shall postpone the making of a return under paragraph one of this rule until the interpleader is disposed of, and shall when it is disposed of make a return showing how the money received is to be disposed of, and the amount (if any) payable to the execution creditor: and the amount payable to the execution creditor shall be dealt with in accordance with the said paragraph.

For s. 41 of Bankruptcy Act, 1914, see *post*, Part V.

Transmission
of payment
into foreign
court under
order of
commitment.

Form 175.

Form 175A.

3. Where by virtue of any order of commitment to be executed in a foreign district any money has been received by the high bailiff of the foreign court the provisions of the last preceding rule regarding the transmission to the home court of money received under warrants of execution, and the return and notice relating thereto, shall apply to such money received under an order of commitment.

(Amended, C. C. (No. 1) Rules, 1928.)

ORDER XXIX.**SECURITY.**

Security by
bond.

Form 235.

Form 237.

1. Where a party proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party, and upon the registrar, at his office, notice of the proposed sureties, according to the form in the Appendix, and the registrar shall forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and shall state in the notice to the obligee that any valid objection which he may have to make to the sureties or either of them must be made on such day.

Affidavit of
sufficiency.
Form 236.

2. The sureties shall make an affidavit of their sufficiency according to the form in the Appendix, unless the opposite party dispenses with such affidavit.

Execution
of bond.

3. The bond shall be executed in the presence of the judge or registrar or of a commissioner to administer oaths, or of a clerk to the registrar nominated to take affidavits.

4. Where a party makes a deposit of money in lieu of giving a bond, he shall forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made. **O. XXIX. r. 4**
 Deposit in lieu of bond.

5. In all cases where the security is by bond, the bond shall be given to the party or persons requiring the security, and shall be deposited with the registrar until the action is finally disposed of. Bond to be deposited.

The registrar has only to see that the bond is duly executed, and that the sureties are sufficient; he cannot decline to approve of the bond upon the ground that the defendant is by law incompetent to execute it (*Young v. Brompton Waterworks Co.*, (1862) 1 B. & S. 675; 31 L. J. Q. B. 14; 124 R. R. 709), in which case it was held that an incorporated joint-stock company, limited, could properly execute such a bond.

In case of objection to trial in the county court under sect. 62, the bond must be in a sum not exceeding 150*l.*, and the security must be approved by the registrar (sect. 62).

In cases of replevin, the bond must be in a sum sufficient to cover the alleged rent or damage, and the probable costs of the action in the High or county court, according to the court in which the replevisor elects to sue (sects. 135, 136).

Where the high bailiff is ordered to take possession of goods until security is given for their safe keeping or payment of their value in default, but the amount of security is not specified, an inventory and appraisalment must be made; upon receiving as a deposit the amount of the appraisalment or sufficient security to be approved by the registrar, for their safe custody and for their delivery up on request, the high bailiff will relinquish possession on condition that they shall be re-delivered to him on request or held to abide the order of the court. Where the warrant specifies the amount of security, no less deposit or security will be sufficient (Order H., r. 40).

In cases other than those which have been above mentioned, where the Act or rule does not specify the sum for which security must be given, the amount must be fixed by the judge or registrar.

If any action be brought on the bond, the court in which the action is brought may, by order, give such relief to the obligors as may be just, and such order will have the effect of a defeasance of the bond (sect. 108).

See Form 82 as to bond by defendant objecting to jurisdiction under sect. 62 of the Act. As to bond in replevin, Forms 287 and 288; by receiver, Form 303; for security for costs by plaintiff out of England, Form 16.

If Security by Deposit.—Where a party is required to give security, he may, in lieu of giving a bond, deposit with the registrar a sum equal in amount to the sum for which he would otherwise give security, together with a memorandum, to be approved of by the registrar, and to be signed by the party, his solicitor or agent, setting forth the conditions on which the money is deposited, and the registrar must give a written acknowledgment of the deposit (sect. 109; Form 234). The party, upon making the deposit, must give notice to the opposite party, by post or otherwise, of the deposit having been made (Order XXIX. r. 4).

Any objection to receive the money without the memorandum named in the statute should be made before the acknowledgment is given by the registrar, as the want of the memorandum cannot afterwards be relied on as vitiating the deposit if the other requisite forms have been complied with (*Griffin v. Coleman*, (1859) 4 H. & N. 265; 28 L. J. Ex. 134; 118 R. R. 426; *Walters v. Coghlan*, (1872) L. R. 8 Q. B. 61; 42 L. J. Q. B. 20).

Payment out of Court of Deposit.—The judge of the court in which the money has been deposited, may, on the same evidence as would be required to enforce or avoid a bond, given by way of security, order the sum deposited to be paid out to such party or parties as he shall think just (sect. 109).

- O. XXIX. r. 6.** 6. No registrar, deputy registrar, registrar's clerk, high bailiff, bailiff, broker, or other officer of the court, shall become surety in any case where, by the practice of the court, security is required.
- Officer of court not to be surety.

ORDER XXX.

PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

Costs where plaintiff fails.

1. In actions by executors or administrators, if the plaintiff fails, the costs shall, unless the court otherwise orders, be awarded in favour of the defendant, and shall be levied *de bonis propriis*.

Executors and Administrators.]—For summary of the law and practice in actions by and against executors and administrators, see notes to sect. 95 of the Act, *ante*, p. 113.

Costs on non-appearance.
51 & 52 Vict. c. 43, ss. 88, 89, 91.

2. Where an executor or administrator, plaintiff or defendant, does not appear on the day of hearing, the provisions of sections eighty-eight, eighty-nine, and ninety-one of the Act shall apply respectively, subject to the rules applicable to executors or administrators suing or sued.

Waste of assets.

3. A party suing an executor or administrator may charge in the summons that the defendant has had assets and has wasted them, and he shall state in his particulars the amount of assets alleged to have been left by the deceased, and the manner in which the said assets have been wasted.

See *Winch v. Winch*, (1853) 13 C. B. 128; 22 L. J. C. P. 104; 93 R. R. 469.

Judgment where waste charged.
Form 238.

4. Where a defendant is charged with waste in the summons, if the judge is of opinion that the defendant has wasted the assets the judgment shall be that the debt or damages and costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis*; and the non-payment of the amount of the demand immediately on the judge finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

See form of warrant, Form 245; see also *Winch v. Winch*, (1853) 13 C. B. 128; 22 L. J. C. P. 104, where it was held that the county court has jurisdiction to try a *devastavit*.

Judgment on default of appearance, or where representation and demand admitted, and assets not denied.
Form 238A.

4A. Where a defendant sued as an executor or administrator does not appear at the trial, or admits his representative character and the plaintiff's demand, and does not deny assets, the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*.

5. Where a defendant, sued as an executor or administrator admits his representative character, and only denies the demand, if the plaintiff proves the demand the judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*. O. XXX. r. 5.
Judgment where representation admitted, but demand denied.

6. Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris, si, &c., et si non, de bonis propriis*; and as to the demand, judgment of assets, *quando acciderint*; and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the court otherwise orders. Form 239.
Judgment where representation admitted and demand denied but proved, and administration alleged and proved.

7. Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does not prove the administration alleged, the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets. *quando acciderint*. Form 240.
Judgment in like case where administration not proved.

8. Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, and proves the administration alleged, the judgment shall be of assets, *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the court otherwise orders. Judgment where representation and demand admitted, and administration alleged and proved.

Procedure after Judgment of Quando, etc.]—It was formerly held that, if, after a plea of *plene administravit* and judgment of assets *quando acciderint*, the defendant received assets, the plaintiff must proceed by summons stating the judgment *quando*, and suggesting assets, and that a suggestion of a *devastavit* would be wrong (*Ellis v. Watt*, (1851) 8 C. B. 614; 19 L. J. C. P. 113). This was provided for by a rule of practice (Order XXX. r. 10, *infra*), which directs that, where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff may issue a summons in the prescribed form (Form 244); and, if it appears that assets have come to the hands of the executor or administrator since the judgment, the judge may order that the debt, damages and costs be levied *de bonis, testatoris, si, etc., et si non*, as to the costs, *de bonis propriis*. The party applying may also charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in an original summons, and the provisions of Rule 4 apply to such inquiry. The judge may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si, etc., et si non, de bonis propriis* (see form of judgment, Form 246; of warrant, Form 245). Form 242.

O. XXX.

r. 9.

Judgment
in like case
where ad-
ministration
not proved
and no other
defence
established.
Form 243.

9. Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any, judgment of assets, *quando acciderint*.

Proceedings
after
judgment
on assets
*quando
acciderint*.
Form 244.

10. Where judgment has been given against an executor or administrator that the amount be levied upon assets of the deceased, *quando acciderint*, the plaintiff may issue a summons according to the form in the Appendix; and if it appears that assets have come to the hands of the executor or administrator since the judgment, the judge may order that the debt, damages, and costs be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*: Provided that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in Rule 3 of this Order, and the provisions of Rule 4 shall apply to such inquiry; and the judge may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si, &c., et si non, de bonis propriis*.

Form 246.

Payment
into court
on defen-
dant's ad-
mission of
demand and
of assets.

11. Where a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into court, subject to the rules relating to payment into court in other cases.

Judgment
in other
cases.

12. In actions against executors or administrators for which provision is not hereinbefore specially made, if the defendant fails as to any of his defences, the judgment shall, unless the court otherwise orders, be for the plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis*.

ORDER XXXI.

NEW TRIAL.

Application
for new
trial.

1. An application for a new trial, or to set aside proceedings, may be made and determined on the day of trial, if both parties are present, or such application may be made at the first court held next after the expiration of twelve clear days from such day of trial: Provided that the intended applicant shall, seven

clear days at least before the holding of such court, deliver to the registrar at his office, and also give to the opposite party by serving the same personally on such party, or by leaving the same at his residence or place of business, or, where the opposite party acts by a solicitor, by service upon such solicitor in accordance with Order LIV. Rule 3, a notice in writing stating that such an application is intended to be made at such court, and setting forth shortly the grounds of the intended application; but the notice shall not operate as a stay of proceedings unless the judge otherwise orders; and if any money paid into court under any execution or order in the action has not been paid out at the time when such notice in writing is given to the registrar, the registrar shall retain the same to abide the event of the application, or until the judge shall otherwise order; and if no application is made, the money shall, if required, be paid over to the party in whose favour the order was made, unless the judge otherwise orders; and if notice is not given in manner aforesaid, or application is not made at the court mentioned in the notice, no application for a new trial or to set aside proceedings shall be subsequently made, unless by leave of the judge, and on such terms as he may think fit: Provided that this rule shall not apply to cases falling within the provisions of section ninety-one of the Act.

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Power of Court to Grant.]—We have seen that where judgment is given in the defendant's absence, the judge may grant a new trial on such terms as he thinks fit (sect. 91), and the above rule does not apply to such cases. The power to grant a new trial in other cases is derived from sect. 93 of the Act, and the practice here under consideration applies to cases within the latter section.

General Power of Judge to Order New Trial.]—The judge may "in every case whatever," whether tried by himself or by jury, order a new trial on such terms as he thinks fit, and may in the meantime stay proceedings (sect. 93; see form of order for new trial, Form 154). The power given under sect. 93 is very wide, and the words "in every case whatever" mean that his judicial discretion is unfettered, though he must act on well-ascertained legal principles. He has no power on an application for a new trial to enter judgment for the applicant (*Robinson v. Fawcett*, (1901) 2 K. B. 325; 70 L. J. K. B. 639, *supra*).

The power extends to cases where on the evidence the judge has decided that he has no jurisdiction, and has ordered the cause to be struck out (*Lister v. Wood* (C. A.), (1889) 23 Q. B. D. 229); also, where, on application, he is satisfied that he misdirected himself on a question of fact (*Sanatorium, Ltd. v. Marshall*, (1916) 85 L. J. K. B. 941), or on a question of law (*Astor v. Barrett*, (1920) 3 K. B. 633; 90 L. J. K. B. 177).

It has been held, contrary to the opinion which formerly obtained, but in accordance with the principle of the cases which established that the power to nonsuit was no greater than at common law, that the power of the judge to grant a new trial is the same as that of the High Court itself in actions in the High Court, and subject to the same limitations (*Murtagh v. Barry*, (1890) 24 Q. B. D. 632; 59 L. J. Q. B. 388). This view has now received the sanction of the House of Lords (*Brown v. Dean* (H. L.).

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(1910) A. C. 373 ; 79 L. J. K. B. 690), and it is settled law that the discretion of the judge to grant a new trial "if he shall think just" is a judicial discretion, which must be exercised on certain well-ascertained principles. It is proposed, therefore, shortly to consider the principal grounds on which new trials are granted in the High Court.

Verdict against Evidence.]—A new trial may be granted on the ground that the verdict of a jury is against the weight of the evidence, or that the damages are excessive or insufficient. The rule is the same even if the parties have agreed to accept the verdict of the majority (*Groom v. Shuker*, (1894) 69 L. T. 293). In the Supreme Court, where the damages given by a jury are excessive and unreasonable, the court has no jurisdiction, without the defendant's consent, to order that there shall be a new trial unless the plaintiff consents to a reduction of the damages (*Watt v. Watt*, (1905) A. C. 115; 74 L. J. K. B. 438); and the same rule would apply in the county court. See now *I. L. Barber & Co., Ltd. v. Deutsche Bank*, (1919) A. C. 304; 88 L. J. K. B. (H. L.) 194, where case of *Watt v. Watt* (*supra*) is distinguished.

Improper Damages.]—In many cases, such as actions for non-delivery of goods for which there is a market, the *quantum* of damages is ascertainable with precision according to well-known rules; but in cases of injury to the person, character, or reputation, the damages are generally at large, and the principal difficulty in controlling verdicts so far as they relate to damages is generally in such actions. The rule in regard to them appears to be much the same as that which applies to the grant of a new trial on the ground that the verdict is against evidence (*Praed v. Graham* (C. A.), (1889) 24 Q. B. D. 53; 59 L. J. Q. B. 230, *per* Lord Esher, M.R.), and the rule has of late years been frequently stated to be that the verdict ought not to be disturbed, even though the judge would himself have given a different one, unless the court thinks that, having regard to all the circumstances of the case, no sensible men could reasonably have given it (*Phillips v. Martin*, (1890) 15 App. Cas. 193; *Metropolitan Rail. Co. v. Wright*, (1885) 11 App. Cas. 152; 55 L. J. Q. B. 401; *Praed v. Graham* (C. A.), (1889) 24 Q. B. D. 53).

The expression of the rule in the older cases as to damages seems to be that the verdict ought not to be disturbed unless the damages awarded are so far in excess or below what seems reasonable to the court as to satisfy it that the jury must have been actuated by improper motive or have proceeded upon a wrong principle (*Creed v. Fisher*, (1854) 9 Ex. 472; 23 L. J. Ex. 143; 96 R. R. 801; *Kelly v. Sherlock*, (1866) L. R. 1 Q. B. 686; 35 L. J. Q. B. 209; *Phillips v. L. & S. W. Rail. Co.*, (1879) 5 Q. B. D. 78). Thus in an action for breach of promise of marriage, in which heavier damages were given than any member of the court approved, a new trial was refused, as no error or misconduct could be suggested (*Berry v. Da Costa*, (1866) L. R. 1 C. P. 331; 35 L. J. C. P. 191). Where, however, the damages in an action for personal injury were, though substantial, unreasonably small under the circumstances, the court inferred from it that the jury must have omitted to consider some of the elements of damage and granted a new trial (*Phillips v. L. & S. W. Rail. Co.* (C. A.), (1879) 5 Q. B. D. 78).

Where an action was tried by jury and the judge gave judgment, but reserved leave to move, and a motion for a new trial was afterwards made and refused, it was held that final judgment for the purpose of appeal was not given until the refusal of the motion, and that the time for appeal ran from the day of refusal (*Foster v. Green*, (1861) 6 H. & N. 793; 30 L. J. Ex. 263).

Even if the judge reserves leave to move, the dissatisfied party may at once appeal to the High Court, and need not move in the county court (*Outhwaite v. Hudson*, (1851) 7 Ex. 380; 21 L. J. Ex. 151).

Compromise by Jury.]—If the smallness of the damages shows that the jury must have made a compromise, and instead of deciding the real question

upon which the right to any damages depends, must have agreed to find a verdict for nominal damages (*Falvey v. Stanford*, (1874) L. R. 10 Q. B. 54; 44 L. J. (N. S.) Q. B. 7), or to split the difference (*Hall v. Poyser*, (1845) 13 M. & W. 600; 14 L. J. Ex. 98), a new trial may be granted.

Misconduct of Jury.—Misconduct of the jury and undue influence upon them, when they give rise to a suspicion of bias or unfairness, may also be grounds (*Morris v. Vivian*, (1842) 10 M. & W. 137; 11 L. J. Ex. 367; 62 R. R. 550; *Hughes v. Budd*, (1840) 8 Dowl. 315; 159 R. R. 835). The presence of a stranger for an appreciable time in the room with the jury is of itself sufficient to invalidate the verdict, and entitle the losing party to a new trial (*Goby v. Wetherill*, (1915) 2 K. B. 674).

Where one of the jury was a member of the borough council which was the defendant it was held the verdict could not stand (*Atkins v. Fulham Borough Council*, (1915) 31 T. L. R. 564).

Separation of Jury.—Separation of jury after summing up does not invalidate the verdict (*Fanshaw v. Knowles*, (1916) 2 K. B. 538; 85 L. J. K. B. 1735).

Discharge of Jury by Judge.—It is an established rule of practice that in an accident case it should not be intimated to a jury that the defendant is insured and, where this rule has been violated, it is within the discretion of the judge to discharge the jury at the expense of the party whose advocate has violated the rule (*Grinham v. Davies*, (1928) 139 L. T. 379).

Perjury of Witnesses.—The fact that witnesses on whose testimony a verdict has been obtained, have since been convicted of perjury committed in the cause, is a ground for a new trial (*Benfield v. Petrie*, (1781) 3 Doug. 24); but a mere prosecution without conviction, even if a bill has been found, is no ground (*Thurtell v. Beaumont*, (1823) 1 Bing. 339; 2 L. J. C. P. 4; 25 R. R. 644; *Seeley v. Mayhew*, (1828) 4 Bing. 561).

Mistake of Witness.—The fact that a material witness, presumably for the successful party, after the trial admits, on affidavit, that he made a serious mistake in giving his evidence, is a ground (*Richardson v. Fisher*, (1823) 1 Bing. 145; 24 R. R. 690).

Parties unprepared, Witness absent.—Generally the fact that a party was unprepared with his evidence (*Cooke v. Berry*, (1745) 1 Wils. 98; *Turquand v. Dawson*, (1835) 1 C. M. & R. 709; 40 R. R. 690), or that a material witness was absent (*Edwards v. Dignam*, (1834) 2 Dowl. 642), or that evidence was not given which might have been given (*Spong v. Hog*, (1772) 2 W. Bl. 802), are not grounds for a new trial.

Discovery of New Evidence.—But the unexpected discovery after the trial of new evidence has sometimes been allowed to be a ground for a new trial (*Thurtell v. Beaumont*, (1823) 1 Bing. 339; 2 L. J. C. P. 4; 25 R. R. 644; *Broadhead v. Marshall*, (1774) 2 W. Bl. 955; *Robinson v. Smith*, (1915) 1 K. B. 711; 84 L. J. K. B. 783); but not where such evidence might have been obtained at the trial by reasonable diligence, or where there is serious delay in bringing the discovery of such new evidence to the notice of the court (*Nash v. Rochford Rural Council*, (1917) 86 L. J. K. B. 370). See further *Guest v. Ibbotson*, (1922) 91 L. J. K. B. 558.

Surprise.—Where evidence given in the course of a trial takes the opposite party by surprise, and an application is made for adjournment, and the trial proceeds, and the party alleging surprise takes his chance of obtaining the verdict, the Court of Appeal will not grant a new trial on the ground of surprise (*Isaacs v. Hobhouse*, (1919) 1 K. B. 398; 88 L. J. K. B. 668).

Misdirection, Improper Reception of Evidence, etc.—Misdirection and improper reception or rejection of evidence are also good grounds for the grant of a new trial, if substantial wrong or miscarriage of justice has been occasioned thereby (R. S. C., Order XXXIX. r. 6; Order LIX. r. 7); these

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are also grounds of appeal under sect. 120. The onus of showing that misdirection did not cause a miscarriage of justice lies on the party resisting the application for a new trial (*Anthony v. Halstead*, (1877) 37 L. T. 433). Where a judge subsequently to trying an action comes to the conclusion that he has misdirected himself on a question of fact, or, apparently, on a question of law, he may on application grant a new trial. See note to sect. 93 of the Act, *ante*, p. 111, and the cases there cited.

Right to begin.—If a mistake be made in deciding the right to begin, it is a ground for a new trial, if a manifest wrong has been occasioned by it (*Ashby v. Bates*, (1846) 15 M. & W. 589; see note to *Booth v. Millns*, (1849) 15 M. & W. 671).

Application for.—The application for a new trial ("trial," in the rules, means the hearing of any action or matter in court (Order LV.)), or to set aside proceedings, may be made and determined on the day of trial, if both parties be present, or it may be made at the first court held next after the expiration of twelve clear days from such day. If made after the day of trial, the party intending to apply must, seven clear days at least before the holding of the court, deliver to the registrar at his office, and also give to the opposite party, personally, or to his solicitor, or by leaving it at his residence or place of business, in accordance with Order LIV. r. 3, a notice in writing of his intention, stating shortly the grounds of the application. These provisions are only directory; therefore, although a party has omitted to give notice in time, the judge may in his discretion entertain an application for a new trial (*Carter v. Smith*, (1856) 4 E. & B. 696; 24 L. J. Q. B. 141; 99 R. R. 699). So, it is believed, the right to receive notice may be waived by the opposite party (*Park Gate Co. v. Coates*, (1870) L. R. 5 C. P. 634; 39 L. J. C. P. 317).

The notice does not operate as a stay of proceedings unless the judge otherwise orders; but money paid into court which has not been paid out must be retained to abide the event of the application, or until the judge otherwise orders. If no application be made, the money, if required, must be paid to the party in whose favour the order was made, unless the judge otherwise orders. If the notice be not duly given, or the application be not made at the court mentioned in the notice, no application for a new trial, or to set aside proceedings, may be subsequently made, unless by leave of the judge on such terms as he thinks fit. This does not apply to applications for a new trial under sect. 91 of the Act, *i.e.*, where defendant has not appeared at the original hearing (Rule 1, *supra*).

Appeals from Registrar.—An application to set aside a judgment or order of the registrar, or any execution thereon, pursuant to sect. 7 of the County Courts Act, 1919, should be made in accordance with Rule 1 (*supra*), unless the judgment or order was given or made in the absence of the defendant. In such cases the application should be made under sect. 91 of the principal Act. See Rule 4 of this Order.

Extended Jurisdiction.—Where an action sent for trial to a foreign court under the extended jurisdiction the application for a new trial must be made to the foreign court, and the new trial, if granted, takes place there (Order XXIIA. r. 26 (1)). Notice of the application does not operate as a stay, unless the judge otherwise orders (Order XXIIA. r. 26 (2)). If notice of the application is given before the registrar has transmitted the documents to the registrar of the home court under Order XXIIA. r. 26, the notice and the documents will, if proceedings are not stayed, be transmitted to the registrar of the home court; but if there is a stay, the registrar of the foreign court will retain the documents until the application is disposed of (Order XXIIA. r. 26 (3)). If the notice is given after transmission of the documents in the action to the home court, the registrar of the foreign court will transmit it to the registrar of the home court, and must also give notice to the latter of a stay of proceedings, if any is ordered (Order XXIIA. r. 26 (4)). If

the documents in the action have been already transmitted to the registrar of the home court, he will re-transmit them to the registrar of the foreign court for use on the application for a new trial (Order XXIIA. r. 26 (5)). If the application is refused or abandoned, the registrar of the foreign court will proceed as directed by Order XXIIA. r. 26 (Order XXIIA. r. 26 (6) (a)); if it is granted, he will retain the documents in the action until the case has been re-tried or otherwise disposed of, when the procedure of Rule 26 will be followed (Order XXIIA. r. 26 (6) (b)). Money paid into the foreign court and certified to the registrar of the home court, or money paid into the home court under an execution or order in the action, which has not been paid out by the registrar of the home court when he receives notice of application for a new trial, will be retained by him to abide the result of the application, or until the judge otherwise orders; if the application for a new trial is not made, the money will, unless the judge otherwise orders, be paid by the registrar of the home court to the parties entitled, and the provisions of Order XXIIA. r. 26, as to money paid into the foreign court will apply (Order XXIIA. r. 26 (7)).

Finality of Decision.—An order made on an application for a new trial is final; the judge is then *functus officio*, and cannot entertain a second application (*G. N. Rail. Co. v. Mossop*, (1856) 17 C. B. 130; 25 L. J. C. P. 22; 104 R. R. 626).

Where the plaintiff applied for a new trial immediately after verdict the judge refused it, but after the next case had been called on he said he would grant it. No entry of the refusal had been made on the minutes. The defendant's solicitor was present both when the application was made and when the judge made the order. The court on these facts held that the judge had not definitely refused to grant a new trial, and that his order was good. They further held that the presence of the defendant himself was unnecessary (*Barton v. Titchmarsh* (C. A.), (1880) 49 L. J. Ex. 573; see also *Moxon v. London Tram. Co.*, (1889) 57 L. J. Q. B. 446, S. C.; *R. v. Greenwich C. C.* (C. A.), 37 W. R. 132; 60 L. T. 248).

Jury.—In granting a new trial, the judge may make it a condition that it shall take place before a jury, although the former trial did not (Order XXXI. r. 2). On a new trial either party may ask for a jury, subject to sect. 19 of the Administration of Justice Act, 1925, although there was no jury on the first (*R. v. Harwood*, (1853) 1 B. C. C. 144; 22 L. J. Q. B. 127; 94 R. R. 860; *Ford v. Taylor*, (1878) 3 C. P. D. 21; 47 L. J. C. P. 116). See *ante*, pp. 118—122, as to trial by jury.

Costs.—If a new trial is granted on payment of costs, which are afterwards paid, the party accepting them is precluded from objecting to the order (*Sparrow v. Reed*, (1848) 5 D. & L. 633; 17 L. J. Q. B. 183). The judge has the same power over the costs of the new trial as over the first.

Should he require a bond to be given by either party, the expense of it must be borne by the party giving it (sect. 108).

Appeal.—Under the Act of 1888, an appeal lies against the order of the judge granting (*Murtagh v. Barry*, (1890) 24 Q. B. D. 632; 59 L. J. Q. B. 388; *Bryant v. North Met. Tram. Co.*, (1890) 6 T. L. R. 396; *How v. L. & N. W. Rail. Co.* (C. A.), (1892) 1 Q. B. 391; 61 L. J. Q. B. 368) or refusing (*Dingor v. Mathews*, (1889) 65 L. T. 748, n.; *Pole v. Bright*, (1892) 1 Q. B. 603; 61 L. J. Q. B. 139) a new trial. It would appear that to give rise to an appeal, the judge in granting or refusing a new trial must have misapplied either law or equity. See also *ante* p. 141, "Appeals from Interlocutory Decisions."

If the judge grants (*How v. L. & N. W. Rail. Co.* (C. A.), (1892) 1 Q. B. 391; and see *Smith v. Baker* (H. L.), (1891) A. C. 325; 60 L. J. Q. B. 683) or refuses (*Wilton v. Leeds Co.*, (1882) 32 W. R. 461) a new trial applied for merely on the ground that the verdict is against the weight of evidence no appeal will lie unless the judge misapplies the law in determining the question before him.

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If the judge grants a new trial on the ground that the damages given by the jury are excessive, this cannot be questioned on appeal, unless as above some wrong principle of law is involved in his decision (*Cole v. De Trafford*, (1917) 1 K. B. 911; 33 T. L. R. 249).

Order.]—The court may, on an appeal by a plaintiff against an order for a new trial, order judgment to be entered for the defendant (*Bryant v. North Met. Tram. Co.*, (1890) 6 T. L. R. 396); but a county court judge has no such power (*Robinson v. Fawcett*, (1901) 2 K. B. 325; 70 L. J. K. B. 639).

Time for Appeal.]—The time for giving notice of appeal is within twenty-one days from the order granting or refusing a new trial. (See "Notice of Motion," *ante*, p. 146. In *Dingor v. Mathews*, (1889) 65 L. T. 748, n., the trial was on July 15th; motion for a new trial was made in the county court, and refused, on August 1st; notice of motion by way of appeal was given on August 20th, and it was held to be duly given.

Staying Execution.]—If the judge at any time is satisfied that any party to an action or matter is unable from any cause to pay and discharge the debt or damages recovered against him, or any instalment thereof, he may, in his discretion, suspend or stay any judgment, order, or execution for such time, and on such terms, as he thinks fit, and so from time to time until it shall appear that such temporary cause of disability has ceased, or so order on such terms (including liability to re-arrest if the terms are not complied with) as he thinks fit the discharge of any debtor arrested or in prison by order of the court. See sect. 23 of County Courts Act, 1919, substituted for sect. 153 of the principal Act, *ante*, p. 208.

Except as above, the County Courts Acts contain no express power to stay execution.

Staying Proceedings.]—It remains to be seen how far the provisions of the Judicature Acts may justify a stay of proceedings before or after judgment. A county court judge was held to be justified in refusing to try, and in staying proceedings, until the plaintiff had paid the costs of an action brought previously in the High Court, and decided in favour of the defendant, and involving substantially the same questions as the case in the county court (*R. v. Bayley*, (1881) 8 Q. B. D. 411; 51 L. J. Q. B. 244; see, where stay ordered in High Court for non-payment of costs by married woman, *In re Payne*, (1883) 23 Ch. D. 288; 52 L. J. Ch. 544); and there are strong grounds for believing that a judge might stay proceedings in his own courts in any case in which, if the action were in the High Court, an order to stay might be made (see *King v. Hawkesworth*, (1879) 4 Q. B. D. 371; 48 L. J. Q. B. 484; *Poyser v. Minors* (C. A.), (1881) 7 Q. B. D. 329; 50 L. J. Q. B. 555).

Under sect. 4 of the Arbitration Act, 1889 (which reproduces sect. 11 of the Common Law Procedure Act, 1854), a county court judge has power to stay proceedings where an action has been commenced notwithstanding the existence of a submission to arbitration of the parties. This seems to follow from the definition of "Court" in that Act when read in conjunction with sect. 89 of the Judicature Act, 1873, now sect. 202 of the Supreme Court of Judicature (Consolidation) Act, 1925, and has been decided to be the law (see *Morrison Tinsplate Co. v. Brooker*, (1908) 1 K. B. 403; 77 L. J. K. B. 197). But it is a matter of considerable doubt whether the registrar of a county court, as such, has jurisdiction to make the order, and the safest course would appear to be to make the application to the judge. Where fraud is alleged the proceedings are not usually stayed, though an arbitration clause exists (*Jureidini v. National British and Irish Millers' Insurance Co.*, (1915) A. C. 499; 84 L. J. K. B. 640; *Monro v. Bognor Urban Council*, (1915) 3 K. B. 167; 84 L. J. K. B. 1091), nor is the discretion of the county court judge, if exercised judicially, interfered with (*Clough v. County Live Stock Insurance Co., Ltd.*, (1916) 85 L. J. K. B. 1185).

Where the party asking that the arbitration clause may be enforced has taken a step in the action he cannot ask that the action be stayed. As to

what is a step in the action, *cf. Ives v. Williams*, (1894) 2 Ch. 478; 63 L. J. Ch. 521; and *Parker, Gaines & Co. Ltd. v. Turpin*, (1918) 1 K. B. 358; 87 L. J. K. B. 357.

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2. The judge may, in his discretion, make it a condition of granting a new trial that it shall take place with a jury, although the former trial did not take place with a jury.

Judge may direct new trial to be had with jury.

3. Where there are two or more judges of any court, an application for a new trial or to set aside proceedings in an action or matter tried or determined before one of such judges shall, wherever practicable, be made to that judge; and for that purpose an application of which notice has been given for a day on which that judge is not sitting may be adjourned to a day on which that judge will sit, if such adjournment will not involve unreasonable delay.

Application for new trial where there are two or more judges.

Appeals from Registrar.

4. An application to set aside any judgment or order of a registrar, and any execution thereon, pursuant to section seven of the County Courts Act, 1919, may, if the judgment or order was given or made in the absence of the defendant, be made in accordance with the provisions of section ninety-one of the Act; and may in any other case be made in accordance with the provisions of Rule 1 of this Order.

Appeals from registrar.
9 & 10 Geo. 5, c. 73, s. 7.
51 & 52 Vict. c. 43, s. 91.

See notes to sect. 92, "Jurisdiction of Registrar."

ORDER XXXII.

APPEALS.

1. Appeals shall be brought in accordance with the provisions of the Rules of the Supreme Court, made under the Supreme Court of Judicature Act, 1884.

Appeals.

The Rules of the Supreme Court referred to are Order LVIII. r. 20, and Order LIX. rr. 4—18. They will be found *ante*, pp. 263—266.

47 & 48 Vict. c. 61, ss. 23, 24.

See generally as to appeals, notes to sect. 120, *ante*, p. 140.

2. When the Court of Appeal has pronounced judgment, either party may deposit the same, or an office copy thereof, with the registrar of the county court, and upon being so deposited such judgment shall be filed and may be enforced as if it had been given by the county court.

Judgment of Court of Appeal to be deposited.

3. A new trial in pursuance of an order of the Court of Appeal shall be entered for trial at the first county court which shall be held next after twelve clear days from the time when such order or office copy thereof has been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the judge otherwise orders; and it shall be conducted in the same manner as any new trial granted by the county court itself.

New Trial.

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of Court of
Appeal.

4. If the order of the Court of Appeal be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the county court.

The order of the court in favour of the appellant will, it is conceived, discharge his sureties, if any, providing that he has not been ordered to pay the costs of the appeal, a very improbable contingency. If money has been paid into court as security for the costs of the appeal, the court, in granting costs to the appellant, will order the money paid into court to be paid out to him (*Kelly v. Webster*, (1852) 16 Jur. 838).

The costs of the proceedings in the court below must be dealt with as accessory to the judgment; therefore the reversal of the judgment below and order for a new trial, reverses an order for costs in the court below (*Gage v. Collins*, (1867) L. R. 2 C. P. 381; 36 L. J. C. P. 144; *Ashby v. Sedgwick*, (1873) L. R. 15 Eq. 245; 42 L. J. Ch. 355).

ORDER XXXIII.

ACTIONS OR MATTERS REMITTED FROM OR TRANSFERRED TO THE
HIGH COURT.

Where
action,
counter-
claim or
matter trans-
ferred from
High Court.
9 & 10 Geo.
5, c. 73, s. 4.

1.—(1) Where by order of the High Court any action, counterclaim or matter is ordered to be transferred to a county court, any party may lodge or cause to be lodged with the registrar the order and the writ, or copies thereof, and such other documents (if any) as the court or judge may direct; and it shall be the duty of such party to apply to the proper officer of the Supreme Court to send to the registrar all pleadings, affidavits and other documents filed in the High Court relating to the action, counterclaim or matter. Such party shall also lodge with the registrar a statement of the names and addresses of the several parties to the action, counterclaim or matter and their solicitors (if any).

(2) If no statement of claim has been delivered in the High Court the plaintiff shall lodge with the registrar in duplicate a concise statement of the particulars of his claim such as would be required upon entering a plaint; or if the only matter remaining to be tried is a counterclaim, and no particulars of such counterclaim have been delivered in the High Court, the defendant shall deliver to the registrar in duplicate a concise statement of the particulars thereof, such as would be required on setting up a counterclaim in the county court.

(3) On the documents aforesaid being lodged and delivered the registrar shall enter the action, counterclaim or matter for trial, and give notice to the parties of the day appointed for the trial, by post or otherwise, ten clear days* at least before such day, and shall annex to the notice to the defendant or the plaintiff, as the case may be, the duplicate of the particulars of the claim or

counterclaim lodged or delivered in accordance with the last preceding paragraph ; Provided that— O. XXXIII.
r. 1.

- (a) where it appears that the plaintiff (or the defendant, where only a counterclaim is remitted) does not reside in England or Wales, the action shall not, unless the judge otherwise orders, be entered for trial unless and until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the Registrar, and
- (b) an undertaking by a solicitor according to the form in the Appendix to be responsible for the costs shall be sufficient, and the provisions of Rule 10 of Order V. shall apply.

See notes to sects. 1 and 2 of the County Courts Act, 1919, *ante*, pp. 49—58, and sect. 4 of that Act, *ante*, p. 235.

As to garnishee proceedings transferred by the High Court to the County Court, see *ante*, p. 54.

As to interpleader proceedings transferred from the High Court, see sect. 204 of Judicature Act, 1925 (*post*, Part V.), and rules 9—19 of this Order.

On the question of costs in matters transferred from the High Court, see notes to sects. 11 and 12 of the 1919 Act, *ante*, pp. 136—139, and Part II., "Costs and Court Fees," pp. 1037—1045.

The proviso to para. (3), *supra*, was added by County Court (No. 1) Rules, 1927.

*Twenty clear days when amount claimed exceeds 50*l.* or the amount of damages claimed is not specified (Rule 3*B. infra*).

2. The registrar shall forthwith indorse on the order or duplicate thereof the date on which the same was lodged, and file the same, and the action, counterclaim or matter shall proceed in all respects as (a) it were an ordinary action in the court. Where a statement of defence or counterclaim has been delivered in the High Court, no notice of defence, set-off or counterclaim under Order X. shall be required as to any matter included in such defence or counterclaim.

(a) *Quære*, "if."

3. Upon being served with a notice of trial under Rule 1 of this Order, a defendant to the action or counterclaim shall proceed in all respects in the same way as if the action had been brought in the county court, and the notice so served upon him were an ordinary summons.

3A. Where any money has been paid into the High Court in an action or matter which is remitted or transferred to a county court, the registrar of the county court shall, on the request of any party to the action or matter, apply to the Paymaster-General, or, where money has been paid into a district registry, to the district registrar, to transmit such money to the registrar ; and such money, when transmitted in accordance with the application,

Order to be filed.
Proceedings in county court.

Defendant to proceed as if action originally brought in county court.

Transmission to county court of money paid into High Court.

O. XXXIII. shall be subject to the order of the county court in like manner as if it had been paid into the county court in the action or matter.

r. 3a.

Form 283A.

An application to the Paymaster-General or district registrar under this rule shall be in accordance with the form in the Appendix.

See also Supreme Court Funds Rules, 1927, Rule 46.

Times for interlocutory proceedings, where claim exceeds 50*l.*, or is for damages where no amount specified.

3B. Where the amount claimed on the writ or by the counter-claim exceeds fifty pounds, or where damages are claimed but the amount of the claim is not specified, the notice of trial required by Rule 1 of this Order shall be given twenty clear days at least before the day appointed for the trial, and the provisions of Order XXIIA., Rules 6 to 11, 13, 14, and 16 to 19, as to the times within which proceedings are to be taken, shall apply; and in the application of those rules the day appointed for the trial shall be deemed to be the return day.

Order and service, where defendant added or substituted.
Forms 94, 95.

3c. Where a defendant is added or substituted in an action or matter remitted or transferred to a county court, except where a defendant is substituted under Order XIV. Rule 4, an order shall be drawn up: and such order, together with a copy of the writ or other proceedings, and of the pleadings, affidavits, and other documents filed in the High Court, and of the statement and particulars filed in the county court pursuant to Rule 1 of this Order, and a notice according to the form in the Appendix as to the day upon which he is to attend at the court, shall be served on the added or substituted defendant according to the rules applicable to the service of default summonses, and the proceedings as against such party shall be deemed to have begun only on the service of such notice.

Special notice in action for libel or slander.

6 & 7 Vict.

c. 96, ss. 1, 2.

Forms 86, 87.

4. Where in any action for libel or slander remitted under section sixty-six of the Act, to be tried in a county court, the defendant intends to avail himself of the provisions of sections one and two of the Libel Act, 1843, he shall give notice in writing of such intention to the registrar five clear days at least before the day appointed for the trial of the action.

Where issue directed by High Court to be tried in county court.

9 & 10 Geo.

5, c. 73,

ss 3, 4.

Form 283B.

4A. Where under the County Courts Act, 1919, an order is made by the High Court directing an issue to be tried at a county court, any party may lodge the order with the registrar, together with the affidavits (if any) filed in the matter, and such other documents as the court or judge may direct.

On the order and documents aforesaid being so lodged the registrar shall enter the issue for trial, and give notice to the parties of the day appointed for the trial, by post or otherwise, ten clear days at least before such day, and shall annex to the notice a copy of the order of the High Court directing the issue to be tried.

4b. The registrar shall forthwith indorse on the order or duplicate thereof the date on which the same was lodged, and, subject to any directions in the order directing the issue to be tried, the matter shall proceed as if it were an ordinary action in the court.

O. XXXIII.
r. 4a.

Proceedings
in county
court.

4c. After the issue has been tried the judge shall certify the result of the trial, and may make any report which he may think fit as to costs or otherwise, according to the form in the Appendix, and the registrar shall forward the certificate with the documents aforesaid to the proper officer of the High Court.

Certificate
of result of
trial.
Form 283c.

See sect. 3 of County Courts Act, 1919.

5. If during the progress of any action or matter under section sixty-seven or section seventy of the Act, or of any other action or matter commenced under the equitable jurisdiction of the court, it is made to appear that the subject-matter of the action or matter exceeds the limit in point of amount to which the jurisdiction of the court is limited, the judge if requested may forthwith make an order for the transfer of the action or matter to the Chancery Division of the High Court, but if not so requested the order shall not be made before fifteen days at least; and the registrar shall make and file a copy of such order, and shall transmit the order, by post or otherwise, to the proper officer of the Chancery Division of the High Court, and shall also send notice, by post or otherwise, of the fact to all parties and persons entitled to be served with a copy of the order.

Transfer of
equitable
action or
matter to
Chancery
Division
under
51 & 52 Vict.
c. 43, ss. 67,
68, 70.
Form 331.

See *Prangnell v. Prangnell*, (1893) 62 L. J. Q. B. 346, and the notes to sect. 68 of the Act.

When the excess of jurisdiction appears from the evidence at the trial, the judge ought not to strike out the action or matter; but he ought to do so if the want of jurisdiction appears on the plaint or petition itself (*Birks v. Silverwood*, (1871) L. R. 14 Eq. 101; 41 L. J. Ch. 638; *Thomson v. Flinn*, (1881) L. R. 17 Eq. 415; 43 L. J. Ch. 256; but see s. 114 of the principal Act.

6. If during the progress of taking any accounts or making any inquiries in any action or matter under section sixty-seven or section seventy of the Act, or of any other action or matter commenced under the equitable jurisdiction of the court, it appears to the registrar that the subject-matter of the action or matter exceeds the limit in point of amount to which the jurisdiction of the court is limited, he may if he thinks fit proceed with and complete the particular account or inquiry, but he shall at the next sitting of the court present a certificate of the state of the proceedings in the action or matter, and if the judge is of opinion that such excess exists, he shall make an order of transfer as under the last preceding rule.

Report by
registrar,
and proceed-
ings where
limit of
jurisdiction
in equitable
action or
matter
found to be
exceeded.
51 & 52 Vict.
c. 43, ss. 67,
68, 70.
Form 331.

7. Where any order is made by the High Court of Justice or any division or judge thereof for the transfer of any action or matter

Transmission
of documents,

O. XXXIII.
r. 6.

&c., to High
 Court by
 registrar,
 after order
 of transfer.
 36 & 37 Vict.
 c. 66, s. 90;
 and 51 & 52
 Vict. c. 43,
 ss. 68, 126.

from a county court to the High Court under section ninety of the Supreme Court of Judicature Act, 1873 (*a*), or under section one hundred and twenty-six of the Act, or where an order is made by the judge under section sixty-eight of the Act, and Rules 5 and 6 of this Order, then, subject to such order, the record in such proceeding shall be transmitted by the registrar in the following manner. The registrar shall make and certify under his hand office copies of all entries of record in the books of the court, and shall forthwith transmit by post or otherwise to the proper officer of the High Court such copies, together with all documents filed in the action or matter, and also, where the proceedings have been transferred from a county court, the order of such court. Such copies and the cost of transmission shall be paid for in the first instance by the party on whose application the transfer has been made, unless the transfer has been made by the judge under Rule 5 or Rule 6 of this Order without any application to transfer being made to him, in which case such copies and the costs of transmission shall be paid for in the first instance by the plaintiff in the action or matter; and the registrar may require deposit of the cost of making such copies and transmission before making or transmitting the same; but such payment shall be without prejudice to any question as to the party by whom such costs are ultimately to be borne.

(*a*) Now s. 203 of Judicature Act, 1925, *ante*, p. 36.

Registrar to
 apply to
 judge for
 directions
 after trans-
 fer from
 High Court
 under
 51 & 52 Vict.
 c. 43, s. 69.

8. Where any action or matter is transferred, under section sixty-nine of the Act, to a county court, the registrar shall forthwith apply to the judge for directions as to the further steps in the action or matter; and thereupon the judge may give such directions for carrying on the action or matter as he may think fit, or he may appoint a time to hear and determine any matters in such action or matter, and direct the registrar to summon all parties to appear on the day so appointed. And the judge may also, if he thinks fit, order the registrar to give notice to the parties to the action or matter, or any of them, that the order of transfer has been made.

See notes to sect. 69 of the Act.

Claimant to
 lodge order
 of High
 Court
 transferring
 interpleader
 proceeding
 under
 47 & 48 Vict.
 c. 61, s. 17.
 Form 284.

9. Where a proceeding by way of interpleader has been transferred to a county court under the powers given by section seventeen of the Supreme Court of Judicature Act, 1884 (*a*), the claimant shall within the time (if any) limited by the order transferring the proceeding, or if no time is so limited, then within seven days from the date of such order, lodge with the registrar

(*a*) Repealed, and re-enacted by sect. 204 of the Supreme Court of Judicature (Consolidation) Act, 1925, *post*, Part V.

the order transferring the proceeding, or a duplicate or copy thereof, under the seal of the High Court, together with office copies of all affidavits filed on the application to the High Court, and a copy of the issue, if any, directed to be delivered between the parties by any order of the High Court, and also a statement in writing setting forth the names and addresses of the several parties to such proceeding, and their solicitors, if any, and stating concisely the nature of the proceeding transferred, together with a request to enter the same for hearing. If the claimant fails to lodge such documents and request within the time limited as aforesaid, any other party to the proceeding, or the sheriff, may lodge the same. The registrar shall thereupon enter the proceeding for hearing, and shall give notice of the day, time, and place for the hearing of the proceeding to the parties, and where the order is made on an interpleader summons issued at the instance of the sheriff, to the London agent of the under-sheriff, by post or otherwise, ten clear days at least before such day, unless any shorter notice is directed in the order transferring the proceeding, or by the judge or registrar as hereinafter provided.

O. XXXIII.
r. 9.

Entry for
hearing.
Form 285.

10. Where the order is made on an interpleader summons issued at the instance of the sheriff, the claimant shall five clear days at least before the day fixed for the hearing of the proceeding (unless such time is reduced as hereinafter provided) lodge with the registrar two copies of the particulars of any goods or chattels alleged to be the property of the claimant, and of the grounds of his claim; and the registrar shall forthwith send by post to the execution creditor one of the copies of such particulars: Provided that by consent of all parties, or without such consent if the judge so directs, the interpleader claim may be tried, although this rule has not been complied with.

Claimant to
lodge two
copies of
particulars
and grounds
of claim.
Form 211.

11. Subject to any directions to the contrary which may be contained in the order transferring the proceeding, damages may be claimed against the execution creditor in a proceeding by way of interpleader transferred from the High Court to a county court in the same manner as in an interpleader proceeding commenced in a county court.

Claims to
damages.

In *Salbstein v. M. Isaacs & Sons and Another*, (1916) 85 L. J. K. B. 109, it was argued that the county courts rule committee exceeded their powers in making the rule that "no claim for damages shall be allowed in an interpleader issue remitted from the High Court," but the Divisional Court decided that this rule was not *ultra vires*. Now, if not contrary to the terms of the order transferring the proceedings to the county court damages may be claimed from the execution creditor in the same way as in ordinary interpleader proceedings (*supra*). Apparently there is no power to claim damages from the sheriff in the county court in such a case.

**O. XXXIII.
r. 12.**

Mode of
trial of in-
terpleader
transferred
from High
Court.

47 & 48 Vict.
c. 61, s. 17.

Provisions
for interim
custody of
goods, and
for expedit-
ing hearing.

12. Any proceeding by way of interpleader transferred from the High Court to a county court shall be tried in such manner and under such conditions as may be prescribed by the order directing such transfer. In the event of no directions as to the manner and conditions of trial being given in such order, any of the parties to the proceeding (or the sheriff, where the order is made on an interpleader summons issued at his instance), may apply to the court to which the proceeding is transferred for directions as to the mode of trial, or as to any proceeding with reference to the property seized; and subject to any such directions the proceeding shall be tried by the judge without a jury, and the ordinary procedure on the trial of an action shall apply.

13.—(1) In particular, where the order directing such transfer directs the sheriff to withdraw from possession on payment of any sum by the claimant, and in default of such payment to sell the goods seized, but provides that such directions for sale shall be subject to any order which may before the goods are sold be made by the county court, directing the sheriff to remain in possession of the goods or to hand over possession thereof to the high bailiff of the county court, any party to the proceeding, or the sheriff may, on notice to the other parties to the proceeding, and (where notice is given by one of the parties) to the London agent of the under-sheriff, apply to the court under Rule 11 of Order XII. to postpone the sale, and to expedite the hearing of the proceeding; and the court may thereupon order the sheriff to remain in possession of the goods until the hearing, or to hand over possession thereof to the high bailiff of the court, instead of proceeding to a sale, upon such terms as to possession money or other charges as may be prescribed by the order directing the transfer, or, if no such terms are prescribed, upon such terms as may be just and reasonable; and the court may also expedite the hearing.

(2) For the purpose of expediting the hearing of any such proceeding as aforesaid, the following provisions shall have effect:

- (a) The court may fix an early day for the hearing, and may for that purpose reduce the length of notice of hearing required by Rule 9 of this Order, and the time before the hearing fixed by Rule 10 for the filing of particulars;
- (b) The judge may also order the hearing to take place at any convenient court of which he is the judge;
- (c) On the day, time, and place for the hearing being fixed, the registrar of the court in which the proceeding is pending shall forthwith give notice thereof to the parties

in accordance with Rule 9, together with notice of the time within which particulars are to be filed ;

O. XXX II.
r. 13.

- (d) Where the hearing is to take place at another court, the registrar of the court in which the proceeding is pending shall forthwith send notice to the registrar of such other court that the judge has ordered the hearing to take place there ; and he shall in sufficient time before the hearing transmit the papers to the registrar of the court at which the hearing is to take place, who shall act at the hearing for such first-mentioned registrar, and shall after the hearing return the papers to him, with a minute of the order made ; and such order shall be settled, sealed, filed, entered, and proceeded on in the court in which the proceeding is pending, in like manner as if the hearing had taken place there.

14. No order made by the court in any proceeding by way of interpleader transferred from the High Court shall prejudice or affect the rights of the sheriff to any proper charges ; and the judge shall make such orders as may be just with respect to any such charges ; but such charges shall be ultimately borne, as between the parties to the proceeding, in such manner as the judge shall direct.

Sheriff's
charges.

15. Where any goods are handed over to the high bailiff in pursuance of any such order as aforesaid, he shall hold or dispose of the same in accordance with the directions contained in such order, or in any subsequent order made in the proceeding ; and he shall be allowed for keeping possession of such goods such reasonable charges, not exceeding those which might be made by the sheriff, as the judge may order, and for a sale of such goods, if he is directed to sell the same, the same charges as are allowed on a sale under an execution issued by the county court ; and such charges shall be ultimately borne, as between the parties to the proceeding in such manner as the judge shall direct.

High bailiff's
charges.

16. Where any proceeding by way of interpleader, or any action or matter pending in the Chancery Division, is ordered to be transferred from the High Court to a county court, and no order to the contrary has been made in the High Court, the costs of the order and of the proceedings prior thereto shall be in the discretion of the judge of the county court, and shall be taxed in the county court upon such scale, whether of the High Court or the county court, as the judge may think just. The costs in the county court shall be in the discretion of the judge, and shall be taxed on such county court scale as he may think just.

Costs of
interpleader
and Chancery
proceedings
transferred
from High
Court.
47 & 48 Vict.
c. 61, s. 17.
51 & 52 Vict.
c. 43, s. 69.

O. XXXIII.
r. 17.

Sheriff's
costs.

17. Where any proceeding by way of interpleader is transferred from the High Court to a county court, the judge may order that the sheriff shall have his costs of the interpleader proceeding in the High Court, and may direct by which party the said costs shall be paid.

Where the claimant succeeds and is awarded costs, he is entitled to be allowed, as against the execution creditor, the sheriff's charges subsequent to the issue (*Goodman v. Blake*, (1887) 19 Q. B. D. 77).

As to form of order, see Part II., "Costs and Court Fees," p. 1057.

Order on
remitted
interpleader.

18. The order made upon a proceeding by way of interpleader transferred from the High Court to a county court shall contain directions as to how any money paid into court or in the hands of the sheriff is to be disposed of, and an order on the sheriff to deal with any money in his hands accordingly. A minute of every such order shall be entered in the minute book, but no order need be drawn up or served unless any of the parties require it, or the court otherwise orders. The order, if drawn up, shall be according to such one of the forms provided for orders on the hearing of interpleader proceedings commenced in the county court as shall be applicable to the case, with such variations as the case may require.

Forms 213,
214.

Transfer of
action, &c.,
remitted from
High Court
to another
court, where
registrar
has acted
for any
party in
High Court.

19. Where the registrar of the court to which any action, matter, or proceeding is transferred from the High Court, or a partner or clerk of such registrar, has acted as solicitor for any party to such action, matter or proceeding in the High Court, the judge may order such action, matter, or proceeding to be transferred to some other court under section eighty-five of the Act; and the provisions of Order VIII. Rule 9, shall apply to any application for such transfer.

51 & 52 Vict.
c. 43, s. 58.

Poor persons.

20.—(1) Where a person has been admitted to take or defend or be a party to any proceedings in the High Court as a poor person and the proceedings have been transferred to a County Court, the Rules of the Supreme Court relating to proceedings by and against poor persons, with the additions and modifications contained in the succeeding paragraphs of this Rule, shall apply, so far as they are applicable, as if they had been in terms inserted in these Rules.

(2) The conducting solicitor shall apply to the proper officer of the Supreme Court to send to the Registrar of the County Court to which the proceedings have been transferred the certificate admitting the party as a poor person, in addition to the pleadings, affidavits and other documents filed in the High Court relating thereto.

(3) Notwithstanding anything in Order XVI., Rules 22 and

23, Order XXVII., Rule 3A, or Order XXXIII., Rule 1, a person proceeding as a poor person under this Rule shall not be required to give security for costs. **O. XXXIII. r. 20.**

(4) The powers conferred upon the Court or a Judge—

- (a) to order a poor person to pay costs to any other party or to receive from any other party any profit costs or charges ;
- (b) to discharge the certificate and direct it to be taken off the file ;
- (c) to grant leave to the poor person or a solicitor conducting the proceedings for him to discontinue settle or compromise such proceedings or to discharge any solicitor or counsel acting for him ;
- (d) to grant leave to a solicitor or counsel acting for a poor person to discontinue his assistance ;
- (e) to order in special circumstances that the costs ordered to be paid to or by a poor person shall include profit costs and charges ;
- (f) to order payment to the conducting solicitor out of money recovered by the poor person or to grant a charge in favour of the conducting solicitor upon any real or personal property recovered by a poor person ;

may be exercised by the Judge of the County Court to which the proceedings are transferred.

(5) A person who has proceeded in a County Court as a poor person under this Rule may, subject to Rules of the Supreme Court, apply to the Judge of the County Court for leave to appeal as a poor person to the High Court, and if leave is granted, the Registrar shall deliver to the conducting solicitor the certificate admitting the party as a poor person, and a certificate that leave to appeal as a poor person has been granted.

NOTE.—Rule 20 added by County Court (Poor Persons) Rules, 1928.

ORDER XXXIV.

REPLEVIN.

1. In actions of replevin no other cause of action shall be joined in the summons. **Rule 1.**

Replevin.—See notes to sects. 133, 134 of the principal Act.

2. On entering a plaint in replevin, the plaintiff shall specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken, and the distress or other taking of which he complains. **No other cause of action to be joined. Particulars.**

3. An action of replevin shall be tried in the same way as other actions, and the judgment therein, in ordinary cases, whether **Mode of trial. Forms 151, 290, 291.**

O. XXXIV.
r. 3.

for plaintiff or defendant, shall be, unless otherwise ordered, according to the forms in the Appendix.

Where defendant succeeds in action where distress is for rent, &c.
Form 290.

4. Where the distress is for rent, or for any other sum of money for which a distress may be lawfully taken, and the defendant succeeds in the action, if the defendant so requires, the judge shall, if the action is tried without a jury, and the jury shall, if the action is tried with a jury, find the value of the goods distrained, and if the value is less than the amount of rent or other sum of money in arrear, judgment shall be given for the amount of such value, but if the amount of the rent or such other sum of money in arrear be less than the value so found, judgment shall be given for the amount of such rent or other sum of money, and such judgment may be enforced in the same manner as any other judgment of the court.

Where defendant entitled to a return in damage feasant.

5. Where the distress is for damage feasant, and the defendant is entitled to judgment for a return, if the plaintiff so requires, the judge shall, if the action is tried without a jury, and the jury shall, if the action is tried with a jury, find the amount of the damage sustained by the defendant, and judgment shall then be given in favour of the defendant, in the alternative, for a return, or for the amount of the damage so found.

Where defendant succeeds in other cases.

6. In all cases of replevin, other than those arising out of a seizure by way of distress, where the defendant justifies the taking and proves his case, the judgment for the defendant shall be for a return of the goods, with or without costs.

One who has replevied goods distrained, and obtained judgment in an action of replevin, cannot maintain an action for damages in respect of the taking of the goods (*Gibbs v. Cruikshank*, (1873) L. R. 8 C. P. 454; 42 L. J. C. P. 273).

Costs.—The judge may, by special order, order costs to be taxed under columns A, B, or C of the scales; if he makes no special order they will be taxed under column B (Order LIII. r. 11).

ORDER XXXV.

Money recovered in High Court by Infants, Persons of unsound mind and widows transferred to County Court for Administration.

NOTE.—This Order was made to carry into effect the provisions of sect. 205 of the Judicature Act, 1925. For text of sect. 205, see *ante*, p. 74.

Transfer of money from High Court.

1. Where any money recovered by or on behalf of or ordered to be paid to or for the benefit of an infant or infants or person or persons of unsound mind or a widow is under section 205 of the Supreme Court of Judicature (Consolidation) Act, 1925, ordered to be paid or transferred to a County Court, and the County Court has received the judgment or order or a sealed copy thereof, the registrar shall send to the Accountant-General of the Supreme

Court (or the District Registrar, if the money is in a District Registry), an application in accordance with the form in the Appendix requesting him to transmit the money (a). **O. XXXV. r. 1.**

Form 458.

Any money received by the County Court under the said section or any re-enactment thereof shall be placed to the credit of an account intituled in the name of the infant or infants or person or persons of unsound mind, or widow, and, after deduction of the prescribed fee, shall be forthwith invested by the registrar in his name in the Post Office Savings Bank; and the registrar shall give to the next friend or friends, guardian or guardians *ad litem*, committee or committees, or widow, as the case may be, a notice in accordance with the form in the Appendix with such variations as the circumstances may require, of the receipt of the money and of its investment and of the readiness of the Court to hear any application as to the mode of dealing therewith.

Investment in P.O. Savings Bank.

Form 459.

(a) See also Supreme Court Funds Rules, 1927, Rule 46.

2. Any money so invested in the Post Office Savings Bank may by the order of the Judge unless otherwise directed by the High Court be transferred and invested in the name of the registrar in any of the investments mentioned in Rule 65a of the Consolidated Workmen's Compensation Rules, 1913, or any amendment thereof; and the money and investments and income thereof and any proceeds of sale thereof (hereinafter referred to together as the trust fund) shall subject to any directions by the High Court be applied and dealt with for the benefit of the said infant or infants or person or persons of unsound mind or widow in such manner as the Judge, or in his absence the registrar, may from time to time direct, and such order may be made by the Judge or registrar on application in that behalf, or on his own motion after such enquiries (if any) as he may think fit to make.

Investment of money.

Trust Fund.

3. The trust fund or any part thereof may at any time by order of the Judge be transferred to another County Court if he shall be of opinion that the matter may be more conveniently dealt with in that Court and for this purpose the directions contained in Rules 90 and 91 of the said Workmen's Compensation Rules or any amendments thereof shall be followed as far as may be, and such order may be made by the Judge on application in that behalf or on his own motion, after such enquiries (if any) as he may think fit to make.

Transfer of Trust Fund to another County Court.

4. An application to the Court in relation to the investment transfer or application of or dealing with the said trust fund may be made on payment of the prescribed fee (if any) by or on behalf of any person interested in accordance with the County Court Rules as to interlocutory applications.

Applications relating to Trust Funds.

O. XXXV.

r. 5.

Costs in
County
Court.

5. With regard to any costs or expenses of or in connection with any of the matters referred to in Rules 2, 3 or 4 of this Order, the Judge or registrar, as the case may be, may if he thinks fit direct that any of such costs or expenses be paid out of the said trust fund or any part thereof and that any investments be sold for that purpose.

Costs in
High Court.

6. Where directions are given by the High Court for any costs to be paid to a solicitor out of the money recovered in the action or matter, the amount of such costs if not paid before transfer to the County Court shall, after the receipt of the Taxing Master's or District Registrar's certificate, and on application in that behalf to the Court by the solicitor, be paid out of the said trust fund and any investments may be sold for that purpose if the Judge, or in his absence the registrar, think fit.

Production of
Documents.

7. The Court may at any time require any next friend, guardian *ad litem*, committee or widow, as the case may be, to obtain and produce the writ pleadings and any other documents used in the action or matter in the High Court.

8. No part of any money invested in the name of a Registrar under Rule 1 or Rule 2 of this Order shall be paid out except upon authority addressed to the Postmaster-General by the Lord Chancellor.

Rule added by County Court Rules, 1925 (No. 2) rules.

ORDER XXXVI.

REGISTRY OF JUDGMENTS.

Return of
judgments
in City of
London
Court.

1. A return of every judgment entered in the City of London Court for the sum of ten pounds and upwards shall be transmitted by the registrar to the registrar of county courts judgments in London, in the same manner as returns of judgments entered in a county court are now transmitted.

Registry of County Court Judgments.—See sect. 183 of the Act and the notes thereto. The fees payable for making searches at the registry are prescribed by the County Court Fees Order, 1925, Fee No. 89, *post*, p. 1128.

Note of
order in
Admiralty
or equity
actions
to be sent.

2. A note of every judgment or order in an admiralty action, or in any action or matter under section sixty-seven or seventy of the Act, or any other action or matter commenced under the equitable jurisdiction of the court, shall within ten days of the making thereof be transmitted by the registrar to the registrar of county courts judgments in London, who shall register the same as heretofore.

The publication of extracts from the register of judgments is privileged (*Searles v. Scarlett* (C. A.), (1892) 2 Q. B. 56; 61 L. J. Q. B. 573).

3. Where pursuant to section eighteen of the County Courts Act, 1919, money payable under a judgment is directed to be paid to the other party or his solicitor instead of being paid into court, the proof required by that section that the judgment has been satisfied shall be given to the registrar by affidavit or otherwise as he shall direct.

O. XXXVI.
r. 3.

Proof of payment under judgment to the other party.

By sect. 18 (2) of the County Courts Act, 1919, judgment in such a case is not to be registered if before the expiration of twenty-one clear days from entry, proof is given to the registrar in prescribed form that the judgment has been satisfied. See sect. 183 of principal Act.

9 & 10 Geo. 5.
c. 73, s. 18.

The "prescribed form" is by affidavit or otherwise as the registrar may direct (Order XXXVI., r. 3), *supra*.

ORDER XXXVII.

FUNDS.

1. Where a party is directed to pay money into court in any action or matter mentioned in sections sixty-seven and sixty-nine of the Act, or in any other action or matter commenced under the equitable jurisdiction of the court, he shall attend and pay the same into the office of the registrar, and obtain a receipt for the amount; and the registrar shall, unless otherwise ordered by the judge, pay the same into a post office savings bank, in accordance with the provisions of section seventy-one of the Act.

Payment into court in equitable actions or matters.
51 & 52 Vict.
c. 43, ss. 67, 69.

The ordinary rules as to payment into and out of court do not apply (Order IX. r. 23). Persons deriving benefit under moneys so paid in are not debarred from depositing moneys in their own name in other post office or other savings banks (County Court Act, 1888, s. 71).

2. The registrar shall enter in the "Cash Book" and "Ledger for Equitable Proceedings" any money so paid, to the account of the action or matter in which it is paid; and where the interest of any fund paid into a post office savings bank has been directed to be paid to any person, the registrar shall pay the same half-yearly out of any general moneys in his hands.

Entry of payments.
Payment of interest.

3. The registrar, whenever he is directed by order to draw out of a post office savings bank any fund or part of any fund standing to the account of any action or matter, shall send a letter to the Treasury according to the form in the Appendix.

Mode of withdrawing moneys from post office savings bank.
Form 343.

4. Where money has before the 1st day of January, 1868, been invested in stocks, and the investment is in the names of the treasurer and registrar alone, the registrar shall from time to time receive the dividends of all the funds so standing in their names, and shall re-invest the dividends in the same names, except where and so far as the court otherwise directs, and shall apportion the amount so re-invested in his books to the same accounts as the original investments.

Re-investment of interest on stocks in names of treasurer and registrar.

O. XXXVII.
r. 4
Notes.
 ———

Legacy and Succession Duty.—Before executing any order directing the payment or transfer of any fund, or part of any fund, in respect of which any duty is payable to the revenue under the Acts relating to legacy succession or estate duty, the registrar must, before making the payment, require a certificate from the proper officer of, or the production of the receipt for, the payment of the duty chargeable in respect of such fund, or any part thereof respectively (Order II. r. 14).

Examination
 of married
 woman
 interested
 in fund.
 Settlement.

5. Where any married woman is interested in any principal money, stocks, shares, or securities exceeding in value 200*l.*, or 10*l.* in annual payments, and is not entitled to the same as her separate property, she shall be examined by the judge apart from her husband to ascertain whether the same shall be paid to him or made the subject-matter of a settlement, and if the judge thinks that a settlement should be made, and in all cases where the married woman is under age, the judge shall in his judgment make such settlement accordingly: Provided always, that the judge may, if he thinks fit, order such settlement to be prepared by counsel and settled by the judge.

Payment of
 sum due to
 deceased
 intestate,
 not exceed-
 ing 100*l.* to
 person
 entitled to
 take out
 administra-
 tion.

6. Where in any action, matter, or proceeding the estate of a deceased person who has died intestate is entitled to a fund or to a share of a fund in court not exceeding 100*l.*, and it is proved to the satisfaction of the judge that no administration has been taken out to such deceased person, and that his assets do not exceed the value of 100*l.*, including the amount of the fund or share to which the estate of such deceased person is entitled, the judge may direct that such fund or share shall be paid, transferred, or delivered to the person, who, being a widower, widow, child, father, mother, brother or sister of the deceased, would be entitled to take out administration to the estate of such deceased person. (R. S. C., Order XXII. r. 18A.)

ORDER XXXVIII.

THE COUNTY COURTS ACT, 1888, SECTIONS 67 AND 70. THE SETTLED LAND ACT, 1925. THE TRUSTEE ACT, 1925.

Rule 1.
 ———

Proceedings
 by petition.
 51 & 52 Vict.
 c. 43, s. 67
 (5), (6).
 15 Geo. V.
 c. 19.
 15 Geo. V.
 c. 18.

1. Proceedings under the fifth and sixth sub-sections of section sixty-seven of the Act, or the Trustee Act, 1925 (other than proceedings under section sixty-three of the last-mentioned Act), or under the Settled Land Act, 1925, shall be commenced by filing a petition, intituled in the matter of the Act under which the proceeding is taken, and of the trust or settlement, with as many copies of the petition as there are respondents to be served.

The petition must be filed with the registrar (Order II. r. 3)

Every petition for dealing with money or securities in court chargeable with any duty payable to the revenue, or with the dividends on any such

securities, must contain a statement whether the duty has or has not been paid (Order XXXVIII. r. 31). O. XXXVIII.
r. 1
Note.

2. At the foot of every petition presented to the court, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith; and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof. (R. S. C., Order LII. r. 16.) 45 & 46 Vict.
c. 38.
Statement
of persons
to be served
with petition.

3. Upon the filing of a petition, the registrar shall issue the copies under the seal of the court to the bailiff for service upon the respective persons to be served, together with a notice, signed by the registrar himself and under the seal of the court, stating the day and hour on which the petition will be heard, and that if they do not attend, either in person or by their solicitors, such order will be made and proceedings taken as the judge may think just and expedient. Registrar to
issue notices
of day of
hearing of
petition.
Form 341.

4. The bailiff shall, ten days at least before the hearing, serve all copies of such petitions and notices in accordance with the rules as to the service of ordinary summonses. Serving of
petitions
and notices.

5. Upon the hearing of any petition or application under this order, unless the judge otherwise directs, the facts relied upon in support of or in opposition thereto shall be proved by affidavit. Facts to
be proved
by affidavit.

6. The judge may refer any matter to the registrar to make inquiries, and to report to him the result of such inquiries. Judge may
direct
inquiries.

7. In every final judgment or order made upon any petition or application under this order, liberty shall be given to all parties to apply. All parties
may apply.

8. Where the judge makes an order upon a petition or application under this order, the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order. Registrar to
draw up
order.

9. Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of any court under subsection five of section sixty-seven or under section seventy of the Act, or section sixty-three of the Trustee Act, 1925, shall file with the registrar an affidavit, intituled in the matter of the Act, and of the particular trust, and setting forth : Payment
into court
under 51 &
52 Vict. c.
43, ss. 67 (5,
70.
15 Geo. 5,
c. 19, s. 63.

(a) His own name, address, and description :

(b) The place where he is to be served with any petition or summons, or any notice of any proceeding or order of the court relating to the trust fund :

(c) The amount of money, stock, or security which he proposes

O. XXXVIII.
r. 9.

to pay, transfer, or deposit in trust to attend the orders of the court :

- (d) A short description of the trust or of the nature and contents of the instrument creating it :
- (e) The names, addresses, and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to the fund, to the best of the knowledge and belief of the trustee :
- (f) The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred or security deposited, or otherwise, as the court may think proper to make or direct.

Amended by County Court Rules, 1925 (No. 2) rules.

Affidavit.
 Form 333.

10. The affidavit in the last preceding rule mentioned may be according to the form in the Appendix, with such variations as each particular case may require.

Costs
 deducted on
 payment
 into court
 to be taxed.

11. Where it is desired to retain any sum of money for costs incurred in the payment of money into court, or in any matter connected with the trust prior to such payment, a bill of costs shall be filed and such sum only shall be retained as may be allowed by the registrar on taxation.

Evidence of
 trust to be
 left.

12. Probate of the will, or the original instrument or document, or such evidence as the registrar may require as to the instrument creating the trust, shall be left with the registrar for such period as he may reasonably require.

Memorandum
 of filing to be
 indorsed.

13. Immediately on the receipt by the registrar of the affidavit, he shall indorse thereon a memorandum of the day on which the same was filed, and when such affidavit has been so indorsed it shall be taken for all purposes to have been duly filed on the date so indorsed thereon.

Evidence of
 trust to be
 compared
 with state-
 ments in
 affidavit.

14. The registrar shall compare the statements in the affidavit with the probate or other instrument deposited with him and shall indorse on the affidavit a memorandum that he has made such comparison, and shall add to such indorsement any memorandum as to any matters which may be omitted in the affidavit and which he may think material.

Certificate of
 filing may be
 given.
 Forms 334,
 335.

15. The persons filing the affidavit, or any of them, may apply to the registrar to give to them a certificate intituled in the matter of the Act and of the particular trust, and under the seal of the court, certifying that the affidavit has been filed, and such certificate may be according to one or other of the forms in the Appendix, with such variations as each particular case may require.

16. In the case of money, the persons filing the affidavit, or any of them, may, upon the receipt of the certificate in the last preceding rule mentioned, pay the money into a post office savings bank under section seventy of the Act, and obtain from the officer of the bank a receipt for the same, and shall forthwith leave the receipt with the registrar, who shall immediately indorse thereon a memorandum of the day on which the same was received by him ; and when such receipt has been so indorsed it shall be taken for all purposes to have been duly recorded on the date so indorsed thereon.

O. XXXVIII.
r. 16.

Money may be paid into post office savings bank. 51 & 52 Viet. c. 43, s. 70.

17. In the case of stock, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate in Rule 15 mentioned, transfer the stock into the names of the treasurer and registrar of the court mentioned in the certificate, in trust to attend the orders of the court, and shall forthwith leave the transfer ticket with the registrar, who shall immediately indorse thereon a memorandum of the day on which the same was received by him ; and when such transfer ticket has been so indorsed it shall be taken for all purposes to have been duly recorded on the date so indorsed thereon.

Transfer of stock.

18. In the case of security, the person filing the affidavit may forthwith deposit the security with the registrar in the name of the treasurer and registrar, in trust to attend the orders of the court, and the registrar shall immediately indorse on the affidavit a memorandum of the day on which the security was deposited with him.

Deposit of security.

19. The registrar shall, within twenty-four hours after the deposit of the security as in the last preceding rule mentioned, send notice thereof by post to the treasurer of the court, stating therein the particulars of the deposit, which notice may be according to the form in the Appendix, with such variations as each particular case may require.

Notice of deposit of security.

20. Where there is a court in which there is not a treasurer, the transfer or deposit shall be made into the names of the registrar and the superintendent of the county court department of the Treasury for the time being.

Transfer or deposit where no treasurer.

21. Immediately after the recording of the postmaster's receipt or of the transfer ticket, or of the deposit of the security, the registrar shall give to the persons paying in the money, or transferring the stock or depositing the security, an acknowledgment or certificate of such payment or transfer or deposit, and such acknowledgment or certificate may be according to the form in the

Certificate of payment, transfer, or deposit to be given.

O. XXXVIII. Appendix, with such variations as each particular case may require.
r. 21.

Forms 336,
337.

Entries to be
made in
Equity Pro-
ceedings
Book.

Notice to
the parties
interested.

Form 339.

Petition by
person in-
terested in
funds in
court.

Form 340.

Persons to
be served.

When trustee
may be
ordered to
pay costs.

22. Immediately after the recording of the postmaster's receipt or of the transfer ticket, or the giving of a certificate of deposit of security, the registrar shall cause an entry to be made in the book heretofore called the Suits and Proceedings in Equity Book of the title of the particular trust, and the amount of money paid or stock transferred, or security deposited, and the names and addresses of the persons making such payment, transfer, or deposit, and the names of all persons stated in the affidavit to be or to claim to be interested in or entitled to such money, stock, or security, and their addresses and descriptions, as given in the affidavit; and the registrar shall forthwith send by post to each of such last-mentioned persons, to the address given in the affidavit, a notice of the said payment, transfer, or deposit, which notice shall be under the seal of the court, and may be according to the form in the Appendix, with such variations as each particular case may require.

23. Any person entitled to or claiming to be interested in any funds in court, or (if need be, but not otherwise) the trustee, who desires the directions of the court as to the investment, payment out, or distribution of the whole or any part of the fund or the income thereof, may file a petition according to the form in the Appendix stating therein the substance of the order which he desires to obtain, and praying for the order and direction of the judge with respect to the fund so paid into court, and the rights of all persons thereto. The petitioner shall file with such petition a copy for every respondent to be served, and a copy for the use of the judge; and the registrar shall forward such last-mentioned copy, with an office copy of the affidavit filed under Rule 9 of this Order (to be made at the costs of the petitioner), to the judge; and, subject to the following rules, Rules 2 to 8 of this Order shall apply to the service and proceedings on such petition.

24. Where the application relates to the capital of the fund in court, the trustee and all persons interested in such fund shall be served with a copy of the petition, unless the judge otherwise directs; and where the application relates to the income only of the trust fund, the trustee only shall be served with the petition, unless the judge otherwise directs.

25. Where a trustee avails himself of the statutory provisions referred to in Rule 9 of this Order without sufficient reason the judge may direct such trustee to bear his own costs, and to pay the costs of any other persons, or to bear and pay any part of such respective costs, as the judge may think fit.

26. If the person filing the petition relies only on the facts stated in the affidavit filed by the trustee, it shall be sufficient for the person filing such petition to state on oath at the hearing that he believes such facts to be true, unless the judge requires any further evidence to be adduced.

**O. XXXVIII.
r. 26.**

Where facts stated in affidavit only are relied on.

27. Upon the hearing the judge shall, if the application relates to the capital of the fund in court, require proof of all facts which are necessary to be ascertained in order not only to grant the specific relief prayed by the petition, but to declare and decide the rights of all parties in or to the fund in court, and he shall make a final order declaring what such rights are, and make such order as to dealing with the whole of the fund as would be made upon a final judgment in an action for administration.

Rights of all parties to be declared.

Form 342.

28. Where on the petition the petitioner relies only on the facts stated in the affidavit of the trustee, it shall not be necessary for the trustee to appear on the hearing; and if he does so appear, his costs shall not be allowed out of the fund unless the judge certifies that it was right and necessary for him to appear.

When trustee need not appear.

29. The registrar shall pay to any person to whom money is found to be due by the final order the sum so found due upon his applying for the same and proving his identity to the satisfaction of the registrar; and where any such person is an infant at the time of the making of the final order, upon proof that he has attained the age of twenty-one years.

Payment to parties found entitled, and to infants on coming of age.

30. The judge at the instance of any person interested shall inquire into any prolixity, and as to any irrelevant matter in any petition or affidavit, and as to any unnecessary expense thereby incurred, and may make such order in reference thereto as the justice of the case may require.

Where there is prolixity or irrelevant matter.

31. Every petition for dealing with money or securities in court chargeable with any duty payable to the revenue, or with the dividends on any such securities, shall contain a statement whether such duty has or has not been paid. (R. S. C., Order XXII. r. 12A.)

Petition to state whether duty has been paid or not.

32. An application under sub-section (2) of Section 203 of the Law of Property Act, 1925, may be made on payment of the prescribed fee (if any), in accordance with the rules for the time being in force as to interlocutory applications.

Application under 15 Geo. 5, c. 20, s. 203 (2).

Rule 32 added by County Court Rules, 1925 (No. 2) rules.

ORDERS XXXIX. TO XLIII.

(Printed (with exception of Order XXXIX.) in Part V., after the statute to which they relate.)

Order XXXIX., relating to Admiralty actions, is printed in Part III., Orders 39 Order XL., rules under Agricultural Holdings Acts, in Part V., to 43.

- O. XXXIX. Order XLI., rules under the Friendly Societies Acts, the Building Societies
 —XLIII. Acts, &c. (under heading "Building Societies Acts"), Part V., Order
 Notes. XLI A., rules under Companies Consolidation Act, 1908, Part V., Order
 — XLII B., rules under Trade Union Act, 1913, Part V., Order XLII., rules
 under the Succession Duty Act, 1853, and Finance Acts (under heading
 "Finance Acts"), Part V., Order XLII A., rules under National Insurance
 Act, 1911, Part V.

Rules relating to the Taxation of Charges of Returning Officers under the "Representation of the People Act, 1918," Order XLIII. rr. 9 to 19, see Part V., after "Representation of the People Act."

ORDER XLIV.

THE EMPLOYERS' LIABILITY ACT, 1880.

Service of Summons.

Time for
 issue and
 service of
 summons,
 43 & 44 Vict.
 c. 42.

1. A summons in an action brought under the Employers' Liability Act, 1880, shall in order to insure its service be delivered to the bailiff, where it is to be served in the home district thirty-five clear days at least, and where it is to be served in a foreign district thirty-eight clear days at least before the return day, and shall in either case be served thirty clear days at least before the return day thereof.

Particulars
 to be filed.

2. Particulars of demand shall be filed by the plaintiff at the time of the entry of the plaint, whatever the amount claimed may be; and a copy thereof shall be forthwith sent to the judge.

What par-
 ticulars of
 demand
 shall state.

3. The particulars of demand shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed, and where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff, and where the injury of which the plaintiff complains is alleged to have arisen by reason of the act or omission of any person in the service of the defendant, the particulars shall give the name and description of such person.

Where a common law action of negligence is transferred from the High Court under sect. 2 of the County Courts Act, 1919, the plaintiff may add in the county court an alternative claim under the Employers' Liability Act (*Wood v. Weber*, (1908) 99 L. T. 195).

Jury.

Notice of
 demand for
 jury.

4. The notice of a demand for a jury required by Order XXII. r. 1, shall be given fifteen clear days at least before the return day.

Forms 142,
 143, 144.

Assessors.

Qualification
 of assessors.

5. Any person who shall, as hereinafter provided, be appointed by the judge to act as an assessor in any action, shall be qualified so to act.

6. Where no demand for a jury has been made, a party who desires assessors to be appointed shall, ten clear days at least before the return-day, file an application according to the form in the Appendix stating the number of assessors he proposes to be appointed, and the names, addresses, and occupations of the persons who may have expressed their willingness in writing to act as assessors. If the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent with his application.

O. XLIV.
r. 6.

How assessors
to be applied
for.
Form 136.

7. Where an application for the appointment of assessors is made by only one party to an action, the registrar shall forthwith cause to be served on the other party notice of the application according to the form in the Appendix, and the party so served shall as soon as may be after the receipt of the notice

Application
made by one
party only to
be forwarded
to the other
party.

- (1) inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in such notice, or any of them; and
- (2) if he objects to any of the persons proposed, state in writing the reasons for such objection; and
- (3) if he desires any other assessors to be appointed, file an application for such appointment in accordance with Rule 6 of this Order.

Form 138.

8. Where separate applications are filed by the parties, no objection to the persons proposed shall be made by either party, but the judge may appoint from the persons named in each application one or more assessors, provided that the same number of assessors be appointed from the names given in such applications respectively.

Where both
parties pro-
pose asses-
sors.

9. The applications for the appointment of assessors, together with any objections made to the persons proposed, shall be forwarded by the registrar to the judge.

Application
to be for-
warded to
judge.

10. Where the judge grants an application for the appointment of assessors, he shall appoint such of the persons proposed for assessors as he may think fit, subject to the provisions contained in this Order, and return the applications with such appointment to the registrar, and thereupon the registrar shall forthwith summon the assessors named. If the judge does not think fit that assessors shall be summoned, notice thereof shall be given by the registrar to all parties according to the form in the Appendix.

Appoint-
ment of
assessors by
judge.

Summoning
of assessors.

Refusal to
appoint.

Form 137.

Form 141.

11. In any action where no demand for a jury has been made, and an application for the appointment of assessors has been filed, the

Judge,
whether
application

O. XLIV.
r. 11.

made or
not, may
appoint
assessors.
Form 137.

Where
assessors
fail to
attend.

judge may, either before or on the return day, nominate one or more additional persons to act as assessor or assessors in the action. Where no application for assessors has been made, the judge may, if he thinks fit, appoint any one or more persons to act as assessors in the action before or on the return-day. Any persons appointed under this rule shall be summoned by the registrar.

12. If at the time and place appointed for the trial all or any of the assessors appointed do not attend, the judge may either proceed to try the action with the assistance of such of the assessors, if any, as attend, or he may adjourn the trial generally, or upon any terms which he may think fit; or he may appoint any person who may be available and who is willing to act, and who is not objected to, or who is objected to on some insufficient ground; or the judge may try the action without assessors if he thinks fit.

Remunera-
tion of
assessors.

13. Every person nominated as an assessor shall receive for each day's attendance in every action the sum of two guineas, together with such further sum, if any, for his expenses as the judge may order.

Deposit of
remuneration
on applica-
tion for
assessors.

14. Every person applying for the appointment of assessors shall at the time of filing his application deposit with the registrar the sum of two guineas for each assessor proposed, and such payments shall be considered as costs in the action, unless otherwise ordered by the judge. Provided that where a person proposed as an assessor has in writing informed the registrar that he does not require his remuneration to be so deposited, no deposit in respect of such person shall be required. Where an action is adjourned, the party at whose instance any assessor has been summoned shall pay such assessor's fee for the day of adjournment forthwith after the order of adjournment is made.

Fees on ad-
journment.

Remunera-
tion of as-
sessors not
proposed by
the parties
but ap-
pointed by
judge.

15. Where an action is tried by the judge with the assistance of any assessors in addition to or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties, or either of them, as the judge shall direct.

Allowance
to assessor
when
services not
required.

16. If after an assessor has been appointed, and before the day of trial the registrar is satisfied that the action has been settled or that the services of such assessor are not required, he shall forthwith countermand the attendance of such assessor, and pay to him one-half of the fees paid for his attendance. The other half, less the cost of telegrams and postages, shall be returned by the registrar to the person by whom the fees were paid.

17. The assessors shall sit in court with the judge, and assist him when required with their opinion and special knowledge for the purpose of ascertaining the amount of compensation, if any, which the plaintiff is entitled to recover.

Assessors rarely, if ever, are appointed.—ED.

O. XLIV.
r. 17.
Assessors
to sit with
judge.

Judgment where several Plaintiffs.

18. Where two or more persons are joined as plaintiffs under Order III. Rule 1, and the negligence, act, or omission which is the cause of action is proved, the judgment shall be for all the plaintiffs, but the amount of the sum awarded for damages and the costs ordered to be paid to each plaintiff shall be found and set forth separately in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the judge may think fit.

Where more
plaintiffs
than one,
compensa-
tion due to
each to be
found
separately.

See Order III. r. 1, passed to meet *Carter v. Rigby* (C. A.), (1896) 2 Q. B. 113; 65 L. J. Q. B. 537.

19. If the defendant fails to pay the several amounts of compensation and the costs awarded in the action, execution against his goods may issue as in an ordinary action; and if the proceeds of the execution are insufficient, after deducting all costs, to pay the whole of the amounts awarded, such proceeds shall, after the deduction of all the costs of the action as aforesaid, be apportioned between the several plaintiffs in proportion to the amounts awarded to them respectively.

Execution in
such cases,
and appor-
tionment of
sum realised.

ORDER XLV.

THE INFERIOR COURTS JUDGMENTS EXTENSION ACT, 1882.

1. Where, under section three of the Inferior Courts Judgments Extension Act, 1882 (a), application is made for the grant of a certificate of a judgment, proof that the judgment has not been satisfied and of the amount remaining unsatisfied shall be given to the satisfaction of the registrar by affidavit, if required.

Proof that
judgment is
not satisfied.
45 & 46 Vict.
c. 31.

NOTE.—(a) See this Act, Part V. The fee for the grant or registration of the certificate of a judgment under this Act is 5s., and for sealing and issuing a duplicate of such certificate, 1s. (County Court Fees Order, 1925, Fee No. 82).

This Act does not extend to the Irish Free State (see *Banfield v. Chester*, (1925) 133 L. T. 623, decided under the Judgments Extension Act, 1868).

2. If the judgment is for payment within a period therein mentioned or by instalments, and such period has not expired or default has not been made in payment of some instalment, the certificate shall not be granted.

When certi-
ficate shall
not be
granted.

3. The names, businesses or occupations, and addresses of the parties to be set forth in the certificate shall be those set forth in the books of the court.

Names, etc.,
to be set
forth in
certificate

O. XLV.
r. 4.

Indorse-
ments on
certificate.

Form 430.

Record and
effect of
granting
certificate.

Costs of
obtaining
certificate.

Indorse-
ment of costs
allowed on
certificate.

On present-
ing certi-
cate for
registration
a copy to be
filed.

Registration
of certificate.

Cost of
registration.

Warrant.
Form 431.

4. The registrar shall indorse on the certificate the number of the plaint and the amount remaining due on the judgment, according to the books of the court, and, after his signature, shall add to the certificate the date on which it is granted.

5. Where a certificate of judgment is granted by a registrar he shall make on the minute of the judgment a memorandum of having granted such certificate, and thenceforth no further proceeding shall be taken or had upon such judgment in the same court, until the judge, or registrar, upon being satisfied that the execution issued in the court in which the certificate was registered was unproductive, shall order that the judgment may be acted on as if such certificate had not been granted.

6. There shall be allowed to a solicitor for the costs of obtaining the certificate five shillings, and where an affidavit is required, seven shillings.

7. The costs, if any, allowed, with the addition of the fee to be paid for the granting of the certificate, shall be indorsed on the certificate by the officer granting the same; which indorsement shall be an authority for the registrar of the court in which the certificate is registered to add the said costs and fee to the amount to be recovered by execution against the goods and chattels of the person against whom the judgment has been obtained.

8. The person presenting a certificate for registration shall add to his note of presentation, to be appended to the certificate, a description of the place within the district of the court in which the goods and chattels of the person against whom the judgment has been obtained are, and shall also present a copy thereof, with the indorsement thereon, written on foolscap paper.

9. On the presentation of a certificate for registration, with a copy as aforesaid, the registrar shall, if the place within which the goods and chattels of the person against whom the judgment has been obtained are stated to be is within the district of the court of which he is the registrar, seal the certificate and register the same by pasting it into the then current minute book of the court, on or about the last page of such book, and shall seal and date the copy of the certificate and return it to the person presenting the certificate.

10. There shall be allowed to a solicitor for the cost of registering a certificate the sum of five shillings, which, with the fee for registration and the costs, if any, allowed for granting the certificate as shown by the indorsement thereon, shall be added to the amount to be recovered. The warrant of execution shall be according to the form in the Appendix.

11. No money shall be paid out of court without production of the sealed copy of the certificate. Provided that, in the event of such copy being lost or destroyed, another copy may be sealed and given to the proper person, upon proof by affidavit or otherwise to the satisfaction of the registrar that the person applying is the proper person, and that he is entitled to the moneys recovered on the judgment, and upon payment of the prescribed fee.

O. XLV. r. 11.
No money to be paid out except on production of sealed copy.

Amended. County Court (No. 1) Rules, 1925, r. 16.

It has been held in the High Court that where a certificate of a decret of the Court of Session has been registered in the High Court under the Judgments Extension Act, 1868, that court has the same jurisdiction to appoint a receiver as if the judgment had been originally obtained there (*Thompson v. Gill* (C. A.), (1903) 88 L. T. 714).

ORDERS XLVI. TO L.

The following are printed in Part V., after the statutes to which they refer.

Order XLVI., rules relating to Married Women's Property Act, 1882. Order XLVII., rules as to the Guardianship of Infants Acts, 1886 and 1925. Order XLVIII., rules as to Charitable Trusts. Order XLIX., rules under the Probate Acts, 1857 and 1858. Order L., containing miscellaneous rules relating to the following statutes:—The Inclosure Expenses Act, 1868, rr. 1, 2, 3; the Solicitors Act, 1870, r. 4; the Ballot Act, 1872, r. 5; the Local Loans Act, 1875, rr. 6, 7, 8; the Commons Act, 1876, r. 9; the Sale of Exhausted Parish Lands Act, 1876, r. 10; the Telegraph Act, 1878, r. 11; the Inebriates Acts, 1879, 1888, 1898, rr. 12, 13; the Army Act, 1881, s. 115 (as amended), r. 14; the Allotments Extension Act, 1882, r. 15; the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, r. 16; the Lunacy Act, 1890, r. 17; the Open Spaces Act, 1906, r. 18; the Brine Pumping Act, 1891, rr. 19, 20, 21; the Pilotage Act, 1913, rr. 22—29; the London Building Act, 1894, rr. 30, 31, 32; the Money-lenders Act, 1900, r. 33; the Factory and Workshop Act, 1901, r. 34 (a); the Licensing (Consolidation) Act, 1910, rr. 37—58; the Housing Act, 1925, r. 59.

NOTE.—(a) Rules 35 and 36 relate to proceedings under other Acts not mentioned in the rules, and application of existing rules to other existing or to future Acts. See these two rules, *infra*.

ORDER L.

Proceedings under other Acts.

35. Where by any Act not mentioned in these rules proceedings are authorised or directed to be taken in a county court, such proceedings shall be commenced by action where the object of the proceedings is to obtain relief against any person, or to compel any person to do or abstain from doing any act. Where there is no person against whom an action can be brought, proceedings shall be taken either by petition or in accordance with the rules for the time being in force as to interlocutory applications, and shall be supported by affidavit; but in any case in which an interlocutory application is made the judge may, if he thinks fit, direct a petition to be filed.

Proceedings under Acts not referred to in rules.

O. L. r. 36.

Application
of general
practice
prescribed
by rules.

36. The general practice of the court prescribed by these rules shall apply to all proceedings whatsoever authorised by any existing or future Act to be commenced or taken in any county court, except in so far as such practice may be inconsistent with the provisions of any such Act, or of any particular rules made as to the procedure under any such Act.

ORDER LA.

The Legitimacy Act, 1926. For text of Rules, see Part V.

ORDER LB.

The Landlord and Tenant Act, 1927. For text of Rules, see Part V.

ORDER LI.

Order LL, County Courts (Stannaries Abolition Act) Rules. See Part V. Stannaries Court (Abolition) Act.

ORDER LII.

FINES. NEGLIGENCE OR MISCONDUCT OF OFFICERS. COMMITTAL FOR CONTEMPT. ENFORCEMENT OF FINES. THE COUNTY COURTS ACT, 1888, SECTIONS 48, 49, 50, 102, 112, 162, AND 167. THE SUMMARY JURISDICTION ACTS.

Issue and
service of
summons on
complaint of
assault or
rescue under
51 & 52 Vict.
c. 43, s. 48.
Form 355.

1. On complaint made to the court that any person has assaulted an officer or bailiff of the court while in the execution of his duty, or has rescued or attempted to rescue any goods levied under process of the court, the registrar shall issue a summons under section forty-eight of the Act, according to the form in the Appendix, directed to the alleged offender (hereinafter called the defendant), and such summons shall be served personally on the defendant two clear days before the return day.

For form of summons, see Form 355; of order, Form 356; see also Forms 357, 358, 359, and 360.

Witnesses
and costs.

2. On the hearing of a summons issued under the last preceding rule, or on the summary hearing by the judge of a complaint against any person taken into custody and brought before him under section forty-eight of the Act, witnesses may be summoned and their attendance enforced in like manner as on the hearing of an action, and the judge may award costs to the complainant, or to the defendant if the complaint is dismissed, in like manner as to a plaintiff or defendant on the trial of an action. Costs so awarded shall be taxed on such scale as the judge shall order, and in default of any order they shall be taxed on the lower scale.

Order.
Form 356.
Enforce-
ment of
order.

51 & 52 Vict.
c. 43, s. 167.

3. An order imposing a fine for an offence under section forty-eight of the Act shall be according to the form in the Appendix; and payment of such fine and costs may be enforced, upon the order of the judge, pursuant to section one hundred and sixty-seven of the Act, and according to the forms in the Appendix, by

distress and sale of the goods of the defendant under warrant of execution, or, in default or (as the case may be) in lieu of distress, by imprisonment of the defendant for any period not exceeding the period which under the Summary Jurisdiction Acts may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction, regard being had to the provisions of the Summary Jurisdiction Acts set out in Part III. of the Appendix (*post*, pp. 909—911). **O. LII. r. 3.**
Forms 357—360.
42 & 43 Vict. c. 49.
Appendix, Part III.

Appeal.]—The order of the judge imposing a fine is not subject to appeal (*Lewis v. Owen*, (1894) 1 Q. B. 102; 63 L. J. Q. B. 233).

4. A summons against a bailiff under section forty-nine of the Act for neglect, connivance, or omission, or a summons against a bailiff or other officer of the court under section fifty of the Act for extortion or misconduct or any other offence, shall, on complaint made by the party aggrieved, be issued according to such of the forms in the Appendix as shall be applicable, and such summons shall be served personally on the party to be charged ten clear days before the return day. **Summons**
for neglect,
etc., under
sect. 49, or
extortion,
etc., under
sect. 50.
Forms 361,
363.

5. An order under section forty-nine or section fifty of the Act shall be according to such of the forms in the Appendix as shall be applicable, and in default of compliance with any such order execution or other process may issue thereon in like manner as on a judgment in an action. The costs awarded by any such order shall be taxed on such scale as the judge shall order, and in default of any order they shall be taxed on the scale which would be applicable to the amount ordered to be paid, or, if costs are awarded to the defendant, the amount claimed, if such amount were recovered or claimed in an action. **Order.**
Forms 362,
364.

For form of summons, see Form 363; of order, Form 364.

6. An order under section one hundred and two of the Act imposing a fine for non-attendance on a person summoned as a juror shall be according to the form in the Appendix; and payment of such fine may be enforced, upon the order of the judge, pursuant to section one hundred and sixty-seven of the Act, by warrant of execution according to the form in the Appendix. **Order fining**
juror, and
enforcement
thereof.
51 & 52 Vict.
c. 43, s. 102.
Forms 145,
146.

7. An order under section one hundred and eleven of the Act, imposing a fine for non-attendance on a person summoned as a witness, or a fine on a person present in court who refuses to be sworn or give evidence, shall be according to the form in the Appendix; and payment of such fine may be enforced, upon the order of the judge, pursuant to section one hundred and sixty-seven of the Act, and according to the forms in the Appendix, by distress and sale of the goods of the witness under warrant of **Order under**
sect. 111,
imposing
fine on
witness.
Form 126.
Enforcement
of order.
51 & 52 Vict.
c. 43, s. 167.
Forms 127—
129.

O. LII. r. 7. execution, or, in default or (as the case may be) in lieu of distress, by imprisonment of such witness for any period not exceeding the period which under the Summary Jurisdiction Acts (a) may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction, regard being had to the provisions of the Summary Jurisdiction Acts set out in Part III. of the Appendix.

(a) See these Acts, *post*, pp. 909—911.

See Forms 126, 127, 128 and 129.

Where a fine is inflicted on a judgment debtor for refusing or neglecting without reasonable cause to appear at the hearing of a judgment summons, the judge has no jurisdiction to apply the fine in reduction of the judgment debt (*R. v. Snagge*, (1909) 1 K. B. 644; 78 L. J. K. B. 562), though he can allow to the judgment creditor a part of it for his expenses.

Time for payment of fine on juror or witness.

7A. An order imposing a fine under section one hundred and two or section one hundred and eleven of the Act may direct payment to be made either forthwith, or within a specified time, or by instalments.

Notice to shew cause before fining juror or witness.

51 & 52 Vict. c. 43, ss. 102, 111.

7B. (1) Before imposing a fine under section one hundred and two or section one hundred and eleven of the Act, the judge may, if he thinks fit, direct the registrar to give notice by post to the person liable to such fine that if he has any cause to shew why a fine should not be imposed on him he may shew such cause in person or by affidavit or otherwise on a day to be named in the notice. The day to be so named shall be a day within fourteen days from the date of the notice on which the court will sit, or, if there is no court to be held within that time, the day fixed for the next sitting of the court.

Order where cause shewn.

(2) On the day named the judge, after considering the cause (if any) shewn, may make such order, either imposing a fine or excusing the person summoned for his non-attendance, as he shall think just in the circumstances of the case.

Committal or fine for contempt of court.

51 & 52 Vict. c. 43, s. 162.

8. An order committing a person to prison or imposing a fine for any offence mentioned in section one hundred and sixty-two of the Act shall be according to the form in the Appendix, and such order may be enforced by proceedings according to the forms in the Appendix.

Forms 365—367.

Forms, of order, 365; of warrant of commitment, 366; of warrant of commitment in default of payment of fine, 367.

Report by registrar to judge if fine not paid.

9. Where a fine is not paid in accordance with the order imposing such fine, the registrar shall forthwith report the matter to the judge, and shall act on any orders given by the judge for the enforcement of such fine. If the judge orders such fine to be enforced by warrant of execution, the time when such order is received by the registrar shall be deemed to be and shall be

entered as the time when application was made to the registrar to issue such warrant. **O. LII. r. 9.**

10. Where by an order imposing a fine a sum is directed to be paid by instalments, and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments remaining unpaid. **Proceedings in default of payment of fine ordered to be paid by instalments.**

11 Where a fine is imposed under section one hundred and two or section one hundred and eleven of the Act without notice being given under Rule 7B of this Order, the following provisions shall apply, viz. :— **Notice to juror or witness to shew cause why fine should not be enforced.**

(a) the judge may, if he thinks fit, before making an order for the enforcement of the fine, direct the registrar to give notice by post to the person on whom the fine has been imposed that if he has any cause to shew why the fine should not be enforced he may shew such cause in person or by affidavit or otherwise on a day to be named in the notice, such day to be fixed in accordance with paragraph (1) of Rule 7B of this Order; and **51 & 52 Vict. c 43, ss. 102, 111.**

(b) if the person on whom the fine has been imposed shews cause why it should not be enforced, either pursuant to notice given under the last preceding paragraph, or without such notice having been given, the judge, after considering the cause shewn, may make such order, either directing the fine to be enforced wholly or in part, or directing that it shall not be enforced, as he shall think just in the circumstances of the case. **Order where cause shewn.**

12 If in any case after a fine has been paid the person on whom it was imposed shews cause which satisfies the judge that if such cause had been shewn at an earlier date he would not have imposed a fine or would have imposed a smaller fine, or would not have ordered payment or full payment to be enforced, the judge may, if he thinks fit, direct the registrar to report the matter to the Treasury: and he may, with the consent of the Treasury, order the fine or any part thereof to be repaid. **Repayment of fine with consent of Treasury.**

ORDER LIII.

COSTS AND ALLOWANCES TO WITNESSES.

Taxation.

1. In every action or matter in any court all costs shall be taxed by the registrar of such court according to the scales of costs in Part IV. of the Appendix, subject to the review of such taxation by the judge. **Rule 1. Taxation of costs. Scales of costs. Appendix, Part IV.**

See generally as to costs, Part II., "Costs and Court Fees." As to increase of costs since the War, see r. 50, *infra*.

O. LIII. r. 1A. 1A. The following alterations shall be made in the scales of costs, viz. :—

Alterations
in scales.

Lower Scale.

- (i.) Paragraph 5 shall be read as if the words “S. 98 of the Act and” were omitted therefrom.
- (ii.) Paragraph 8 is hereby annulled, and the following paragraph shall stand in lieu thereof, viz. :—

8. The judge or registrar may in like actions, by special order to be entered in the minute book, allow a fee not exceeding £2 4s. 6d. for the employment of counsel, and where such fee is allowed there may be allowed to the solicitor instructing such counsel for

Instructions for brief	3s. 4d.
Drawing brief, per folio	1s. 0d.

not exceeding 5s.

Attendance on counsel with brief . . . 3s. 4d.

Attendance at court with counsel . . . 3s. 4d.
- (iii.) The following paragraph shall stand as paragraph 8A. viz. :—

8A. On an interlocutory application in an action or matter in which costs are allowed on the lower scale, costs may be allowed as follows, viz. :—

- (a) On an application to the registrar, costs not exceeding those which may be allowed under Column A of the higher scale on a similar application may be allowed by him; and
- (b) On an application to the judge, costs not exceeding those which may be allowed under the same column on a similar application, or, if the judge certifies for counsel, the costs mentioned in paragraph 8, may be allowed by the judge, by special order to be entered in the minute book.
- (c) This paragraph shall not apply to an application for a new trial, unless the judge certifies for counsel on such application, in which case the solicitor instructing counsel may be allowed the costs mentioned in paragraph 8 in lieu of those mentioned in paragraphs 3 and 6.

Higher Scale.

- (iv.) Item 32 shall be read as if the word “special” were omitted therefrom.
- (v.) Item 38 shall be read as if the words “under Order VII., Rule 29b, para. 2,” were substituted therein for the

words "under section 86 of the County Courts Act, O. LIII. r. 1A. 1888."

- (vi.) Item 45 shall be read as if the word "special" were omitted therefrom.
- (vii.) Item 53 shall be read as if the word "special" were omitted therefrom.
- (viii.) Item 62 shall be read as if the words "S. 98 of the Act, and " were omitted therefrom.

Rule dated March 19th, 1920, amended by (No. 2) Rules of 1922 and (No. 1) Rules of 1923.

2. (1) Where practicable the costs of an action or matter shall be taxed on the day on which the action or matter is tried or heard; and where the costs have not been so taxed the bill of costs shall be lodged for taxation within four days after the said day unless the court otherwise directs, and one day's notice of taxing, together with a copy of the bill of costs if the registrar so directs, shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor.

Costs, when to be taxed. Delivery of bill.

(2) Any solicitor who shall fail to leave his bill of costs (with the necessary papers and vouchers) within the time or extended time fixed by the registrar for that purpose, or who shall in any way delay or impede the taxation, shall, unless the registrar otherwise directs, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.

As amended by County Court (No. 1) Rules, 1925, r. 18.

3. Notice of taxation may be sent by post prepaid, provided that it is posted in time to reach the party to whom it is addressed in due course of post before noon of the day preceding the day fixed for taxation.

Notice of taxation.

4. In every bill of costs to be taxed under column B or C the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation. (R. S. C., Order LXV. r. 19H.)

Forms of bills of costs.

Rule 5 and 6 annulled. See in lieu thereof Rules 47, 48, and 49. Rules, dated May 13th, 1918.

Allowance of Costs by Judge or Registrar.

7. An order or decision of the judge or registrar for the allowance of any of the discretionary items in the scales of costs or for the allowance of any particular costs under any of the County Court Rules shall be a special order or decision made or given upon consideration of the facts of the particular case and not a general order or decision, and the registrar shall have no power to allow any item which has been expressly disallowed by the judge, and

How order for particular costs to be made and obtained. 51 & 52 Viet. c. 43, s. 119.

O. LIII. r. 7. the order or decision of the registrar as to the allowance or disallowance of any item shall be subject to review by the judge.

Revised rule, dated August 2nd, 1922. *Morley v. Bevington*, (1905) 93 L. T. 768, is no longer law since the addition of the last paragraph of this rule.

Allowance of special items in certain cases.

8.—(1) The judge or registrar may, in his discretion, in any action of matter, order or decide that any of the following items mentioned in the scale of costs shall be allowed to the party in whose favour the order is made, in addition to or in substitution for, as the case may be, the costs to which he would otherwise be entitled, viz., items 31, 70, 86, and 93.

Words in italics added by County Court (No. 2) Rules, 1922.

Allowance of additional costs in important cases.

(2) Where costs are taxed under column B or column C, the amounts allowable under any item in the scales (including the items relating to plans, drawings, charts or models, and the allowances to expert and scientific witnesses) may, regard being had to the length, difficulty or importance of the case, be increased by a reasonable amount at the discretion of the registrar (to be exercised in accordance with Rule 23 of this Order), subject to review by the judge, or by special order of the judge.

NOTE.—The word “drawings” was added to this rule by County Court (No. 1) Rules, 1923.

Where more counsel than one retained.

(3) Where costs are taxed under column B or column C, reasonable fees may, where more counsel than one are retained, and the judge on consideration of the facts of the case certifies for the allowance of fees to more counsel than one, be allowed to such additional counsel, and for consultations, and to solicitors for additional briefs and attendances on counsel with the same, and for appointing and attending consultations, at the discretion of the registrar, subject to review by the judge, or by special order of the judge.

Costs of proceedings not allowed for in scales.

(4) Where proceedings are taken for which no provision is made by the rules or scales of costs, and costs are taxed under column B or column C, reasonable costs may be allowed in respect of such proceedings by the registrar, subject to review by the judge, or by special order of the judge, not exceeding those which may under the scales or these rules be allowed in respect of proceedings of a like nature.

More than one Counsel.—Where costs are taxed under columns B or C and there is a real contest, or the judge certifies under sect. 119 of the Act, the judge may certify for the allowance of fees to more counsel than one. In such cases reasonable fees may be allowed to such additional counsel, and for consultations, and to solicitors for additional briefs, and attendances on counsel with the same, and for appointing and attending consultations (Order LIII. r. 8, (3), altering the decision in *Bates v. Gordon Hotels, Ltd.*, (1913) 1 K. B. 631; 82 L. J. K. B. 441).

See Part II., “Costs and Court Fees,” p. 1070.

9.—(1) An application for a certificate under section one hundred and nineteen of the Act shall be made at or immediately after the trial or hearing; *and if not so made shall not afterwards be entertained unless the judge for good cause otherwise orders, or unless the judge is satisfied that the omission to make the application in due time was due to mistake or inadvertence, in which case he may on such terms as he may think fit entertain an application at a later date.* O. LIII. r. 9.
Judge's certificate
for costs.
51 & 52 Vict.
c. 43, s. 119.

NOTE.—Words in italics were added by County Court (No. 2) Rules, 1922.

(2) Where the plaintiff accepts money paid into court in satisfaction of his claim, or where the plaintiff gives notice of discontinuance, or an action is struck out on default of appearance by the plaintiff, or the defendant admits the claim or consents to judgment, an application for a certificate under section one hundred and nineteen of the Act may be made on notice in writing in accordance with the rules as to interlocutory applications, and shall state the grounds on which the application is made.

(3) Where the judge certifies under the said section and this rule the certificate shall be entered at the end of the minutes of the court of the day on which it is given, and shall be signed by the judge.

The entry and signature may be made on a day subsequent to that on which the order for costs is made (*Badcock v. Hunt*, (1889) 38 W. R. 255).

The order for costs on a higher scale will be inoperative unless the judge certifies in the mode above specified. Mere entry of the order on the minutes will not suffice (*Howard v. Graves*, (1885) 52 L. T. 858).

It is an insufficient ground for the grant of a certificate that one of the parties has committed perjury in the cause, or been accused of so doing (*R. v. City of London Court* (2), (1886) 18 Q. B. D. 105; 56 L. J. Q. B. 79).

10. Where the judge or registrar allows counsel under item 92, there may be allowed to the solicitor instructing such counsel, in addition to items 80 and 81, such items as may be allowed where the judge or registrar allows counsel on any interlocutory motion or application. Solicitor's costs where counsel allowed before arbitrator, etc., item 92.

NOTE.—Words in italics were added by County Court (No. 2) Rules, 1922.

As to Scale.

NOTE.—In cases where costs of interlocutory proceedings are ordered to be taxed before the general taxation of the costs of the action or matter, column B. applies to all cases exceeding 20*l.*, to the exclusion of column C. (Order XII. r. 11 (6).)

11. In actions in which a perpetual injunction is claimed, whether the same is granted or not, and in actions under sections fifty-nine, sixty, sixty-one, and one hundred and thirty-three of the Act, the judge may order the costs to be taxed under column A, B, or C, and in default of any such order they shall be taxed under column B. In special actions.
51 & 52 Vict.
c. 43, ss. 59—
61, 133.

O. LIII. r. 11
Notes.

By claiming an injunction the plaintiff will risk having to pay, if defeated, costs on the highest scale. In any event, in the absence of special directions, on scale B.

It is thought that this rule is not intended to cut down the scale of costs, and that cases under the extended jurisdiction will carry costs on Scale C without a special order. See Order XXIIA., r. 28.

Costs in equitable proceedings where subject-matter does not exceed 20*l*.

Actions for recovery of possession.

51 & 52 Vict.
c. 43, ss. 138,
139.

12. In proceedings under sections sixty-seven and seventy of the Act, or under the Settled Land Act, 1925, or in any other proceedings under the equitable jurisdiction of the court, where the subject matter does not exceed 20*l*., the judge may order the costs to be taxed under column B.

13. The costs in actions under sections one hundred and thirty-eight and one hundred and thirty-nine of the Act shall be taxed as follows:—

- (a) Where the tenancy was weekly, monthly, quarterly, or for any definite period not exceeding six months, the costs shall be taxed on the scale applicable to the respective sums mentioned in column 2 of the following table, plus, in the case of the plaintiff, the amount of any rent or mesne profits recovered, and in the case of a defendant, the amount of any rent or mesne profits claimed. Provided that in the case of a defendant his costs shall be taxed as upon the tenancy claimed by the plaintiff.

Column 1.	Column 2.
1. If the rent of the premises was at a rate not exceeding 7 <i>s.</i> 6 <i>d.</i> per week	£ s. d. 3 0 0
2. If the rent of the premises was at a rate exceeding 7 <i>s.</i> 6 <i>d.</i> ., but not exceeding 15 <i>s.</i> per week	5 10 0
3. If the rent of the premises was at a rate exceeding 15 <i>s.</i> ., but not exceeding 20 <i>s.</i> per week	12 0 0
4. If the rent of the premises was at a rate exceeding 20 <i>s.</i> per week	21 0 0

- (b) In the case of all other tenancies, whether or not any sum is recovered or claimed for rent and mesne profits or either, the costs shall be taxed under column A, B, or C, as the judge may order, and in default of any such order shall be taxed under column B.

NOTE.—Rule amended by County Court Rules, 1926 (No. 1) rules.

Jurisdiction by consent.
51 & 52 Vict.
c. 43, s. 64.

14. Costs in actions under section sixty-four of the Act shall be taxed under column C, unless the judge otherwise orders.

Interpleader proceedings.

15. The “subject matter” in an interpleader proceeding shall mean (1) in the case of a claimant the amount of the value of the goods his claim to which is allowed (a), plus the amount of the

damage (if any) adjudged, (2) in the case of an execution creditor the amount of the value of the goods seized, plus the amount of the damages (if any) claimed, and (3) in the case of a high bailiff the amount of the damages claimed. O. LIII. r. 15.

NOTE.—(a) Not necessarily the sum of money which may have been ordered to be paid into Court as representing the goods (*Tarry v. Witt* (1915), 84 L. J. K. B. 950).

The value of the goods is the value as found by the judge, not the amount of deposit made to avoid a sale (*Studham v. Stanbridge*, (1895) 1 Q. B. 870; 64 L. J. Q. B. 473).

16. Where a counter-claim is raised and tried, the scale upon which the costs of the parties are to be taxed shall, unless the judge otherwise orders, be determined as follows :— Costs where counter-claim raised and tried.

(1) If the plaintiff is successful on both claim and counter-claim, by the amount which he recovers on his claim, unless the amount of the defendant's claim is the larger, in which case the costs incurred subsequently to the delivery of the counter-claim shall be determined by the amount of such counter-claim.

(2) If the defendant is successful on both claim and counter-claim, by the amount which he recovers on his counter-claim, or the amount of the plaintiff's claim, whichever may be the larger.

(3) If both parties are successful, by the amounts which they recover on their respective claims; and if both claims fail, by the amount claimed by the opposite party.

(4) Provided that items of costs referring to work done solely in connection with either the claim or counter-claim shall be taxed on the scale applicable to such claim or counter-claim respectively, and provided that in cases falling within paragraph (1) or paragraph (2) of this rule, if the subject-matter of the counter-claim is entirely unconnected with that of the claim, items of costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in respect of the counter-claim or claim (as the case may be) in addition to those incurred or paid in respect of the claim or counter-claim, may be allowed by the judge, or where no special directions as to costs are given by the judge, at the discretion of the registrar, subject to review by the judge. Where subject-matter of counter-claim is distinct from that of claim.

17. Where the demand is unliquidated, and the plaintiff recovers less than the amount claimed, the judge may, if he thinks fit, order that his costs be taxed on the scale applicable to the amount claimed, or any intermediate scale, and that the court fees recoverable by the plaintiff shall be calculated on the amount claimed or on any smaller amount. Where plaintiff recovers less than claim.

O.LIII.r.18.

Defendant's
costs.

Taxation of
costs ordered
to be paid by
or to third
party.

Fees where
party
recovers less
than he
claims.

No costs
allowed if
not sanc-
tioned by
scales.

Discretion of
registrars.

When costs
unneces-
sarily in-
curred.

Where
solicitor
from a
distance
employed.

Discretion-
ary fees and
allowances.

18. Where the costs of a defendant are being taxed, the word "recovered," wherever it occurs in the scale, shall be deemed to be "claimed."

18A. Where an order is made for payment of costs by or to a third party, any costs, fees to counsel and allowances to witnesses reasonably incurred or paid in addition to the costs of the original action by reason of such third party having been brought in, in respect of the trial of the question of the liability of the third party, or in preparing for such trial, may be allowed, and such costs shall be taxed as if the third party were a defendant, and the party to or by whom such costs are ordered to be paid were a plaintiff, and as if the notice to the third party were a summons with particulars annexed.

19. Subject to the provisions of Rule 17 of this Order, where the plaintiff or defendant recovers less than the amount of his claim or counter-claim, so as to reduce the amount of court fees recoverable by him, he shall pay the difference.

General Directions.

20. Costs not sanctioned by the scale are not to be allowed, except in cases expressly provided for by these rules, and costs are not to be allowed as between the parties to an action in respect of searching for payments into court nor in respect of any proceedings to enforce payment of a judgment or order by way of execution against the goods or commitment under the Debtors Act, 1869, save as provided in Order XXV. Rules 53 and 54.

21. When under the scales or rules a discretion as to the allowances to be made is vested in registrars, they are required to exercise such discretion with care and discrimination, and strictly in accordance with the particular directions set forth in the scales and rules.

22. No costs which are to be paid or borne by another party shall be allowed which do not appear to the registrar on taxation to have been necessary or proper for the attainment of justice or for defending the rights of the party incurring the same, or which appear to such registrar to have been incurred through over-caution, negligence, or mistake, or merely at the desire of such party.

In particular, where a party employs a solicitor who does not reside or carry on business in or near the district of the court, no costs for locomotion or maintenance of such solicitor shall be allowed unless the court is satisfied that there was reasonable cause for employing such solicitor.

23. All fees or allowances which are discretionary shall, unless otherwise provided, be allowed at the discretion of the registrar

on taxation, who, in the exercise of such discretion, shall take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the action or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances. O. LIII. r. 23.

The insolvency of an estate is one of the "other circumstances" which the registrar, upon the taxation of an administrator's bill in an administration action, is entitled to take into consideration (*Pain v. Bowden*, (1896) 2 Q. B. 301; 65 L. J. Q. B. 530).

24. Where two or more defendants are joined and judgment is given separately against each with costs, the costs shall, unless the judge otherwise orders, be apportioned according to the respective amounts of each judgment. Where separate judgments against defendants.

25. Where a solicitor who is a plaintiff or defendant appears in person and is allowed costs he shall be entitled on taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary. Costs of solicitor where appearing in person as plaintiff or defendant.
(See *London Scottish Benefit Society v. Chorley*, (1884) 13 Q. B. D. 872; 53 L. J. Q. B. 551; and *Tolpuitt v. Mole*, (1911) 1 K. B. 836.

26. Where a party appearing by counsel is allowed costs but the costs of employing counsel are not allowed, the costs of the solicitor instructing counsel may be allowed on the scale which would have been applicable if the solicitor had appeared for his client without counsel. Costs of solicitor where counsel employed but not allowed.

27. A folio shall comprise seventy-two words, every figure comprised in a column or authorised to be used counting as one word. Folio.

28. When any real property is directed to be sold, the ordinary conveyancing charges shall be allowed. Sale of real property.

29. Where in the course of an action or matter a party suing or sued in a fiduciary or representative character necessarily incurs costs not allowable upon taxation under any scale, the registrar shall apply to the judge, who may, by an order to be filed with the proceedings, allow such a sum as he may think fit for such costs to be paid out of any funds in court applicable to the purpose. Costs of person in fiduciary, etc., position.

30. The costs occasioned by any unsuccessful claim or unsuccessful resistance to any claim to any property shall not be paid out of the estate unless the judge otherwise directs. (R. S. C., Order LXV. r. 14A.) Costs out of estate.

31. The costs of inquiries to ascertain the persons entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the judge otherwise directs. (R. S. C., Order LXV. r. 14B.) Costs as regards particular shares.

O. LIII. r. 32.

Distribution
not to be
delayed by
difficulties as
to some
shares.

32. Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the judge may think reasonable. (R. S. C., Order LXV. r. 14c.)

Disallowance
of costs of
improper,
vexatious,
or unneces-
sary matter
in documents
or proceed-
ings.

33. The judge may, at the hearing of any action or matter, or upon any application or proceeding in any action or matter, and whether the same is objected to or not, direct the costs of any affidavit, evidence, notice, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or is caused by misconduct or negligence, to be disallowed, or may direct the registrar to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or vexatious, or to contain unnecessary matter, or to be of unnecessary length, or to have been caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question has not been raised before and dealt with by the judge, it shall be the duty of the registrar to look into the same for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. (R. S. C., Order LXV. r. 27 (20).)

Set-off of
costs.

34. In any case in which, under the last preceding rule, or any other rule, or by the order or direction of the judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the registrar may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he thinks fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such registrar may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. (R. S. C., Order LXV. r. 27 (21).)

See *Puddephatt v. Leith*, (1916) 2 Ch. 168; 85 L. J. Ch. 543.

Disallow-
ances where
bill of costs
payable out
of a fund
reduced by a
sixth.

35. If on the taxation of a bill of costs payable out of a fund or estate (real or personal) or out of the assets of a company in liquidation the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part, no

costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation. **O. LIII. r. 35**

36. Where in any action or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the court may, if it considers that there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill or any part thereof, previously to the registrar completing the taxation thereof, accompanied by any statement the court may direct, and by a letter informing such client that the bill of costs has been referred to the registrar for taxation, and will be proceeded with at the time the registrar has appointed for this purpose, and the court may suspend the taxation for such time as it may consider reasonable. (R. S. C., Order LXV. r. 56.)

Delivery of bill to client where costs to be paid out of a fund.

Witnesses.

37. Subject to the special provisions of these rules, allowances may be made to witnesses for their attendance at court according to the scales in Part IV. of the Appendix; but such allowances may be increased at the discretion of the registrar, subject to review by the judge, or by special order of the judge, to such amounts as will reasonably compensate such witnesses for their loss of time.

Allowances to witnesses for attendance.

Appendix, Part IV.

NOTE.—See Part II. “Costs and Court Fees” as to expenses of railway and other servants in employ of public companies and corporations, p. 1068. The allowance in such cases is in the nature of a recompense to the employer for loss of the servant’s services, but it seems very doubtful if the employer could successfully claim it from his servant.

37A. Allowances may be made to accountants being members of any recognised society of accountants on the scale applicable to merchants and professional men, instead of on that applicable to tradesmen.

Allowances to accountants.

38. Where a witness is a plaintiff in the action or matter he shall not be entitled to any allowance, except for travelling, unless he is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, or unless the judge in any particular case otherwise orders.

Appendix, Part IV.

Plaintiff not entitled except in certain cases.

39. There may be also allowed to all witnesses, and to plaintiffs and defendants if personally attending the court, for travelling and hotel expenses, the sums actually and reasonably paid by them.

Travelling expenses.

Words in italics added by County Court (No. 2) Rules, 1922.

A witness can also recover from the person on whose behalf he is summoned, or from any other person by agreement, an allowance for loss of time according to the scale of allowances to witnesses on taxing costs (*Chamberlain v. Stoneham*, (1890) 24 Q. B. D. 113; 59 L. J. Q. B. 95). As to liability of solicitor who issues the subpoena, see note, *ante*, p. 78.

O. LIII. r. 40.

When attending in more than one case.

Costs of witnesses not summoned. Compensation to seamen.

Allowances to expert or scientific witnesses.

Allowances where costs taxed under column A.

Allowances for proof and costs of plans, etc.

Taxation as between solicitor and client.

40. If witnesses attend in more than one action or matter they shall be allowed a proportionate part only of their allowances in each action or matter.

41. The costs of witnesses, whether they have been examined or not, may, unless otherwise ordered, be allowed, though they have not been summoned.

42. Seamen necessarily detained on shore for the purpose of an action or matter shall be allowed such remuneration as the judge may order, or, in the absence of an order, as the registrar may think reasonable compensation for their loss of time.

43.—(1) In any action or matter in which a party is entitled as of right, or by order of the judge, to tax his costs under column B or column C, the judge or the registrar on taxation, subject to review by the judge, may allow for qualifying to give evidence by and for the attendance in court of any expert or scientific witnesses, or any member of the medical profession, such sums, not exceeding the maximum allowances mentioned in the scale for expert and scientific witnesses in the Appendix, as he may think fit, in addition to travelling expenses.

(2) Where costs are taxed under column A, the judge or the registrar on taxation, subject to review by the judge, may allow for qualifying to give evidence and for attendance in court as where taxed under column B.

Rule, dated July 27th, 1923.

44. Persons who prepare plans, drawings, charts or models for the purpose of illustration, and who if called at the trial prove the correctness of such plans, drawings, charts or models only, shall not be entitled to allowances as expert and scientific witnesses, but shall be allowed for their attendance upon the scale applicable to ordinary witnesses; and there may also be allowed by the judge or registrar, subject to review by the judge, for the preparation of such plans, drawings, charts or models and of all tracings and copies thereof the sum reasonably paid for the same, so long as it does not exceed the sums mentioned in item 95 of the scale of costs.

Rule, Dated July 27th, 1923.

It is not necessary to give notice to admit plans in order to have the cost allowed on taxation (see *Hayes v. Brown*, (1920) 1 K. B. 250; 89 L. J. K. B. 63).

Rule 45 as to the "Rivers Pollution Prevention Acts, 1876 and 1893" (see Part V.), is annulled. Order L. rr. 35, 36 apply.

Taxation as between Solicitor and Client.

46.—(1) An application to the registrar under section one hundred and eighteen of the Act for the taxation of any cost and

charges as between solicitor and client shall be made in writing, **O. LIII. r. 46.** and shall state on whose behalf the application is made.

(2) On receipt of such application the registrar shall fix a time ^{51 & 52 Vict. c. 43, s. 118.} and place for proceeding with such taxation, and shall give or send by post to the applicant and the other party notice in writing of the time and place so fixed three clear days at least before the day so fixed.

Paragraph 3 of this rule is annulled. See, now, Rules 47, 48, and 49, *infra*.

(4) The costs of such taxation shall be dealt with by the registrar in accordance with the provisions of the Solicitors Act, 1843, and shall be added to or deducted from the amount certified ^{6 & 7 Vict. c. 73, s. 37.} to be due.

If an action is commenced in the High Court, and is afterwards by order sent to the county court under sect. 1 of the County Courts Act, 1919, and if after the order the plaintiff changes his solicitor before he has acted in the county court, the solicitor may sue for his costs without first obtaining a taxation pursuant to sect. 118 (*Boydell v. Millar*, (1891) 60 L. J. Q. B. 251; approved by C. A. in *Cubison v. Mayo*, (1896) 1 Q. B. 246; 65 L. J. Q. B. 267).

A solicitor retained to bring or defend an action cannot recover any costs incurred after retainer which are not allowed by the scales (*Ex parte Lamond*, (1888) 21 Q. B. D. 242; 57 L. J. Q. B. 503); but this is not the case if the client is plaintiff, and he represents to the solicitor that a debt of a certain amount is due to him and a less sum is recovered. The registrar may then, in his discretion, tax on the scale applicable to the claim (*In re Langlois* (C. A.), (1891) 1 Q. B. 349; 60 L. J. Q. B. 123).

Objections to Taxation.

47. Any party who may be dissatisfied with the allowance ^{Party dis-} or disallowance by the registrar of the whole or any part of any ^{satisfied to} items in any costs taxed by him may, at any time before the ^{make objec-} certificate or allocatur is signed, or such earlier time as may in ^{tions in} writing. any case be fixed by the registrar, deliver to the other party interested therein, and carry in before the registrar, objections in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof to the allowance or disallowance whereof objection is made, and the grounds and reasons for such objections, and may thereupon apply to the registrar to review the taxation in respect of the same.

48. Upon such application the registrar shall reconsider and ^{Review of} review his taxation upon such objections, and he may, if he ^{taxation} thinks fit, receive further evidence in respect thereof, and, if so ^{upon objec-} required by either party, he shall state either in his certificate of ^{tions.} taxation or allocatur, or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

O. LIII. r. 49.

Review of Taxation by Judge.

Review of
taxation by
judge.

51 & 52 Vict.
c. 43, s. 118.

49.—(1) Any party who may be dissatisfied with the allowance or disallowance by the registrar of any item or part of an item in any costs taxed by him may, whether objections have been carried in before the registrar or not, apply to the judge, pursuant to section one hundred and eighteen of the Act and this rule, to review the taxation as to such item or part of an item, and the judge may upon such application make such order as he may think just as to such item or part of an item, and generally as to the application and the costs thereof.

(2) Where the costs of an action or matter or application are taxed on the day on which the action or matter or application is tried or heard, an application to the judge to review the taxation may be made on the same day, or, if not so made, may be made in accordance with the next succeeding paragraph of this rule.

(3) Except as provided by the last preceding paragraph, an application to the judge to review any taxation shall be made within four days from the date of the completion of the taxation, or within such further time as the judge or registrar may allow, and shall be made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications.

(4) The notice shall specify the objections to the taxation, and where the objections have not been carried in before the registrar, the grounds and reasons for such objections.

(5) Where an application for review is made after objections have been carried in before the registrar, the application shall be heard and determined on the evidence brought in before him, and no further evidence shall be received unless the judge otherwise directs.

(6) Where an application for review is made without objections having been carried in before the registrar—

- (a) the judge may, if he thinks fit, hear and determine the application on such evidence as he thinks fit; or
- (b) the judge may refer the matter to the registrar for his report, and adjourn the hearing of the application until such report is received; and may, where the objections to the taxation are not specified in the notice of application for review, direct that such objections, and the grounds and reasons for the same, be delivered to the other party interested and carried in before the registrar;
- (c) where any matter is so referred, the registrar shall proceed thereon in accordance with Rule 48, and shall report to the judge accordingly:

- (d) the registrar shall give notice to the parties interested **O. LIII. r. 49.**
of a time and place when and where the report may
be inspected, and shall at the request and cost of any
party furnish him with a copy thereof :
- (e) unless any party objects to the report, the judge on the
adjourned hearing of the application for review shall
determine the same in accordance with the report,
and may make such order as he may think just as to
the costs of the application ; but
- (f) any party interested may within four days from the
date of the report, or within such further time as the
judge or registrar may allow, file and deliver to the
other party objections to the report, with the grounds
and reasons for the same, and any such objections
shall be heard and determined in accordance with
paragraph 5 of this rule on the adjourned hearing of
the application for review :
- (g) in any case the judge, in dealing with the costs of the
application, may have regard to the fact that objec-
tions were not in the first instance carried in before
the registrar.

The above rules 47, 48 and 49 (in lieu of the former rules 5, 6, 46 (3) and 47, annulled) are dated May 13th, 1918.

Increased Costs.

50. The total of any items of costs (as distinct from payments) Increase of costs.
in respect of business done after the thirty-first day of December 6 Edw. c. 58.
nineteen hundred and nineteen in any action or matter com-
menced in or remitted to a county court, or in proceedings under
the Workmen's Compensation Act, 1906, shall where costs are
payable under Column B or Column C of the higher scale be
increased by $33\frac{1}{3}$ per centum, and such increase shall be allowed
upon any taxation or assessment of costs in respect of any such
business as well between party and party as between solicitor and
client.

(2) Provided—

- (a) that this rule shall not affect any power to direct payment
of a fixed or gross sum in respect or in lieu of costs ;
- (b) that where any items of costs are increased under Rule 8
of this Order, or costs are allowed on any scale higher than
that which would otherwise be applicable, the increase
authorised by this rule shall not be allowed in respect of
such items or in respect of costs allowed on such higher
scale, unless the judge otherwise orders ;

O. LIII. r. 50. (c) that this rule shall not apply to bills of costs which have at the date when this rule comes into operation already been delivered to the client sought to be charged therewith or to the person chargeable therewith or liable therefor, or to bills already taxed and certified or allowed.

(3) The increase hereby authorised shall not affect the question whether a bill of costs when taxed is or is not less by one-sixth part than the bill delivered sent or left.

Rule dated March 19th, 1920.

ORDER LIV.

GENERAL PROVISIONS.

Party may act by solicitor or agent.

1. Where by these rules any act may be done by any party, such act may be done either in person or by his solicitor, or by an agent, where it can be legally done by an agent.

Where the plaintiff sues by his solicitor, the particulars must be signed by the latter in his own name or that of his firm, and he must state upon them his place of business, and where he will accept service of proceedings in the action on behalf of the plaintiff. A clerk duly authorised may sign the particulars in the name and on behalf of the solicitor. Solicitors' costs of entry of plaint will not be allowed without the order of the court if the particulars are insufficient (Order VI. r. 9). A lithographed signature will not suffice (*R. v. Cowper* (C. A.), (1890) 24 Q. B. D. 533; 59 L. J. Q. B. 265).

See *Kinnell & Co., Ltd. v. Harding, Wace & Co.*, (1918) 1 K. B. 405; 87 L. J. K. B. 342, as to right of a corporation or limited company to issue process by an agent who is not an attorney.

Service of notices, etc., where no mode of service prescribed.

2. Any notice, proceeding, or document required by these rules to be served on any party, and as to which no mode of service is prescribed by these rules, may be so served by delivering the same to the person on whom it is to be served, or by delivering the same at the residence or place of business of such person, or by sending the same by post addressed to such person at his last-known residence or place of business; and any such notice, proceeding, or document, if served by post, shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice, proceeding, or document, it shall be sufficient to prove that the same was properly addressed and posted: Provided that for the purposes of this rule a place of business shall not be deemed to be the place of business of the person to be served unless he is the master or one of the masters thereof.

Service by or upon solicitor acting for party.

3. Where a party acts by a solicitor, any document, notice, or proceeding required to be served by or upon such party may be served by or upon such solicitor, except in cases where by these

rules personal service upon a party is required ; and any notices or orders required by these rules to be sent by the registrar or high bailiff to such party may be sent to his solicitor ; and service of any such document, notice, or proceeding upon such solicitor, or delivery of the same at his office, or sending the same to him by post prepaid, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered. Provided that the provisions of this rule shall not extend to any default or judgment summons, nor, except as provided by Order VII. Rule 12, to any ordinary summons.

O. LIV. r.

Where an action is sent from the High Court to the county court, service may be made on the solicitor who acts in the county court, not on his London agent (*Malley v. Shepley*, (1893) 62 L. J. Q. B. 31).

Service of a notice of appeal on the solicitor of a party who acts by solicitor suffices, but service on the London agent of a country solicitor does not (*Powell v. Thomas*, (1891) 1 Q. B. 97 ; *Jackson v. Margrett*, (1893) 41 W. R. 267 ; 68 L. T. 91).

4. A solicitor acting for a party in any action or matter may give notice in writing by post or otherwise to the registrar and to the other party, or his solicitor, that he is so acting, whereupon service of any document, notice, or proceeding whatsoever authorised by these rules to be served by or upon a solicitor so acting shall be served by or upon such solicitor accordingly, and he shall be deemed to be the solicitor acting for the party on whose behalf he has given such notice, until notice of change of solicitor has been duly given. Provided that where the plaint is entered by a solicitor acting for the plaintiff, and the particulars have been duly signed by him or on his behalf as provided by Order VI. Rule 9, or where a notice of defence, set off, or counter-claim is signed by or on behalf of a solicitor acting for a defendant, no further notice need be given under this rule.

Solicitor may give notice that he is acting.

Service by or on such solicitor.

In the cases included in the proviso, the solicitor need not give notice under this rule that he is acting for the party.

5. Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service.

Practice on service by solicitor.

5A. Service of process shall not be effected by a person under the age of sixteen years, and an affidavit of service shall state that the person serving the process is over that age.

Service not to be effected by person under sixteen years of age.

6.—(1) Subject to the provisions of section seventy-two of the Act prohibiting the retainer of a solicitor as an advocate by the

Change of solicitor. 51 & 52 Vict. c. 43, s. 72.

O. LIV. r. 6.

Notice.

Form 352.

solicitor acting generally in an action or matter for any party, any party who acts by solicitor may before or after judgment change his solicitor without any order for that purpose. When any such change is made forty-eight hours' notice in writing of such change shall be given to the registrar and to the other parties to the action or matter, or to the solicitors, if any, acting for them, and of the name or firm and place of business of the new solicitor, according to the form in the Appendix, and the registrar shall file the notice given to him; but until such notice is filed and a copy thereof served the former solicitor shall be deemed to be the solicitor of the party.

Taxation of
costs in case
of change of
solicitors.

(2) Where any party has changed his solicitor and given notice of such change in accordance with this rule, the costs allowed to such party shall, unless any solicitor previously employed claims to have his costs taxed separately, be included in one bill and taxed by the solicitor last employed by such party; and money paid into court in respect of such costs shall be paid out in accordance with Order IX. Rules 21 and 22.

(3) If any solicitor previously employed claims to have his costs taxed separately, he shall bring in a separate bill, which shall be taxed with the bill of costs brought in by the solicitor last employed, and in any such case the cost of drawing the bills and attending taxation, and the fees on taxation, shall be allowed and charged as if the whole amount of costs had been included in one bill, and shall be apportioned between the several bills as the registrar shall direct; and money paid into court in respect of costs shall, if any question arises as to the application thereof, be paid out to such persons and in such proportions as the court, on application made by any party interested on notice to the other parties interested, shall direct.

Solicitors to
sign a roll.

7. No solicitor shall be allowed to appear for any person in a court until he has signed a roll or book to be kept for that purpose by the registrar, but no fees shall be payable for that purpose; and any solicitor appearing in any court shall, once in every year, if required by the registrar, produce his certificate for the year to the registrar, who shall note the fact of such production on the roll or book.

No notice of
employment
of counsel
or solicitor
required.

8. It shall not be necessary for any party to give notice to any other, or to the court, of his intention to employ a barrister or solicitor to act as his advocate at the trial, and the allowance of costs for such barrister or solicitor shall not be affected by such want of notice.

8A. In matters which, if the same related to actions or proceedings pending in the High Court, might be dealt with in chambers, the parties may be represented by any person who would be allowed to appear in chambers in the High Court.

O. LIV. r. 8A.
Who may appear on proceedings in chambers.

9. The court shall order in what newspapers any advertisements which may from time to time be ordered in any action or matter shall be inserted; and the expense of such advertisements shall be paid to the registrar by the party requiring the same before they are inserted.

Newspaper advertisements.

10. All advertisements to be inserted in the *London Gazette*, except as to proceedings under Orders XXXIX. or XLI. Rule 12, shall be transmitted by the registrar for insertion to the registrar of county courts judgments in London.

Advertisements for *London Gazette*.

11. The judge, or in his absence the registrar, may order which party shall have the conduct of proceedings in any action or matter.

Conduct of action.

12. Parties may by consent enlarge or abridge any of the times fixed by these rules or by statute for taking any step or filing any document, or giving any notice, in any action or matter. Where such consent cannot be obtained, either party may apply to the court, on notice to the non-consenting party, for an order to effect the object sought to have been obtained with the consent of the other party, and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed, and on such terms, as to costs and otherwise, as the court may direct.

Enlargement or abridgment of time.

This rule also applies to the time for signing judgment on a default summons in default of appearance. See Order VII. r. 36.

13. Subject to the provisions of these rules as to the filing of particulars, where any documents are directed to be filed they shall be filed with the registrar, together with as many copies as there are parties to be served, with the names and addresses and occupations or descriptions of such parties, and, where so required by any of these rules, an additional copy for the use of the judge.

Filing of documents and copies for service.

14. Before any of the documents mentioned in Part V. of the Appendix is issued by the registrar, it shall be sealed with the seal of the Court. [1925]

Sealing of documents.

The documents which require the seal of the court are enumerated in Part V. of Appendix, *post*, p. 912.

15. All notices required by these rules shall be in writing, unless expressly authorised by the court to be given orally. (R. S. C., Order LXVI. r. 1.)

Notices to be in writing.

O. LIV. r. 16. **16.** Where by these rules any party is required to give notice according to a form mentioned in the Appendix, it shall be sufficient if the notice given complies substantially with such form.

Form of notices. **17.** Where anything is required by these rules to be done within a period not exceeding forty-eight hours, no part of any Sunday or day on which the offices of the court need not be open under these rules or under any order of the Lord Chancellor, shall be included in the computation of such period.

See *Brammall v. Mutual Industrial Corporation*, Order LV., *post*, p. 650.
For days on which the offices of the court are to be kept open, see Order I. r. 3. For holidays in county court offices, see *post*, p. 941.

When time for doing any act expires on day when offices are closed. **18.** Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices of the court are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open; provided that such day shall be counted in the computation of time required by these rules in respect of service.

When process may not be served and need not be issued. **19.** No summons, warrant, or other process (except a summons *in rem* or a warrant of arrest in an admiralty action) shall be served or executed on Sunday, Christmas Day, Good Friday, or on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving; nor need any summons, warrant, or other process be served or granted on any day on which the offices of the courts need not be open under these rules or under any order of the Lord Chancellor; but such days shall be counted in the computation of time required by these rules in respect of service.

Transmission or filing of notices and documents. **19A.** Subject to the provisions of these rules as to the transmission of documents to the registrar for the purposes of

- (a) the entry of claims;
- (b) entering up judgment on default summonses; or
- (c) the issue of summonses to witnesses, executions, judgment summonses, and orders of commitment,

any notice or document required by these rules to be given or sent to or filed with the registrar may be so given or sent or filed by delivering the same at the office of the registrar, or by sending the same, with all copies required by these rules, by prepaid post addressed to the registrar at his office.

20. All letters, notices, documents or process sent by post by or to the officers of the courts, or by or to parties in any action or matter, shall be prepaid, and shall not be sent by book post.

**O. LIV.
r. 20.**

Transmission of notices, etc., by post.

The rule formerly Rule 21 is annulled by C. C. Rules (No. 1 Rules), 1923.

22. All proceedings and documents shall be in forms similar to the forms in the Appendix, where the same are applicable ; and in cases where such forms are not applicable, or where no forms are provided, parties shall frame the proceedings or documents, using as guides the forms contained in the Appendix.

Use of forms in Appendix.

Where no forms prescribed.

22A. The registrar of any court may apply to the Treasury for any of the forms required to be used in proceedings in court, notwithstanding that such forms are marked in the Appendix as "not to be printed," and if such application is granted may obtain such forms and supply the same without charge for the use of parties to such proceedings.

Supply of forms.

22B. The words " the hearing fee must be paid before the case is called on " shall be printed or written on the following forms in the Appendix, viz. :—Forms 38, 40, 207, 208, 210, 281, 283, 285, 375, and 416.

Notice as to hearing fee to be printed or written on Forms 38, 40, 207, 208, 210, 281, 283, 285, 375, 416.

23. No practice shall prevail in any court which shall be inconsistent with these rules, nor shall any matter be added to or taken from any form in the Appendix, whereby any obligation shall be imposed upon any suitor or any officer of the court to which he is not liable under statute or these rules, or otherwise by law.

Rules and forms to be adhered to.

In many cases the rules leave the determination of particular matters in the discretion of the judge, and he is not permitted to prescribe for his own guidance, or that of the officers of the court, general rules to be applied to cases as they arise instead of exercising his discretion in the particular case. Thus, where a judge made a general rule that solicitors' costs should not be allowed in certain cases, and refused them in a particular case in obedience to his general rule, it was held that he had not exercised his discretion, and he was ordered to hear and determine the application (*R. v. Marylebone C. C.*, (1890) 34 S. J. 459 ; see also *The Cashmere*, (1890) 15 P. D. 121 ; 59 L. J. P. 57).

24. Non-compliance with any of these rules, or with any rule of practice, for the time being in force, shall not render any proceedings void unless the court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the court may think fit. (R. S. C., Order LXX. r. 1.)

Non-compliance with rules not to render proceedings void.

25. Applications to set aside proceedings for irregularity may be made to the court on notice in manner prescribed by Order XII. Rule 11. No application to set aside any proceeding for

Application to set aside proceedings for irregularity.

O. LIV. r. 25. irregularity shall be allowed unless made within a reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity. Where any such application is made, the several objections intended to be insisted upon shall be stated in the notice. (R. S. C., Order LXX. rr. 2 and 3.)

See *Charles P. Kinnell & Co. v. Harding, Wace & Co.*, (1918) 1 K. B. 405, judgment of Swinfen Eady, L.J. at p. 410.

Duplicate of
warrant,
etc., lost or
destroyed.

26. In the event of any warrant, order, or other document issued by the court being lost or destroyed, a duplicate thereof may be issued from time to time upon proof, by affidavit or otherwise, to the satisfaction of the registrar, of such loss or destruction.

ORDER LV.

INTERPRETATION OF TERMS.

Interpreta-
tion.

In the construction of these rules, words importing the singular number include the plural, and words importing the plural number include the singular, and words importing the masculine gender include females, and, unless there is anything in the subject or context repugnant thereto, words have the same meaning as in the Act, and the several words hereinafter mentioned or referred to have or include the meanings following:—

“The Act” means the County Courts Act, 1888;

“Clear days” means that in all cases in which any particular number of days is prescribed for the doing of any act, or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day;

When notice may be given by post, Erle, C.J., expressed an opinion “that the notice must be put into the post in such time that by the ordinary course of post the party to whom it is addressed shall receive it within the time” (*Evans v. Matthews*, (1857) 26 L. J. Q. B. 166) in which the notice may be validly given; so, if a notice has to be given five clear days before the trial, it appears that, if sent by post, it ought to be sent so that five clear days might elapse after receipt of the notice, irrespective of the day on which, in the ordinary course of post, it would be received.

Where the days are not “clear days,” it seems that the time should be computed exclusively of the day on which the notice or document is served, or, if sent by post, received, but inclusively of the last day (*Liffin v. Pitcher*, (1842) 1 Dowl. N. S. 767; R. S. C., Order LXIV. r. 12). The same rule applies if an act has to be done within a certain number of days from another act (*Young v. Higgon*, (1840) 6 M. & W. 49, 53; 9 L. J. M. C. 29, *per Parke, B.*).

In computing “two clear days” Sunday is probably not to be reckoned. So held as to notice of motion in the High Court under Order LII. r. 4 (*Brammall v. Mutual Industrial Corporation*, (1915) 84 L. J. Ch. 474).

“Court” includes a judge or registrar exercising the powers of the court in chambers as well as in open court;

“Default summons” means a summons which is issued on the

entry of a plaint, and is required by statute or rule to be served personally ;

“ Foreign court ” means the court of a district into which process is issued from another court ;

“ High bailiff ” means if there be more than one high bailiff to a court, either of such high bailiffs ;

“ Home court ” means the court from which process is originally issued ; “ Home district ” means the district of the home court ; and “ foreign district ” means the district of the foreign court ;

“ Judgment ” means the final decision of the court in any action ;

“ Metropolitan court ” means any court referred to in section eighty-four of the Act, and includes also the Bow County Court of Middlesex ;

Bow is not hereby added to the courts mentioned in sect. 84, nor the leave to sue required by sect. 74 affected.

“ Month ” means calendar month ;

But in the registrar’s minute of the order upon a judgment summons it means a lunar month (*Saunders v. Swansea Finance Co.*, (1905) 21 T. L. R. 317).

“ Oath and affidavit,” in the case of persons for the time being allowed by law to attest upon honour, affirm, or declare, instead of swearing, include attestation upon honour, affirmation, and declaration, and “ swear ” in the like case includes attest upon honour, affirm, and declare ;

“ Order ” means the final decision of the court in any matter, and also any decision of the court other than a final decision in any action or matter, and also the decision of the judge or registrar on any interlocutory application ;

“ Ordinary summons ” means a summons which is issued on the entry of a plaint, and is not required by statute to be served personally ;

“ Treasurer ” includes any person appointed by the Treasury to perform the functions of treasurer ;

“ Trial ” means the hearing of any action or matter in court ;

“ Vessel ” includes every description of vessel used in navigation not propelled by oars only.

APPENDIX, PART I.

COUNTY COURTS FORMS, 1903—1923.

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COUNTY COURT.

FORMS. (a)

1914—1928.

NOTE.—*In all forms to be printed for the future the number of plaintiff and number of warrant should be put, and the seal impressed on the right hand corner of the form, instead of the left hand corner, so as to facilitate reference where papers are joined together.*

Summonses, affidavits, notices, judgments, orders, warrants, and other proceedings taken under the Acts to which Orders XXXV., XXXVIII., XXXIX., XL., XLI., XLII., XLIII., XLIV., XLV., XLVI., XLVII., XLVIII., XLIX., L., and LI. relate, should be entitled with the Acts respectively referred to in those Orders (b).

1.

General Form of Heading and Conclusion of all Notices and Admissions.

No. of Plaintiff.

In the county court of _____, holden at _____
 [Seal. (If required.)]
 Between A. B., plaintiff,
 and
 C. D., defendant.

Dated this _____ day of _____ 19 ____
 _____ Registrar [or person sending notice
 or making admission].

To [the person to whom notice is sent].

2.

General Form of Heading and Conclusion of Judgments, Orders, and Warrants.

No. of Plaintiff.

In the county court of _____, holden at _____
 Between A. B., plaintiff,
 and
 C. D., defendant.

(Seal.)

The _____ day of _____ 19 ____
 * * * * *

By the court,
 Registrar.

(a) The reference given to High Court forms signifies that the form to which such reference is appended is framed on the High Court form.

(b) The following forms, it is believed, are complete to date. The new forms provided in or amended by the County Court Rules, 1920, 1921, 1923, 1925, 1926, 1927, and 1928 have been incorporated.

3.

General Form of Heading and Conclusion of Affidavits.*(Except where otherwise hereafter given.)*

No. of Plaintiff.

In the county court of _____, holden at _____
 Between A. B., plaintiff,
 and
 C. D., defendant.

Sworn at _____ in the _____
 county of _____
 this _____ day of _____
 One thousand nine hundred _____
 and _____, before me _____

4.

Mem. to be made on any Order or other Document Signed by one Judge acting for another.

Order 2,
 Rule 1.

This [*as the case may be*] was made [*or granted*] and signed by judge Z. acting in the matter for judge A., under the provisions of sect. 19 of "The County Courts Act, 1888."

5.

Mem. to be placed at foot of every Summons, Notice, Judgment, Order, Warrant, or other Process of the Court.

Hours of attendance at the office of the registrar [*place of office*] from ten till four o'clock, except on [*here insert the day on which the office will be closed*] when the office will be closed at one o'clock.

6.

Præcipe for Ordinary Summons.

Order 5,
 Rules 4-7-12.

In the county court of _____ holden at _____
 To be served by _____ No. of Plaintiff,
 If the claim exceeds £2 two copies of the plaintiff's accounts or particulars of claim are required before a summons can be issued, and if there are two or more defendants to be served, two additional copies for each additional defendant.

Plaintiff's Names in full, Residence
 or Place of Business, with No. of
 House.

Occupation or Description.

If plaintiff is a female, state whether
 married, single, or a widow, and,
 if married, state the full names of
 her husband.

If Plaintiff is an Infant required to
 sue by a next friend, state that
 fact, and Names in full, Residence
 or Place of Business, and Occupa-
 tion or description of Next Friend.

If Plaintiff is Assignee, state that
 fact, and Name, Address, and
 description of Assignor.

If the plaintiffs are co-partners suing
 in the name of their Firm, add
 "Suing as a Firm."

Defendant's Surname and (where known) his Names in Full, his Residence or Place of Business, and (where known) Name of Street and No. of House.

Whether male or female, and, if known, whether of full age or not, and, if female, whether married, single, or a widow.

General Occupation or Description.
If the Defendants are sued as Co-partners in the Name of their Firm, or a Person carrying on Business in a Name or Style other than his Firm Name is sued in such Name or Style, add "Sued as a Firm."

If a Company registered under the Companies (Consolidation) Act, 1908, is Defendant, give address for service, and describe it as "being the registered office of the Company."

	£	s.	d.		£	s.	d.
Amount claimed ...				Solicitor's Costs ...			

What the claim is for—

Solicitor's Name and Address.

(Amended, C. C. (No. 3) Rules, 1928.)

6A.

Præcipe for Ejectment or Possession Summons.

Action brought under sect. 59, 138 or 139 of the County Courts Act, 1888

In the county court of _____ holden at _____

No. of Plaintiff.

Order 5,
Rules 4-7
12.

Two copies of the Plaintiff's accounts or particulars of claim are required before a summons can be issued, and if there are two or more Defendants to be served, two additional copies for each additional Defendant.

Plaintiff's Names in full, Residence or Place of Business, with No. of House.

Occupation or Description.

If plaintiff is a female, state whether married, single, or a widow, and, if married state the full names of her husband.

If Plaintiff is an Infant required to sue by a Next Friend, state that fact, and Names in full, Residence or Place of Business, and Occupation or Description of Next Friend.

If Plaintiff is Assignee, state that fact, and Name, Address and Description of Assignor.

If the Plaintiffs are Co-partners suing in the name of their Firm, add ("Suing as a Firm").

Defendant's Surname, and (where known) his Names in full; his Residence or Place of Business, and (where known) Name of Street and No. of House.

Whether Male or Female, and if known, whether of full age or not, and, if Female, whether married, single, or a widow.

General Occupation or Description.

If the Defendants are sued as Co-partners in the name of their Firm, or a Person carrying on Business in a Name or Style other than his own Name is sued in such Name or Style, add ("Sued as a Firm").

If a Company registered under the Companies (Consolidation) Act, 1908, is Defendant, give Address for service, and describe it as "*being the Registered Office of the Company.*"

What the Claim is for :—Recovery of possession of

Section 59 :

The last rent paid for the said premises (is not known) or was £ : : per

The weekly value of the said premises is estimated at £ : :

Section 138 :

The said premises were let on a tenancy (at £ : : per

, which has been duly determined by a notice to quit (or has expired).

The Plaintiff also claims rent (or and Mesne Profits) in respect of the said premises.

Rent (or and Mesne Profits claimed for a period from :

19 to

Fee for issuing Plaintiff ...
Solicitor's Costs

£ s. d.

Solicitor's Name and Address.

(Amended, C. C. (No. 3) Rules, 1928.)

7.

Præcipe for Default Summons.

In the county court of _____, holden at _____

No. of Plaintiff _____

To be served by _____

Two copies of the Plaintiff's particulars of claim are required before a Summons can be issued, and if there are two or more defendants to be served, two additional copies for each additional defendant.

Order 5,
Rules 4-6,
12.

Plaintiff's Names in full, Residence
or Place of Business, with No. of
House.

Occupation or Description.

If plaintiff is a female, state whether
married, single, or a widow, and,
if married, state the full names of
her husband.

If Plaintiff is an Infant required to
sue by a next friend, state that
fact, and Names in full, Residence
or Place of Business, and Occupa-
tion or Description of Next Friend.

If the Plaintiffs are Co-partners
suing in the Name of their Firm,
add "Suing as a Firm".

Defendant's Surname, and (where
known) his Names in full, his Resi-
dence or Place of Business, and
(where known) Name of Street and
No. of House.

Whether male or female, and, if
known, whether of full age or
not, and, if female, whether
married, single, or a widow.

Occupation or Description.

If the Defendants are sued as Co-
partners in the name of their Firm,
or a Person carrying on Business
in a Name or Style other than his
own Name is sued in such Name
or Style, add "Sued as a Firm."

If a Company registered under the
Companies (Consolidation) Act,
1908, is Defendant, give address
for service, and describe it as
"being the registered office of the
Company."

	£	s.	d.		£	s.	d.
Amount claimed ...				Solicitor's Costs ...			

What the claim is for—

Solicitor's Name and Address.

(Amended, C. C. (No. 3) Rules, 1928.)

7A.

Notice to be posted in Registrar's office as to actions against partners or persons carrying on business in names other than their own.

Actions against partners or persons carrying on business in names other than their own.

NOTICE.—Where a person intends to issue process against persons carrying on business as partners, or against a person carrying on business in a name other than his own, he should so inform the Court officials at the time of applying for the process to issue, in order that the proceedings may be issued in the proper form.

8 (1).

Affidavit for Leave to issue Ordinary Summons against Defendant out of the District.

51 & 52
Vict. c. 43,
s. 74.

Order 5.
Rule 13 (2).

(1) Name,
residence,
and occupa-
tion of
deponent.
(2) The like
of proposed
defendant.
(3) The like
of proposed
plaintiff.

I, (1) make oath and say as follows:—
[Where the demand is for a debt or liquidated claim.]

1. (2) is justly and truly indebted to me [or to (3)] in the sum of £ for the price of goods sold [or for money lent, or as the case may be].
[Or where the claim is unliquidated.]

1. I [or (3)] claim [or claims] to be entitled to recover from (2) the sum of £ for damages for breach of contract [or as the case may be].

[Where an assignee of a debt applies for leave, add paragraph according to Form 8 (2).]

2. I [or the proposed plaintiff] apply [or applies] for leave to enter a plaint and issue an ordinary summons in this court against the above-named on the grounds stated in this affidavit.

3. The grounds on which the application is based are—

[Where residence, &c., within six months relied on.]

A. That the proposed defendant, within six months before the date hereof, dwelt [or carried on business] within the district of this court, that is to say, at in the county of

[Or where cause of action or part relied on.]

B. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of within the district of this court.

The facts relied on as constituting the alleged cause of action or a part thereof are

[here state the facts relied on]

4. The proposed defendant is not a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or a person engaged in manual labour.

To be added
where pro-
posed plain-
tiff does not
make the
affidavit.

5. I am a person in the employ of the proposed plaintiff [or as the case may be] and the facts herein deposed to are within my own knowledge, and I am duly authorised by the proposed plaintiff to make this affidavit.

Sworn, &c.

A. B.

Order to be placed at foot.

Having duly considered the facts above disclosed, I do order that the above-named be at liberty to enter a plaint and issue an ordinary summons in this Court against the above-named

Dated this day of 19 .

Registrar.

8 (2) instead of 8 (2).

Paragraph to be added where the Proposed Plaintiff is Assignee of a Debt.

Order 5,
Rule 13 (3)

2A. That the debt for which an action is proposed to be brought was originally contracted by the proposed defendant with G. H. of [name, residence, and occupation] and was absolutely assigned to me [or to the proposed plaintiff], by an assignment dated the day of and made between the said G. H. [or the trustee in the Bankruptcy of the said G. H., or as the case may be] of the one part, and me this deponent [or the proposed plaintiff], of the other part, and on or about the day of express notice in writing of such assignment was given to the proposed defendant.

8A.

Affidavit for Leave to issue Ordinary Summons against Defendant out of the District who is a Domestic or Menial Servant, a Labourer, a Servant in Husbandry, a Journeyman, an Artificer, a Handicraftsman, a Miner, or a Person engaged in Manual Labour.

I, (1) make oath and say as follows:—

[Where the demand is for a debt or liquidated claim.]

1. (2) is justly and truly indebted to me [or to (3)] in the sum of £ for the price of goods sold [or for money lent, or as the case may be].

[Or where the claim is unliquidated.]

1. I [or (3)] claim [or claims] to be entitled to recover from (2) the sum of £ for damages for breach of contract [or as the case may be].

[Where an assignee of a debt applies for leave, add paragraph according to Form 8 (2).]

[Where residence, &c., within six months relied on.]

2. The proposed defendant within six months before the date hereof, dwelt [or carried on business] within the district of this court, that is to say, at in the county of

[Or where cause of action or part relied on.]

2. The cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of within the district of this court.

3. I [or the proposed plaintiff] apply [or applies] for leave to enter a plaint and issue an ordinary summons in this court against the above-named on the grounds stated in this affidavit.

4. The grounds on which the application is based are—

NOTE.—Such only of the following paragraphs to be used as is applicable to the circumstances.

[Where residence in the district relied on.]

A. That the proposed defendant was residing within the district of this court, that is to say at in the county of when the debt or part thereof was contracted [or the cause of action wholly or in part arose].

[Or where personal presence in the district relied on.]

B. That the proposed defendant was personally present in the district of this court, and there contracted the debt or part thereof in respect of

51 & 52
Vict. c. 43,
s. 74.
Order 5,
Rule 13 (16).
(1) Name,
residence,
and occupa-
tion of
deponent.
(2) The like
of proposed
defendant.
(3) The like
of proposed
plaintiff.

which an action is proposed to be brought [*or and there entered into the contract for breach of which an action is proposed to be brought*].

[*or that the wife [or agent] of the proposed defendant was personally present in the district of this court, and there contracted on his behalf the debt or a part thereof in respect of which an action is proposed to be brought [or and there entered on his behalf into the contract for breach of which an action is proposed to be brought].*]

[*or in case of tort.*]

That the proposed defendant [*or a servant [or agent] of the proposed defendant for whose acts or defaults he is alleged to be responsible*] was personally present in the district of this court, and there committed the alleged wrongful act [*or was guilty of the alleged negligence*] in respect of which an action is proposed to be brought].

[*Or where cause of action or part relied on.*]

c. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at _____ in the county of _____, within the district of this Court.

That the facts relied on as constituting the alleged cause of action or a part thereof are _____

[*here state the facts relied on*]

[*and proceed as follows*]

and the proposed place of trial will not be less convenient of access to the proposed defendant than the county court of _____ holden at _____ in which he could be sued without leave.]

[*Or where facts stated in Order V., Rule 13, paragraph 9 (d), relied on.*]

d. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at _____ in the county of _____, within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof, are _____

[*here state the facts relied on*]

[*and proceed as follows*]

And I [*or the proposed plaintiff*] have [*or has*] reason to believe that the proposed defendant admits the claim, and on the _____ day of _____ I [*or the proposed plaintiff*] gave [*or caused to be given*] to the proposed defendant notice in writing of my [*or his*] intention to apply for leave to sue the proposed defendant in this Court, and by such notice required the proposed defendant to state whether he disputed the claim, and the proposed defendant has admitted [*or has failed to give notice that he disputes*] the claim.]

To be added where proposed plaintiff does not make the affidavit.

5. I am a person in the employ of the proposed plaintiff [*or as the case may be*] and the facts herein deposed to are within my own knowledge, and I am duly authorised by the proposed plaintiff to make this affidavit.

Sworn, &c.

A. B.

Order to be placed at foot.

Having duly considered the facts above disclosed [*add where paragraph 4c is used*], and being satisfied that this court will not be less convenient of access to the proposed defendant than the county court of _____ held at _____ I do order that the above-named _____ be at liberty to enter a plaint and issue an ordinary summons in this court against the above-named _____

Dated this _____ day of _____ 19 _____

Registrar.

9.

Affidavit for Leave to issue Default or Special Default Summons against Defendant out of the District.

I, (1) make oath and say as follows :—
 1. (2) is justly and truly indebted to me [or to (3)] in the sum of £ for the price of goods sold [or for money lent, or as the case may be].
 2. I [or the proposed plaintiff] apply [or applies] for leave to enter a plaint and issue a default [or a special default] summons in this court against the above-named on the grounds stated in this affidavit.

3. The grounds on which the application is based are :—

[Where residence, &c., within six months relied on.]

That the proposed defendant, within six months before the date hereof, dwelt [or carried on business] within the district of this court, that is to say, at in the county of

[Or where cause of action or part relied on.]

That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at in the county of, within the district of this court.

4. The facts relied on as constituting the alleged cause of action or a part thereof are

[here state the facts relied on.]

5. The proposed defendant is not a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or a person engaged in manual labour.

6. I am a person in the employ of the proposed plaintiff [or as the case may be] and the facts deposed to are within my own knowledge and I am duly authorised by the proposed plaintiff to make this affidavit.

Order to be placed at foot.

Having duly considered the facts above disclosed, I do order that the above-named be at liberty to enter a plaint and issue a default [or special default] in the court against the above-named

Dated this day of

Registrar.

NOTE.—This affidavit to be printed on a half-sheet of salmon or rose-tinted paper.

9A.

Affidavit for Leave to issue Default or Special Default Summons against Defendant out of the District who is a Domestic or Menial Servant, a Labourer, a Servant in Husbandry, a Journeyman, an Artificer, a Handicraftsman, a Miner, or a Person engaged in Manual Labour.

I, (1) make oath and say as follows :—
 1. (2) is justly and truly indebted to me [or to (3)] in the sum of £ for the price of goods sold [or as the case may be].

[Where residence, &c., within six months relied on.]

51 & 52
 Vict. c. 43,
 s. 74.
 Order 5,
 Rule 13 (4).
 Order 7,
 Rule 29b (2).
 (1) Name, residence and occupation of deponent.
 (2) The like of proposed defendant.
 (3) The like of proposed plaintiff.

To be added where proposed plaintiff does not make the affidavit.

51 & 52
 Vict. c. 43,
 s. 74.
 Order 5,
 Rule 13 (9).
 Order 7,
 Rule 29b (2).
 (1) Name, residence, and occupation of deponent.

(2) The like of proposed defendant. 2. The proposed defendant, within six months before the date hereof, dwelt [or carried on business] within the district of this court, that is to say, at _____ in the county of _____.

[Or where cause of action or part relied on.]

2. The cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at _____ in the county of _____ within the district of this court.

(3) The like of proposed plaintiff. 3. I [or the proposed plaintiff] apply [or applies] for leave to enter a plaint and issue a default [or a special default] summons in this court against the above-named _____ on the grounds stated in this affidavit.

4. The grounds on which the application is based are—

NOTE.—Such only of the following paragraphs to be used as is applicable to the circumstances.

[Where residence in the district relied on.]

A. That the proposed defendant was residing within the district of this court, that is to say, at _____ in the county of _____, when the debt or part thereof was contracted [or the cause of action wholly or in part arose].

[Or where personal presence in the district relied on.]

B. That the proposed defendant was personally present in the district of this court, and there contracted the debt or part thereof in respect of which an action is proposed to be brought.

[or that the wife [or agent] of the proposed defendant was personally present in the district of this court, and there contracted on his behalf the debt or a part thereof in respect of which an action is proposed to be brought.]

[Or where cause of action or part relied on.]

C. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at _____ in the county of _____, within the district of this Court.

That the facts relied on as constituting the alleged cause of action or a part thereof are

[here state the facts relied on.]

[and proceed as follows]

and the proposed place of trial will not be less convenient of access to the proposed defendant than the county court of _____ holden at _____ in which he could be sued without leave.]

[Or where facts stored in Order V., Rule 13, paragraph 9 (d), relied on.]

D. That the cause of action in respect of which the proposed defendant is proposed to be sued arose wholly or in part at _____ in the county of _____, within the district of this court.

That the facts relied on as constituting the alleged cause of action or a part thereof are

[here state the facts relied on.]

[and proceed as follows]

And I [or the proposed plaintiff] have [or has] reason to believe that the proposed defendant admits the claim, and on the _____ day of _____

I [or the proposed plaintiff] gave [or caused to be given] to the proposed defendant notice in writing of my [or his] intention to apply for leave to sue the proposed defendant in this court, and by such notice required the proposed defendant to state whether he disputed the claim, and the proposed defendant has admitted [or has failed to give notice that he disputes] the claim.]

5. The proposed defendant is a (*state his occupation*) but he carries on [or formerly carried on] the trade [or calling] of a and my [or the proposed plaintiff's] claim is for the price [or value or hire] of goods sold and delivered [or let on hire] to the proposed defendant to be used or dealt with in the way of that trade [or calling] [or for the price [or value] of work done for the proposed defendant for the purposes of that trade [or calling]].

6. I am a person in the employ of the proposed plaintiff [or as the case may be] and the facts herein deposed to are within my own knowledge, and I am duly authorised by the proposed plaintiff to make this affidavit.

Sworn, &c.

A. B.

To be added where proposed plaintiff does not make the affidavit.

Order to be placed at foot.

Having duly considered the facts above disclosed [*add, where paragraph 4c is used*] and being satisfied that this court will not be less convenient of access to the proposed defendant than the county court of held at [] I do order that the above-named be at liberty to enter a plaint and issue a default [or special default] summons in this court against the above-named

Dated this day of 19 .

Registrar.

This affidavit to be printed on a half-sheet of salmon or rose-tinted paper.

11.

Affidavit of Debt for issue of Default or Special Default Summons against Defendant within the District.

I, (1) make oath and say as follows:—

Order 5, Rule 14.

1. That C. D. (2) is justly and truly indebted to me [or to (3) in the sum of £ for the price of goods sold [or for money lent, or as the case may be].

Order 7, Rule 29b (2).

2. The proposed defendant is not a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or a person engaged in manual labour.

(1) Name, residence and occupation of deponent.

3. I am a person in the employ of the proposed plaintiff [or as the case may be] and the facts herein deposed to are within my own knowledge, and I am duly authorised by the proposed plaintiff to make this affidavit.

(2) The like of proposed defendant.

(3) The like of proposed plaintiff.

Sworn, &c.,

A. B.

NOTE.—*This affidavit to be printed on a half-sheet of salmon or rose-tinted paper.*

To be added where proposed plaintiff does not make the affidavit.

12.

Affidavit of Debt for issue of Default or Special Default Summons within the District against Defendant who is a Domestic or Menial Servant, a Labourer, a Servant in Husbandry, a Journeyman, a Miner, or a Person engaged in Manual Labour.

Order 5,
Rule 14.

Order 7,
Rule 29b (2).

(1) Name, residence and occupation of deponent.

(2) The like of proposed defendant.

(3) The like of proposed plaintiff.

I, (1) make oath and say as follows:—

1. That C. D. (2) is justly and truly indebted to me [or to (3)]
in the sum of £ for the price of goods sold [or as the case

may be].

2. The proposed defendant is a (state his occupation) but he carries on [or formerly carried on] the trade [or calling] of a and my [or the plaintiff's] claim is for the price [or value or hire] of goods sold and delivered [or let on hire] to the proposed defendant to be used or dealt with in the way of that trade [or calling] [or for the price [or value] of work done for the proposed defendant for the purposes of that trade [or calling]].
Where claim exceeds £5, strike out this paragraph (see Rules, 1921, r. 4).

3. I am a person in the employ of the proposed plaintiff, [or as the case may be] and the facts herein deposed to are within my own knowledge, and I am duly authorised by the proposed plaintiff to make this affidavit.

To be added where proposed plaintiff does not make the affidavit.

Sworn, &c.,

A. B.

NOTE.—*This affidavit to be printed on a half-sheet of salmon or rose-tinted paper.*

13.

Agreement to give Jurisdiction to a County Court.

[Not to be printed.]

51 & 52 Vict.
c. 43, s. 64.

Order 5,
Rule 2.

We, [the respective solicitors of] A. B. of, &c., and C. D. of &c., do hereby agree that the county court of holden at shall have power to try an action to be brought by A. B. against C. D. for under the provisions of sect. 64 of the County Courts Act, 1888.

Witness our hands this day of 19 .

A. B. [or E. F., Solicitor for A. B.].

C. D. [or G. H., Solicitor for C. D.].

14.

Agreement not to Appeal.

[Not to be printed.]

& 52 Vict.
c. 43, s. 123.

We, [the respective solicitors of] the above-named plaintiff and defendant, do hereby, under the provisions of sect. 123 of the County Courts Act, 1888, agree that the decision of his honour the judge of this court in this action shall be final.

Witness our hands this day of 19 .

Plaintiff [or's solicitor].

Defendant [or's solicitor].

15.

Undertaking by Next Friend of Infant to be responsible for Defendant's Costs.

I, the undersigned E. F. , of , being the next friend of A. B. , who is an infant, and who is desirous of entering a plaint in this court against C. D. , of, &c. , hereby undertake to be responsible for the costs of the defendant in such action, in the manner following: namely, if the said A. B. fail to pay to the defendant, when and in such manner as the court shall order, all such costs of such action as the court shall direct him to pay to the defendant, I will forthwith pay the same to the registrar of the court.

Dated this day of 19 .

E. F.

Order 5,
Rule 16.

16.

Bond for Costs where Plaintiff out of England.

[Not to be printed.]

Know all men by these presents that we, A. B., of , C. D., of , and E. F., of , are held and firmly bound to G. H., of , in the sum of £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be well and truly made, we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents.

Sealed with our seals and dated this day of 19 .

Whereas a plaint was upon the day of entered by the above-named A. B., against the above-named G. H., in the county court of holden at

I approve
this bond
J. K.,
Registrar
(L.S.).

And whereas it appeared upon the entry of such plaint that the said A. B. did not reside in England or Wales: And whereas it is directed by r. 10 of Ord. V. of the County Court Rules, that in such case the summons shall not be issued until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the registrar:

And whereas the said A. B. and the above-bounden C. D. and E. F., as sureties for the said A. B., have agreed to give such security by entering into the above-written bond or obligation with the condition hereunder written, and the security has been approved of by the registrar of the said county court, as appears by his allowance in the margin hereof:

Now the condition of the above-written bond is such, that if the said A. B., the plaintiff, or any plaintiff substituted in his stead, shall discontinue, or become nonsuit in the said action, or in case the said action is referred to arbitration, and an award is made against the said A. B., or any substituted plaintiff therein, showing that he is not entitled to recover therein, or if the said G. H., the defendant, or any substituted defendant, obtain a judgment or verdict or any other judgment therein, then or in either of the said cases if the above-bounden A. B., C. D., and E. F., or either of them, their or either of their heirs, executors, or administrators, do pay or cause to be paid to the said G. H., or any substituted defendant, his executors, administrators, or assigns, his or their costs to be taxed in the said action, then this obligation shall be void and of no effect, otherwise the same shall be and remain in full force and virtue.

17.

Undertaking by Solicitor to be responsible for Costs.

[Not to be printed.]

[Title of Action.]

Order ,
Rule 10.

As solicitor for the above-named plaintiff, I hereby undertake to be personally responsible for any costs which the said plaintiff may be ordered to pay to the defendant in this action.

Dated this day of 19 .

Solicitor for the plaintiff.

18.

Memorandum to be put on all Plaintiff Notes.Order 7,
Rule 1.

Bring this note when you come to the court or to the office for any purpose connected with this action. On the day of trial bring all books, &c., necessary to prove your case.

Money will be paid out of court ONLY on production of this note, and upon your or your agent's PERSONAL ATTENDANCE if you reside within the district.

If the defendant will sign and deliver at the office of the Registrar an admission that he owes you the money, or if you and he will sign and deliver at the office of the Registrar an agreement as to the amount due, and will consent to a judgment, you will only have to pay half the hearing fee.

If the debt or claim exceeds five pounds you may have the action tried by a jury, on giving notice in writing at the Registrar's Office ten clear days [or, in actions under the Employers' Liability Act, 1880, fifteen clear days] before the day of trial, and on payment of eight shillings for the fees of such jury.

Summonses for witnesses and for the production of documents by them may be obtained at the office, upon payment of the proper fee.

19.

Plaint Note (Ordinary Summons).Order 7,
Rule 1.

In the county court of holden at .

Between A. B., plaintiff,
and

C. D., defendant.

(Seal.)
No. of Plaintiff.

Fees paid.

£	s.	d.

The above action was entered this day, and will be tried at on
the day of at o'clock in the noon
[add, if so, at a court to be held before the Registrar only].

Dated this day of 19 .

Registrar of the Court.

The hearing fee must be paid before the action is called on.

N.B.—IF YOU OBTAIN A JUDGMENT AGAINST THE DEFENDANT, ALL MONEY ORDERED TO BE PAID THEREUNDER MUST BE PAID INTO COURT, AND MUST NOT BE RECEIVED BY YOU, UNLESS THE COURT DIRECTS IT TO BE PAID TO YOU. (*See section 105 of the County Courts Act, 1888, section 18 of the County Courts Act, 1919.*)

20.

Plaint Note (Default Summons).

In the county court of _____ holden at _____

*Order 7,
Rule 1.*

Between A. B., plaintiff,
and
C. D., defendant.

(Seal.)
No. of Plaintiff.

Fees paid.

£	s.	d.

The above action was entered this day, and you will be entitled to judgment at the expiration of eight days from the date of the personal service of the summons, inclusive of the day of service, unless the defendant within such period of eight days delivers to the Registrar a notice of defence or an admission of your claim. Should such notice or admission be delivered you will be informed by post thereof, and of the day and hour when the action will be tried or otherwise disposed of.

Dated this _____ day of _____ 19 _____

Registrar.

N.B.—If no notice of defence or admission is delivered, judgment must be entered within two months from the day of service of the summons, after which period the action will be struck out. *Order 7, Rule 36.*

21.

Plaint Note (Special Default Summons).

In the county court of _____ holden at _____

Between A. B., plaintiff,
and
C. D., defendant.

No. of Plaintiff.
(Seal.)

*Order 7,
Rule 1.*

” ” ”
” ” ”

£	s.	d.

The above action was entered this day, and you will be entitled to judgment at the expiration of eight days from the date of the personal service of the summons, inclusive of the day of service, unless the defendant within such period of eight days delivers to the Registrar an affidavit of defence or an admission of your claim. If the defendant delivers such affidavit a copy thereof will be sent to you by post, or if an admission is delivered you will be informed by post thereof, and in either case you will be informed by post of the day and hour when the action will be tried or otherwise disposed of.

Order 7,
Rule 36.

Dated this day of 19 .

N.B.—If no affidavit of defence or admission is delivered, judgment must be entered within two months from the day of service of the summons, after which period the action will be struck out.

N.B.—*Plaint Notes 19, 20 and 21 to be printed on paper 9½ by 8 inches 20 on salmon or rose-tinted paper, and 21 on blue paper.*

22.

Ordinary Summons.

Order 7,
Rule 2.

(To be used in cases for which other forms are not specially provided.)

In the county court of holden at .

Between A. B., plaintiff,
[Address, description,]
and

No. of Plaintiff
(Seal.)

C. D., defendant.
[Address, description.]

(a) Insert
this when
necessary.

(a) [Issued by leave of the judge [or registrar].]

Order 7,
Rule 2.
Order 6,
Rule 1.

You are hereby summoned to appear at a county court to be holden at on the day of 19 , at the hour of in the noon, to answer the plaintiff to a claim, the particulars of which are hereunto annexed. [Where the amount of the claim does not exceed forty shillings, after "claim" strike out the words "the particulars of which are hereunto annexed," and state shortly the substance of the claim.]

Registrar.

Debt or claim.	.	.	.	.	.	.
Costs of plaintiff	.	.	.	.	.	.
Solicitor's costs	.	.	.	.	.	.

£	s.	d.

Total amount £

Dated this day of 19 .
To the defendant.

Registrar.

N.B.—IF YOU OWE THE MONEY, AND WILL CONSENT TO A JUDGMENT, YOU WILL SAVE HALF THE HEARING FEE.

See BACK.

[To be indorsed on the summons.]

If you admit your liability for the whole or part of the plaintiff's claim, but desire the decision of the court as to the time and mode of payment

thereof, you should deliver an admission in writing, to the registrar of this court, by post or otherwise, five clear days [or, if the amount claimed exceeds £50, ten clear days] before the day of trial; but you may deliver your admission to the registrar of this court at any time before or when the action is called on, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you and the plaintiff can agree as to the amount due and the mode of payment, and will before the action is called on sign a memorandum of such agreement and deliver the same to the registrar, you will save half the hearing fee.

If you pay the debt and costs, as stated in the summons, into the registrar's office, five clear days [or if the claim exceeds £50, ten clear days] before the day of trial, you will avoid further costs, *unless the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment*; but you may pay the same at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you admit a part only of the claim, you may, by paying into the registrar's office the amount so admitted, five clear days [or if the claim exceeds £50, ten clear days] before the day of trial, together with costs proportionate to such amount, avoid further costs, unless the plaintiff proves at the trial an amount exceeding your payment, *or the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment*.

If you intend to dispute the plaintiff's claim on any of the following grounds,—

1. That you have a set-off or counter-claim against the claim of the plaintiff;
2. That you were under twenty-one when the debt claimed was contracted;
3. That you were then, or are now, a married woman;
4. That the debt claimed is more than six years old;
5. That you have been discharged from the plaintiff's claim under any Bankruptcy Act;
6. That you have already tendered to the plaintiff what is due;
7. That you have a statutory or equitable defence;
8. That you intend to rely on fraud or misrepresentation;

you must give notice thereof to the registrar five clear days [or if the claim exceeds £50, ten clear days] before the day of trial; and such notice must contain the particulars prescribed by the County Court Rules; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your DEFENCE be a SET-OFF OR COUNTER-CLAIM, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your DEFENCE be a TENDER, you must pay into court the amount tendered.

If the debt or claim exceeds five pounds you may have the action tried by a jury, on giving notice in writing at the registrar's office ten clear days [or, in actions under the Employers' Liability Act, 1880, fifteen clear days] before the day of trial, and on payment of eight shillings for the fees of such jury.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the registrar of this court, upon payment of the proper fee.

NOTE.—An ordinary summons to be printed in pica type, leaded, on a half-sheet of cream wove foolscap, fourteen pounds or thereabouts.

22A.

Ordinary Summons.

REGISTRAR'S COURT.

[Heading as in Form 22.]

(a) [Issued by leave of the Judge [or Registrar].]

Order 6,
Rule 1.Order 7,
Rule 2.Order 22b,
Rule 2.(a) Insert
this when
necessary.

You are hereby summoned to appear at a County Court to be holden before the Registrar only at _____ on the _____ day of _____ at the hour of _____ in the _____ noon to answer the Plaintiff to a claim, the particulars of which are hereunto annexed. [Where the amount of the claim does not exceed forty shillings, after "claim" strike out the words "the particulars of which are hereunto annexed," and state shortly the substance of the claim.

	£	s.	d.
Debt or Claim ...			
Costs of Plaintiff ...			
Solicitor's Costs ...			
Total amount £			

(1) If the claim does not exceed £5, strike out this paragraph.

(1) Take Notice that if you intend to dispute this claim you must give notice to the Registrar of your intention within four clear days after the receipt of this summons. The action will then be tried by the Judge on another day, notice of which will be sent to you. If you give notice of dispute later than four clear days after the receipt of this summons, or if, having failed to give notice, you dispute the claim at the hearing, you may be ordered to pay any costs properly incurred by the plaintiff in consequence of your failure to give notice within the time allowed.

(2) If the claim exceeds £5, strike out this paragraph.

(2) Take notice that if you intend to dispute this claim and do not consent to the action being tried by the Registrar, you must give notice to the Registrar accordingly within four clear days after the receipt of this summons. The action will then be tried by the Judge on another day, notice of which will be sent to you. If you give your notice later than four clear days after the receipt of this summons, or if, having failed to give notice, you dispute the claim at the hearing and do not consent to the action being tried by the Registrar, you may be ordered to pay any costs properly incurred by the plaintiff in consequence of your failure to give notice within the time allowed.

Dated this _____ day of _____
To the Defendant.

N.B.—If you owe the Money and will consent to a Judgment, you will save half the hearing Fee.

See BACK.

[Indorsement as in Form 22.]

(Amended, C. C. (No. 1) Rules, 1928.)

23.

Default Summons where the Claim of the Plaintiff does not exceed £10.

[Heading as in ordinary summons, No. 22.]

Order 7,
Rules 2, 29b.

TAKE NOTICE, that unless within eight days after the personal service of this summons on you, inclusive of the day of service, you deliver to the registrar of this court, at [place of office], by post or otherwise, the notice of defence [annexed hereto] duly filled in, dated and signed by yourself or

your solicitor, the plaintiff may, without giving any further proof in support of such claim than the affidavit filed in court herein, obtain judgment and proceed to execution for the full amount claimed and costs payable forthwith or by such instalments as he may think fit.

	£	s.	d.
Claim			
Fee for plaint			
Solicitor's costs			
Total amount of debt and costs			
Fee for substituted service			

If you admit your liability for the whole or part of the plaintiff's claim, and desire the decision of the Court as to the time and mode of payment thereof, you may so state in your notice of defence, and offer to pay the same, with the costs of the plaintiff on

the amount admitted, at such time or by such instalments as shall be specified in the notice.

If you deliver a notice of defence within the time above limited, the registrar will send you by post notice of the day on which the action will be tried or disposed of.

Dated this day of

Registrar.

To the defendant.

N.B.—This summons must be served personally on the defendant within a period of twelve months from the date thereof, or within such extended period as may be allowed.

N.B.—Your special attention is directed to the instructions on the back hereof, and to the notice of defence overleaf.

Notice of Defence.

[To be annexed to summons.]

No. of Plaintiff.

In the county court of* holden at

*A. B. v. C. D.

I intend to defend this action.

I do not owe the plaintiff any money, because (1)

[or I owe the plaintiff £ only, and no more, because] (1)

[or I have a set-off or counter-claim against the plaintiff for £ (1)]

[If defendant admits the whole or part of the claim, add]

I admit the plaintiff's claim [or £ part of the plaintiff's claim], and

I offer to pay the same with the costs of the plaintiff on that amount, on the day of 192 [or by instalments of], because (2)

Dated this day of 19

— (3) Defendant

To be signed here.

Address to which notice of trial is to be sent.

(* To be filled in by registrar previous to issue of summons.)

See BACK.

[To be indorsed on the summons.]

If you pay the debt and costs, as per margin on the other side, into the registrar's office, before the expiration of eight days from the date of service of this summons, inclusive of the day of service, and without delivering a notice of defence or an admission, you will avoid further costs, unless the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

If you do not deliver a notice of defence or an admission, but allow judgment against you by default, you will save half the hearing fee, and the order upon such judgment will be to pay the debt and costs forthwith [or by instalments (to be specified as in plaintiff's written consent)].

(1) State shortly the facts relied on to support the defence, set-off or counter-claim.
(2) State shortly the facts relied on to support your contention of inability to pay except by instalments.
(3) Here must be signed the name of defendant or of his solicitor, and in the latter case the words "solicitor for," together with his address must be prefixed.

If you admit a part only of the claim, you must deliver the notice of defence and admission within the time specified on the summons; and you may, by paying into the registrar's office at the same time the amount so admitted, together with costs proportionate to such amount, avoid further costs, unless the plaintiff proves at the trial an amount exceeding your payment. *or the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.*

If you deliver the notice of defence, you may pay the debt and costs, or, if you admit a part only of the claim, the amount so admitted, together with costs proportionate to such amount, into the registrar's office at any time before the action is called on, and by so doing you may avoid further costs, unless the plaintiff proves an amount exceeding your payment, *or the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.*

If you intend to dispute the plaintiff's claim on any of the following grounds:—

1. That you have a set-off or counter-claim against the claim of the plaintiff;
2. That you were under twenty-one when the debt claimed was contracted;
3. That you were then, or are now, a married woman
4. That the debt claimed is more than six years old;
5. That you have been discharged from the plaintiff's claim under any Bankruptcy Act;
6. That you have already tendered to the plaintiff what is due
7. That you have a statutory or equitable defence;
8. That you intend to rely on fraud or misrepresentation;

you must in your notice of defence, or in a subsequent notice to be delivered to the registrar in duplicate five clear days before the day fixed for the trial, set out a concise statement of your grounds of defence or of your set-off or counter-claim. If your defence be a set-off or counter-claim, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into court the amount tendered.

24.

Notice by Plaintiff of Consent to accept Instalments.

(To be annexed to a Default Summons.)

Order 5,
Rule 19.

Take notice, that payment of the amount sued for herein will be accepted by instalments of [*state amount of instalment*] payable on the [*state the time or times at which instalments will be accepted.*]

Dated this . . . day of . . . 19 . . .

[*Plaintiff*] or
[*Plaintiff's solicitor*].

To the above-named [*defendant or defendants.*]

25.

Special Default Summons where the Claim of the Plaintiff exceeds £10.

[Heading as in ordinary summons, No. 22.]

Order 7,
Rules 2, 29b.

TAKE NOTICE, that unless within eight days after the personal service of the summons on you, inclusive of the day of service, you deliver to the registrar of this court, at [*place of office*], by post or other

	£	s.	d.	
Claim				wise, an affidavit, with a copy thereof, stating that you intend to defend this action and have a good defence thereto on the merits, and stating shortly the grounds of your defence, or that you have a set-off or counter-claim which you intend to set up, and stating shortly the grounds of such set-off or counter-claim, the plaintiff may, without giving any further proof in support of such claim than the affidavit filed in court herein, obtain judgment and proceed to execution for the full amount claimed and costs payable
Fee for plaint				
Solicitor's costs				
Total amount of debt and costs				
Fee for substituted service				

forthwith or by such instalments as he may think fit.

If you admit part of the claim you may offer to pay the amount admitted at such time or by such instalments as shall be specified in the affidavit. If you admit your liability for the whole of the plaintiff's claim and desire the decision of the Court as to the time and mode of payment thereof, you may, instead of delivering an affidavit, or if you admit your liability for part only of the plaintiff's claim you may, when delivering an affidavit, deliver to the Registrar of this Court, within the time above limited, a notice that you admit your liability to pay the whole or part (to be specified in the notice) of the claim sued for, and offer to pay the same with the costs of the plaintiff, on the amount admitted, at such time or by such instalments as shall be specified in the notice.

If you deliver an affidavit, or a notice of admission, within the time above limited, the Registrar will send you by post notice of the day on which the action will be tried or disposed of.

Dated this day of .
To the defendant.

Registrar.

N.B.—This summons must be served personally on the defendant within a period of twelve months from the date thereof, or within such extended period as may be allowed.

N.B.—Your special attention is directed to the instructions on the back hereof.

Indorsement.

If you pay the debt and costs, as per margin on the other side, into the Registrar's office before the expiration of eight days from the date of service of this summons, inclusive of the day of service, and without delivering an affidavit or notice of admission, you will avoid further costs unless the Court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

If you do not deliver an affidavit or notice of admission, but allow judgment against you by default you will save half the hearing fee, and the order upon such judgment will be to pay the debt and costs forthwith [or by instalments (to be specified as in the plaintiff's written consent)].

If you admit a part only of the claim, you must deliver your affidavit within the time specified on the summons, with an admission as specified on the summons, and you may, by paying into the Registrar's office at the same time the amount so admitted, together with costs proportionate to such amount, avoid further costs, unless the plaintiff proves at the trial an amount exceeding your payment, or the Court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

If you deliver an affidavit or notice of admission, you may pay the debt and costs, or, if you admit a part only of the claim, the amount so admitted,

together with costs proportionate to such amount, into the Registrar's office at any time before the action is called on, and by so doing you may avoid further costs, unless the plaintiff proves an amount exceeding your payment, or the Court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

If you intend to dispute the plaintiff's claim on any of the following grounds,

1. That you have a set-off or counter-claim against the claim of the plaintiff;
2. That you were under twenty-one when the debt claimed was contracted;
3. That you were then, or are now, a married woman;
4. That the debt claimed is more than six years old;
5. That you have been discharged from the plaintiff's claim under any Bankruptcy Act;
6. That you have already tendered to the plaintiff what is due;
7. That you have a statutory or equitable defence;
8. That you intend to rely on fraud or misrepresentation;

you must in your affidavit of defence or in a subsequent notice to be delivered to the Registrar in duplicate five clear days [or if the claim exceeds £50, ten clear days] before the day fixed for the trial set out a concise statement of your grounds of defence or of your set-off or counter-claim.

If your defence be a set-off or counter-claim, you must, with the notice thereof, also deliver to the Registrar a statement of the particulars thereof.

If your defence be a tender, you must pay into Court the amount tendered.

27 and 28.

These Forms are annulled by County Court Rules, 1926 (No. 1) rules.

29.

Indorsement on Copy of Ordinary Summons after Service.

*Order 2,
Rule 23,
Order 7,
Rule 10.* Served the summons of which this is a true copy [add, if so, with copy of affidavit annexed] on the day of 19 , at by delivering the same to the defendant personally [or by delivering the same at the house [or place of dwelling or place of business] of the defendant, to apparently not less than 16 years old, [add the statement made, as who promised to give the same to the defendant the same day, or as the case may be]].

Bailiff of the county court.

[If the summons has been served in any other manner, pursuant to the provisions of Order VII., the mode of service must be stated in the indorsement.]

29A.

Indorsement on Copy of Ordinary Summons after Service in Action against Firm.

*Order 7,
Rules 15, 16,
16a (2).* Served the summons of which this is a true copy [add, if so, with copy of the affidavit annexed] on the day of

- (a) by delivering the same at [state place of service] to C. D., , a partner in [or who stated that he was a partner in] the defendant firm [or who carries on business [or who stated that he carried on business] in the name or style of]:
- or (b) by delivering the same at [state place of service] to a person who did not give his name, but stated that he was a partner in the defendant firm [or that he carried on business in the name or style of]:

[or (c) by delivering the same at _____, being the principal place of business of the defendant firm within the district of this court, to E. F. _____, the person [or if the name is not known to a person] who had or appeared to have the control or management of the business there].

Bailiff of the _____ county court.

30.

Notice of Non-Service of Ordinary or Judgment Summons.

Take notice that the summons [or judgment summons] in this action has not been served, for the following reason:— *Order 2, Rules 5, 24.*

Dated this _____ day of _____ 19 ____
To the _____
[Plaintiff.]

31.

Notice of Doubtful Service of Ordinary Summons.

Take notice, that the summons in this action was left at the address^s given by you, and [here insert the bailiff's return of service, as indorsed on the copy of the summons]. You must therefore be prepared, if the defendant does not appear at the hearing, to satisfy the court that the summons has come to the knowledge of the defendant before the return day. *Order 2, Rules 6, 25.*

To the plaintiff.

32.

Indorsement on Copy of Summons served or to be served on Company registered under the Companies (Consolidation) Act, 1908.

(1.) *Where bailiff ascertains that the registered office of the company is situate at the address given on the summons, or at some other address within the district.* *8 Edw. 7, c. 69, s. 116.*

Served the summons of which this is a true copy [add, if so, with copy of affidavit annexed] on the defendant company on the _____ day of _____ 19 ___, by leaving the same [or by sending the same through the post in a prepaid letter addressed to the company] at [state address], I having ascertained by seeing the words "Registered Office" painted or affixed to the outside of the premises [or by inquiry at the premises] that the registered office of the company is situate at such address. *Order 2, Rules 23, 26 (2, 3).*

(2.) *Where bailiff is unable to ascertain whether the registered office of the company is situate at the address given on the summons.* *Order 2, Rule 26 (4).*

Served the summons of which this is a true copy [add, if so, with copy of affidavit annexed] on the _____ day of _____ 19 ___, by leaving the same [or by sending the same through the post in a prepaid letter addressed to the defendant company] at the address given on the summons: but I have been unable to ascertain whether the registered office of the company is situate at such address.

(3.) *Where bailiff ascertains that the registered office is not situate at the address given on the summons and does not ascertain that it is situate at some other address within the district.* *Order 2 Rule 26 (5).*

Not served, I having ascertained that the registered office of the defendant company is not situate at the address given on the summons, and not having ascertained that it is situate at any other address within the district.

33.

Notice of doubtful Service of Summons on Company registered under the Companies (Consolidation) Act, 1908.

Order 2,
Rule 26.

Take notice that the summons in this action was served at the address given by you: but the bailiff has been unable to ascertain whether the registered office of the defendant company is situate at such address.

You must therefore be prepared, if the defendant company does not appear at the hearing, to satisfy the court that the registered office of the defendant company is situate at such address.

To the plaintiff.

34.

Indorsement on Copy of Default or Judgment Summons after Service.

Order 2,
Rule 23.

The summons of which this is a true copy [*add, if so, with copy of affidavit annexed*] was served by personally on [*the defendant or the defendants*] at on the day of 19 [*add, if travelling expenses paid or tendered with judgment summons, and the sum of* was paid [*or tendered*] to the said for his expenses].

Bailiff of the county court.

34A.

Indorsement on Copy of Default Summons after Service in Action against Firm.

Order 7,
Rules 31,
31a, 31b.

The summons of which this is a true copy, [*add, if so, with copy of affidavit annexed*] was served by me personally on the day of at

(a) on C. D., , a partner in [*or who stated that he was a partner in*] the defendant firm [*or who carries on business* [*or who stated he carried on business*] in the name or style of

[*or (b) on a person who did not give his name, but stated that he was a partner in the defendant firm* [*or that he carried on business in the name or style of*]].

[*or (c) by delivering the same at* , being the principal place of business of the defendant firm within the district of this court to E. F. the person [*or, if the name is not known, to a person*] who had or appeared to have the control or management of the business there].

Bailiff of the county court.

35.

Notice of Service of Default Summons.

Order 2,
Rule 31.

You are hereby informed that the defendant was on the day of 19 , served with the summons issued in this action.

To the plaintiff. High bailiff.

36.

Notice of Non-Service of Default Summons.

Order 2,
Rule 31.

Take notice, that the summons in this action has not been served, for the following reason:—

To the plaintiff.

High bailiff.

37.

Affidavit of Service of Default Summons.

I, A. B., of _____, [or G. H., a clerk [or servant] in the permanent and exclusive employ of] _____, [or I. M., of _____, the solicitor for] _____, [or R. S., of _____, solicitor, agent for L. M., of _____, the solicitor for] _____, [or X. Y., a clerk in the employ of [R. S., of _____, solicitor, agent for] _____, L. M., of _____, solicitor for] _____, Order 5, Rule 13 (9).
Order 7, Rule 34.
Order 40, Rule 4 (11).
Order 50, Rule 11 (10).

the above-named plaintiff make oath and say :

That I [am a clerk [or servant] in the permanent and exclusive employ of]

[or am a clerk in the employ of [R. S., of _____, solicitor, agent for] _____, L. M., of _____, solicitor for] the above-named plaintiff, and that I am over sixteen years of age.

That I did on the _____ day of _____, 19____, duly serve E. F., the above-named defendant [or one of the above-named defendants] with a summons, a true copy whereof is hereunto annexed, marked "A," [add, if so, with copy of affidavit annexed] by delivering the same personally to the said defendant at [here insert place where service was made]

(Indorse the copy summons or other process thus :—This paper, marked "A," is the paper referred to in the annexed affidavit.)

37 (2).

Affidavit of Service of Summons in Action against a Firm.

That I did, on the _____ day of _____, duly serve the summons a true copy whereof is hereunto annexed, marked A, [add, if so, with a copy of affidavit annexed.] Order 7, Rules 15, 16a, 31, 31 31b.

(a) by delivering the same personally at [state place of service] to C. D., a partner in [or who stated that he was a partner in] the defendant firm [or who carries on business [or who stated that he carried on business] in the name or style of _____] :

[or (b) by delivering the same personally at [state place of service] to a person who did not give his name, but stated that he was a partner in the defendant firm [or that he carried on business in the name or style of _____] :

[or (c) by delivering the same at _____, being the principal place of business of the defendant firm within the district of this court, to E. F., the person [or, if the name is not known, to a person] who had or appeared to have the control or management of the business there.]

[Endorse the copy summons thus :—This paper marked A is the paper referred to in the annexed affidavit.]

37 (3).

Notice to be sent where Notice of Defence is not signed, or does not state the Facts on which Defendant relies, or Affidavit of Defence is not duly sworn, or does not state any Grounds of Defence, Set-off or Counter-claim.

TAKE NOTICE, that your notice [or affidavit] of defence, which is returned herewith, is defective, in that _____ Order 7, Rule 34b (3).

- (a) such notice of defence is not signed ; or
- (b) such notice of defence does not state the facts on which you rely as a defence [or in support of your set-off or counter-claim] ; or
- (c) such affidavit of defence is not duly sworn ; or

(d) such affidavit of defence does not state any grounds of defence set-off or counter-claim.

You are hereby required to amend your notice of defence by adding your signature [or by stating the facts on which you rely].

or You are hereby required to amend your affidavit of defence by duly swearing to the same [or by stating the grounds of your defence [set-off or counter-claim]]

And further TAKE NOTICE, that if you do not within twelve days from the date of service of the summons on you, inclusive of the day of service, return your notice [or affidavit] of defence to me, by post or otherwise, duly amended as above required, you will be liable to have judgment entered against you in the same manner as if you had failed to deliver any notice [or affidavit] of defence.

Dated this day of

To the defendant.

Registrar.

37A.

Præcipe for Entry of Judgment on Default Summons.

Order 7,
Rule 34A.

In the county court of , holden at

No. of Plaintiff.

Between A. B., plaintiff,

and

C. D., defendant.

I hereby request you to enter judgment by default against the defendant, payable forthwith [or by instalments of £ : : for every twenty-eight days, the first instalment to be paid on the day of , 19].

Amount of claim as stated on summons

Amount (if any) since received by plaintiff

Balance of claim for which judgment to be entered ...

Court fees and solicitor's costs (if any) entered on summons ...

Court fees on entering judgment

Solicitor's costs (if any) on entering judgment

Total

Add, if so

The defendant is a married woman [a widow], and judgment is to be entered against her in respect of a contract before coverture [during coverture or since the determination of the coverture].

Dated this day of 19

Signature.

Plaintiff [or plaintiff's solicitor].

To the registrar of the court.

38.

Notice to Plaintiff of Day of Trial of Default or Special Default Summons, where Notice or Affidavit of Defence delivered.

Order 7,
Rule 34c.

TAKE NOTICE that the defendant has delivered a notice [or an affidavit] of defence to this action, a copy of which is sent herewith.

The action will be tried at a court to be held at (state where) on day, the day of , 19 , at o'clock in the noon.

The hearing fee must be paid before the case is called on.

Dated this day of , 19 .

To the plaintiff.

Registrar.

39.

Notice to Defendant of Day of Trial of Default of Special Default Summons where Notice or Affidavit of Defence delivered.

You having delivered a notice [or an affidavit] of defence to this action. *Order 7, Rule 34c.*
 TAKE NOTICE that this action will be tried at a court to be held at (state where) on day the day of , 19 , at o'clock in the noon.

Dated this day of , 19 .

To the defendant. Registrar.

40.

Notice to Plaintiff of Day of Disposal of Default or Special Default Summons where Admission of whole of Claim delivered.

TAKE NOTICE that the defendant has admitted the whole of your claim and [offers to pay the same on the day of , 19 (or by instalments of per month) and if within five clear days* you accept this offer and pay to me or remit to me by money order the sum of shillings, being the fee for entering judgment, judgment will be entered for the whole claim and the court fees and costs and payment will be ordered to be made in accordance with the offer of the defendant. Otherwise] this action will be disposed of by the registrar at a sitting to be held at (state where) on day, the day of , 19 , at o'clock in the noon. *Order 7, Rule 34d.* The words in brackets to be struck out if admission is not accompanied by offer of payment.

The fee for entering judgment must be paid before the case is called on.

Dated this day of , 19 .
 To the plaintiff. Registrar.

* A notice sent after the expiration of the 5 days will be accepted, but in that case unless you are otherwise informed by the Registrar, the action will be dealt with on the day fixed for disposal.

41.

Notice to Defendant of Day of Disposal of Default or Special Default Summons, where Admission of Whole or Part of Claim delivered.

TAKE NOTICE that [if the plaintiff does not accept your offer of payment] this action will be disposed of by the registrar at a sitting to be held at (state where) on day, the day of , 19 , at o'clock in the noon, the only question being as to the time and mode of payment of the sum admitted by you. *Order 7, Rule 34d.* The words in brackets only to be used in case of admission of whole of claim.

Dated this day of , 19 .

To the defendant. Registrar.

42.

Notice to Plaintiff of Day of Disposal of Default or Special Default Summons, where Admission of part of Claim delivered.

TAKE NOTICE that this action will be disposed of by the Registrar at a Sitting to be held at [state where] on day, the day of , 19 , at o'clock in the noon. *Order 7, Rule 34d.*

The fee for entering judgment must be paid before the case is called on.

Dated this day of , 19 .

To the Plaintiff. Registrar.

42A (1).

Letter to be sent where Action commenced in one Court is to be tried in another under Order in Council made under Section 5 of the County Courts Act, 1903.

(1)

Ordinary Summons.

Order 22.
Rules 21, 22. In the county court of holden at .
Sir,

I beg to inform you that a præcipe has been filed in this court for the commencement of an action between

A. B., plaintiff.

and

C. D., defendant,

which action will, under Order in Council made under section 5 of the County Courts Act, 1903, be tried in your court.

I have therefore to request you to fix a day for the trial, and to inform me of the day so fixed.

Your obedient servant,

Registrar.

To the registrar of the county court
of holden at .

42A (2).

Special Default Summons

Order 22A.
Rule 22. In the county court of holden at .
Sir,

I beg to inform you that a special default summons has been issued in this court in an action between

A. B., plaintiff,

and

C. D., defendant,

and that the defendant has delivered an affidavit of defence to the action, which will, under Order in Council made under section 5 of the County Courts Act, 1903, be tried in your court.

I have therefore to request you to fix a day for the trial, and to inform me of the day so fixed.

Your obedient servant,

Registrar.

To the registrar of the county court
of holden at .

42B.

Notice of Day of Trial, where Action commenced in one Court is to be tried in another.

Order 22A.
Rules 21, 22. In the county court of holden at .
Sir,

I beg to acknowledge the receipt of your letter of and to inform you that the action of will be tried at a court to be held at (insert court-house) on the day of 19 , at o'clock in the noon.

Your obedient servant,

Registrar.

To the registrar of the county court of holden at .

42c.

Notice to be annexed to Plaintiff-Note and Summons, or to Notice of Trial of Default Summons, where an Action commenced in one Court is to be tried in Another.

Take notice, that this action will be tried in the county court of holden at _____, and the same will be tried at a court to be held at _____ (insert court-house) on the _____ day of _____ 19, at _____ o'clock in the _____ noon. Order 22A,
Rules 21, 22.

And further take notice, that all proceedings in this action previous to the trial are to be taken in, and payment into court before trial must be made into, the county court of _____ holden at _____, and that the office of the registrar of such last-mentioned court is situate at (state where office situate).

Dated this _____ day of _____ 19 _____

Registrar.

43.

[Not to be printed.]

Affidavit in support of Application for substituted Service.

I, J. S. [address and description] make oath and say as follows:—
State facts showing either that the summons has come to the knowledge of defendant, or that he wilfully evades service of the same. Or, that upon inquiry at his usual place of abode, or at any other place where prior to the time when the plaint was entered he might probably have been met with, he could not be found so as to be served, and that in either case there is just ground to believe that he has gone out of the realm or otherwise absconded to avoid being served.

Order 7,
Rule 40.

Then state deponent's means of knowledge of the facts deposed to.

Sworn, &c.

44.

Order for substituted Service.

[Not to be printed.]

Upon reading an affidavit of _____ of _____, in the county of _____ sworn the _____ day of _____ 19 _____

It is ordered that the delivery of a sealed copy of the summons issued in this action, together with a sealed copy of this order, to some adult inmate at the usual [or last known] place of residence [or business] of the above-named defendant C. D., situate and being at _____ in the county of _____ [or that delivery of a sealed copy of the summons issued in this action, together with a sealed copy of this order, by registered post addressed to the defendant C. D., at _____ in the county of _____, being the usual [or last known] place of residence [or business] of the said defendant], shall be deemed to be good and sufficient service of the said summons on the said defendant on the day of such delivery.

Order 7,
Rule 4.
Order 39,
Rules 14, 17.

[Or, that notice of the entry of the above-named plaint be published in the _____, and that the publication of such notice shall be deemed to be good and sufficient service of the summons upon the defendant C. D.]

Dated this _____ day of _____ 19 _____ Registrar.

45.

Substituted Service.—Notice in Papers.*[Not to be printed.]*

Order 7,
Rule 40.
Order 39,
Rules 14, 17.

In the county court of holden at .
To C. D. of .

Take notice, that a plaint has been entered and a summons issued against you in the above county court by A. B., of , for the sum of £ for goods sold and delivered [*or as the case may be*] and an order has been made that the publication of a notice of the entry of such plaint in the shall be deemed to be good and sufficient service of the summons upon you.

The summons will be heard at on the day of 19 , at o'clock in the noon, on which day you are required to appear; and if you do not appear either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of 19 .

Registrar.

46.

Order for Leave to Proceed as if Personal Service of Default or Special Default Summons had been effected.

Order 7,
Rule 33a.

On the application of and upon reading the affidavit of

It is ordered that the plaintiff on serving the defendant with a sealed copy of this order [*add, unless the judge or registrar is satisfied that the defendant has already received the summons*] and a sealed copy of the summons and particulars in this action] by delivering the same to some adult inmate at the usual [*or last known*] place of residence [*or business*] of the defendant situate at in the county of [*or by sending the same by registered post addressed to the defendant as in the county of being the usual [*or last known*] place of residence [*or business*] of the said defendant*] [*or addressed to the defendant at the office of of solicitor, who appears by the said affidavit [*or by evidence given on behalf of the plaintiff*] to be acting for [*or in communication with*] the defendant*] [*if any other conditions are imposed state the same*]] be at liberty to proceed as if the defendant had been personally served with the summons in this action at the time when the said copy is so delivered [*or at the time when the registered letter would have been delivered in the ordinary course of post*].

Dated this day of , 19 .

By the court.

Registrar.

46A.

Notice to Plaintiff where Action entered or fixed for Hearing at Registrar's Court.

Order 22B,
Rule 2 (1).

Take notice that this action has been entered or fixed for hearing at a court to be held before the registrar only.

If the claim exceeds £5 strike out this paragraph.

If you do not consent to the action being tried by the registrar in the event of the claim being disputed, you must give notice to the registrar accordingly within four clear days after the receipt of this notice. If you give such notice and the claim is disputed, the action will be tried by the judge on another day, notice of which will be sent to you. If you do not give such notice and the claim is disputed and you do not consent at the hearing to the action being tried by the registrar, you may be ordered to pay any costs properly incurred by the defendant in consequence of your failure to give notice within the time allowed.

46B.

Notice to Defendant where Action is fixed for Hearing at Registrar's Court.

Take notice that this action has been fixed for hearing at a court to be held before the registrar only.

If you intend to dispute this claim [and do not consent to the action being tried by the registrar] you must give notice to me accordingly within four clear days after the receipt of this notice. The action will then be tried by the judge on another day, notice of which will be sent to you. If you give notice later than four clear days after the receipt of this notice, or if, having failed to give notice, you dispute the claim at the hearing [and do not consent to the action being tried by the registrar], you may be ordered to pay any costs properly incurred by the plaintiff in consequence of your failure to give notice within the time allowed.

¹ Where the claim exceeds £5, strike out the words in brackets

47.

Order for Service on Defendant out of England and Wales.

[Not to be printed.]

Upon hearing _____, and upon reading the affidavit of _____, sworn the _____ day of _____, 19 _____.

Order 7,
Rule 45.

It is ordered that [the intended plaintiff] be at liberty to issue a summons against [the intended defendant].

And it is further ordered that the plaintiff be at liberty to serve [if a foreigner in a foreign country insert notice of] the said summons at [here insert country or place within the limits of which the service is to be effected] or elsewhere in the _____, and that the hearing of the said summons shall be proceeded with on _____ the _____ day of _____ 19 _____, at _____ in the _____ noon.

Dated this _____ day of _____ 19 _____.

Registrar.

48.

Notice to accompany Summons to be served on Defendant out of England and Wales.

Take notice, that by leave of the judge a plaint has been entered and a summons issued against you in the above-named county court by A. B. of _____, a copy of which summons is hereto annexed.

Order 7
Rule 46

The summons will be heard at _____ on _____ the _____ day of _____ 19 _____, on which day you are required to appear; and if you do not appear either in person or by your solicitor at the time and place above-mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this _____ day of _____ 19 _____.

Registrar.

To the defendant [naming him]. _____

49.

Notice of Summons in lieu of Service of Summons to Defendant out of England and Wales.

Take notice, that by leave of the judge a plaint has been entered and a summons issued against you in the above-named county court by A. B. of _____ for [copy in the full particulars annexed to the summons].

Order 7,
Rule 47.

The summons will be heard at _____ on _____ the _____ day of _____ 19 _____, on which day you are required to appear; and if you do not appear either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this _____ day of _____ 19 _____.

To the defendant [naming him]. _____

Registrar.

50.

Affidavit on Application on behalf of Infant or Person of Unsound Mind for Appointment of Guardian ad litem.*[Not to be printed.]**Order 7,
Rule 50 (1).*I, *E. F.*, make oath and say as follows:—

1. The summons in this action [*or matter*] was served on the defendant, C. D., on the day of 19 .
2. The defendant is an infant [*or a person of unsound mind not so found by inquisition*].
3. E. F., of , is a fit and proper person to act as guardian *ad litem* of the above-named defendant, and has no interest in the matters in question in this action [*or matter*] adverse to that of the defendant, and the consent of the said E. F. to act as such guardian is hereto annexed.

Sworn, &c.

Form of Consent to be annexed to Affidavit.

I, E. F., of , consent to act as guardian *ad litem* of C. D. an infant [*or a person of unsound mind not so found by inquisition*], a defendant in this action [*or matter*], [and I authorise Mr. to defend this action [*or matter*]].

Signature of guardian.

51.

Order appointing Guardian ad litem.*Order 7,
Rule 50 (1).*

On the application of , and on reading the affidavit of , filed on the day of , and the consent thereto annexed, It is ordered that E. F., of be appointed to act as guardian *ad litem* of the defendant C. D. an infant [*or a person of unsound mind not so found by inquisition*].

Dated this day of 19 .

Registrar.

52.

Notice to Plaintiff of Appointment of Guardian ad litem.*Order 7,
Rule 50 (2).*

Take notice, that the summons in this action [*or matter*] was served on the day of , on the defendant C. D., who is an infant [*or a person of unsound mind not so found by inquisition*] and that E. F., of , has been appointed to act as guardian *ad litem* of the said defendant.

Dated this day of 19 .

Registrar.

53.

Notice to Plaintiff where no Application made on behalf of Infant or Person of Unsound Mind for Appointment of Guardian ad litem.*Order 7,
Rule 50 (3).*

Take notice, that the summons in this action [*or matter*] was served on the day of , on the defendant C. D., who is an infant [*or a person of unsound mind not so found by inquisition*], and that no application has been made on behalf of the said defendant for the appointment of a person to act as guardian *ad litem*.

And further take notice, that before proceeding further with this action [*or matter*] against the said defendant you must apply to the judge for an order that some proper person be assigned as guardian of the said defendant, by whom he may appear and defend.

Dated this day of 19 .

Registrar.

To the plaintiff and Mr.
his solicitor.

54.

Application by Plaintiff for Appointment of Guardian ad litem to Defendant who is an Infant or a Person of Unsound Mind.

[Not to be printed.]

Take notice, that I intend to apply to the judge at _____, on the _____ day of _____ at the hour of _____ in the _____ noon, for an order appointing G. H., _____ of _____ or some other proper person, guardian *ad litem* of the defendant C. D., _____ who is an infant [or a person of unsound mind not so found by inquisition], and that I shall apply, if necessary, for the postponement of the trial.

Order 7,
Rule 50 (5).

And further take notice, that an affidavit of _____, filed this day (a copy of which accompanies this notice) will be read in support of such application.

Dated this _____ day of _____ 19 _____.

Plaintiff,
[or Solicitor for the plaintiff].

To the defendant C. D.,
and to _____ the father
[or guardian] of the said C. D.,
and to the registrar of the court.

55.

Affidavit in support of Application by Plaintiff for Appointment of Guardian ad litem to Defendant.

[Not to be printed.]

I, _____, of _____, make oath and say as follows:—

Order 7,
Rule 50 (5).

1. I am informed by the registrar that the summons in this action [or matter] was on the _____ day of _____, served on the defendant C. D., _____ who is an infant [or a person of unsound mind not so found by inquisition], and that no application has been made to the court on behalf of the said defendant for the appointment of a guardian *ad litem*.

2. G. H., _____ of _____, is a fit and proper person to act as guardian *ad litem* of the above-named defendant and has no interest in the matters in question in this action [or matter] adverse to that of the said defendant.

3. The consent of the said G. H., _____ to act as such guardian is hereto annexed.

Sworn, &c.

Form of Consent to be annexed to Affidavit.

I G. H., _____ of _____, consent to act as guardian *ad litem* of C. D., _____ an infant [or a person of unsound mind not so found by inquisition], a defendant in this action [or matter], [and I authorise Mr. _____ to defend this action [or matter]].

Signature of guardian.

56.

Order appointing Guardian ad litem on Application of Plaintiff.

Upon the application of the plaintiff for the appointment of G. H., _____ of _____ or some other proper person, guardian *ad litem* of the defendant C. D., _____ who is an infant [or a person of unsound mind not so found by inquisition], and upon reading the affidavit of _____ filed on the _____ day of _____, and the consent thereto annexed,

Rule 50 (6).

And upon hearing Mr. _____, on behalf of the said defendant,

I do order that G. H., _____ of _____, be appointed to act as guardian *ad litem* of the said defendant _____, [or, if the person proposed by the plaintiff is not appointed,

And it appearing to me that the said G. H., _____ is not a proper person to be appointed such guardian, and that J. L., _____ of _____, is a proper person to be appointed such guardian, and is willing to act as such guardian,

I do order that the said J. L., be appointed to act as guardian *ad litem* of the said defendant] [*or, in default of any other person, being willing to act,*

And it appearing to me that the said G. H., is not a proper person to be appointed such guardian, and that there is no other proper person willing to act as such guardian,

I do order that the registrar of this court be appointed to act as guardian *ad litem* of the said defendant.]

[And I do further order that the hearing of this action [*or matter*] be postponed till the day of , at o'clock in the noon.

Dated this day of 19 ,

Judge.

57.

Order appointing Guardian *ad litem* named by Infant Defendant appearing at the Trial.

Order 7,
Rule 51 (1).

Whereas now at the trial of this action [*or matter*] the defendant C. D. being an infant, appears here in court and names E. F. of] to act as his guardian, who now assents to act as such guardian ;

It is ordered that the said E. F. be, and he is hereby appointed to be, guardian of the said defendant, to act on his behalf in this action [*or matter*].

58.

Order appointing Guardian *ad litem* of Infant Defendant appearing at the Trial and not naming a Guardian.

Order 7,
Rule 51 (1).

Whereas now at the trial of this action [*or matter*] the defendant C. D. being an infant, appears here in court and does not name a guardian :

It is ordered that G. H., of , [*or the registrar of this court*] be, and he is hereby appointed to be, guardian of the said defendant, to act on his behalf in this action [*or matter*].

59.

Order for Consolidation.

[*Not to be printed.*]

Order 8,
Rules 1, 4.

In the county court of , holden at .

Plaint No. .

Between A. B., plaintiff,

and

C. D., defendant,

and

Plaint No. .

Between A. B., plaintiff,

and

C. D., defendant.

[*Add the plaint numbers and titles of all the actions to be consolidated.*]

Whereas the above-mentioned A. B. has commenced the [two] actions above mentioned against the above-mentioned C. D. for or in respect of different causes of action which might have been joined in one action : And whereas the aggregate amount of the debts and damages claimed [*or the aggregate claims*] in the said action does [*or do*] not exceed the jurisdiction of this court :

I do therefore order that the said actions be consolidated and tried together as one action [*add any special terms*].

[And I do further order that the plaintiff do pay and bear in any event all costs thrown away by reason of the bringing of [two] actions instead of

Rule 4.

one, and that the costs of and incident to this application and the order consequent thereon be the defendant's costs in any event.]

And I do further order that this order shall be drawn up and served on the said A. B.

Dated this day of 19 .

Judge.

60.

Undertaking by Defendant applying for Stay of Proceedings.

[*Not to be printed.*]

In the county court of , holden at .

Plaint No. .

*Order 8,
Rule 2.*

Between A. B., plaintiff,
and
C. D., defendant,
and

Plaint No. .

Between E. F., plaintiff,
and
C. D., defendant.

Whereas the above-mentioned actions have been brought in this court by the said A. B. and E. F. against me, and whereas the causes of action in the said actions arise out of the same alleged breach of contract [*or wrong or breach of duty*].

Now, therefore, I undertake to be bound, so far as my liability in the said actions is concerned, by the judgment of the court, in either of the said actions which may be selected by the judge.

C. D.,
Defendant.

61.

Order to Stay Proceedings.

[*Not to be printed.*]

[*Heading as in Form 60.*]

Whereas the above actions have been commenced in this court against the said C. D. for or in respect of causes of action arising out of the same alleged breach of contract [*or wrong or breach of duty*].

And whereas the said C. D. has filed an undertaking to be bound, so far as his liability to the plaintiffs, A. B. and E. F., in the said actions is concerned, by the decision of the court in one of such actions.

I do therefore order that all proceedings in the second-mentioned action be stayed until judgment shall have been given in the first-mentioned action.

[And I do further order that the costs of this application and of the order consequent thereon be costs in the first-mentioned action and abide the event thereof.]

And I do further order that this order shall be drawn up and served on the said A. B. and E. F.

Dated this day of 19 .

Judge.

62.

Notice to other Plaintiffs of Judgment in Selected Action.

[*Heading as in Form 60.*]

Whereas by order dated the day of it was ordered that all proceedings in the above-mentioned action of E. F. v. C. D. should be stayed until judgment should have been given in the above-mentioned action of A. B. v. C. D. .

*Order 8,
Rules 5, 6.*

Now I hereby give you notice that on the day of judgment was

given in the said action of A. B. v. C. D. in favour of the defendant.

And I further give you notice that the said defendant will be entitled to his costs of the above-mentioned action of E. F. v. C. D. up to the date of the said order of the day of unless you, the said E. F. shall on or before the day of [one month from date of judgment in selected action] give to me or send to my office written notice to set down your action of E. F. v. C. D. for hearing.

[Or, if judgment in selected action was given for plaintiff, proceed as follows:—

Now I hereby give you notice that on the day of judgment was given in the said action of A. B. v. C. D. in favour of the plaintiff.

And I further give you notice that you will be at liberty to proceed with your action of E. F. v. C. D. for the purpose of ascertaining and recovering your debt [or damages] and costs, and that if you desire so to proceed you must, on or before the day of [one month from date of judgment in selected action], give to me or send to my office written notice to set down your action of E. F. v. C. D. for hearing.]

Dated this day of 19

Registrar.

To the above-named plaintiff, E. F.

63.

[Not to be printed.]

Notice of Discontinuance of Action or Withdrawal of Part of Claim.

Order 9,
Rule 1.

Take notice that I shall not proceed further in this action, and that I hereby withdraw from the same [add, if so, as against the defendant C. D.]. [or Take Notice, that I hereby withdraw so much of my claim in this action as relates to [specify the claim which is withdrawn, and add, if so, as against the defendant C. D.].]

Dated this day of

Plaintiff.

To the registrar, and to the defendant (naming him).

64.

Judgment for Costs against Plaintiff on Discontinuance of Action or Withdrawal of Part of Claim.

Order 9,
Rule 1.

The plaintiff having by a notice in writing dated the day of wholly discontinued this action [or withdrawn his claim in this action for— or withdrawn so much of his claim in this action as relates to— or as the case may be]

[add, if so, as against the defendant, C. D.]. It is this day adjudged that the defendant [or the said defendant C. D.] do recover against the plaintiff the sum of £ for costs:

And it is ordered that the plaintiff do pay the said sum of £ to the registrar of this court forthwith [or on the day of] [or by instalments of for every days, the first instalment to be paid on the day of 19].

Dated this day of

Registrar.

65.

Notice to Plaintiff of Admission of Part of Claim. Default or Special Default Summons.

Order 7,
4d.

TAKE NOTICE:—

1. The defendant has delivered an admission [or has admitted in his notice or affidavit of defence] that the sum of £ part of the amount claimed by you is due from him to you.

2. The defendant offers to pay the said sum of £ on the day of , 19 [or by instalments of per month].

3. Within five clear days after the receipt of this notice of admission you, or your solicitor, should complete and sign the notice at the foot of this notice and return it to me, by post or otherwise.*

4. If you accept the amount admitted in satisfaction of your claim, abandoning the balance, and accept the mode of payment offered by the defendant, you must, with the notice mentioned in the last preceding paragraph, pay to me or remit to me by money order the sum of shillings, being the fee for entering judgment. In that case it will not be necessary for you to attend the court and judgment will thereupon be entered for the amount admitted, and the court fees and costs, and payment will be ordered to be made in accordance with the offer of the defendant.

5. If you accept the amount admitted in satisfaction of your claim, abandoning the balance, and [object to the mode of payment offered by the defendant, but] are willing to leave it to the registrar to give judgment for the amount admitted and direct the time and mode of payment in accordance with section 5 (4) of the County Court Act 1919, and section 105 of the County Courts Act, 1888, a day will be fixed for disposal of the action, notice of which will be sent to you in due course. In any other case the action will proceed and you must attend on the day fixed for the trial of the action, notice of which will be sent to you in due course.

Dated this day of , 19 .

To the plaintiff.

Registrar.

NO. OF PLAINT.

In the county court of holden at .

A. B. v. C. D.

I accept [or do not accept] in satisfaction of my claim the sum of £ admitted by the defendant [if offer of payment made add]

I accept the mode of payment offered by the defendant and I enclose shillings fee for entering judgment.

Or [I do not accept the mode of payment offered by the defendant and] am willing [or not willing] to leave it to the registrar to give judgment for the amount admitted and direct the time and mode of payment in accordance with section 5 (4) of the County Courts Act, 1919, and section 105 of the County Courts Act, 1888.

Dated this day of , 19 .

To the Registrar.

Plaintiff.

* A notice sent after the expiration of the five days will be accepted, but in that case, unless you are otherwise informed by the registrar, the action will be dealt with on the day fixed for disposal or trial.

Notice to Plaintiff of Admission of whole Claim. Ordinary Summons.

TAKE NOTICE :—

1. The defendant has delivered an admission that £ the amount claimed by you is due from him to you, but he desires the decision of the court as to the time and mode of payment thereof.

2. The defendant offers to pay the said sum of £ on the day of , 19 , [or by instalments of per month].

3. If you accept the mode of payment offered by the defendant, you should, within such reasonable time before the return day as time will permit, send notice of acceptance to me and to the defendant and pay

to me or remit to me by money order, the sum of shillings, being the fee for entering judgment, but you may send or give such notice and fee at any time before the return day. In either case it will not be necessary for you to attend the court on the day of hearing of the action, and judgment will then be entered for the amount admitted and the court fees and costs, and payment will be ordered to be made in accordance with the offer of the defendant. In any other case the action will proceed and you must attend the court on the return day.

Dated this day of , 19 .
To the plaintiff. Registrar.

67.

Notice to Plaintiff of Admission of Part of Claim. Ordinary Summons.

*Order 9,
Rule 2.*

TAKE NOTICE:—

1. The defendant has delivered an admission that the sum of £ part of the amount claimed by you is due from him to you, but he desires the decision of the court as to the time and mode of payment thereof.

2. The defendant offers to pay the said sum of £ on the day of , 19 [or by instalments of per month].

3. If you accept the amount admitted in satisfaction of your claim, abandoning the balance, and accept the mode of payment offered by the defendant, you should within such reasonable time before the return day as time may permit, send notice of acceptance to me and to the defendant and pay to me or remit to me by money order the sum of shillings, being the fee for entering judgment, but you may send or give such notice and fee at any time before the return day. In either case it will not be necessary for you to attend the court on the day of hearing of the action, and judgment will then be entered for the amount admitted and the court fees and costs, and payment will be ordered to be made in accordance with the offer of the defendant.

4. If you object to accept the amount admitted in satisfaction of your claim, or if accepting the amount admitted you object to the mode of payment offered by the defendant, you should, within such reasonable time before the return day as time may permit, send notice of objection to the amount admitted or the offer of payment as the case may be to me and to the defendant, but you may give your notice at any time before the return day or attend on the return day and notify the same and in any such case the action will be dealt with as if a notice in that behalf had been given in due time.

5. If you object to accept the amount admitted and the mode of payment offered in satisfaction of your claim the action will be dealt with on the return day in the ordinary way; in any other case (except the case mentioned in paragraph 3) the registrar will on the return day deal with the case, and on payment of the necessary court fee will give judgment for the amount admitted with court fees and costs, and direct the time and mode of payment in accordance with section 5 of the County Courts Act, 1919, and section 105 of the County Courts Act, 1888.

Dated this day of , 19 .
To the plaintiff. Registrar.

68 (New Form).

Agreement as to Amount of Claim and Mode of Payment.*[Not to be printed.]*

We, the plaintiff and defendant, do hereby agree that the amount of the claim due from the defendant to the plaintiff is £ , and that the same [with £ for the court fees and £ or the plaintiff's costs, amounting together to the sum of £] shall be paid in manner following. viz. :—

Dated this day of .

Signatures of
plaintiff and
defendant.

71.

Defendant's Admission.*[Not to be printed.]*

I, the undersigned defendant, admit the truth of the allegations in the plaint, and hereby submit to the judgment of the court thereon.

Order 9,
Rule 5.

(Signed) C. D., defendant.

Signed in the presence of .

72.

Annulled.

73.

Notice of Payment into Court of whole Claim.

Take notice, that the defendant [*or garnishee*] has paid into court the full amount of your demand in this action, together with your costs therein.

Order 9,
Rule 12 (2).

[N.B.—*Upon your applying for the above amount, it will be necessary that you should produce the plaint-note given to you on the entry of the plaint.*]

Order 26,
Rule 5 (2).

74.

Notice of Payment into Court of Part of Claim.

Take notice, that the defendant [*or garnishee*] has this day paid into court the sum of £ in respect of your demand in this action [and the sum of £ in respect of fees and costs [*or on tender*]]. If you elect to accept the same in full satisfaction of the sum claimed, and the costs you have incurred, and send to the registrar of this court and to the defendant a written notice forthwith, by post, or by leaving the same at the registrar's office and at the defendant's place of abode or business, the action will be discontinued, and you will be liable to no further costs. In default of such

Order 9,
Rule 12 (2).
Order 26,
Rule 5 (2).

(u) These words must be inserted only where the defendant denies liability or relies on the defence of tender.

notice [the said sum will be retained and (a)] the action will be proceeded with. If you do not appear at the hearing, you will be liable to pay to the defendant such costs as he may incur for appearing at the hearing, or such other sum of money as the judge may order, for expenses subsequent to the payment into court.

Dated this day of 19 .

Registrar.

To the plaintiff.

[N.B.—Upon your applying for the above amount it will be necessary that you should produce the plaint-note given to you on the entry of the plaint.]

75.

Notice of Payment into Court with Denial of Liability.

[Not to be printed.]

Order 9,
Rule 12 (1).

Take notice, that the above-named defendant [or C. D., one of the above-named defendants] has paid into court the sum of £ in satisfaction of the whole of the plaintiff's claim herein [or of so much of the plaintiff's claim as relates to (here describe the part of the claim or cause of action in respect of which the payment is made)] and the sum of £ in respect of fees and costs [or on tender].

And further take notice that notwithstanding such payment the defendant denies his liability.

And further take notice that the address of the said defendant is as follows (state the address).

Dated &c.

C. D.

the above-named defendant [or E. F., solicitor for the above-named defendant].

To the registrar of the court and to

A. B., the above-named plaintiff.

NOTE.—A sealed copy of this notice must be sent to the plaintiff with Form 74 when the defendant denies liability.

76.

Notice of Acceptance of Sum paid into Court or to Plaintiff.

[Not to be printed.]

Order 9,
Rules 13
(1, 4), 20
(1, 4).

Take notice, that the plaintiff accepts the sum of £ paid by the defendant [or garnishee] into court [or to the plaintiff] in satisfaction of the claim in respect of which it is paid in.

Order 26,
Rule 5 (3).

But the plaintiff will apply to the judge on the day of at o'clock in the noon for an order directing the defendant [or garnishee] to pay the fees and costs (beyond the fees and costs paid into court) properly incurred by the plaintiff before the receipt of notice of payment into court [or before the receipt of the said sum of £], and in attending the court to obtain such order.

Dated this day of 19 .

Plaintiff.

To the registrar of the court
and

To the defendant [or garnishee].

77.

Order against Defendant or Garnishee Paying Money into Court or to Plaintiff for Payment of further Costs.

On the application of the plaintiff, it is ordered that the plaintiff do recover against the defendant [*or garnishee*] the sum of £ for costs incurred by the plaintiff for work done before the receipt of notice of payment into court herein [*or before payment of the plaintiff's demand herein by the defendant to the plaintiff*] and for the costs of attending the court to obtain this order.

*Order 9,
Rules 13 (3),
20 (2).*

*Order 26,
Rule 5 (5).*

And it is ordered, that the defendant [*or garnishee*] do pay the same to the registrar of this court on the day of 19 .

[*To be altered as required, if order made for payment of costs to be taxed.*]

78.

Notice of Objection to Trial of Counter-claim, under the Supreme Court of Judicature (Consolidation) Act, 1925, Sect. 203

[*Not to be printed.*]

Take notice, that the plaintiff objects to the court giving any relief upon the counter-claim raised in this action exceeding that which the court would have jurisdiction to give independently of section 203 of the Supreme Court of Judicature (Consolidation) Act, 1925.

*15 & 16 Geo.
5, c. 49,
s. 203.*

*Order 10,
Rule 3.*

And further take notice that the plaintiff will, on the day appointed for the trial of this action, apply to the judge to adjudicate upon the original claim herein.

Plaintiff.

To the registrar of the court
and

To the defendant.

79.

Notice of Objection to Trial of Action under Sect. 62 of the County Courts Act, 1888.

[*Not to be printed.*]

Take notice, that under the provisions of section 62 of the County Courts Act, 1888, I object to this action being tried in the county court; and I propose as my sureties [*here state the full names and additions of the sureties whether householders or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any*] [*or, and I propose to deposit a sum of money in lieu of giving security*].

*51 & 52 Vict.
c. 43, s. 62.*

*Order 10,
Rule 6.*

Defendant.

To the registrar of the court.

80.

51 & 52 Vict.
c. 43, s. 62. **Affidavit to obtain Certificate of Judge under Sect. 62 of the County Courts Act, 1888.**

[Not to be printed.]

Order 10, Rule 6. I, C. D., of [or E. F., of , solicitor for the above-named defendant] the above-named defendant make oath and say :

1. This action is brought for [*here state the cause of action*].
2. In my opinion important questions of law [*or fact, or law and fact*] will arise in this action.
3. The important questions are the following : [*here state the important questions*].
4. The facts which are likely to raise the questions of law above mentioned are as follows : [*here state the facts relied on*].

Add when
question of
law will
arise.

81.

Notice to Plaintiff of Grant of Certificate by Judge.

Order 10, Rule 6. Take notice, that the judge has granted his certificate that important questions of law [*or fact, or law and fact*] are likely to arise in this action, and that, pursuant to section 62 of the County Courts Act, 1888, all proceedings in this court in this action are stayed.

Dated this day of 19

Registrar.

To the plaintiff.

82.

Bond where Notice of Objection to Trial given under Sect. 62 of the County Courts Act, 1888.

[Not to be printed.]

Order 10, Rule 6. Know all men by these presents, that we, A. B., of, &c., and C. D., of, &c., and E. F., of, &c., are jointly and severally held and firmly bound to G. H., of, &c., in the sum of £ to be paid to the said G. H., or his certain attorney executors, administrators, or assigns. For which payment to be well and truly made we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

A sum
sufficient to
cover the
amount
claimed, and
costs of trial
in High
Court, not
exceeding in
the whole
150l.

Sealed with our seals and dated this day of one thousand
nine hundred and

Whereas an action has been brought in the county court of holden at wherein the above-mentioned G. H. is plaintiff, and the above-bounden A. B. is defendant :

And whereas the said A. B. has given due notice to the said G. H. of his, the said A. B.'s, objection to the said action being tried in the said court, as provided by section 62 of the County Courts Act, 1888 :

For notice of
sureties and
affidavit of
justification,
see forms 285
and 286.

And whereas it is by the same section of the said Act provided that the party who shall object shall give security, to be approved by the registrar of the court aforesaid, for the amount claimed, and the costs of trial in the High Court of Justice :

And whereas the said A. B. and the above-bounden C. D. and E. F., as sureties for the said A. B., have agreed to give such security by entering into the above-written bond obligation, and the security intended to be hereby given has been approved of by the registrar of the said county court, as appears by his allowance in the margin hereof : Now the condition of the above-written bond is such that if the above-bounden A. B., C. D., and E. F., any or either of them, shall pay unto the said G. H., his executors, administrators, or assigns, the amount for which judgment may be given against the said A. B. in the High Court of Justice, and all costs which he may be ordered by that court to pay, then this obligation shall be void and of no effect, otherwise the same shall remain in full force and virtue.

I approve of
this bond.
I.K.,
(L.S.)
Registrar.
This bond
requires a
stamp.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden _____ in the presence
of _____

NOTE.—If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.

83.

Defendant's Statement.

[Not to be printed.]

I, the undersigned defendant C. D., disclaim all interest under the will of E. F., deceased, named in the plaintiff's particulars [or as heir-at-law of, or as next of kin, or one of the next of kin of E. F., deceased, named in the plaintiff's particulars].

Order 10,
Rule 9.

Or, I, the undersigned defendant, state that I admit [or deny] [here repeat in the language of the particulars the statements admitted or denied.]

Or, I, the undersigned defendant, submit that upon the facts stated in the plaintiff's particulars it does not appear that there is any agreement which can be legally enforced [or that it appears upon the plaintiff's particulars that I am jointly liable with one E. F. who is not a party to this action, and not severally liable as by the particulars appear, or that it appears by the plaintiff's particulars that G. H. should have been a joint plaintiff with the said A. B. in this action, or as the case may be].

Or, that the plaintiff has conveyed [or assigned] his interest in the mortgage [or equity of redemption] mentioned in the plaintiff's particulars to one I. J., or that I have conveyed or assigned to H. L., by way of further charge for securing the sum of £ _____, the equity of redemption in the property sought by this action to be foreclosed.

Or, that since the dissolution of the partnership mentioned in the plaintiff's particulars the plaintiff has executed a deed under seal, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership trading [or as the case may be].

(Signed) C. D., defendant.

Where filed by solicitor, add—

This statement was filed by _____, of _____, solicitor for the defendant.

84.

Notice of Set-off or Counter-Claim.

51 & 52 Vict.
c. 43, s. 82. Take notice, that the defendant intends at the hearing of this action to
claim a set-off [*or* to set up a counter-claim] against the plaintiff's demand,
Order 10, the particulars of which are annexed hereto.
Rules 10, 11. Dated this day of 19 .

The defendant [*or* 's solicitor].

To the registrar of the court,
and to the plaintiff.

(The registrar is to annex to this notice the particulars of set-off or counter-claim, as furnished by defendant, sealed with the seal of the court.)

85.

Notice of Special Defence.

51 & 52 Vict.
c. 43, s. 82. Take notice, that the defendant intends at the hearing of this action to
give in evidence and rely upon the following ground of defence.
Dated this day of 19 .

The defendant [*or* 's solicitor].

To the registrar of the court,
and to the plaintiff.

[These paragraphs not to be printed.]

Infancy. That the defendant was an infant, within the age of twenty-one years
Order 10, when the supposed claim arose, [*or* the supposed contract or agreement was
Rule 12. made,] and that he was born as he believes at in the county of
on the day of .

Cverture. That the defendant is now, [*or* was, at the time when the supposed claim
Order 10, arose, *or* the supposed contract or agreement was made,] the wife of
Rule 13. of ; and that she was married to him at in the county
of on the day of , and that he resides at in the
county of .

Statute of Limitations. That the claim for which the defendant is summoned is barred by a
Statute of Limitations.
Order 10,
Rule 14.

Bankruptcy. That the defendant is a discharged bankrupt, and obtained his order of
Order 10, discharge from the [*here state court*] on the day of .
Rule 15.

Libel or slander. That the libel [*or* slander] complained of is true in substance and in fact.
Order 10,
Rule 16.

Statutory defence. That section four of the Sale of Goods Act, 1893, has not been complied
with.
Order 10,
Rule 18.

Equitable defence. Take notice, that the defendant intends at the hearing of this action to
rely as a matter of defence on the statement hereunto annexed.
Order 10,
Rule 19.

Statement.

The facts constituting the equitable defence to this action are as follows :

[Here set out the facts as concisely as possible, and number the paragraphs as in an affidavit.]

That the defendant before action brought tendered to the plaintiff the sum of £ , and now brings the same into court. Tender.
Order 10,
Rule 20.

NOTE.—*Notices of special defence, in cases commenced in the High Court and sent to the county court for trial under sections 65 or 66 of the County Courts Act, 1888, must have, in addition to the usual headings, the special headings provided for those cases.*

86.

Notice to be given by Defendant under the Libel Act, 1843, 6 & 7 Vict. c. 96, s. 1, in an Action for Libel or Slander remitted for Trial in a County Court.

[Not to be printed.]

Being an action for libel [*or slander*] commenced in the High Court of Justice, and remitted by order of a judge [*or master or district registrar*] thereof under section 66 of The County Courts Act, 1888, to be tried before this court. 51 & 52 Vict.
c. 43, s. 66.
Order 10,
Rule 17.

Take notice, that the defendant on the trial of this action will give in evidence in mitigation of damages that he made [*or offered*] an apology to the plaintiff for the libel [*or slander*] complained of before the commencement of the action [*or as soon after the commencement of the action as he had an opportunity of so doing*]. Order 33,
Rule 4.

To the registrar of the court
and to the plaintiff.

87.

Notice to be given by Defendant under the Libel Act, 1843, 6 & 7 Vict. c. 96, s. 2, in an Action for Libel remitted for Trial in a County Court.

[Not to be printed.]

Being an action for libel commenced in the High Court of Justice, and remitted by order of a judge [*or master or district registrar*] thereof under section 66 of The County Courts Act, 1888, to be tried before this court. 51 & 52 Vict.
c. 43, s. 66.
Order 9,
Rule 14.

Take notice, that the defendant on the trial of this action will give in evidence and rely upon the following ground of defence ; (that is to say,)

That the libel was inserted in the newspaper called or known by the name of without actual malice and without gross negligence, and that before the commencement of the action [*or as soon after the commencement of the action as he had an opportunity of doing so*] the defendant inserted in the said newspaper [*or offered to publish in any newspaper or periodical publication to be selected by the plaintiff*] a full apology for the said libel, and that the defendant has paid into court £ by way of amends for the injury sustained by the plaintiff by the publication of the said libel. Order 10,
Rule 17.
Order 33,
Rule 4.

Dated this day of 19 .

C. D., defendant.

or

To the registrar of the court
and to the plaintiff.

E. F., defendant's solicitor.

[N.B.—If the libel was published in any periodical publication other than a newspaper, alter the notice accordingly.]

88.

Notice by Defendant to Third Party.*[Not to be printed.]*Order 11,
Rule 1.

To X. Y., of [address and description].
Take notice, that this action has been brought by the plaintiff against the defendant [as surety for M. N., upon a bond conditioned for payment of 20l. and interest to the plaintiff].

The defendant claims to be entitled to contribution from you to the extent of one half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under the said bond [or, also surety for the said M. N., in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of 19].

[Or, as acceptor of a bill of exchange for 50l., dated the day of 19 , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

[Or, to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 100 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that if you wish to dispute the plaintiff's claim in this action as against the defendant, or your liability to the defendant, you must appear at this court on the return day of the summons in this action, a copy of which summons [where the original action is commenced by default summons, add with a copy of the notice of the day on which the action will be tried] is hereunto annexed.

In default of your so appearing you will be deemed to admit the validity of any judgment obtained against the defendant in this action, whether obtained by consent or otherwise, and your own liability to contribute or indemnify to the extent herein claimed.

Or, (Signed) C. D.
L. M., Defendant.
Solicitor for the defendant.
C. D.

89.

Application by Defendant for Security for Costs under Order XII., Rule 9.*[Not to be printed.]*Order 12,
Rule 9.

I, the defendant, neither reside nor carry on business within twenty miles from the court, and I apply for an order directing the plaintiff to deposit in court a sum of money to be fixed by the court as security for my costs of this action, on the grounds stated in my affidavit accompanying this application [or in the case of a special default summons in my affidavit of defence].

Dated this day of , 19 .

To the registrar of the court.

Defendant.

90.

Notice to Defendant of Refusal of Application for Security for Costs under Order XII., Rule 9.

Take notice, that I have duly considered the allegations in your affidavit [of defence] and in my discretion I refuse your application for an order directing the plaintiff to deposit a sum of money as security for your costs. You must therefore attend the court on the day fixed for the trial.

Dated this day of , 19

Registrar.

To the defendant.

91.

Notice to Plaintiff to Deposit Sum in Court under Order XII., Rule 9.

Take notice, that the defendant, who neither resides nor carries on business within twenty miles of this court, having filed with me an affidavit disclosing [or having in his affidavit of defence disclosed] a good defence to this action on the merits, and having applied for an order directing you to deposit a sum of money as security for his costs of this action, you are hereby required within three clear days from the date hereof to deposit in court the sum of £ to abide the event of this action. And further take notice that in default of your making such deposit as hereby directed the action will be struck out, and you may be ordered to pay the defendant's costs.

Dated this day of , 19

Registrar.

To the plaintiff.

(Amended, County Court (No. 1) Rules, 1927.)

91A.

Notice to Defendant of Deposit under Order XII., Rule 9, having been made or not having been made.

(1) Take notice, that the plaintiff has this day deposited with me the sum of £ to abide the event of this action.

You should therefore attend the court on the day fixed for the trial.

or

(2) Take notice, that the plaintiff has been required by me to deposit in court the sum of £ to abide the event of this action, but has not deposited the same.

The action will therefore be struck out, and your costs have been allowed at £ , and you need not attend the court on the day fixed for the trial.

Dated this day of 19

Registrar.

To the defendant.

(Amended, County Court (No. 1) Rules, 1927.)

92.

Order to adjourn Proceedings.Order 12,
Rules 12-16

It is ordered that the trial of this action be adjourned until the
day of 19 , at o'clock in the noon.

93.

Notice of Postponement of Trial.

*Order 12,
Rule 14.* I hereby give you notice that the trial of the above action is postponed until the day of 19 , at o'clock in the noon, and that if you do not attend at the court-house at upon the day and at the hour above-mentioned, either in person or by your solicitor, such order will be made and proceedings taken as the judge may think fit.

Dated this day of , 19 .

Registrar.

To the plaintiff and defendant.

93A.

Order for Adjournment where Court is in doubt whether Service of Summons has come to knowledge of Defendant.

*Order 7,
Rule 11.* Whereas the Court is in doubt, on the evidence before it, whether the service of the summons in this action has come to the knowledge of the defendant :

It is ordered that this action be adjourned for further evidence until the day of 19 , at o'clock in the noon :

[*Add, if so ordered*—And it is further ordered that a copy of this order, with a copy of the summons and particulars in this action, be served on the defendant by the high bailiff by post, in accordance with the provisions of Order LIV. Rule 2, of the County Court Rules.]

Dated this day of 19 .

Registrar.

94.

Order Adding Defendant.

*Order 14,
Rules 2, 11.* It is ordered that E. F. of be added as a defendant in this action, and that the hearing of this action be adjourned to the day of 19 , at o'clock in the noon.

Dated this day of 19 .

Registrar.

95.

Notice to Parties whose Names are added as Defendants.

*Order 14,
Rules 2, 11.* Take notice, that by an order of this court, dated the day of a copy of which order is hereunto annexed, together with a copy of the summons in the above action, you were ordered to be added as one of the defendants in the above action.

And further take notice, that the hearing of the above action has been adjourned to the day of at o'clock in the noon, and that if you do not attend at the court-house at upon the day and at the hour above-mentioned, either in person or by your solicitor, such order will be made and proceedings taken as the judge may think fit.

96.

Order for Defendant to defend on behalf of Others having the same Interest.

Upon reading the affidavit of _____, It is ordered that the defendant C. D. be at liberty to defend this action on behalf or for the benefit of the following persons, as well as on his own behalf; that is to say,

*Order 3,
Rule 8.*

[State names, addresses, and occupations.]

Dated this _____ day of _____ 19 ____.

Judge [or Registrar].

97.

Notice to Plaintiff that Defendant Defends on behalf of others.

Take notice, that the above-named defendant has obtained an order for leave to defend the above action on behalf of or for the benefit of [*state names of persons as in order*], as well as on his own behalf. You may, if you think fit, object at the trial to the defendant defending on behalf of all or any of such persons. The affidavit on which the above-mentioned order was made is filed at my office, and may be inspected by you.

*Order 3,
Rule 8.*

Dated this _____ day of _____ 19 ____.

Registrar,

To the above-named plaintiff.

98.

Notice to Persons on whose behalf Defendant has obtained Leave to Defend.

Take notice, that the above-named defendant has obtained an order, a copy whereof, with a copy of the summons in the above action, is served herewith, for leave to defend the above action on your behalf or for your benefit as well as on his own behalf. You may, if you think fit, object at the trial to the defendant defending on your behalf. The affidavit on which the above-mentioned order was made is filed at my office, and may be inspected by you.

*Order 3,
Rule 8.*

Dated this _____ day of _____ 19 ____.

Registrar.

To _____, of _____

99.

Notice of Application for Directions.

[Not to be printed.]

Take notice, that I intend to apply to the judge [or registrar] of this court, on _____ the _____ day of _____ 19 ____, for an order for [further] directions.

*Order 15,
Rule 2.*

[Here state all matters or proceedings previous to trial on which directions are required.]

To _____ Signature of Applicant.

100.

Order for Directions.*[Not to be printed.]*

Order 15, Upon hearing the application of it is ordered as follows :—That
Rule 1. *[Here insert the directions ordered, and that either party may apply for further directions upon giving fresh notice.]*

101.

Notice of Day of Trial under Order XV.

Order 15, Take notice, that the trial of this action will take place on the
Rule 6. day of 19 , at o'clock in the noon.
 To

102.

Order for Delivery of Interrogatories.

In the county court of , holden at No. of plaint
 Between A. B., plaintiff,
 and
 C. D., defendant.

Order 16, Upon hearing
Rules 2, 2B. It is ordered that the on payment of the sum of into court
 [or without giving security] be at liberty within days from the date
 of this order to deliver to the interrogatories in writing, and that the
 said do answer the interrogatories by affidavit, and return such answer
 to me for filing and deliver a copy thereof to the within days
 from the service of this order [add, where payment into court ordered, and
 a copy of the receipt for payment into court] upon him, and that the costs
 of this application be

Dated this day of 19 .

Registrar.

103.

Interrogatories.*[Not to be printed.]*

Order 16, Interrogatories on behalf of the above-named [plaintiff, or defendant
Rule 5. C. D.] for the examination of the above-named [defendants E. F. and G. H.
 or plaintiff].

1. Did not, &c.

2. Has not, &c.

&c. &c. &c.

[The defendant E. F. is required to answer the interrogatories numbered .]

[The defendant G. H. is required to answer the interrogatories numbered .]

104.

Answer to Interrogatories.*[Not to be printed.]*

Order 16, The answer of the above-named defendant E. F. to the interrogatories of
Rule 8. his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath
 and say as follows :—

105.

Order for Oral Examination for insufficient Answer to Interrogatories.

Upon hearing

It is ordered that the plaintiff [*or* defendant] do attend before the registrar of this court at _____ on the _____ day of _____ 19____, at _____ o'clock in the _____ noon, to be by him orally examined as to the points mentioned in the paper-writing hereunto annexed, the plaintiff's [*or* defendant's] answers to the interrogatories delivered to him in this action being insufficient in such points.

Order 16,
Rule 9.

And it is further ordered that the costs of the examination, and of the proceedings herein, to be taxed by the registrar, shall be paid by _____ [*or* shall abide the event, *or as otherwise ordered*].

Dated this _____ day of _____ 19____.

106.

Order for Affidavit as to Documents.

In the county court of _____ holden at _____ No. of plaint _____
Between A. B., _____ plaintiff,
_____ and _____
C. D., _____ defendant.

Upon hearing

It is ordered that on payment by the _____ of the sum of _____ into court [*or* without security given by the _____] the _____ do within _____ days from the service of this order [*add, where payment into court ordered*, and a copy of the receipt for payment into court] upon him, answer on affidavit stating what documents are or have been in _____ possession or power relating to the matters in question in this action, and return such affidavit to me for filing and deliver a copy thereof to the _____ and that the costs of this application be _____

Order 16,
Rules 10, 23.

Dated this _____ day of _____ 19____.

Registrar.

107.

Affidavit as to Documents.[*Not to be printed.*]

I, the above-named defendant, C. D., make oath and say as follows :

Order 16,
Rule 11.

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitor, or in the possession, custody, or

power of any other person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

108.

Order to produce Documents for Inspection.

*Order 16,
Rules 12, 16.* Upon hearing It is ordered that the do, at all seasonable times, on reasonable notice, produce at [*insert place of inspection*], situate at the following documents, namely, and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and abstracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated this day of 19

109.

Notice to produce Documents for Inspection.

[*Not to be printed.*]

*Order 16,
Rules 13, 14.* Take notice, that the plaintiff [*or defendant*] requires you to produce for his inspection the following documents referred to in your [*particulars of claim, or of defence, or affidavit dated the day of*].

Describe documents required.

110.

Notice to Inspect Documents.

[*Not to be printed.*]

*Order 16,
Rule 15.* Take notice, that you can inspect the documents mentioned in your notice of the day of [*except the deed numbered in that notice*] at [*insert place of inspection*] on next, the inst., between the hours of and o'clock.

Or, that the plaintiff [*or defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of, on the ground that [*state the ground*]:—

111.

Notice to Admit and Inspect.

[*Not to be printed.*]

*Order 18,
Rules 6, 7.* Take notice, that the plaintiff [*or defendant*] in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], or his solicitor, at on the day of 19, between the hours of and ; and the defendant [*or plaintiff*] is hereby required within forty-

eight hours from the last-mentioned hour to admit, saving all just exceptions to the admissibility of all such documents as evidence in this action, that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively.

Dated this day of 19 . G. H., of , Solicitor for
To E. F., Solicitor for Plaintiff [*or* Defendant].
Defendant [*or* Plaintiff].

ORIGINALS.

Description of Document.	Dates.
Deed of covenant between A. B. of the first part, and C. D. of the second part	January 1, 1898.
Letter—Defendant to Plaintiff	March 1, 1901.

COPIES.

Description of Document.	Dates.	Original or Duplicate served, sent, or delivered, when, how and by whom.
Register of baptism of A. B. in the parish of X. . . .	January 1, 1878.	
Letter—Plaintiff to Defendant	February 1, 1901.	Sent by General Post, Feb. 1st, 1901.

112.

Notice to Produce (General Form).

[*Not to be printed.*]

Take notice, that you are hereby required to produce and show to the court on the trial of this action, all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this _____, and particularly [*specify them*].

Order 18,
Rule 7.

Dated this day of 19 .

(Signed)
of

Solicitor for the above-named.

To the above-named.

113.

Notice to admit Facts.

[*Not to be printed.*]

Take notice, that the plaintiff [or defendant] in this action requires the defendant [or plaintiff] to admit, for the purposes of this action only, the

Order 9,
Rule 8.

several facts respectively hereunder specified ; and the defendant [*or plaintiff*] is hereby required, not later than three clear days before the return-day, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

Dated, &c.

G. D., solicitor for the plaintiff [*or defendant*].

To E. F., solicitor for the defendant [*or plaintiff*].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1890.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1896.
5. That Julius Smith never was married.

114.

Admission of Facts, pursuant to Notice.

[*Not to be printed.*]

Order 9,
Rule 8.

The defendant [*or plaintiff*] in this action, for the purposes of this action only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this action.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or plaintiff*] on any other occasion, or by any one other than the plaintiff [*or defendant or party requiring the admission*].

Dated, &c.

E. F., solicitor for the defendant [*or plaintiff*].

To G. H., solicitor for the plaintiff [*or defendant*].

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1890.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith is dead.	4. But not that he died on the 1st of April, 1896.
5. That Julius Smith never was married.	5.

115.

Notice to Registrar of Change in Plaintiff's Title before Judgment.

[*Not to be printed.*]

Order 17,
Rule 2.

Take notice, that _____, the plaintiff in the above action, died upon the _____ day of _____ 19____, and that his last will and testament was

duly proved by me in the principal [or district] probate registry of the Probate, Divorce, and Admiralty Division of the High Court of Justice [or that letters of administration to his personal estate and effects were duly granted to me] upon the day of 19, and that I am the executor of his said will [or that I am the administrator of the personal estate and effects of the said deceased].

By executor
or adminis-
trator.

[Or, that the above-named, by an assignment dated the day of, duly assigned all his interest in the subject-matter of the above action to me, the undersigned.]

By assignee.

And further take notice, that I am desirous of being substituted as plaintiff in the above action against the above-named defendant in the place of the said [or added as a plaintiff with the said plaintiff in the above action].

Dated this day of 19.
(Signature).

To the registrar of the court, and to
the above-named defendant.

116.

Notice to Registrar of Change in Plaintiff's Title before Judgment, where such Change affects more Actions than one.

Take notice, that, the plaintiff in the several actions mentioned in the schedule hereto, died upon the day of, and that his last will and testament was duly proved by me in the principal [or district] probate registry of the Probate, Divorce and Admiralty Division of the High Court of Justice, [or that letters of administration to his personal estate and effects were duly granted to me] upon the day of 19, and that I am the executor of his said will [or the administrator of the personal estate and effects of the said deceased].

Order 17
Rule 2 (2).

[Or, that, the plaintiff in the several actions mentioned in the schedule hereto, by an assignment dated the day of, duly assigned all his interest in the subject-matter of the said several actions to me, the undersigned.]

And, further take notice, that I am desirous of being substituted as plaintiff in the said actions against the several defendants in the said actions in the place of the said [or added as a plaintiff with the said plaintiff in the said actions].

Dated this day of 19.
(Signature).

To the registrar of the court,
and to the several defendants named
in the schedule hereto.

The Schedule above referred to.

Letter and Number.	Plaintiff.	Defendant.

117.

Notice to Defendant of Change in Plaintiff's Title before Judgment.

*Order 17,
Rule 2.* Take notice, that of as executor of the last will and testament of deceased [or as administrator of the personal estate and effects of deceased] [or as assignee under an assignment dated the day of] has this day filed an affidavit, together with a notice, a copy of which notice is hereunto annexed, stating that he is desirous of being substituted as plaintiff in the above action against you in the place of [or added as a plaintiff with the above-named plaintiff in the above action against you].

And further take notice, that unless you appear at the hearing of this action upon the day of 19, at o'clock in the noon, to show cause against the same, the said will be substituted for [or made a joint plaintiff with] the above-named plaintiff.

*Order 17,
Rule 3.* [N.B.—*Similar notices upon change in defendant's title before judgment may be prepared from this and the last preceding forms.*]

118.

Order to continue Proceedings against a new Party.

[Not to be printed.]

*Order 17,
Rules 4, 5.* Upon hearing who alleged [state circumstances rendering the order necessary],

It is ordered that the proceedings in this action be carried on between the plaintiffs [name the continuing plaintiffs] and the defendants [name the continuing defendants] and X. Y. [the person upon whom the interest or liability has devolved].

And it is ordered that notice of this order be served on the said X. Y., and that the further proceedings in this action be adjourned until the day of , 19 .

Dated this day of 19 .
Judge [or Registrar].

119.

Notice to Party against whom Proceedings Ordered to be Continued.

*Order 17,
Rule 5.* I hereby give you notice, that by an order of this court dated the day of , 19 , a copy of which order is hereunto annexed, together with a copy of the summons in this action, it was ordered that the proceedings in this action should be carried on between the plaintiffs (name the continuing plaintiffs) and the defendants (name the continuing defendants) and you X. Y. as (state the character in which the new party is added).

And further take notice, that the further proceedings in this action have been adjourned to the day of 19 , at o'clock in the noon : and that if you do not attend at (the court-house) at upon the day and at the hour above mentioned, either in person or by your solicitor, such order will be made or proceedings taken as the judge may think fit.

And further take notice, that you may at or before the hearing apply to the judge or registrar to discharge the said order of the day of 19 .

Dated this day of , 19

Registrar.

120.

Order for Transfer.

It is ordered that the above action be transferred to the county court of 51 & 52 Vict.
holden at c. 43, ss. 42,
To the plaintiff and defendant. 85.

Order 8,
Rule 9.

121.

Notice by Court, to which Action has been Transferred, of Day of Trial.

Take notice, that the above action has been transferred to this court, and 51 & 52 Vict.
that it is appointed to be tried in this court on the day of 19, c. 43, ss. 42,
at the hour of in the noon. 85.
To the plaintiff and defendant.

Order 8,
Rule 9.

122.

Consent that Court shall decide in an Action where Title has incidentally come in Question.

[*Not to be printed.*]

We, [the respective solicitors of] the plaintiff and defendant, do hereby 51 & 52 Vict.
under the provisions of section 61 of the County Courts Act, 1888, consent c. 43, s. 61.
that this action shall be decided by his honour the judge of this court.

Witness our hands, this day of 19

Plaintiff [*or*'s solicitor].

Defendant [*or*'s solicitor].

123.

Summons to Witness to give Evidence.

You are hereby required to attend at [*the court-house*] on 51 & 52 Vict.
the day of 19, at the hour of in the c. 43, ss. 110,
noon, and so from day to day, until the above action is tried, to give evi- 111.
dence in the above action on behalf of the [plaintiff *or* defendant, as the
case may be].

Order 18,
Rule 3.

In default of your attendance you will, if at the time of the service of
this summons on you payment or tender of your expenses is made on
the prescribed scale of allowances, be liable to a fine of 10*l.* under
section 111 of the County Courts Act, 1888, payment of which fine may,
under section 167 of the Act, be enforced, upon the order of the judge, in
such manner as payment of a sum adjudged to be paid on summary convic-
tion may be enforced under the Summary Jurisdiction Acts, that is to say,
by distress and sale of your goods, or, in default or in lieu of distress, by
imprisonment.

Dated this day of 19

Registrar.

To

124.

Summons to Witness to produce Documents.

51 & 52 Vict. c. 43, ss. 110, 111. You are hereby required to attend at [*the court-house*] on the day of 19 , at the hour of in the noon, and so from day to day, until the above action is tried, to give evidence on behalf of , and also to bring with you and produce the several documents hereunder specified [and all other books, papers, writings, and other documents relating to the above action, which may be in your custody, possession, or power].

Order 18,
Rule 3.

In default of your attendance you will, if at the time of the service of this summons on you payment or tender of your expenses is made on the prescribed scale of allowances, be liable to a fine of 10*l.* under section 111 of the County Courts Act, 1888, payment of which fine may, under section 167 of the Act, be enforced, upon order of the judge, in such manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Summary Jurisdiction Acts, that is to say, by distress and sale of your goods, or, in default or in lieu of distress, by imprisonment.

Dated this day of 19 .

Registrar.

To

[*Here insert list of documents required to be produced.*]

124A.

Indorsement on Copy of Summons to Witness after Service.

Order 18,
Rule 3.

Served the summons of which this is a true copy on the day of 19 , at , by delivering the same to the within named personally, [or by delivering the same at the house or place of dwelling or place of business] of the within named , to apparently not less than 16 years old [*add the statement made, as who promised to give the same to the said the same day, or as the case may be*].

£ : : paid [or tendered] for expenses.

Bailiff of the county court.

[*If the summons has been served in any other manner, pursuant to the provisions of Order XVIII. Rule 4, the mode of service must be stated in the indorsement.*]

125.

Affidavit of Service of Summons on Witness.

Order 18,
Rule 3 (5).

Order 19,
Rule 12.

I, of , the above-named plaintiff [or defendant] [or I, of , a clerk [or servant] in the permanent and exclusive employ of the above-named plaintiff [or defendant] [or I, of , solicitor for the above-named plaintiff [or defendant] [or a solicitor acting as agent for Mr. , of , the solicitor for the above-named plaintiff [or defendant] [or I, , of , a clerk [or person] in the employ of Mr. , of , the solicitor for the above-named plaintiff [or defendant] [or a clerk] [or

person] in the employ of Mr. , of , a solicitor acting as agent for Mr. , of , the solicitor for the above-named plaintiff [or defendant] make oath and say as follows:—

1. [*Where service effected by a clerk or servant*] That I am a clerk [or servant] in the permanent and exclusive employ of the above-named plaintiff [or defendant] [or a clerk] [or person] in the employ of Mr. , of , the solicitor for the above-named plaintiff [or defendant] [or a clerk] [or person] in the employ of Mr. , of , a solicitor acting as agent for Mr. , of , the solicitor for the above-named plaintiff [or defendant].

2. That I am over 16 years of age.

3. That I did on the day of 19 , duly serve the witness E. F. of with a summons, a true copy of which is hereunto annexed, marked "A," by delivering the same personally to the said witness E. F., at in the county of [or as the case may be].

4. That I paid [or tendered] to the said witness at the same time and place, the sum of for his expenses.

Sworn at, &c.

(*Indorse the copy summons thus*:—This paper, marked "A," is the paper referred to in the annexed affidavit.)

126.

**Order under Section 111 of the County Courts Act, 1888, fixing
Witness for Non-attendance, &c.**

Whereas of was duly summoned to appear as a witness in this action at a court this day holden, and at the time of being so summoned payment [or a tender of payment] of his expenses was made according to the scale of allowances prescribed by the County Court Rules : 51 & 52 Vict. c. 43, s. 111.
Order 52,
Rule 7.

And whereas he has refused [or neglected] without sufficient cause shown, to appear at the court [or to produce] (*here describe what he was required by the summons and bound to produce*) [or has refused to be sworn or to give evidence]:

[*Or, Whereas being this day present in court, and being required by the court to give evidence in this action, refused to be sworn or to make affirmation [or after being duly sworn [or after having made affirmation] refused to give evidence [or to produce] (*here describe what he was required and bound to produce*)]:

It is hereby ordered that the said do forfeit and pay a fine of £ for such neglect [or refusal]:

And it is ordered that the said do pay the said sum of £ to the registrar of this court on this day of [or by instalments of for every days, the first instalment to be paid on the day of]:

And in default of payment of the said sum according to this order, payment thereof may be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said A. B. for any period not exceeding the period which, under the Summary Jurisdiction Acts, may be imposed in

* Where witness is present in court, commence form here.

respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction.

Given under the seal of the court this day of .
By the court, Registrar.

[Or, It is ordered that the said do on or before the day of , produce and leave with the registrar of this court at his office, situate at , the following (*describe what he was required and bound to produce*)].

Given under the seal of the court this day of 19 .
By the court, Registrar.

127.

Warrant of Execution against Goods of Witness for Fine.

51 & 52 Vict. Whereas was duly summoned to appear as a witness in this action
c. 43, ss. 111, at a court holden at on the day of 19 , and at the time
167. of being so summoned payment [*or a tender of payment*] of his expenses
Order 52, was made according to the scale of allowances prescribed by the County
Rule 7. Court Rules;

And whereas he refused [*or neglected*], without sufficient cause shown, to appear at such court [*or to produce*] [*here describe what he was required and bound to produce*] [*or refused to be sworn or to give evidence*]:

[Or, Whereas being present in court on the day of 19 , and being required by the court to give evidence, refused to be sworn or to make affirmation [*or after being duly sworn*] [*or after having made affirmation*] refused to give evidence [*or to produce*] (*here describe what he was required and bound to produce*)]:

And whereas it was thereupon ordered by the court that the said should forfeit and pay a fine of £ for such neglect [*or refusal*]; and it was ordered that the said should pay the said sum of £ to the registrar of this court on the day of [*or by instalments of* for every days, the first instalment to be paid on the day of]:

And that in default of payment of the said fine according to the said order, payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said under warrant of execution:

And whereas the said fine has not been paid according to the said order, and the judge of this court has ordered it to be levied as hereinafter mentioned:

These are, therefore, to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said , wherever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds) the sum stated at the foot of this warrant, being the amount remaining unpaid under the said order, together with the costs of this execution: And also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to the said which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution

hereof; and if no sufficient distress can be found, to certify the same to the Registrar of this court.

Given under the seal of the court, this day of 19 .

By the court, Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

	£	s.	d.
Amount of fine ordered to be paid			
Paid			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

[For Return of Insufficient Distress, see Form 358.]

128.

Commitment in Default of Distress for Fine on Witness under Section 111.

In the county court of holden at
Between A. B., plaintiff,
and
C. D., defendant.

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and

To the governor of [*prison used by the court*].

Whereas was duly summoned to appear as a witness in this action at a court holden at on the day of 19 , and at the time of being so summoned payment [*or a tender of payment*] of his expenses was made according to the scale of allowances prescribed by the County Court Rules :

And whereas he refused [*or neglected*], without sufficient cause shown, to appear at such court [*or to produce*] [*here describe what he was required and bound to produce*] [*or refused to be sworn or to give evidence*] :

[*Or, Whereas* being present in court on the day of 19 and being required by the court to give evidence, refused to be sworn or to make affirmation [*or after being duly sworn*] [*or after having made affirmation*] refused to give evidence, [*or to produce (here describe what he was required and bound to produce)*] :

And whereas it was thereupon ordered by the court that the said should forfeit and pay a fine of for such neglect [*or refusal*] : and it was ordered that the said should pay the said sum of £ to the registrar of the court on the day of [*or by instalments of* for every days, the first instalment to be paid on the day of].

And that in default of payment of the said fine according to the said order payment thereof might be enforced, upon the order of the judge,

51 & 52 Vict.
c. 43, ss. 111,
167.

Order 52,
Rule 7.

pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said under warrant of execution, or, in default of in lieu of distress, by imprisonment of the said for any period not exceeding the period which, under the Summary Jurisdiction Acts, may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction :*

And whereas default having been made, &c. [*follow Form 359 from the asterisk (*) to the end*].

129.

**Commitment in Lieu of Distress for Fine on Witness under
Sect. 111.**

[*Follow Form 128 down to the asterisk (*). Then follow Form 360 from the asterisk (*) to the end.*]

130.

Affidavit to obtain Order to bring up Prisoner to give Evidence.

[*Not to be printed.*]

51 & 52 Vict.
c. 48, s. 112.

I, of the plaintiff [*or defendant*], make oath and say :
1. That the above action is appointed to be tried at this court on the
day of 19 , and that E. F., now a prisoner confined in [*state
the prison*], will be a material witness for me upon the said trial.

2. That I am advised and verily believe, that I cannot safely proceed to the trial of the said action without the testimony of the said E. F.

And I hereby make application to his honour the judge of this court for an order under section 112 of the County Courts Act, 1888, that the said E. F. may be brought before this court to be examined as a witness on my behalf.

131.

Order to bring up Prisoner to give Evidence.

(*Seal.*)

To [*officer in whose custody the prisoner is*].

51 & 52 Vict.
c. 48, s. 112.

Whereas the plaintiff [*or defendant*] has made application to me, by affidavit, for an order under section 112 of the County Courts Act, 1888, to bring up before this court E. F., who, it is said, is detained as a prisoner in your custody, to be examined as a witness on behalf of the said plaintiff [*or defendant*] in a certain action depending in this court between the said A. B., plaintiff, and C. D., defendant :

You are therefore, by this order issued pursuant to the said section, required upon tender made to you of a reasonable sum for the conveyance and maintenance of a proper officer or officers, and of the said E. F., in going to, remaining at, and returning from this court, to bring the said E. F. before this court at [*court-house*] on the day of 19 , at o'clock in the noon, then and there to be examined as a witness on behalf of the said plaintiff [*or defendant*]; and immediately after the said E. F. shall have given his testimony before this court, you are required safely to conduct him the said E. F. to the prison from which he shall have been brought under this order.

Dated this day of 19

Judge.

132.

Order for Examination of Witnesses before Trial.

Upon hearing and upon reading the affidavit of filed the *Order 18,*
day of 19 , and *Rules 18-20,*
It is ordered that be sworn in as witnesses on behalf of the 28.

It is ordered that _____ a witness on behalf of the _____ be examined *voir dire* (on oath or affirmation) before [here insert name of person appointed], the plaintiff [or defendant] or his solicitor or the agent of such solicitor giving to the defendant [or plaintiff] or his solicitor or the agent of such solicitor notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed with the registrar of this court at his office situate at _____, and that an office copy thereof may be read and given in evidence on the trial of this action, saving all just exceptions, on proof to the satisfaction of the judge that the deponent is dead, or out of England and Wales, or unable from sickness or infirmity to attend the trial, and that the costs of this application be.

Order 18,
Rule 30.

133.

Notice by Registrar rejecting Affidavit.

I hereby give you notice that I reject the affidavit of _____ of _____ sworn the _____ day of _____, and refuse to file the same, and my reasons for rejecting such affidavit and refusing to file same are as follows:—

Order 19,
Rule 14.

Dated this day of , 19 .

Registrar.

To the above-named plaintiff [or defendant].

134.

Order of Reference.

By the consent of the plaintiff and defendant, it is ordered that all matters in difference in this action [and all other matters within the jurisdiction of this court in difference between the said parties] be referred to the arbitration of _____ whose award, to be made or given on or before the _____ day of _____ 19____, shall be entered as the judgment in this action :

Order 20,
Rule 1.

And it is further ordered that the time for making or giving such award may be from time to time enlarged by the court, in its discretion, for such time as it shall, by indorsement to be made on this order, direct; and that the said award, when made or given, may be referred back again to the said arbitrator at the like discretion of the court without the further consent of the said parties, and in case either of the said parties shall neglect or refuse to attend any appointment to be made by the said arbitrator for proceeding under this order, after two days' notice thereof in writing shall have been given to him by serving the same personally or by leaving it at his usual or last known place of abode, the said arbitrator shall be at liberty to proceed *ex parte* on the matters of the said reference and his award shall be as valid as if both the said parties had duly attended before him.

And it is further ordered that the costs of the said reference and award shall be in the discretion of the arbitrator, and that the costs of the action shall abide the event [*or be reserved*] :

And it is lastly ordered, that the submission to arbitration shall not be revocable by either party.

134A.

Precedent for Award on Reference.*[Not to be printed.]*Order 20,
Rule 1.

In the county court of holden at

No. of plaintiff.

Between A. B., plaintiff,
and
C. D., defendant.

Whereas by an order made on the day of 19 , it was by consent ordered that all matters in difference in this action should be referred to me , whose award, to be made on or before the day of 19 , should be entered as the judgment in the action; and it was further ordered that the costs of the said reference and award should be in my discretion, and that the costs of the action should abide the event:

Now having heard and considered the allegations and the evidence of the parties, I do hereby make my award concerning the matters referred to me as follows:

I award and find that the plaintiff is entitled to recover in this action from the defendant the sum of £ *[or that the plaintiff is not entitled to recover anything in this action from the defendant]*:

And I further award and direct that the defendant *[or plaintiff]* do pay the plaintiff's *[or defendant's]* costs of the reference, to be taxed in case of dispute, and the costs of this my award *[which I assess at the sum of £]*:

And in case the plaintiff *[or defendant]* shall pay such last mentioned costs, then I award and direct that the defendant *[or plaintiff]* do repay to the plaintiff *[or defendant]* the amount which he shall so pay:

[Or such other order as the arbitrator shall make as to costs.]

Or, where a counter-claim has been made,

I award and find that the plaintiff is entitled to recover in this action from the defendant the sum of £ , and that the defendant is entitled to recover on his counter-claim from the plaintiff the sum of £ : *or* that the plaintiff is entitled to recover in this action from the defendant the sum of £ , and that the defendant is not entitled to recover anything on his counter-claim from the plaintiff *[or as the case may be]*.

And I further award and direct that the plaintiff and defendant do each bear his own costs of the reference, and do each pay one half of the costs of this my award *[which I assess at the sum of £]*:

And that if either party shall in the first instance pay the whole or more than one half of the costs of the award, the other party shall repay him so much of the amount so paid as shall exceed one half of the said costs *[or such other order as the arbitrator shall make as to costs]*.

[If the award directs that anything be done or omitted by the plaintiff or defendant, the directions given should be concisely stated immediately before that part of the award which deals with the costs.]

Dated this day of 19 .

Arbitrator.

134B.

Order of Reference of Action or Matter for Inquiry and Report.9 & 10
Geo. 5,
c. 73, s. 6.
Order 20A.

With the consent of the parties, it is ordered that this action *[or matter]* and all questions arising therein *[or the following question arising in this action [or matter], viz. :* *[state the question]* be referred to the registrar of this court *[or to Mr. , of , for inquiry and report, pursuant to section 6 of the County Courts Act, 1919, [add directions, if any, as to how reference is to be conducted].*

And it is ordered that the registrar *[or referee]* is to complete his inquiries

and file his report and give notice to the parties by _____ the _____ day of _____, unless such time be further enlarged by the court.

And it is further ordered that this action [or matter] do stand adjourned for the consideration of the report until _____ the _____ day of _____ or, if the time for filing the report be enlarged, to such later day as may be hereafter fixed.

Dated this _____ day of _____

By the court,
Registrar.

To the plaintiff and defendant.

135.

[Not to be printed.]

The county court of _____ holden at _____

List of Gentlemen who have consented to act as Assessors in this Court under Sect. 103 of the County Courts Act, 1888.

Order 21,
Rule 3.

No.	Name.	Address.	Description.
1	A. B.		
2	C. D.		
3	E. F.		
4	G. H.		
5	I. K.		
6	L. M.		
7	N. O.		
8	P. Q.		
9	R. S.		
10	T. U.		
11	V. W.		
12	X. Y.		

136.

Application for Assessors.

[Not to be printed.]

In the county court of _____ holden at _____ No. of plaintiff.
Between A. B., plaintiff,
and
C. D., defendant.

The plaintiff [or defendant] applies to have this action tried with an assessor [or assessors], and he submits to his honour the judge the name [or, names] of No. 1, A. B., merchant [or, as the case may be] [or No. 4, G. H. and No. 9, R. S.], as a fit person [or fit persons] to be summoned to act as assessor [or assessors].

Order 21,
Rule 7.

* The defendant [or plaintiff] consents to the appointment of the assessor [or assessors] herein named, as appears by his consent thereto filed herewith.

Dated this _____ day of _____ 19 .

Plaintiff [or defendant].

* Where the other party does not consent, or where the other party has filed an application for the appointment of assessors, strike this paragraph out.

Memorandum of Consent by Judge.

I consent to try this action with the assistance of an assessor [or assessors]
[or, as the case may be].

Judge.

When the application is in an action under the Employers' Liability Act, 1880, substitute as follows for the first paragraph:—

Order 44,
Rule 6.

The plaintiff [or defendant] applies to have an assessor [or assessors] appointed to assist the court in ascertaining the amount of compensation to be awarded to the plaintiff, should the judgment be in his favour; and he submits the names of the following persons who have expressed their willingness in writing to act as assessors, should they be appointed.

(Here set out the names, addresses, and occupations of the persons above referred to.)

137.

Summons to Assessor.

In the county court of . . . holden at

No.

[Title of Action.]

(Seal.)

The day of 19 .

51 & 52 Vict.
c. 43, s. 103.

Order 21,
Rules 8, 10.
Order 44,
Rules 10, 11.

Sir,

You are hereby summoned to attend and serve as an assessor in this court on the day of 19 , at the hour of . . . in the noon, to assist the judge in the hearing and determination of this action under section 103 of the County Courts Act, 1888 [or as the case may be].

I am, sir,

Your obedient servant,

Registrar.

To , of .

138.

**Notice to Opposite Party of Names of Assessors suggested by Party
applying that Action should be tried with their Assistance.**

Order 21,
Rule 9.

Take notice that the plaintiff [or defendant] having applied to his honour the judge for the appointment of assessors to assist him in trying this action, his honour the judge is willing that it should be so tried.

Below are the names of the assessors the plaintiff [or defendant] desires should be summoned.

Should you have any objection to their acting as assessors, you must forthwith send me in writing your reasons for your objection, and must mention the names of any other of the assessors of this court whom you are willing should be summoned.

Should you have no objection to the assessors named being summoned, you must forthwith sign this notice and return it to me.

No. 1, A. B., of , merchant.

No. 4, G. H., of , merchant.

The defendant [or plaintiff] has no objection to make to the above assessors being summoned.

Order 44,
Rule 7.

[To be altered as required, where the application is in an action under the Employers' Liability Act, 1880.

(Signature.)

139.

Notice of Sitting to hear Objections raised by one Party to Assessors named by the other.

Take notice, that his honour the judge [*or I*] will on the _____ day of _____ 19____, at the hour of _____ in the _____ noon, sit at [*state where*] to hear the objections made by the plaintiff [*or defendant*] to the under-mentioned persons being summoned to act as assessors in this action.

Dated this _____ day of _____ 19____.

Order 21,
Rule 10.

Registrar.

To the above-named plaintiff and defendant.

140.

Order upon hearing Objection to proposed Assessors.

Upon the hearing of the objections made by the plaintiff [*or defendant*] to the under-mentioned persons being summoned to act as assessors in this action [*here insert order*].

Order 21,
Rule 10.

By the court,

Registrar.

141.

Notice of Refusal to Summon Assessors.

I hereby give you notice that his honour the judge of this court has directed me to inform you that the application for assessors to be summoned to assist him at the hearing of the above action is refused, he being of opinion that the appointment of such assessors is unnecessary in the present action.

Order 21,
Rule 8.Order 44,
Rule 10.

Dated this _____ day of _____ 19____.

Registrar.

To the above-named plaintiff and defendant.

142.

Notice requiring a Jury.*[Not to be printed.]*

Take notice that the plaintiff [*or defendant*] requires a jury to be summoned to try this action.

51 & 52 Vict.
c. 43, s. 101.

Dated this _____ day of _____ 19____.

Plaintiff [*or defendant*].Order 22,
Rule 1.

To the registrar of the court.

Order 4,
Rule 4.Order 51,
Rule 24.

143.

Registrar's Notice of Jury.

Take notice that this action will be tried by a jury the _____ having demanded a jury therein.

51 & 52 Vict.
c. 43, s. 101.To the defendant [*or plaintiff*].Order 22,
Rule 1.Order 44,
Rule 4.Order 51,
Rule 24.

144.

Summons to Juror.

In the county court of _____ holden at _____, You are hereby summoned to attend and serve as a juror in this court at the Court House situate at _____ on _____ day the _____ day of _____, 19____, at the hour of _____ in the _____ noon, upon the trial of any action or actions to be tried by jury, and, unless and until discharged by the court, on any subsequent day to which the trial of any such action may be adjourned.

51 & 52 Vict.
c. 43, s. 102.Order 22,
Rule 1.Order 44,
Rule 4.Order 51,
Rule 24.

In default of attendance you will be liable to a penalty of five pounds under section 102 of the County Courts Act, 1888.

Given under the seal of the court, this day of , 19 .
Registrar.

To , of _____

144A.

Notice to Juror that his Attendance will not be Required.

Order 22,
Rule 5_i

In the county court of holden at .
Take notice, that you will not be required to attend and serve as a juror in this court on day the day of , 19 , pursuant to the summons dated the day of , 19 , which has been served on you requiring you to so attend.

Dated this day of , 19 .

Registrar.

To of _____

144B.

Notice to Juror to Attend on Day to which Trial is Adjourned.

Order 22,
Rules 5, 5a.

Take notice, that the trial [*or the further hearing*] of an action of v. to be tried by jury in this court has been adjourned from day the day of 19 , to day the day of 19 .

And that you are required to attend and serve as a juror in this court at (*Court House*) on day the day of , 19 , at the hour of in the noon, upon the trial [*or the further hearing*] of the said action, pursuant to the summons dated the day of , 19 , which has been served on you requiring you to so attend and serve.

Dated this day of , 19 .

Registrar.

144C.

Summons to Women Jurors.

9 & 10
Geo. 5, c. 71,
s. 1, and 51
& 52 Vict.
c. 43, s. 102.

Order 22,
Rules 1, 4a,
4b, 4c, 4d.

Order 44,
Rule 4.
Order 51,
Rule 24.

In the county court of holden at .
You are hereby summoned to attend and serve as a juror in this court at the Court House situate at on day, the day of , 19 , at the hour of in the noon, upon the trial of any action or actions to be tried by jury, and, unless and until discharged by the court, on any subsequent day to which the trial of any such action may be adjourned.

In default of attendance you will be liable to a penalty of five pounds under section 102 of the County Courts Act, 1888.

Given under the seal of the court, this day of , 19 .
Registrar.

Take notice that you may apply to the registrar of this court for exemption from attendance as a juror on account of pregnancy or other feminine condition or ailment, provided that such application is received by the registrar within two days of the receipt of this jury summons by you.

145.

Order fining Juror for Non-attendance.

51 & 52 Vict.
c. 43, s. 102.

Order 52,
Rules 6, 7a.

In the county court of holden at .
Whereas was duly summoned to attend and serve this day as a juror in this court upon the trial of any action or actions to be tried by jury :

And whereas he has neglected, without sufficient cause shown, to attend and serve as a juror at this court :

[*Or, in case of non-attendance on adjournment,*

Whereas was duly summoned to attend and serve as a juror in this court on the day of , upon the trial of any action or actions to be tried by jury, and on any subsequent day to which the trial of any such action might be adjourned:

And whereas he has neglected, without sufficient cause shown, to attend and serve as a juror at this court on this day of , to which day the trial of an action of v. was adjourned from the said day of :]

It is hereby ordered that the said do forfeit and pay a fine of £ for such neglect:

And it is ordered that the said do pay the said sum of £ to the registrar of this court forthwith [or on the day of , 19] [or by instalments of for every days, the first instalment to be paid on the day of].

Given under the seal of the court this day of

Registrar.

146.

Warrant of Execution against Goods of Juror for Fine.

Whereas was duly summoned to attend and serve as a juror at a 51 & 52 Vict. c. 43, ss. 102, 167. actions to be holden on the day of upon the trial of any action or actions to be tried by jury:

And whereas he neglected, without sufficient cause shown, then to attend and serve as a juror in this court, and it was thereupon ordered by the court that he should forfeit and pay a fine of £ for such neglect, and it was ordered that the said should pay the said sum of £ to the registrar of this court on the day of , 19 : [or by instalments of for every days, the first instalment to be paid on the day of]:

Order 52, Rules 6, 7a.

Or, in case of non-attendance on adjournment,

Whereas was duly summoned to attend and serve as a juror in this court on the day of , upon the trial of any action or actions to be tried by jury, and on any subsequent day to which the trial of any such action might be adjourned:

And whereas he neglected, without sufficient cause shown, to attend and serve as a juror in this court on the day of , to which day the trial of an action of v. was adjourned from the said day of , and it was thereupon ordered by the court that he should forfeit and pay a fine of £ for such neglect, and it was ordered that the said should pay the sum of £ to the registrar of this court on the day of , 19 : [or by instalments of for every days, the first instalment to be paid on the day of]:

And whereas the said sum has not been paid according to the said order, and his honour the judge of this court has ordered it to be levied as herein-after mentioned:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds) the sum stated at the foot of this warrant, being the amount of such fine, together with the costs of this execution; and also to seize and take any money or bank notes, whether of the Bank of England or of any other bank, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to him, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the

registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of , 19 .

By the court,

Registrar.

[*Conclude as in Form 127.*]

147.

Order for Costs of Day where Rule for Certiorari or Prohibition has not been served.

51 & 52 Vict.
c. 43, s. 129. Whereas a rule [*or summons*] has been granted by the High Court of Justice [*or a judge of the High Court of Justice*] requiring cause to be shown why a writ of *certiorari* [*or prohibition*] should not issue in this action, and no order has been made by such court [*or judge*] respecting the costs in this court :

And whereas a copy of such rule [*or summons*] has not been served on the plaintiff [*or defendant*] [*or on the registrar*], according to section 129 of the County Courts Act, 1888 :

And whereas the plaintiff [*or defendant*] has on this day appeared at this court to prosecute [*or defend*] this action :

It is ordered, that the defendant [*or plaintiff*] do pay the sum of £ for the plaintiff's [*or defendant's*] costs of the day ; and it is ordered that the defendant [*or plaintiff*] do pay the same to the registrar of this court on the day of 19 .

148.

Order for Costs of Day where Writ of Certiorari or Prohibition has not been lodged.

51 & 52 Vict.
c. 43, s. 130. Whereas a writ of *certiorari* [*or prohibition*] has been granted in this action by the High Court of Justice [*or a judge of the High Court of Justice*] on the *ex parte* application of the defendant [*or plaintiff*], who has not lodged it with the registrar of this court [*or has not given notice to the plaintiff*] [*or defendant*] that it has issued] two clear days before this day, being the day fixed for hearing this action :

And whereas the said court [*or judge*] has made no order respecting the costs in this court :

And whereas the plaintiff [*or defendant*] has on this day appeared at this court to prosecute [*or defend*] this action :

It is ordered, that the defendant [*or plaintiff*] do pay the sum of £ for the plaintiff's [*or defendant's*] costs of the day ; and it is ordered that the defendant [*or plaintiff*] do pay the same to the registrar of this court on the day of 19 .

149.

Order for Costs to Defendant where Plaintiff does not Appear.

Order 22,
Rule 6.

Whereas the plaintiff has not appeared, either in person or by his solicitor, at the court holden this day, being the day appointed for the trial of this action, and the defendant has appeared in person [*or by his solicitor*], and has not admitted the demand : It is awarded that the plaintiff do pay the sum of £ for the defendant's costs : and it is ordered that the plaintiff do pay the same to the registrar of this court on the day of 19 .

[*To be altered as required, where order made for payment of costs to be taxed.*]

150.

Judgment for Defendant, or Nonsuit.

Upon the trial of this action at a court holden this day, it is adjudged ^{51 & 52 Vict. c. 43, ss. 88, 93.} that judgment be entered for the defendant [or that a nonsuit be entered], and that the plaintiff do pay the sum of £ for the defendant's costs: And it is ordered that the plaintiff do pay the same to the registrar of this court on the day of 19 .

[To be altered as required, if order made for payment of costs to be taxed.]

151.

Judgment for Plaintiff.

(1.)

Acknowledgment of payment into Court.				It is this day adjudged that the plaintiff do recover against the defendant the sum of £ for debt [or damages], and £ for costs, amounting together to the sum of £ :	Order 23, Rule 2.
Date.	£	s.	d.		
_____	_____	_____	_____	_____	Order 34, Rule 3.
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	

And it is ordered that the defendant do pay the same to the registrar of this court forthwith [or on the day of] [or by instalments of for every days, the first instalment to be paid on the day of 19].

Order 35, Rule 1a.

[In case default be made in payment of any instalment according to this order, execution or successive executions may issue for the whole of the said sum and costs then remaining unpaid, or for such portion thereof as the court shall order.] ^{51 & 52 Vict. c. 43, s. 149.}

Order 25, Rule 8.

N.B.—*This form will, by striking out the words not required, apply to judgments whether for payment of the whole claim forthwith, or within fourteen days or any other specified time, or for payment by instalments, and to judgments under section 99 of the County Courts Act, 1888, and also to judgments in replevin, where the judgment is for the plaintiff. If at the time of making an order for payment by instalments the court directs that, in case default be made in payment of any instalment, execution shall issue for a portion only of the amount remaining unpaid, the last paragraph must be altered so as to give effect to such order.*

(2.)

Where judgment is given for a sum exceeding £20, the court may order judgment to be entered as follows:—

It is this day adjudged that the plaintiff do recover against the defendant the sum of £ for debt [or damages], and his costs of this action, to be taxed according to column of the scales of costs:

Order 23, Rule 12.

And it is ordered that the defendant do pay the said sum of £ to the registrar of this court forthwith [or on the day of], and do pay the amount of the said costs when taxed to the registrar of this court forthwith [or within fourteen days] after the date of the certificate of taxation.

In case default be made in payment, execution may issue for the sum and costs remaining unpaid; or if default is made in payment of the said sum of £ before the said costs have been taxed, separate warrants may issue for the recovery of the said sum on default in payment thereof, and for the recovery of the said costs after the same have been taxed and default has been made in payment thereof, subject to the provisions of Order XXV. r. 9, of the County Court Rules.

151A.

Judgment against Married Woman, Widow, or Divorced Woman, alone or with others, in respect of Ante-nuptial Contract or Tort, or Contract or Tort during Coverture.

Order 23,
Rules 2, 3.

Enter judgment according to form 151, and proceed as follows:—

(1.)

Against married woman, widow, or divorced woman, in respect of ante-nuptial contract or tort

And it is ordered that the debt [or damages] and costs hereby recovered against the defendant (name of married woman, widow, or divorced woman) shall be payable out of the separate property of the said defendant which she is now or may hereafter be possessed of or entitled to [or, in case of widow or divorced woman, out of such property of the said defendant as during her coverture was her separate property], and any property which she may hereafter while discoverd be possessed of or entitled to: Provided that nothing herein contained shall render available to satisfy this judgment any separate property which she is now [or, in case of widow or divorced woman, was during her coverture] or may hereafter be restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property shall be available to satisfy this judgment notwithstanding such restriction.

(2.)

Against married woman, widow, or divorced woman, in respect of contract during coverture made prior to the 5th of December, 1893 (the date of the commencement of the Married Women's Property Act, 1893), or in respect of tort during coverture.

And it is ordered that the debt [or damages] and costs hereby recovered against the defendant (name of married woman, widow, or divorced woman) shall be payable out of the separate property of the said defendant [or, in case of widow or divorced woman, out of such property of the said defendant as during her coverture was her separate property], and not otherwise: Provided that nothing herein contained shall render available to satisfy this judgment any separate property which she is [or, in case of widow or divorced woman, was during her coverture] restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property shall be available to satisfy this judgment notwithstanding such restriction.

(3.)

Against married woman, widow, or divorced woman, in respect of contract made on or since the 5th of December, 1893.

And it is ordered that the debt [or damages] and costs hereby recovered against the defendant (name of married woman, widow, or divorced woman) shall be payable out of the separate property of the said defendant which she is now or may hereafter be possessed of or entitled to [or, in case of widow or divorced woman, out of such property of the said defendant as during her coverture was her separate property], and any property which she may hereafter while discoverd be possessed of or entitled to, and not otherwise: Provided that nothing herein contained shall render available to satisfy this judgment any separate property which at the time of entering into the contract sued on in this action or thereafter she was or may be restrained from anticipating [or, in case of widow or divorced woman, which she was during her coverture or may hereafter be restrained from anticipating], unless by reason of section 19 of the Married Women's Property Act, 1882, such property shall be available to satisfy this judgment notwithstanding such restriction.

152.

Judgment where Counter-claim has been made.

It is this day adjudged that the plaintiff in this action do recover against the defendant the sum of £ for debt [*or damages*] and £ for costs, amounting together to the sum of £ [*or that judgment be entered for the defendant [or that a nonsuit be entered] in this action, and that the plaintiff do pay the sum of £ for the defendant's costs*].

Order 22,
Rule 22.

And it is further adjudged that the defendant do recover on his counter-claim against the plaintiff the sum of £ for debt [*or damages, as the case may be*] and £ for costs, amounting together to the sum of £ [*or that judgment be entered for the plaintiff on the defendant's counter-claim [or that the counter-claim be struck out], and that the defendant do pay the sum of £ for the plaintiff's costs of the said counter-claim*].

If the same party succeeds both in the action and on the counter-claim, proceed as follows:—

And it is ordered that the [*party against whom judgment is given*] do pay to the registrar of this court the sum of £ , being the total amount adjudged against him as aforesaid in this action and on the defendant's counter-claim:

[Or, if one party succeeds in the action and the other on the counter-claim, proceed as follows:—

And it is ordered that the [*party against whom the balance is*] do pay to the registrar of this court the sum of £ , being the balance in favour of [*the other party*] after deducting the amount adjudged to the [*party against whom the balance is*] as aforesaid]:

And it is ordered that the said sum be so paid forthwith [*or on the day of*] [*or by instalments of for every days, the first instalment to be paid on the day of 19*].

[To be altered as required, where judgment is given for payment of a sum of money and costs to be taxed.]

153.

Order suspending Judgment, Order, or Execution, or for Discharge of Debtor.

On the application of , and the judge being satisfied that the defendant is unable to pay and discharge the debt [*or damages or costs*] recovered against him in this action [*or the instalments due under the judgment [or order] in this action*],

9 & 10
Geo. 5,
c. 73, s. 23.
Order 23,
Rule 15a.

The judge doth, pursuant to section 23 of the County Courts Act, 1919, order that the said judgment [*or order*] be suspended [*or that the execution issued in this action be suspended*] for [*state time*] upon the terms following, viz.:

[*state terms*]

[*or that the defendant be discharged from custody under the order of commitment issued in this action upon the terms following, viz. [state terms, including, if so ordered, liability to re-arrest if the terms are not complied with].*

Dated this day of , 19 .

By the court,
Registrar.

154.

Order for New Trial.

It is ordered that the judgment in this action, and all subsequent proceedings thereon, be set aside, and a new trial had between the parties on [*set out the terms or conditions, if any, on which the order is made*].

51 & 52 Vict.
c. 43, s. 93.
Order 31,
Rules 1, 4.

Order 23,
Rule 10.
Order 25,
Rule 29.
Order 26,
Rules 29.

155.

Certified Copy of Judgment or Order.

The county court of _____ holden at _____ on the _____
Minutes of judgments, orders, and other proceedings at a court held at _____
day of _____ 19, before His Honour _____ Judge.

No.	Plaintiff.	Appearance.	Defendant.	Appearance.	Particulars of Claim.	Amount claimed.	Special Defence.	By whom Jury required.	For whom Judgment given.	Amount of Judgment.	Costs.	Order.

Amount of Judgment or Order, including Costs	£	s.	d.
Subsequent Costs			
Paid into Court			
Total sum now due			

I HEREBY CERTIFY that the above is a true copy
of an entry in the minute book, judgments, orders,
and other proceedings of the _____ county
court of _____ holden at _____.

Dated this _____ day of _____, 19 .

Registrar.

Last date of payment [or if no payment has been made, date on which default was made].
NOTE.—If the judgment or order is entered in any minute or order book of a different form to the above, then the certificate must follow the form of such book

156.

Notice of Payment into Court under Judgment or Order.

I hereby give you notice, that A. B., the defendant, [or garnishee] has paid into court the sum of £ under the judgment [or order] obtained by you against him herein.

[N.B.—Upon your applying for the above amount it will be necessary that you should produce or send the plaint-note given to you on the entry of the plaint.]

157.

Order altering Judgment or Order.

In the county court of holden at

No. of plaint, Order 23,
 Rules 14, 15.

Between A. B., plaintiff,
[Address, description,]
and

C. D., defendant,
[Present address, description, and, if
known, place of employment.]

Whereas the plaintiff obtained a judgment [or an order] against the defendant in this court on the _____ day of _____ 19____, for the payment of £ _____, together with £ _____ for costs, [and in payment thereof [or of _____ part thereof] the defendant has made default] :

Acknowledgment of payment into Court.				Upon the application of the plaintiff [<i>or</i> defendant]	
Date.	£	s.	d.	Received by	it is ordered that the defendant do pay the amount
					still due under the said judgment [<i>or</i> order], as stated
					at the foot of this order, to the registrar of this court,
					on the day of 19 , [<i>or</i> by instalments of
					for every days; the first payment to be
					made on the day of 19].
					Given under the seal of the court, this day
					of 19 .

Registrar.
£ s. d.

Amount remaining due on judgment [or order].

158.

Order to proceed after Death of Plaintiff after Judgment.

Upon reading the affidavit of _____, it is ordered that E. F., _____ the executor of A. B., _____ the plaintiff in this action, who has died since judgment, be substituted as plaintiff for the original plaintiff, and that the said E. F. _____ be at liberty to issue execution against C. D., _____ the defendant in this action [or to take any such proceedings against C. D. _____]

Order 25,
Rule 14.

the defendant in this action, as the deceased plaintiff was entitled to take against him], for the amount of the unsatisfied judgment and costs in this action [or that the question whether E. F., the executor of A. B.

the original plaintiff in this action, now deceased, is entitled to recover the amount of the judgment obtained against C. D., the defendant in this action, and costs, shall be tried by action to be commenced by plaintiff in the ordinary way, wherein the said E. F. shall be plaintiff and the said C. D. shall be defendant].

Dated this day of 19 .

Judge [*or* Registrar].

159.

Order to proceed after Death of Plaintiff after Judgment, where such Order affects more Actions than one.

Upon reading the affidavit of _____ it is ordered that E. F. _____ the
 executor of A. B. _____ the plaintiff in the several actions mentioned in the _____

Order 25.
 Rule 18.

the schedule hereto, who has died since judgment, be substituted as plaintiff for the original plaintiff in the said actions, and that the said E. F. be at liberty to issue execution against the several defendants in the said actions [or to take any such proceedings against the several defendants in the said actions as the deceased plaintiff was entitled to take against them respectively] for the several amounts of the unsatisfied judgments and costs in the said actions [or that the question whether E. F., the executor of A. B., the original plaintiff, now deceased, in the several actions mentioned in the schedule hereto is entitled to recover against the several defendants in the said actions the several amounts of the unsatisfied judgments and costs in the said actions shall be tried by separate actions to be commenced by plaintiff in the ordinary way, wherein the said E. F. shall be plaintiff, and the several defendants in the said actions shall be defendants].

Dated this day of 19 .

Judge [or Registrar].

The Schedule above referred to.

Letter and Number.]	Plaintiff.	Defendant.

160.

Order to proceed after Change of Interest by Assignment or otherwise after Judgment.

Order 25,
Rule 14.

Upon reading the affidavit of , it is ordered that E. F., the assignee [or as the case may be] of the judgment [or order] obtained by A. B., the plaintiff [or C. D., the defendant, as the case may be] in this action be substituted as plaintiff [or defendant] in this action in the name and by the description of E. F., of, &c., the assignee of A. B., [or C. D., the defendant], of, &c., and that the said E. F., in and by such name and description, be at liberty to issue execution against the defendant [or the plaintiff] in this action [or to take any such proceedings against the defendant [or the plaintiff] in this action, as the said plaintiff [or defendant] was entitled to take against him for the amount of the unsatisfied judgment and costs in this action [or that the question whether E. F., of, &c., the assignee of A. B., of, &c., [or of C. D., of, &c.,] is entitled to the benefit of the judgment [or order] obtained by the plaintiff [or defendant] against the defendant [or plaintiff] in this action, shall be tried by action to be commenced by plaintiff in the ordinary way, wherein the said E. F., in and by such name and description as aforesaid, shall be plaintiff, and the said C. D., [or the said A. B.,] shall be defendant.

Dated this day of 19 .

Judge [or Registrar].

161.

Order to proceed after Change of Interest by Assignment or otherwise after Judgment, where such Order affects more Actions than one.

Order 25,
Rule 16.

Upon reading the affidavit of , it is ordered that E. F., the assignee (or as the case may be) of the several judgments [or orders] obtained by A. B., the plaintiff in the several actions mentioned in the schedule hereto be substituted as plaintiff in the said actions in the

name and by the description of E. F. of, &c., the assignee of A. B. of, &c., and that the said E. F., in and by such name and description, be at liberty to issue execution against the several defendants in the said actions [or to take any such proceedings against the several defendants in the said actions as the said A. B. the plaintiff was entitled to take against them respectively] for the several amounts of the unsatisfied judgments and costs in the said actions [or that the question whether E. F., of, &c., the assignee of A. B., of, &c., is entitled to the benefit of the several judgments [or orders] obtained by the said A. B., the plaintiff in the several actions mentioned in the schedule hereto, against the several defendants in the said actions, shall be tried by separate actions to be commenced by plaintiff in the ordinary way, wherein the said E. F., in and by such name and description as aforesaid, shall be plaintiff, and the several defendants in the said action shall be defendants.

Dated this day of 19 .

Judge [or Registrar].

The Schedule above referred to.

Letter and Number	Plaintiff.	Defendant.

N.B.—No proceedings under a judgment or order, either by judgment summons or otherwise, are sanctioned by the rules after any change of interest in the parties entitled to the benefit of the judgment or order without an order in one of the above forms numbered 158 to 161.

161A.

Præcipe for Warrant of Execution against Goods.

In the county court of holden at .

No. of Plaintiff.
No. of Execution.

Order 25,
Rule 7.

Plaintiff's names in full.

Plaintiff's residence and occupation.

Full names and addresses [or other sufficient identification] of all defendants, with their occupations, if known.

I apply for the issue of a warrant of execution against the above-named defendant [name the defendant, or, if there are more defendants than one, and plaintiff desires to proceed against some or one only, name them or him] in respect of a judgment [or an order] of this court.

Judgment creditor.

[or

Solicitor to creditor.
[Solicitor's address.]

To be filled up by clerk.

Fol. Min. Bk. Fol. Ledger. £ s. d.

Amount of judgment [or order] and costs . . .

Paid into court . . .

Sum in payment of which defendant has made default .

Date when issued 19 .

C.C.P.

25

**Notice to be Delivered or Left on Levy under Warrant of Execution
against Goods.**

*Order 25,
Rule 17.*

Take notice, that the warrant of execution against your goods on the judgment [*or order*] obtained against you in this action is for the following amount :—

	£	s.	d.
Amount for which judgment [<i>or order</i>] was obtained			
Since paid by you into court			
Remaining due on judgment [<i>or order</i>]			
Poundage for issuing this warrant			
Total amount to be levied			

The fees for keeping possession of such of your goods as may be seized (including expenses of removal, storage of goods, and all other expenses) is SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10s. per day although the value may exceed 20*l.*, and in addition, for feeding animals, the actual cost thereof.

If you pay the amount to be levied, as stated above, within half an hour of the entry of the bailiff, you will not be required to pay to him any further sum.

If possession is kept after the seventh day at the written request of both parties, the fees and cost of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If your goods are removed, you will have to pay the appraisement fee as undermentioned.

Your goods are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at your request.

If your goods are sold, the following fees are chargeable for the appraisement and sale, and no others :—

For the appraisement SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale, and commission, and delivery of the goods, ONE SHILLING AND SIXPENCE IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, the value to be fixed by appraisement in case of dispute, and, in addition, any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

If your goods are removed, the bailiff is required to give you a sufficient inventory of the goods so removed, and to give you notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If your goods are sold, the bailiff is required to furnish you, on your request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

163.

Warrant of Execution against Goods of Defendant.

Whereas on the day of 19 , the plaintiff obtained a judgment [or an order] in this court against the defendant [*name the defendant or all the defendants*] for the sum of £ for debt [or damages] and costs; and it was thereupon ordered by the court that the defendant should pay the same to the registrar on the day of [or by instalments of for every days]:

Order 25,
Rule 8.

And whereas default has been made in payment according to the said judgment [or order]:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, [*name the defendant against whose goods execution is issued*] where-soever they may be found, within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and imple-ments of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said judgment [or order], together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, pro-missory notes, bonds, specialties, or securities for money of the said defen-dant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this

day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Amount for which judgment [or order] was obtained .			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon.]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said defendant.

Application was made to the registrar for this warrant at minutes
past the hour of in the noon of the day of 19 .

See BACK.

[To be indorsed on every warrant of execution.]

The name and address of the [] solicitor to the execution creditor is:— 51 & 52 Vict.
c. 43, s. 155

[This information should be inserted only where the warrant is to be sent to the high bailiff of a foreign court.]

FEES FOR THE EXECUTION OF THIS WARRANT.

The fees for keeping possession of the goods seized (including expenses of removal, storage of goods, and all other expenses) IS SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, to be fixed by appraisement in case of dispute, so that the total fee

Order 25,
Rule 17.

does not exceed 10s. per day although the value may exceed 20l. [and, in addition, for feeding animals the actual cost thereof].

If the debtor pays the amount to be levied, as stated on the other side, within half an hour of the entry of the bailiff, he will not be required to pay to him any further sum.

If possession is kept after the seventh day at the written request of both parties, the fees and cost of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If the goods are removed, the debtor will have to pay the appraisement fee as undermentioned.

If the goods are sold, the following fees are chargeable for the appraisement and sale, and no others:—

For the appraisement, SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING AND SIXPENCE IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, the value to be fixed by appraisement in case of dispute, and in addition any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

If the goods are removed, the bailiff is required to give the debtor a sufficient inventory of the goods so removed, and to give him notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If the goods are sold, the bailiff is required to furnish the debtor, on request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

163A.

Indorsement on Warrant of Execution or Order of Commitment, of Fact of Renewal thereof.

Order 25,
Rules 6,
46 (4). The time during which this warrant [*or order*] is to remain in force was
on the day of extended by leave of the court for one year from
the day of

Registrar.

164.

Warrant of Execution on Judgment against Married Woman, Widow, or Divorced Woman, alone or with others, in respect of Ante-nuptial Contract or Tort, or Contract or Tort during Coverture.

Order 25,
Rule 8. Whereas on the day of 19 , the plaintiff obtained a judgment [*or an order*] in this court against the defendant [*name the defendant or all the defendants*] for the sum of £ for debt [*or damages*] and costs; and it was thereupon ordered by the court that the defendant should pay the same to the registrar on the day of 19 [*or by instalments of for every days*]:

[*Proceed as follows:—*

(1.)

Where judgment was entered according to form 151A (1)—

And it was further ordered that the debt [*or damages*] and costs recovered against the defendant (*name of married woman, widow, or divorced*

woman) should be payable out of the separate property of the said defendant which she was then or might thereafter be possessed of or entitled to [or, in case of widow or divorced woman, out of such property of the said defendant as during her coverture was her separate property], and any property which she might thereafter while discoverd be possessed of or entitled to : Provided that nothing in the said judgment [or order] contained should render available to satisfy the said judgment [or order] any separate property which she was then [or, in case of widow or divorced woman, was during her coverture] or might thereafter be restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property should be available to satisfy the said judgment [or order] notwithstanding such restriction :

(2.)

Where judgment was entered according to form 151A (2)—

And it was further ordered that the debt [or damages] and costs recovered against the defendant (name of married woman, widow, or divorced woman) should be payable out of the separate property of the said defendant [or, in case of widow or divorced woman, out of such property of the said defendant as during her coverture was her separate property], and not otherwise: Provided that nothing in the said judgment [or order] contained should render available to satisfy the said judgment [or order] any separate property which she was [or, in case of widow or divorced woman, was during her coverture] restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property should be available to satisfy the said judgment [or order] notwithstanding such restriction :

(3.)

Where judgment was entered according to form 151A (3)—

And it was further ordered that the debt [or damages] and costs recovered against the defendant (name of married woman, widow, or divorced woman) should be payable out of the separate property of the said defendant which she was then or might thereafter be possessed of or entitled to [or, in case of widow or divorced woman, out of such property of the said defendant as during her coverture was her separate property], and any property which she might thereafter while discoverd be possessed of or entitled to, and not otherwise : Provided that nothing in the said judgment [or order] contained should render available to satisfy the said judgment [or order] any separate property which at the time of entering into the contract sued on or thereafter she was or might be restrained from anticipating [or, in case of widow or divorced woman, which she was during her coverture or might thereafter be restrained from anticipating], unless by reason of section 19 of the Married Women's Property Act, 1882, such property should be available to satisfy the said judgment [or order] notwithstanding such restriction :]

And whereas default has been made in payment according to the said judgment [or order] :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant (name of married woman, widow, or divorced woman) being property available to satisfy the said judgment [or order] as hereinbefore mentioned, wheresoever they may be found within the district of the court (except the wearing apparel and bedding of her or her family, and the tools and implements of her trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said judgment [or order], together with the costs of this execution ; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said defendant, being property available to satisfy the said judgment [or

	£	s.	d.
Costs adjudged			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said plaintiff.

Application was made to the registrar for this warrant at _____ minutes
past the hour of _____ in the _____ noon of the _____ day of _____ 19 _____.

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

166.

Receipt for Money Levied or Paid under Process.

No. _____			County Court.		Order 25, Rule 20a.
No. of Plaintiff _____	No. of Execution or other Process _____				
		v.			
Received the _____ day of _____	of the above named _____		the sum of _____		
pounds _____	shillings and _____	pence :—			
On account of—					
Debt and costs		£ : :			
Possession fees		£ : :			
Total		£ : :			

Bailiff.

N.B.—This form to be printed and numbered in duplicate on thin paper, 6 inches long by 4 inches deep, and bound up in books, 50 duplicates in each book.

For forms 167—169 (Friendly Societies and other Acts) under "Building Societies Acts," Part V.

170.

Notice of Application for Sale of Goods otherwise than by Auction.

[Not to be printed.]

Take notice that I, the undersigned A. B., the execution creditor [or execution debtor] herein, shall on the _____ day of _____ at _____ o'clock _____ 46 & 47 Vict. c. 52, s. 145.
in the _____ noon at [state where application will be made] apply to his _____ 53 & 54 Vict. c. 71, s. 2.
honour the judge [or to the registrar] of this court for an order that a sale of the goods seized under the execution herein may be made otherwise than by public auction, that is to say [e.g., by private sale to (state name of intending purchaser if known)]. Order 25, Rule 24.

The grounds of the application are as follows [state the grounds].

A. B.

To the high bailiff
and to E. F., G. H., &c. [name
the other persons to be served].

171.

**Notice of Sale or Payment under Execution in respect of a Judgment
for a Sum exceeding £20.**

4 & 5 Geo. 5,
c. 59, s. 41.
Order 2,
Rule 35.

Take notice, that under the warrant of execution issued in this action against the goods of the defendant [naming him], the goods of the defendant have been sold [or the sum of £ has been paid in order to avoid a sale], and that the balance now left in my hands, after deduction of £ for the costs of the execution, amounts to the sum of £, which will be duly retained by me for fourteen days pursuant to the provisions of sub-section 2 of section 41 of the Bankruptcy Act, 1914.

Dated this day of 19 High bailiff.

To the registrar of the county court of holden at
And to (the execution creditor).

172.

**Notice of Withdrawal from Possession, or Payment over of Money, on
Notice of Receiving Order.**

4 & 5 Geo. 5,
c. 59, s. 41.
Order 2,
Rule 36.

Take notice, that having received notice that a receiving order has been made under the Bankruptcy Act, 1914, against the defendant [naming him], I have withdrawn from possession of the goods seized under the warrant of execution issued in this action against the goods of the said defendant [and have delivered the same to the official receiver [or trustee] under the said order] [or I have paid over the proceeds of sale of the goods of the said defendant sold under the warrant of execution issued in this action [or the money paid in order to avoid a sale under [or the money received in part satisfaction of] the warrant of execution issued in this action against the goods of the said defendant] to the official receiver [or trustee] under the said order].

Dated this day of 19 High bailiff.

To the registrar of the county court of holden at
And to (the execution creditor).

173.

High Bailiff's Warrant to Registrar of Foreign Court.

51 & 52 Vict.
c. 43, s. 158.
Order 28,
Rule 1.

Whereas the warrant of execution hereto annexed has been issued out of this court against the goods and chattels of the defendant (1)

And whereas the goods and chattels of the said defendant are out of the ordinary jurisdiction of this court, and are believed to be within the jurisdiction of the county court of holden at of which you are the registrar :

[Or, whereas the order of commitment hereto annexed has been made against the defendant (2).]

And whereas the said defendant is out of the ordinary jurisdiction of this court, and is believed to be within the jurisdiction of the county court of holden at of which you are the registrar :

These are therefore to require you to cause the said warrant [or order] to be executed within the ordinary jurisdiction of the said last-mentioned county court.

Dated this day of 19 High bailiff of the county court
of holden at

To the registrar of the county court
of holden at

NOTE.—This warrant must be signed by the high bailiff and sealed in accordance with section 158 of the Act.

Amended by County Court Rules, 1926 (No. 1).

(1) If the warrant is issued against one only of several defendants, name him.
(2) If there is more than one defendant, name defendant against whom order issued.

173A.

Notice to be annexed to Form 162 (Notice on Levy) where Warrant of Execution sent to Foreign Court.

Take notice, that all payments under the warrant of execution issued in this action should be made and all notices or claims in respect of the execution or the goods taken in execution should be given or sent to the high bailiff of the county court of holden at , and not to the high bailiff of the county court of holden at .

Order 28,
Rule 1 (2).

Dated this day of 19 .

High bailiff of the county court of holden at .

(This notice is now endorsed on Form 162.)

174.

Notice of Non-Execution of Warrant or Order of Commitment.

Take notice, that the warrant of execution [or order of commitment] in this action has not been executed within one calendar month from the day of its delivery to me for the following reasons (*state reasons*).

Order 2,
Rule 37.

High bailiff to the county court of holden at .

To the registrar of the county court of holden at .

175.

Return and Advice Note from Foreign Court.

A. B. v. C. D.

No. of plaint.

No. of warrant.

Order 28,
Rules 2, 3.

Home Court at .

Take notice that the sum of £ : : has been recovered under the above Warrant of Execution and a draft for this amount is enclosed here-
Order of Commitment with.

(¹)
Dated this day of 19 .

High bailiff of the county court of holden at .

(¹) Here set out any further or other return when the full amount has not been recovered.

To the high bailiff of the home court.

(Revised, C. C. (No. 1) Rules, 1928.)

175A.

Notice of Return and Remittance from Foreign Court.

A. B. v. C. D.

No. of plaint.

No. of warrant.

Home court at .

Take notice that the sum of £ : : has been recovered under the above Warrant of Execution and has been transmitted to the home court.
Order of Commitment

(¹)
Dated this day of 19 .

High bailiff of the county court of holden at .

(¹) Here set out any further or other return when the full amount has not been recovered.

To the judgment creditor.

(Form added by C. C. (No. 1) Rules, 1928.)

176.

Præcipe for Judgment Summons.

Order 25,
Rule 5.

In the county court of holden at

No. of plaint.
No. of J. S.

Plaintiff's name in full.

Plaintiff's residence and }
occupation. }

Full names and addresses (or other sufficient identification) of all defendants with their occupations, if known.

I apply for an issue of a judgment summons against the above-named defendant [*name the defendant, or, if there are more defendants than one, and plaintiff desires to proceed against some or one only, name them or him*] in respect of a judgment [*or an order*] of this court.

I am aware that if I do not prove to the satisfaction of the court at the hearing that the judgment debtor has or has had since the date of the judgment (or order) the means to pay the sum in respect of which he has made default and that he has refused or neglected or refuses or neglects to pay the said sum, I may have to pay the costs of this summons.

Judgment creditor,
or,
Solicitor to creditor
Solicitor's address.

To be filled up by Clerk.

Fol. . . . Min. Bk. . . . Fol. . . . Ledger

	£	s.	d.	£	s.	d.
Amount of judgment [<i>or order</i>] and costs						
<i>Deduct</i> :—Amounts (if any) in respect of which an order of commitment was made and defendant was imprisoned before date of order						
<i>Add</i> :—Costs of previous judgment summonses, hearings, and commitments (if any) since date of judgment [<i>or order</i>] allowed by the judge						
<i>Deduct</i> :— Paid into court— otherwise than under execution against the goods under execution against the goods, after deducting costs of execution						
Amounts in respect of which an order of commitment has been made <i>since</i> date of judgment [<i>or order</i>], and in respect of which defendant has been or may be imprisoned						
Amounts which were not required to have been paid before the date of this summons						
Sun in payment of which defendant has made default						
Date when granted						

Amended. County Court (No. 1) Rules, 1925, r. 22.

obtained, or if a fresh order has been obtained upon a judgment, an order] against the above-named defendant in this court [or in the county court of holden at] on the day of 19 , for the payment of £ for debt [or damages] and costs, forthwith [or on the day of 19 , or by instalments of for every days], and subsequent costs have been incurred in pursuance thereof and allowed by the judge, amounting to :

And whereas default has been made in payment of the sum of payable in pursuance of the said judgment [or order], and the plaintiff has required this judgment summons to be issued against you the defendant [if the summons is issued against some or one only of several defendants, name them or him] :

You are therefore hereby summoned to appear personally in this court at [place where court holden] on the day of , 19 , at the hour of in the noon, to be examined on oath by the court touching the means you have or have had since the date of the said judgment [or order] to satisfy the sum payable in pursuance of the said judgment [or order] ; and also to show cause why you should not be committed to prison for such default, [or why a receiving order should not be made against you pursuant to sub-section 5 of section 103 of the Bankruptcy Act, 1883].

Dated this day of 19 .

Registrar.

To the defendant [if the summons is issued against some or one only of several defendants, name them or him.]

	£	s.	d.	£	s.	d.
Amount of judgment [or order], and costs						
<i>Deduct</i> :—Amounts (if any) in respect of which an order of commitment was made and defendant was imprisoned <i>before</i> date of order						
<i>Add</i> :—Costs of previous judgment summonses, hearings, and commitments (if any) <i>since</i> date of judgment [or order], allowed by the judge						
<i>Deduct</i> :—						
Paid into court, Led. Fo. otherwise than under execution against the goods under execution against the goods (after deducting costs of execution)						
Amounts in respect of which an order of commitment has been made <i>since</i> date of judgment [or order], and in respect of which defendant has been or may be imprisoned						
Amounts which were not required to have been paid before the date of this summons (<i>see note (*) below</i>)						
Sum in payment of which defendant has made default						
Costs of this summons						

* Where a fresh order has been made *after* defendant has been committed and imprisoned, this amount will be the difference between the amount of the instalments in arrear at the date of the summons and the

whole sum payable under the fresh order, *exclusive* of the amount in respect of which defendant was imprisoned *before* the order. See Order XXV. Rule 55.
For indorsement of service, see Form 34.

178A.

Memorandum to be printed at foot of or annexed to Judgment Summons.

In default of your attendance you will, if at the time of the service of this summons on you payment or tender of your expenses is made on the prescribed scale of allowances, be liable to a fine of £10 under section 111 of the County Courts Act, 1888, payment of which fine may, under section 167 of the Act, be enforced, upon the order of the judge, in such manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Summary Jurisdiction Acts, that is to say, by distress and sale of your goods, or, in default or in lieu of distress, by imprisonment.

Order 25,
Rule 31 (3).

179.

Memorandum to be printed at foot of or annexed to every Judgment Summons issued pursuant to Order XXV. Rule 26, for service out of the district.

NOTE.—By Order XXV. Rule 37, of the County Court Rules, it is provided as follows:—

Order 25,
Rule 37.

Where a judgment creditor at whose instance a judgment summons is issued, or a judgment debtor summoned to appear by a judgment summons, does not reside within the district of the court in which the summons is to be heard, he may forward to the registrar of the court from which the summons is issued an affidavit, setting forth any facts which he may wish to be before the court prior to any order being made on the summons. And the judge may, if he thinks fit, on the hearing of the judgment summons admit the affidavit as the evidence of the person by whom the same is made.

An affidavit may be sworn before any judge or registrar, or clerk to a ^{51 & 52} registrar nominated by the judge for that purpose, or a commissioner for c. 43, s. 3 oaths, or a justice of the peace.

180.

Affidavit where Judgment Summons is sought on a Judgment or an Order of a Court other than a County Court.

The Debtors Act, 1869.

In the county court of holden at

In the matter of a judgment [*or order*] of the High Court of Justice [*or Order 5, Rule 30.*
as the case may be].

Between A. B., plaintiff,
[Address, description.]

and
C. D., defendant,
[Address, description,]

I [state name] of [state residence and occupation], the above-named plaintiff [or I (state name) of (state residence and occupation)], make oath and say as follows :

1. That on the _____ day of _____ 19____, I, [or the above-named plaintiff] obtained a judgment [or an order] in (*here set forth the style of the court in which the judgment or order was obtained*) against the above-named defendant, for the payment of the sum of _____.

2. That there is still due under the said judgment [or order] the sum of _____

3. I apply for the issue of a judgment summons against the above-named defendant [*if the application is for a summons against some or one only of several defendants, name them or him*] in respect of the non-payment of the said sum of

4. [To be added where the plaintiff does not himself make the affidavit.]
The facts above deposed to are within my own knowledge, and I am duly
authorised by the plaintiff to make this affidavit on his behalf.

Sworn at, &c.

A. B.

181.

Judgment Summons on a Judgment or Order of a Court other than a County Court.

The Debtors Act, 1869.

32 & 33 Vict.
c. 62, s. 5.
Order 25,
Rules 30, 31.

In the [title of court issuing summons].

No. of judgment summons.

Between A. B., plaintiff,

[Address, description.]

and

C. D., defendant.

[Present address, description, and if known, place of employment.]

Whereas the plaintiff obtained a judgment [or an order] against the above-named defendant in the High Court of Justice [or as the case may be] on the day of for the sum of £ and there is now due and payable under the said judgment [or order] the sum of £

And whereas the plaintiff has required this judgment summons to be issued against you the defendant [if the summons is issued against some or one only of several defendants name them or him].

You are therefore hereby summoned to appear personally in this court at [place where court holden] on the day of 19 , at the hour of in the noon, to be examined on oath by the court touching the means you have or have had since the date of the said judgment [or order] to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default [or, why a receiving order should not be made against you pursuant to sub-section 5 of section 103 of the Bankruptcy Act, 1883].

Dated this day of 19 .

Registrar.

To the defendant [if the summons is issued against some or one only of several defendants, name them or him].

	£	s.	d.
Amount remaining due under judgment [or order]			
Costs of this summons			
Total sum due			

For indorsement of service, see Form 34.

182.

Affidavit for Leave to Issue Judgment Summons on Judgment or Order against a Firm, or a Person carrying on Business in a Name other than his own.

No. of plaint.

Order 25,
Rule 27.

In the county court of

holden at

Between

and

plaintiff,

defendants.

I of [state name, residence, and occupation], the above-named plaintiff [or I, of [state name, residence, and occupation]], make oath and say as follows:—

1. On the day of 19 , I [or the plaintiff] obtained judgment [or an order] in this action in this court [or in the county court of holden at , or in the High Court of Justice, or as the case may be] against the defendants [state name in which defendants were sued] for the sum of £ [and costs] and there is now due and payable under the said judgment [or order] the sum of £ .

2. I allege that _____, of [state name, residence, and occupation] is liable as a partner in [or the sole member of] the said firm of _____ [or as the person carrying on business on his own behalf in the name of _____] to pay the sum payable under the said judgment [or order], and I make this allegation on the following grounds:

(1) that the said _____ has admitted before the court in the proceedings in which the said judgment [or order] was obtained that he was a partner in [or the sole member of] the said firm of _____ [or the person carrying on business on his own behalf in the name of _____] at the time of the accruing of the cause of action [or has been adjudged in the proceedings in which the said judgment [or order] was obtained to be liable as a partner in [or the sole member of] the said firm of _____] [or as the person carrying on business on his own behalf in the name of _____]:

Compare
Order 25,
Rule 11.

[or (2) that the said _____ was individually served as a partner in [or the sole member of] the said firm of _____ [or as the person carrying on business on his own behalf in the name of _____] with the summons in the action in which the said judgment [or order] was obtained, and failed to appear at the trial]:

Compare
Order 25,
Rule 11.

[or (3) (State any other grounds on which the person against whom a judgment summons is sought is alleged to be liable, with the deponent's sources of information and grounds of belief.)]

3. I verily believe that the said _____ is well able to pay the said sum of _____ now due and payable under the said judgment [or order] [(to be added where plaintiff does not himself make the affidavit), and I am duly authorised by the plaintiff to make this affidavit on his behalf].

4. I apply for the issue of a judgment summons against the said _____ in respect of the non-payment of the said sum of £ _____.

Sworn at _____ in the county of _____
this _____ day of _____ 19 _____ }
Before me, _____

183.

Affidavit for Leave to Issue Judgment Summons for Service out of the District on Judgment or Order against a Firm, or a Person carrying on Business in a Name other than his own.

No. of plaint.

In the county court of _____ holden at _____
Between _____ plaintiff,
and _____
defendants.

Order 25,
Rule 27.

I, _____ of [state name, residence, and occupation], the above-named plaintiff [or I, _____ of [state name, residence, and occupation]], make oath and say as follows:—

1. On the _____ day of _____, 19 _____, I [or the plaintiff] obtained judgment [or an order] in this action in this court [or in the county court of _____] holden at _____ or in the High Court of Justice, or as the case may be] against the defendants [state name in which defendants were sued] for the sum of £ _____ [and costs] and there is now due and payable under the said judgment [or order] the sum of £ _____.

2. I allege that _____, of [state name, residence, and occupation] is liable as a partner in [or the sole member of] the said firm of _____ [or as the person carrying on business on his own behalf in the name of _____] to pay the sum payable under the said judgment [or order], and I make this allegation on the following grounds:—

(1) that the said _____ has admitted before the court in the proceedings in which the said judgment [or order] was obtained that he was a partner in [or the sole member of] the said firm of _____ [or the person carrying on business on his own behalf in the name of _____] at the time of the accruing of the cause of action [or has been

Compare
Order 25,
Rule 11.

Compare
Order 25.
Rule 11.

adjudged in the proceedings in which the said judgment [or order] was obtained to be liable as a partner in [or the sole member of] the said firm of [] [or as the person carrying on business on his own behalf in the name of []]:

[or (2) that the said [] was individually served as a partner in [or the sole member of] the said firm of [] [or as the person carrying on business on his own behalf in the name of [] with the summons in the action in which the judgment [or order] was obtained, and failed to appear at the trial]:

[or (3) (State any other grounds on which the person against whom a judgment summons is sought is alleged to be liable, with the deponent's sources of information and grounds of belief.)]

3. The said [] now lives at [], and there occupies a house [or shop or rooms, or as the case may be] of the yearly rent or value of £ [].

4. The said firm of [state name in which defendants were sued] [or the said [state name in which defendants were sued]] carry [or carries] on the business of [state what] in a [state what] at [state where, and add any facts showing that the business is profitable].

5. The said [] has [or has not] separate means apart from the business of the said [state name in which defendants were sued] [or the said [state name in which defendants were sued]] [if separate means are alleged, state any facts showing such means].

6. The said [] is unmarried [or is married and has [] children, of whom [] work and earn wages] [if these facts are not known, state that deponent does not know them].

7. I verily believe that the said [] is well able to pay the said sum of £ [] now due and payable under the said judgment [or order] [to be added where plaintiff does not himself make the affidavit, and I am duly authorised by the plaintiff to make this affidavit on his behalf].

8. I apply to the court for leave to issue a judgment summons against the said [] in respect of the non-payment of the said sum of £ [].

Sworn at [] in the county of []
this [] day of [] 19 []

Before me, []

Registrar.

[or Clerk nominated to take affidavits].

Leave granted [or refused].

Judge.

184.

Judgment Summons on Judgment or Order against a Firm, or a Person carrying on Business in a name other than his own.

The Debtors Act, 1869.

32 & 33 Vict.
c 62, s. 5.

Order 25,
Rules 27, 31.

Address,
description.

In the county court of [] holden at []

Between [] plaintiff,

and []
defendants.

No. of plaintiff.

No. of judgment summons.

* State
name, ad-
dress, and
description
as in the
original
summons
with any
amendment
made by
the court.

To [] of [state the name, address, and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof, or of the person alleged to be carrying on business in a name other than his own] of []

Whereas the plaintiff obtained judgment [or an order] against the defendants by and in the name of [] above described in this court [or in the county court of [] holden at [] or in the High Court of Justice, or as the case may be] on the [] day [] 19 [], for the sum of £ []

[and costs] and there is now due and payable under the said judgment [or order] from the said* to the said plaintiff the sum of £ :

And whereas the said plaintiff has filed an affidavit in this court a copy whereof is hereunto annexed, wherein it is alleged that you the above-named are liable as one of the partners in [or the sole member of] the said firm of* [or as the person carrying on business on your own behalf in the name of*] to pay the sum payable under the said judgment [or order]:

You are therefore hereby summoned to appear personally in this court, at [place where court holden] on the day of 19 , at the hour of in the noon, to be examined on oath by the court touching the means you have or have had since the date of the said judgment [or order] to pay the said sum of £ now due and payable under the said judgment [or order]; and also to show cause why you should not be committed to prison for default in payment of the said sum [or why a receiving order should not be made against you pursuant to sub-section 3 of section 103 of the Bankruptcy Act, 1883]:

And take notice, that if you deny that you are liable as one of the partners [or the sole member of] the said firm of* [or as the person carrying on business on your own behalf in the name of*] to pay the sum payable under the said judgment [or order] you must appear at this court on the day and at the hour above mentioned, and that in default of your so appearing you will be deemed to admit your liability as aforesaid to pay the amount due and payable under the said judgment [or order].

Dated this day of 19 .

Registrar.

	£	s.	d.
Amount remaining due under judgment [or order] .			
Costs of this summons			
Total sum due			

For indorsement of service, see Form 34.

[N.B.—This summons is available against one person only, and where an order for payment by instalments has been made, part only of which are due, must be modified in accordance with the facts.]

185.

Affidavit of Service of Judgment Summons.

I, A. B., of [state name, residence, and occupation] the above-named plaintiff [or clerk or servant to the above-named plaintiff, or solicitor to the above-named plaintiff, or clerk to Mr. of , solicitor to the above-named plaintiff, or as the case may be], make oath and say:

Order 25,
Rules 31, 33.

That I did on the day of 19 , at [state the place of service exactly, as 22, King Street, Croydon, the residence of the above-named defendant, C. D., or the place of business of E. F., the employer of the above-named defendant, C. D.], duly serve the above-named defendant, C. D., with a judgment summons, a true copy whereof is hereunto annexed, marked A., [add if so, with copy of affidavit annexed] by delivering the same personally to the said defendant.

[Add, if travelling expenses paid or tendered with judgment summons, That I paid [or tendered] to the said , at the same time and place, the sum of for his expenses.]

[Indorse the copy judgment summons thus:—This paper, marked A., is the paper referred to in the annexed affidavit.]

186.

Order on Judgment Summons altering Original Judgment or Order.32 & 33 Vict.
c. 62, s. 5.

The Debtors Act, 1869.

In the [title of court issuing summons].

No. of plaintiff.

No. of judgment summons.

Between A. B., plaintiff,
[Address, description]
andC. D., defendant,
[Present address, description, and if
known, place of employment].

Whereas the plaintiff obtained a judgment [or an order] against the defendant in this court [or in the county court of holden at] on the day of 19, for the payment of the sum of £ , together with £ for costs, and in payment thereof [or of part thereof] the defendant has made default:

[or, Whereas the plaintiff obtained a judgment [or an order] against the defendant in the High Court of Justice [or as the case may be] on the day of , for the sum of £ , and there is now due and payable under the said judgment [or order] the sum of £]:

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant [name the defendant against whom the judgment summons was issued] was required to appear personally at this court on the day of 19, to be examined on oath touching the means he had then or had had since the date of the said judgment [or order] to pay the said sum of £ , which summons has been proved to this court to have been personally and duly served on the said defendant:

Acknowledgment of
payment into Court.

Date.	£	s.	d.	Received by

It is ordered, that the said defendant [naming him] do pay the amount still due on the said judgment [or order], and the costs of the said summons and its hearing, as stated at the foot of this order to the registrar of this court, by instalments of £ forevery days; the first payment to be made on the day of 19.

Given under the seal of the court, this
day of 19.

Registrar.

	£	s.	d.
Amount remaining due under judgment [or order]			
Costs of judgment summons and its hearing			

187.

Order of Commitment on a Judgment or Order of a County Court.32 & 33 Vict.
c. 62, s. 5.

The Debtors Act, 1869.

In the [title of court ordering commitment].

No. of plaintiff.

No. of judgment summons.

No. of order.

Between A. B., plaintiff,
and

C. D., defendant,

To the high bailiff and others the bailiffs of the said court and all peace officers within the jurisdiction of the said court, and to the governor of the [prison used by the court].

Whereas the plaintiff obtained a judgment [or an order] against the defendant¹ in this court [or in the county court of] holden at [] on the day of 19 , for the payment of £ for debt [or damages] and costs, and subsequent costs have been incurred in pursuance thereof amounting to :

And whereas the defendant¹ has made default in payment of payable in pursuance of the said judgment [or order] :

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant [name the defendant against whom judgment summons was issued] was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [or order] to satisfy the sum then due and payable in pursuance of the said judgment [or order], and to show cause why he should not be committed to prison for such default, which summons has been proved to this court to have been personally and duly served on the said defendant :

And whereas, at the hearing of the said summons, it has now been proved to the satisfaction of the court that the said defendant now has [or has had since the date of the said judgment [or order]], the means to pay the sum due and payable in pursuance of the said judgment [or order], and refuses [or neglects] [or has refused or neglected] to pay the same, and the said defendant has shown no cause why he should not be committed to prison.

Now, therefore, it is ordered that, for such default as aforesaid, the said defendant shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged, or shall file such affidavit as is mentioned in Order XXV. Rule 43, of the County Court Rules.

These are therefore to require you, the said high bailiff, bailiffs, and others, to take the said defendant and to deliver him to the governor of the [prison used by the court], and you the said governor to receive the said defendant, and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of the court this [insert date of order] of 19 .

Registrar.

	£	s.	d.
Sum in payment of which defendant had made default at time of issue of judgment summons			
Fees and costs on issue and hearing of judgment summons			
Deduct amount paid into court since issue of judgment summons			
Poundage on this order			
Sum on payment of which the debtor is to be discharged			

This order remains in force for one year only from the date hereof, unless such time is extended under Order XXV. Rule 46.

Add when so ordered—The time during which this order is to remain in force was on the day of extended by order of the judge to the day of 19 .

Registrar.

Amended by County Court Rules, 1926 (No. 1).

188.

Indorsement of Order of Commitment sent to and issued by a Foreign Court.To the governor of the [*here insert name of prison of foreign court*].51 & 52 Vict.
c. 43, s. 158.Order 25,
Rule 41.

Take notice that in accordance with the provisions of section one hundred and fifty-eight of the County Courts Act, 1888, this order of commitment has been sent to me, and issued by me to the high bailiff of this court, and that the debtor, if apprehended within the jurisdiction of this court, is to be conveyed to the prison of this court, and is to be there kept for the time mentioned in the order of commitment, unless sooner discharged by law.

Dated this day of 19 .

Registrar.

188A.

Entry of Part Payment on Order of Commitment.Order 25,
Rules 48a (4),
49a (4).

Where part payment is made after the issue of an Order of Commitment the amount paid is to be entered in ink on the face of the order and deducted from the sum on payment of which the debtor is to be discharged, and the entry signed by the bailiff or gaoler, in the following form:—

Sum on payment of which the debtor is to be discharged

Deduct amount paid since issue of order

Balance on payment of which the debtor is to be discharged

(Signed)

£ s. d.

Bailiff [*or Gaoler*].

189.

Order of Commitment on Judgment or Order of a Court other than a County Court.32 & 33 Vict.
c. 62, s. 5.Order 25,
Rule 44.

The Debtors Act, 1869.

In the [*title of court ordering commitment*].

No. of plaint.

No. of judgment summons.

No. of order.

Between A. B., plaintiff,
and

C. D., defendant.

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and to the governor of the [*prison used by the court*].

Whereas the plaintiff obtained a judgment [*or an order*] against the defendant in the High Court of Justice [*as the case may be*] on the day of , 19 , for the sum of £ , and there is now due and payable under the said judgment [*or order*] the sum of :

And whereas a summons was, at the instance of the plaintiff, duly issued out of this court, by which the defendant [*name the defendant against whom judgment summons was issued*] was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [*or order*] to pay the said sum, in payment of which he had made default, and to show cause why he should not be committed to prison for such default, which summons has been proved to this court to have been personally and duly served on the said defendant :

And whereas, at the hearing of the said summons, it has now been proved to the satisfaction of the court, that the said defendant now has [*or has had since the date of the said judgment [or order]*] the means to pay the sum due and payable under the said judgment [*or order*] and refuses [*or neglects*] [*or has refused or neglected*] to pay the same, and the said defendant has shown no cause why he should not be committed to prison:

Now, therefore, it is ordered, that for such default as aforesaid the said defendant [*naming him*] shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged, or shall file such affidavit as is mentioned in Order XXV. Rule 43, of the County Court Rules.

These are, therefore, to require you the said high bailiff, bailiffs, and others, to take the defendant [*naming him*] and to deliver him to the governor of the [*prison used by the court*], and you the said governor to receive the said defendant, and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of the court this [*insert date of order*] day of 19 .

Registrar.

	£	s.	d.
Amount remaining due under judgment [<i>or order</i>] at time of issue of judgment summons.			
Fees and costs on issue and hearing of judgment summons			
Deduct amount paid into court since issue of judgment summons			
Poundage on this order			
Sum on payment of which the debtor is to be discharged			

This order remains in force for one year only from the date hereof, unless such time is extended under Order XXV. r. 46.

Add when so ordered: The time during which this order is to remain in force was on the day of extended by order of the judge to the day of , 19 .

Registrar.

190.

Order on Judgment Summons on a Judgment or Order against a Firm, or a Person carrying on Business in a Name other than his own, altering the Original Judgment or Order.

The Debtors Act, 1869.

No. of plaintiff.

No. of judgment summons.

32 & 33 Vict.,
c. 62, s. 5.
Order 25,
Rule 40.

In the county court of holden at .
Between . . . plaintiff,
and . . . defendants.

Address,
Description.

[*State name, address, and description, as in the original summons, with any amendment made by the court.*]

Whereas the plaintiff obtained a judgment [*or an order*] against the

defendants by and in the name of above described in this court [*or* in the county court of holden at *or* in the High Court of Justice, *or as the case may be*] on the day of 19 , for the sum of £ [and costs], and there is now due and payable under the said judgment [*or order*] from the said defendants to the said plaintiff the sum of £ :

And whereas the said plaintiff having filed an affidavit in this court, wherein it was alleged that [*state the name, address, and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof, or of the person alleged to be carrying on business in a name other than his own*] was liable as one of the partners in [*or* the sole member of] the said firm of [*or as the person carrying on business on his own behalf in the name of*] to pay the sum payable under the said judgment [*or order*], a summons was, at the instance of the said plaintiff, duly issued out of this court, by which the said was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [*or order*] to pay the said sum of £ , and notice was thereby given to the said that if he denied that he was liable as one of the partners in [*or* the sole member of] the said firm of [*or as the person carrying on business on his own behalf in the name of*] to pay the sum payable under the said judgment [*or order*] he must appear at this court on the day above mentioned, and that in default of his so appearing he would be deemed to admit his liability as aforesaid to pay the amount due and payable under the said judgment [*or order*] :

And whereas the said summons came on for hearing this day, and the said summons has been proved to this court to have been personally and duly served on the said :

And whereas the said did not appear at the hearing of the said summons :

[*or* And whereas the said appeared at the hearing of the said summons, and admitted his liability as one of the partners in [*or* the sole member of] the said firm of [*or as the person carrying on business on his own behalf in the name of*] to pay the sum payable under the said judgment [*or order*] :

[*or* And whereas the said appeared at the hearing of the said summons, and denied that he was liable as one of the partners in [*or* the sole member of] the said firm of [*or as the person carrying on business on his own behalf in the name of*] to pay the sum payable under the said judgment [*or order*], but proof has been made to the satisfaction of the court that the said is liable as one of the partners in [*or* the sole member of] the said firm of [*or as the person carrying on business on his own behalf in the name of*] to pay the said sum :]

Acknowledgment of
payment into Court.

Date.	£	s.	d.	Received by

It is ordered, that the said do pay the amount still due on the said judgment [*or order*], and the costs of the said summons and its hearing, as stated at the foot of this order, to the registrar of this court, by instalments of £ for every days; the first payment to be made on the day of 19 .

Given under the seal of the court, this day of 19 .

Registrar.

Amount remaining due under judgment [*or order*] . . .
Costs of judgment summons and its hearing . . .

£	s.	d.

191.

Order of Commitment on a Judgment Summons on a Judgment or Order against a Firm, or a Person carrying on Business in a Name other than his own.

The Debtors Act, 1869.

No. of plaint.

32 & 33 Vict.
c. 62, s. 5.

No. of judgment summons.

Order 25,
Rule 46.

In the [title of court ordering commitment].

Between . . . plaintiff,

and

. . . defendants.

Address,
description.

[State name, address, and description, as in the original summons, with any amendment made by the courts.]

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and to the governor of the [prison used by the court].

Whereas the plaintiff obtained a judgment [or an order] against the defendants by and in the name of above described in this court [or in the county court of holden at , or in the High Court of Justice, or as the case may be] on the day of 19 , for the sum of £ [and costs], and there is now due and payable under the said judgment [or order] from the said defendants to the said plaintiff the sum of £ :

And whereas the said plaintiff having filed an affidavit in this court, wherein it was alleged that [state the name, address, and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof, or of the person alleged to be carrying on business in a name other than his own] was liable as one of the partners in [or the sole member of] the said firm of [or as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [or order] a summons was, at the instance of the said plaintiff, duly issued out of this court, by which the said was required to appear personally at this court on the day of 19 , to be examined on oath touching the means he had then or had had since the date of the said judgment [or order] to pay the sum due and payable under the said judgment [or order], and also to show cause why he should not be committed to prison for default in payment of the said sum, and notice was thereby given to the said that if he denied that he was liable as one of the partners in [or the sole member of] the said firm of [or as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [or order] he must appear at this court on the day above mentioned, and that in default of his so appearing he would be deemed to admit his liability as aforesaid to pay the amount due and payable under the said judgment [or order] :

And whereas the said summons came on for hearing this day, and the said summons has been proved to this court to have been personally and duly served on the said :

And whereas the said did not appear at the hearing of the said summons :

[or And whereas the said appeared at the hearing of the said summons, and admitted his liability as one of the partners in [or the sole member of] the said firm of [or as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [or order] :

[or And whereas the said appeared at the hearing of the said summons, and denied that he was liable as one of the partners in [or the sole member of] the said firm of [or as the person carrying on business on his own behalf in the name of] to pay the sum payable under the said judgment [or order], but proof has been made to the satisfaction of

the court that the said is liable as one of the partners in [*or* the sole member of] the said firm of [*or* as the person carrying on business on his own behalf in the name of] to pay the said sum]:

And whereas at the hearing of the said summons it has now been proved to the satisfaction of the court that the said now has [*or* has had since the date of the said judgment [*or* order]] the means to pay the sum due and payable under the said judgment [*or* order], and refuses [*or* neglects] [*or* has refused *or* neglected] to pay the same, and the said has shown no cause why he should not be committed to prison:

Now, therefore, it is ordered that for such default as aforesaid the said shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged, or shall file such affidavit as is mentioned in Order XXV. r. 43, of the County Court Rules.

These are therefore to require you the said high bailiff, bailiffs, and others, to take the said , and to deliver him to the governor of the [*prison used by the court*], and you the said governor to receive the said and him safely keep in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Given under the seal of this court, this [*insert date of order*] day of 19 .

Registrar.

	£	s.	d.
Amount remaining due under judgment [<i>or</i> order] at time of issue of judgment summons			
Fees and costs on issue and hearing of judgment summons			
Deduct amount paid into court since issue of judgment summons			
Poundage on this order			
Sum on payment of which the debtor is to be discharged			

This order remains in force for one year only from the date hereof, unless such time is extended under Order XXV. r. 46.

Add when so ordered: The time during which this order is to remain in force was on the day of extended by order of the judge to the day of 19 .

Registrar.

191A.

Notice to Debtor where Order of Commitment Made, but Directed to be Suspended.

The Debtors Act, 1869.

No. of plaint.

No. of judgment summons.

Order 25,
Rule 46 (2).

In the [*Title of Court ordering commitment*].

Between A. B., plaintiff,
and

C. D., defendant.

Take notice, that an order of commitment for your imprisonment for days was this day made by the judge of this court.
The order will not be put in force if the sum stated below be paid into

court on or before the day of , 19 [or by instalments of £ for every days, the first payment to be made on the day of , 19].

In default of payment within the time above mentioned [or of any instalment] a warrant may issue without further notice and you may be imprisoned for the period above mentioned unless you shall sooner pay the whole amount remaining due under the said order, and the poundage on the order.

Dated this day of , 19 £ s. d. Registrar.

Amount payable under the order

To the judgment debtor [naming him].

(Amended, C. C. (No. 1) Rules, 1928.)

192.

Affidavit under Order XXV. r. 43 or 44.

In the county court of holden at

Between A. B., plaintiff,
and

C. D., defendant.

I, C. D. of make oath and say,—

1. That under the Debtors Act, 1869, an order for my commitment was made by this court [or the county court of holden at], for making default in payment of £ , due from me in pursuance of a judgment [or an order] of the [here insert the court in which the judgment or order was given or made]

2. That on the day of 19 , I was adjudicated a bankrupt by the [here insert the court by which adjudication was made] [or That on the day of 19 , a receiving order was made for the protection of my estate by the [here insert the court by which the receiving order was made].

3. That the receiving order [or the order of adjudication] was published in the *London Gazette* on the day of 19 .

4. That the debt, in respect of which the above judgment [or order] was given [or made], was provable under the bankruptcy.

Sworn at

C. D.

Order 25,
Rules 43,
44.

192A.

Affidavit under Order XXV. r. 24a, 45a or 45b.

In the county court of holden at

Between A. B., plaintiff,
and

C. D., defendant.

I, C. D., of make oath and say,—

1. That on the day of 19 , a warrant of execution against my goods was issued by this court in consequence of default made by me in payment of £ , due from me in pursuance of a judgment [or an order] given [or made] against me on the day of 19 .
[or

1. That under the Debtors Act, 1869, an order for my commitment was made by this court [or the county court of holden at], for making default in payment of £ due from me in pursuance of a judgment [or an order] of the [here insert the court in which the judgment or order was given or made].]

2. That on the day of 19 , an order for the administration of my estate was made by the [here insert the court in which the order was made] under the provisions of section 122 of the Bankruptcy Act, 1883, as shown by the certificate of the registrar of that court hereto annexed.

3. That the debt in respect of which the above judgment [or order] was given [or made] has been notified to the court by which the said order for administration was made, and the plaintiff who obtained the said judgment [or order] has not obtained leave to proceed from that court, as appears from the certificate of the registrar hereto annexed.

Sworn at

C. D.

Order 25,
Rules 24a,
45a, 45b.

193.

Certificate under Order XXV. r. 24b or 45c.Order 25,
Rules 24b,
45c.

In the county court of _____ holden at _____
 I hereby certify that an order for the administration of the estate of
 C. D., of [here insert address and description of debtor], was made by this
 court under the provisions of section 122 of the Bankruptcy Act, 1883, on
 the _____ day of _____, 19____, and that a debt of £ _____ has been notified by
 the said C. D., to this court as being due from him to [here insert the
 name, address, and description of the creditor whose name the debtor
 wishes to be inserted], and that the said [here insert the name of creditor]
 has not obtained leave to proceed from this court.

Dated this _____ day of _____ 19____.

Registrar.

194.

Certificate by Registrar for Discharge of Judgment Debtor.

The Debtors Act, 1869.

Order 25,
Rule 44.

In the county court of _____ holden at _____
 Between A. B., plaintiff,
 and
 C. D., defendant.

I hereby certify that the defendant, who was committed to your custody
 by virtue of an order of commitment under the seal of this court [or the
 county court of _____ holden at _____], bearing date the _____ day of
 19____, has filed an affidavit in this court, stating that [here insert statement
 in affidavit]; and that the defendant may, in respect of such order, be
 forthwith discharged out of your custody.

Given under the seal of the court this _____ day of _____ 19____.

Registrar.

To the governor of the
 [prison used by the court].

195.

Certificate of Payment by Prisoner.

The Debtors Act, 1869.

[Heading as in Form 194.]

Order 25,
Rules 49, 51.

I hereby certify that the defendant, who was committed to my [or your]
 custody by virtue of an order of commitment under the seal of this court
 [or of the county court of _____ holden at _____], bearing date the
 day of _____ 19____, has paid and satisfied the sum of money for the non-pay-
 ment whereof he was so committed, together with all costs due and payable
 by him in respect thereof; [add, where the certificate is sent by the
 registrar, and that the defendant may, in respect of such order, be forth-
 with discharged out of your custody].

Dated [or given under the seal of the court] this _____ day of _____ 19____.
 Governor of _____ [or registrar of the county
 court of _____ holden at _____].

To the governor of _____ [or the registrar of the county court of
 holden at _____].

196.

Request by Creditor for Discharge of Prisoner.

The Debtors Act, 1869.

[Heading as in Form 194.]

Order 25,
Rule 50.

I, the undersigned A. B., the plaintiff in this action, request that the de-
 fendant C. D., if still in custody, may be discharged.

To the registrar.

A. B.

197.

Certificate for Discharge of Prisoner at Request of Creditor.

The Debtors Act, 1869.

[*Heading as in Form 194.*]Order 25,
Rule 50.

I hereby certify that C. D., who was committed to your custody by virtue of an order of commitment under the seal of this court [*or of the county court of* holden at] bearing date the day of 19 , may, in respect of such order, be forthwith discharged out of your custody
 Registrar of the county court of
 holden at .

To the governor of

198.

Affidavit for Leave to Summon Garnishee.Order 26,
Rules 1, 2.

I, A. B., of in the county of , [*or*, I, C. D., of, &c., solicitor to] the above-named plaintiff, make oath and say:

1. That I [*or* A. B.], on the day of recovered judgment [*or* obtained an order] in the county court of , holden at , in this action [*or* matter] against the above-named defendant, for the sum of £ , for debt [*or* damages] and costs [*or* for payment of the sum of £ and £ for costs].

2. That the said judgment is still wholly unsatisfied [*or* is still unsatisfied as to the sum of £].

[*Or* 2. That the whole [*or* £ part] of the sum payable under the said order is still unsatisfied.]

3. That M. N., of in the county of , is indebted to the defendant in the sum of £ . [*Add, if so, for payment of which sum the defendant recovered judgment [*or* obtained an order] in this court against the said M. N. on the day of 19 , and by the said judgment [*or* order] it was ordered that the said M. N. should pay the said sum of £ to the registrar of this court on the day of 19 [*or* by instalments of for every days], and the sum of £ remains due and unpaid under the said judgment [*or* order].]*

4. That the said M. N. is in respect of the said debt to the defendant within the jurisdiction of this court, and could be [*or* has been] sued in respect thereof in this court (a) on the following ground, viz. :—

(a) that the said M. N. resides [*or* carries on business] within the district of this court:

[*Or* (b) that the said M. N. resided [*or* carried on business] within the district of this court within six calendar months next before this day of /]:

[*Or* (c) that the cause of action between the defendant and the said M. N. arose wholly or in part within the district of this court]:

[*Or* (d) that the said defendant resides [*or* carries on business] within the district of this court, and the said M. N. resides [*or* carries on business] within the district of the county court of , and could be sued in this court under section eighty-four of the County Courts Act, 1888.

Sworn, &c.

NOTE (a).—See Order 26, r. 1 (2).

199.

Summons to Garnishee.

No. of plaint.

Between A. B., plaintiff,
(*Address and description*)
and
C. D., defendant,
(*Address and description*)
and
M. N., garnishee,
(*Address and description.*)

Order 26,
Rules 1, 2.

Whereas the plaintiff at a court holden at on the day of 19 , recovered judgment [*or* obtained an order] against C. D. of [*name, address, and description*] for the sum of £ for debt [*or* damages] and costs, [*or* for payment of the sum of £ and £ for costs] which judgment [*or* order] remains unsatisfied as to the sum of £ .

And whereas the plaintiff has filed an affidavit stating that you are indebted to the said C. D. in the sum of £ :

You are hereby summoned to appear at a court to be holden at on the day of 19 , at the hour of in the noon, to show cause why an order should not be made upon you for the payment to the plaintiff of the amount of the debts due and owing and accruing from you to the said C. D., or so much thereof as will satisfy the debt due under the said judgment [*or* order] and the plaintiff's costs of this proceeding :

And take notice, that from and after the service of this summons upon you all such debts are attached to answer the said judgment [*or* order] :

And further take notice, that if you pay to the registrar of this court the amount of such debts, or so much thereof as will satisfy the debt due under the said judgment [*or* order] [and the fees and solicitor's costs indorsed on this summons], five clear days before the day upon which you are required to appear, you will incur no further costs.

Dated this day of 19 .

Registrar.

To [*the garnishee*].

	£	s.	d.
Amount remaining due under judgment [<i>or</i> order]			
Costs of this summons			
Solicitor's costs			
Total amount	£		

This summons is issued at the instance of , the above-named plaintiff [*or* solicitor for the above-named plaintiff], whose address for service is .

199A.

Notice to Judgment Debtor of Issue of Garnishee Summons.

[*Heading as in Garnishee Summons.*]

Order 26.
Rule 4a.

Take notice, that the garnishee summons, a copy of which is hereunto annexed, was issued on the day of , and served on the day of , and that if you have any cause to show why the court should not order M. N. , the garnishee named in the said summons, to pay to the judgment creditor the debt alleged to be due from the garnishee to you, or so much thereof as may be sufficient to satisfy the sum due to the judgment creditor from you, with the costs of the garnishee proceedings, you must appear at this court on the day of at the hour of in the noon, and show such cause accordingly.

Dated this day of 19 .

To (*the judgment debtor*).

Registrar.

199B.

Notice to Judgment Creditor of Payment into Court by Garnishee.

(1)

*Where Whole Claim paid in.**[Heading as in Garnishee Summons.]*

TAKE NOTICE, that the garnishee has paid into court the full amount of your claim in these proceedings, together with your costs therein.

*Order 26,
Rule 5 (2).*

The amount paid into court will, on application made by you on the day of at the hour of in the noon, be ordered to be paid out to you, unless cause is shown to the contrary; or you may apply for payment out on any earlier day, on the production of the consent in writing of the judgment debtor to the money paid into court being paid out to you.

Dated this day of 19 .

To *(the judgment creditor)*.

Registrar.

(2)

*Where part of Claim paid in.**[Heading as in Garnishee Summons.]*

TAKE NOTICE, that the garnishee has paid into court the sum of £ in respect of your claim in these proceedings, and the sum of £ in respect of fees and costs.

If you elect to accept the sum paid in in full satisfaction of your claim against the garnishee, and the costs you have incurred, and send to the registrar of this court and to the garnishee a written notice of such acceptance forthwith, by post, or by leaving the same at the registrar's office and at the garnishee's residence or place of business, the proceedings against the garnishee will abate, and you will not be liable to any costs incurred by the garnishee after receiving such notice, and the amount paid into court will, on application made by you on the day of at the hour of in the noon, be ordered to be paid out to you, unless cause is shown to the contrary; or you may apply for payment out on any earlier day, on the production of the consent in writing of the judgment debtor to the money paid into court being paid out to you.

In default of such notice the proceedings will proceed: and if you do not appear at the hearing you will be liable to pay to the garnishee such costs as he may incur for appearing at the hearing, or such other sum of money as the judge may order for expenses subsequent to the payment into court.

Dated this day of 19 .

To *(the judgment creditor)*.

Registrar.

200.

Notice to Judgment Debtor of Payment into Court by Garnishee.*[Heading as in garnishee summons.]*

Take notice, that M. N., the garnishee named in the proceedings herein, has paid into court the sum of £ .

*Order 26,
Rule 5 (3).*

And further take notice, that the said sum will be ordered to be paid out to the judgment creditor A. B. unless you appear at this court on the day of at the hour of in the noon, and show cause to the contrary.

Dated this day of 19 .

To *(the judgment debtor)*.

Registrar.

201.

Judgment on Garnishee Summons.*[Heading as in garnishee summons.]**Order 26,
Rules 7, 8.*

Whereas the plaintiff at a court holden at _____ on the _____ day of _____ 19____, recovered a judgment [*or obtained an order*] against C. D., of _____ for the sum of £ _____ for debt [*or damages*] and costs, [*or for payment of the sum of £ _____ and £ _____ for costs*], which judgment [*or order*] remains unsatisfied as to the sum of £ _____ :

And whereas the plaintiff having filed an affidavit stating that the above-named M. N. was indebted to the said C. D. in the sum of £ _____ the said M. N. was summoned to show cause why he should not be ordered to pay to the plaintiff the amount of the debts due and owing and accruing from him to the said C. D., or so much thereof as would satisfy the debt due under the said judgment [*or order*], and the plaintiff's costs of this proceeding :

And whereas the said M. N. has failed to appear before the court this day [*or has appeared before the court this day, and has failed to show cause why he should not be ordered to pay such debts*] [*or has shown sufficient cause why he should not be ordered to pay such debts*] to the plaintiff :

If the plaintiff is allowed his costs of the garnishee proceedings out of the debts found due from the garnishee to the defendant, and the amount of such debts, after deducting any costs which the garnishee is allowed to deduct from the amount due from him to the defendant, is not sufficient to satisfy such costs and the amount due under the judgment or order obtained by the plaintiff against the defendant, proceed as follows:—

It is ordered that the plaintiff do recover against the said M. N. the sum of £ _____, being the amount of the debts found due from the said M. N. to the said C. D., [*add, if so ordered, after deducting from such amount the sum of _____ which is hereby allowed to be deducted by the said M. N. from the amount of such debts for his costs of this proceeding*], and that the sum of £ _____ so recovered be applied first in payment of the costs of the plaintiff of this proceeding, amounting to the sum of £ _____, and secondly, so far as the same will extend, in satisfaction of the debt due under the said judgment [*or order*] obtained by the plaintiff against the said C. D.

[or, If the plaintiff is allowed his costs out of the debts, and the amount of such debts, after deducting any costs which the garnishee is allowed to deduct from the amount due from him to the defendant, is more than sufficient to satisfy such costs and the amount due under the judgment or order, proceed as follows:—

It is ordered that the plaintiff do recover against the said M. N. the sum of £ _____, being so much of the amount of the debts found due from the said M. N. to the said C. D. [*add, if so ordered, after deducting from such amount the sum of _____ which is hereby allowed to be deducted by the said M. N. from the amount of such debts for his costs of this proceeding*], as will be sufficient to satisfy the costs of the plaintiff of this proceeding, amounting to the sum of £ _____, and the debt due under the said judgment [*or order*] obtained by the plaintiff against the said C. D.]

[or, If the garnishee is ordered to pay costs personally, proceed as follows:—

It is ordered that the plaintiff do recover against the said M. N. the sum of £ _____, being the amount of the debts found due from the said M. N. to the said C. D. [*or, if such debts exceed the debt due under the judgment or order, being so much of the amount of the debts found due from the said M. N. to the said C. D. as will be sufficient to satisfy the debt due under the said judgment [or order] obtained by the plaintiff against the said C. D.*].

And it is further ordered that the plaintiff do recover against the said M. N. the sum of £ _____ for his costs of this proceeding, such last-mentioned sum to be paid by the said M. N. personally.]

[or, If judgment is given for the garnishee, proceed as follows:—

It is ordered that judgment be entered in this proceeding for the said M. N., and, if the plaintiff is ordered to pay costs, add, and that the plaintiff do pay the sum of £ _____ for the costs of the said M. N. of this proceeding.]

And proceed as follows :—

And it is ordered that the said M. N. do pay the said sum of £ [or the said sums of £ and £ amounting together to the sum of £] [or that the plaintiff do pay the said sum of £] to the registrar of this court on the day of 19, [or by instalments of £ for every days, the first instalment to be paid on the day of 19].

[If the garnishee is allowed to deduct any costs from the debts due from him to the defendant, add :—

And it is further ordered that the said M. N. be allowed the sum of £ for his costs of this proceeding, and the said sum is hereby allowed to him in part discharge of the debts due from him to the said C. D.]

202.

Execution against Garnishee.

[Heading as in Garnishee Summons.]

Whereas on the day of 19, the above-named plaintiff A. B. obtained a judgment in this court against the above-named M. N. whereby it was ordered that the plaintiff should recover against the said M. N. the sum of £ being, &c. [recite the judgment entered, according to Form 201] : and it was thereupon ordered that the said M. N. should pay the said sum of £ [or the said sums of £ and £, amounting together to the sum of £, to the Registrar on the day of [or by instalments of for every days :]

And whereas default has been made in payment according to the said order :

Order 26,
Rule 7.

These are therefore *[the same as in ordinary executions]*.

203.

Notice of Claim to Goods taken in Execution.

Take notice, that E. F. of has claimed the goods [or certain goods] *[where only certain goods are claimed here enumerate them]* taken in execution by me under the warrant of execution issued in this action. If within four days after receiving this notice you give notice to me that you admit the title of the said E. F. to the said goods, or request me to withdraw from possession, you will not be liable for any costs incurred after the receipt by me of your notice.

Dated, &c.

High Bailiff.

To *[the execution creditor]*.

Order 27,
Rule 1 (1).

204.

Notice by Execution Creditor of Admission of Title of Claimant or Request to Bailiff to withdraw.

Take notice, that I admit the title of E. F. to the goods seized by you [or that I request you to withdraw from possession] under the execution issued under the judgment in this action.

Order 27,
Rule 1 (2).

Execution creditor.

To the high bailiff.

205.

Notice to Claimant setting up Claim to Goods taken in Execution to make Deposit or give Security.

[Heading as in next Form.]

Whereas you, E. F., have claimed the goods [or certain goods] *[where only certain goods are claimed here enumerate them]* taken in execution by me under the warrant of execution issued in this action :

51 & 52
Vict. c. 43,
s. 156.

Order 27,
Rule 1 (3).

Take notice, that you are hereby required, in accordance with section 156 of the County Courts Act, 1888, either—

- (1) to deposit with me the amount of the value of the goods so claimed by you, such value to be fixed by appraisement in case of dispute, to be by me paid into court to abide the decision of the judge upon your claim; *or*
- (2) to deposit with me the costs of keeping possession of such goods until such decision can be obtained; *or*
- (3) to give me security by bond with sureties according to section 108 of the County Courts Act, 1888, and Ord. XXIX. of the County Court Rules for the value of the goods so claimed by you;

And further take notice, that in default of your making deposit or giving security the goods will be sold as if no such claim had been made by you, and the proceeds paid into court to abide the decision of the judge.

High Bailiff.

To

206.

Interpleader Summons to Execution Creditor.

Order 27,
Rule 2.

In the county court of

holden at

No. of Plaintiff.

Between A.B., plaintiff,

and

C.D., defendant,

and

E.F., claimant.

Whereas [*here insert the name, address, and description of claimant, so far as is then known*] has made a claim to [certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at your instance] [*or* certain rent alleged to be due to him in respect of and issuing out of the premises upon which certain goods and chattels were taken in execution under process issuing out of this court at your instance];

You are therefore hereby summoned to appear at a court to be holden at on the day of 19, at the hour of in the noon, when the said claim will be adjudicated upon, and such order made thereupon as to the court shall seem fit.

Dated this day of 19

Registrar.

To [*the execution creditor*].

NOTE.—*The claimant is called upon, five clear days at least before the day of hearing, to deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of his claim, and the high bailiff is required to forthwith send by post to you one of the copies of such particulars.*

207.

Interpleader Summons to Claimant setting up Claim to Goods or Proceeds thereof.

[*Heading as in Form 206.*]

[*Name, address, and description of claimant.*]

Order 27,
Rule 3.

You are hereby summoned to appear at a court to be holden at on the day of 19, at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or* to the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of [*the execution creditor*]; and in default of your then establishing such claim the said goods and chattels will then be sold, and the proceeds thereof paid over [*or* the said proceeds of sale [*or* value] will be paid over] according to the exigency of the said process;

And take notice, that you are hereby required, five clear days at least before the said day, to deliver to the high bailiff, or leave at my office, two copies of the particulars of the goods and chattels which [or the proceeds [or value] whereof] are claimed by you, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid, your claim will not be heard by the court.

The hearing fee must be paid before the case is called on.

To [the claimant above named].

208.

Interpleader Summons to Claimant setting up Claim to Rent in respect of the Premises upon which Execution was Levied.

[Heading as in Form 206.]

[Name, address, and description of claimant.]

You are hereby summoned to appear at a court to be holden at on the day of 19, at the hour of in the noon, to support a claim made by you to certain rent alleged by you to be due to you in respect of and issuing out of certain premises upon which certain goods and chattels were taken in execution under process issuing out of this court at the instance of [the execution creditor]; and in default of your then establishing such claim the said goods and chattels will then be sold, and the proceeds thereof paid over according to the exigency of the said process [or, if such goods and chattels shall have been then sold or the value thereof deposited in court, then the proceeds of such sale or the amount deposited will be paid over according to the exigency of the said process];

Order 27,
Rule 3.

And take notice, that you are hereby required, five clear days at least before the said day, to deliver to the high bailiff, or leave at my office, two copies of the particulars of the amount of the rent claimed by you, and of the period for which and the premises in respect of which you claim such rent, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid, your claim will not be heard by the court.

The hearing fee must be paid before the case is called on.

To [the claimant above named].

209.

Interpleader Summons to Execution Creditor and High Bailiff, where Claimant claims Damages as well as the Goods seized.

In the county court of holden at

No. of plaint.

Order 27,
Rule 3.

Between A. B., plaintiff,

and

C. D., defendant,

and between E. F., claimant,

and

[the execution creditor] and the high bailiff of this court, respondents.

Whereas [name, address, and description of claimant] has made a claim to certain goods and chattels [or to the proceeds of sale [or value] of certain goods and chattels] taken in execution under process issuing out of this court at your instance, and has also claimed from you and from the high bailiff of this court the sum of £ for damages arising out of the said execution:

You and the high bailiff are therefore hereby summoned to appear at a court to be holden at on the day of 19, at the hour of in the noon, when the said claim, both as to the said goods and chattels [or the proceeds of sale [or value] of the said goods and chattels], and

as to the said damages, will be adjudicated upon, and such order made thereupon as to the court shall seem fit.

To [the execution creditor] and to the high bailiff of this court.

NOTE.—*The claimant is called upon five clear days at least before the day of hearing to deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of his claim, and the high bailiff is required to forthwith send by post to the execution creditor one of the copies of such particulars.*

210.

Interpleader Summons to Claimant setting up Claim to Damages, as well as to the Goods or the Proceeds thereof.

[Heading as in Form 209.]

[Name, address, and description of claimant.]

Order 27,
rule 3.

You are hereby summoned to appear at a court to be holden at on the day of 19 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [or to the proceeds of sale [or value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of [the execution creditor], and also for damages arising out of such execution, and, in default of your then establishing such claim, the said goods and chattels will then be sold and the proceeds thereof paid over [or the said proceeds of sale [or value] will be paid over], according to the exigency of the said process;

And take notice, that you are hereby required five clear days at least before the said day to deliver to the high bailiff, or leave at my office, two copies of the particulars of the goods and chattels which [or the proceeds [or value] whereof] are claimed by you, and of the grounds of your claim, and you must also state in such particulars the amount of the damages you claim, and the party from whom you claim the same, and the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid your claim will not be heard by the court,

The hearing fee must be paid before the case is called on.

To [the claimant above named].

211.

Particulars of Claim under Interpleader Summons.

[Not to be printed.]

[Heading as Interpleader Summons.]

Order 27,
Rules 5, 8.
Order 33,
Rule 10.

Take notice, that I, E. F., of [address and description] claim certain goods and chattels [or the proceeds of sale [or value] of certain goods and chattels] to wit [specify them, or add, as specified in the schedule hereunder written] taken in execution under process issuing out of this court in this action, and mentioned in the interpleader summons herein, and that the grounds of my claim are that the said goods and chattels were assigned to me by an indenture dated the day of , and made between the said , the above-named defendant, of the one part, and me, the said E. F., the claimant of the other part.

And further take notice that I claim the sum of £ from the said A. B., the plaintiff and the high bailiff of this court, for damages arising out of the said execution; and that the grounds of my claim are that they broke and entered my said house at aforesaid, and that they there seized and took away the said goods and chattels under the said execution.

Dated, &c.

(Signed) E. F., Claimant.

To the execution creditor, and the high bailiff of this court.

212.

Particulars of Claim for Rent under Interpleader Summons.[*Not to be printed.*][*Heading as in Interpleader Summons.*]

Take notice, that C. D. , the defendant, is my tenant of [*describe the premises*] situate at in the county of , and that the goods and chattels taken in execution under process issuing out of this court in this action, and mentioned in the interpleader summons herein, were in and upon the said [*house and premises*], and that there was at the date of the said execution due to me from the said C. D. the sum of £ for [*one year's*] rent of the said [*house and premises*], and that the same is still due and owing from the said C. D. to me, and that I claim payment of the said sum of £ out of the proceeds of the said execution.

Order 27,
Rule 5.

Dated this day of

(Signed) E. F. [*name, address, and description*],To [*the execution creditor*] and the
high bailiff of this court.

212A.

Order for Sale of Goods taken in Execution, but claimed by a Claimant as Security for a Debt.[*Heading as in Action, or if Interpleader Summons issued, Heading as in Summons.*]

Upon the application of , and upon hearing , and the execution creditor undertaking to secure any persons entitled to priority over him against any loss by reason of the sale hereinafter directed :

Order
Rule 13.

It is ordered that the high bailiff do proceed to sell enough of the goods seized under the warrant of execution issued in this action to satisfy—

- (1) the expenses of and incident to the sale ;
- (2) the rent [*if any*] duly claimed by the landlord of the premises on which the goods were seized ;
- (3) the taxes [*if any*] charged upon the execution debtor, and in arrear or payable for the year in which the goods were seized, not exceeding the taxes for one year ;
- (4) the claim of the claimant E. F.
- (5) the costs of the high bailiff in relation to the execution in this action ; and
- (6) the claim of the execution creditor in this action.

And it is further ordered that the high bailiff do, after deducting the expenses of and incident to the sale, pay the rent and taxes claimed and charged as above-mentioned, and do pay the balance of the proceeds of sale into court, and that the registrar do apply such balance in payment of the various sums herein mentioned in the order herein mentioned, and that the ultimate balance [*if any*] of such proceeds be paid to the execution debtor :

But if the proceeds of sale shall be insufficient to pay any of the sums herein directed to be paid in priority to the claim of the execution creditor

then it is ordered that the execution creditor do pay so much of the said sums as such proceeds shall be insufficient to pay to the several parties entitled thereto respectively :

And any of the parties are to be at liberty to apply to the court as they may be advised.

213.

Order on Interpleader Summons where Claim is not established.

[Not to be printed, but to be used as a precedent.]

[Heading as in Interpleader Summons.]

*Order 27,
Rule 14
Order 33,
Rule 18.* It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* the proceeds of sale [*or* value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of [*the execution creditor*], [*or* to certain rent alleged to be due to him in respect of and issuing out of certain premises upon which certain goods and chattels were taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], that the said goods and chattels [*or* proceeds of sale [*or* value]] are not the property of the said E. F. [*or* that there is no rent due to the said E. F.].

And it is ordered, that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the said [*execution creditor*], on or before the day of , 19 .

[Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court, or, in the case of an interpleader transferred from the High Court, any moneys in the hands of the sheriff, are to be disposed of, and an order on the sheriff to deal with such moneys accordingly: for example, thus—

Hearing fee. And it is ordered that the said E. F. do on or before the day of pay the sum of £ , being the fee payable on the hearing of this proceeding estimated on the sum of £ , to the registrar of this court :

Disposal of deposit or proceeds of sale. And it is ordered that out of the sum of £ paid into court in this proceeding by the high bailiff, being the value of the said goods and chattels deposited by the said E. F. with the said high bailiff [*or* being the proceeds of the sale by the said high bailiff of the said goods and chattels] the sum of £ be paid to the said high bailiff for possession money and charges in respect of the said execution, and that the balance of the said sum of £ be paid to the said [*execution creditor*] in satisfaction, so far as the same will extend, of the sum in respect of which the said execution issued :]

[Or, where security given for value of goods :

Where security given for value of goods. And it is ordered that the said E. F. do on or before the day of pay to the registrar of this court the sum of £ , being the value of the said goods and chattels, and that in default of such payment the high bailiff do proceed to enforce the security given by the said E. F. for such value :

And it is ordered that all moneys paid by the said E. F. in respect of the said sum of £ , or recovered by the enforcement of the said security, be applied first in payment to the high bailiff of the sum of £ for the possession money and charges payable to him in respect of the said execution, and then in payment to the said [*execution creditor*], so far as the same will extend, of the sum in respect of which the said execution issued.]

[Or, in the case of an interpleader transferred from the High Court :

And it is ordered that the sheriff of do forthwith after service of this order upon him pay to the said [execution creditor] the sum of £ paid to the said sheriff by the said E. F. pursuant to the order of Master

dated the day of , 19 , [or the moneys in the hands of the said sheriff, representing the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the order of Master dated the day of , 19 ,] [or that the sum of £ paid into court by the sheriff of , pursuant to the order of Master dated the day of , 19 , being the amount paid to the said sheriff by the said E. F. pursuant to the said order [or the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the said order] be paid to the said [execution creditor], after deducting from the said sum [or moneys] the charges of the said sheriff in respect of the said execution, [such charges to be taxed by the registrar in case of dispute :]

And it is further ordered that the said E. F. do pay to the said sheriff his costs of this proceeding down to and including the order directing this proceeding to be transferred to this court, such costs in case of dispute to be taxed by the registrar, and paid by the said E. F. to the registrar for the use of the sheriff within days from the date of the certificate of taxation.]

To [the claimant] and to the high bailiff [or the sheriff of].

Interpleader transferred from High Court.

Disposal of moneys in hands of or paid into court by sheriff.

Costs of sheriff.

214.

Order on Interpleader Summons where Claim is established.

[Not to be printed, but to be used as a precedent.]

[Heading as in Interpleader Summons.]

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [or the proceeds of sale [or value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [execution creditor], [or to certain rent alleged to be due to him in respect of and issuing out of certain premises on which certain goods and chattels were taken in execution under process issuing out of this court at the instance of the said [execution creditor], that the said goods and chattels [or proceeds of sale] [or value] [or part of the said goods and chattels or proceeds of sale or value, to wit, specifying them or it] are the property of the said E. F. [or that rent to the amount of £ is due to the said E. F.].

And it is ordered, that the said [execution creditor] do pay the sum of £ for costs to the registrar of this court, for the use of the said E. F., on or before the day of 19

[Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court, or, in the case of an interpleader transferred from the High Court, any moneys in the hands of the sheriff, are to be disposed of, and an order on the sheriff to deal with such moneys accordingly: for example, thus—

And it is ordered, that the said [execution creditor] do, on or before the day of 19 , pay the sum of £ , being the fee payable on the hearing of this proceeding, estimated on the sum of £ , to the registrar of this court:—

And it is ordered that the sum of £ paid into court in this proceeding by the high bailiff, being the value of the said goods and chattels

Order 27, Rule 14.
Order 33, Rule 18.

Hearing fee.

Disposal of deposit or proceeds of sale.

deposited by the said E. F. with the said high bailiff [or being the proceeds of the sale by the said high bailiff of the said goods and chattels] be paid to the said E. F. :]

Where security given for value of goods.

[Or, where security given for value of goods :

And it is ordered, that the security given by the said E. F. for the value of the said goods and chattels be delivered up to the said E. F. to be cancelled :]

Where costs of keeping possession deposited.

[Or, where the costs of keeping possession of the goods have been deposited with the high bailiff :

And it is ordered, that the sum of £ deposited by the said E. F. with the high bailiff for the costs of keeping possession of the said goods and chattels be forthwith repaid by the said high bailiff to the said E. F. :]

High bailiff's possession money and charges.

And it is ordered that the said [execution creditor] do, on or before the day of , 19 , pay to the registrar of this court, for the use of the high bailiff the sum of £ for possession money and charges in respect of the said execution.

Interpleader transferred from High Court.

[Or, in the case of an interpleader transferred from the High Court :

And it is ordered, that the sheriff of do forthwith after service of this order upon him pay to the said E. F. the sum of £ paid to the said sheriff by the said E. F. pursuant to the order of Master

Disposal of moneys in hands of or paid into court by sheriff.

dated the day of , 19 :] [or the moneys in the hands of the said sheriff representing the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the order of Master dated the day of , 19 :] [or that the sum of £ paid into court by the sheriff of pursuant to the order of Master dated the day of , 19 , being the amount paid to the said sheriff by the said E. F. pursuant to the said order [or the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the said order], be paid to the said E. F.

Possession money since date of Master's order.

And it is ordered, that the said [execution creditor] do, on or before the day of 19 , pay to the registrar of this court, for the use of the said E. F. the sum [if any] paid by the said E. F. to the said sheriff for possession money from the date of the said order of Master :

Costs of sheriff.

And it is ordered that the said [execution creditor] do pay to the said sheriff his cost of the said execution and of this proceeding down to and including the order directing this proceeding to be transferred to this court, such costs in case of dispute to be taxed by the registrar and to be paid by the said [execution creditor] to the registrar for the use of the sheriff within days from the date of the certificate of taxation.]

To [the execution creditor]

and to the high bailiff

[or the sheriff of].

215.

Order on Interpleader Summons where both Goods and Damages are claimed, and the Claim to neither is established.

[Not to be printed, but to be used as a precedent.]

[Heading as in Interpleader Summons.]

Order 27,
Rule 14.

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [or the proceeds of sale [or value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [execution creditor] and for damages arising out of the said execution, and which the said E. F. claims against [the execution creditor] and the high bailiff of this court, that the said goods and chattels

[*or proceeds of sale*] [*or value*] are not the property of the said E. F., and that the said E. F. is not entitled to recover any damages from either [*the execution creditor*] or the high bailiff of this court :

And it is ordered that the said E. F. do pay to the registrar of this court the sum of £ for costs for the use of the said [*execution creditor*], and the sum of £ for costs for the use of the high bailiff of this court, on or before the day of 19 .

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees or other charges or expenses ; also directions as to how any moneys paid into court are to be disposed of ; see Form 213.*]
To [*the claimant*].

216.

Order on Interpleader Summons where both Goods and Damages are claimed, and the Claim to both is established.

[*Not to be printed, but to be used as a precedent.*]

[*Heading as in Interpleader Summons.*]

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or the proceeds of sale*] [*or value*] of certain goods and chattels taken in execution under process issuing out of this court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which the said E. F. claims against [*the execution creditor*] and the high bailiff of this court, that the said goods and chattels [*or proceeds of sale*] [*or value*] [*or part of the said goods and chattels or proceeds of sale or value*], to wit [*specifying them or it*] are the property of the said E. F., and that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the said [*execution creditor*] and the high bailiff of this court :

Order 27,
Rule 14.

[*Or*, and that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the said [*execution creditor*], but is not entitled to recover any damages against the high bailiff of this court :]

[*Or*, and that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the high bailiff of this court, but is not entitled to recover any damages against the said [*execution creditor*] :

And it is ordered, that the said [*execution creditor*] and the high bailiff of this court do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 :

[*Or*, that the said [*execution creditor*] do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 , and that the said E. F. do pay the sum of £ for costs, to the registrar of this court, for the use of the high bailiff of this court, on or before the day of 19 :]

[*Or*, that the high bailiff of this court do pay the said sum of £ for damages, and the sum of £ for costs, and that the said [*execution creditor*] do pay the sum of £ for costs to the registrar of this court for the use of the said E. F., on or before the day of 19 :]

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses ; also directions as to how any moneys paid into court are to be disposed of ; see Form 214.*]

To [*the execution creditor*] and
the high bailiff.

217.

Order on Interpleader Summons where both Goods and Damages are claimed and the Claim to the Goods is, but that to Damages is not, established.

[Not to be printed, but to be used as a precedent.]

[Heading as in Interpleader Summons.]

Order 27,
Rule 14.

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [or the proceeds of sale [or value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [execution creditor], and for damages arising out of the said execution, and which the said E. F. claims against [the execution creditor] and the high bailiff of this court, that the said goods and chattels [or proceeds of sale] [or value] [or part of the said goods and chattels or proceeds of sale or value], to wit, [specifying them or it] are the property of the said E. F., but that the said E. F. is not entitled to recover any damages from either [the execution creditor] or the high bailiff of this court:

And it is ordered that [the execution creditor] do pay to the registrar of this court the sum of £ for costs, for use of the said E. F., on or before the day of 19, and that the said E. F. do pay to the registrar of this court the sum of £ for costs, for the use of the high bailiff of this court, on or before the day of 19.

[Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court are to be disposed of; see Form 214.]

To the [execution creditor] and
to E. F. [the claimant].

218.

Order on Interpleader Summons where both Goods and Damages are claimed, and the Claim to the Goods is not, but the Claim to Damages is, established.

[Not to be printed, but to be used as a precedent.]

[Heading as in Interpleader Summons.]

Order 27,
Rule 14.

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [or the proceeds of sale [or value] of certain goods and chattels] taken in execution under process issuing out of this court at the instance of the said [execution creditor], and for damages arising out of the said execution, and which the said E. F. claims against [the execution creditor] and the high bailiff of this court, that the said goods and chattels [or proceeds of sale [or value]] are not the property of the said E. F., but that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the said [execution creditor] and the high bailiff of this court.

[Or, but that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the said [execution creditor], but is not entitled to recover any damages against the high bailiff of this court:

[Or, but that the said E. F. is entitled to recover the sum of £ for damages arising out of the said execution against the high bailiff of this court, but is not entitled to recover any damages against the said [execution creditor]:]

And it is ordered that the said [execution creditor] and the high bailiff of this court do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19:

[Or, that the said *[execution creditor]* do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 , and that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the high bailiff of this court, on or before the day of 19 :]

[Or, that the high bailiff of this court do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 , and that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the said *[execution creditor]*, on or before the day of 19 :]

[Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court are to be disposed of; see Form 213.]

To E. F. *[the claimant]*,
and to *[execution creditor]*,
and the high bailiff.

219.

Order on Interpleader Summons where both Goods and Damages are claimed, and Money is paid into Court in respect of the latter, and the Claim to the Goods is established, and the Money paid into Court is found to be sufficient to satisfy the Damages.

[Not to be printed, but to be used as a precedent.]

[Heading as in Interpleader Summons.]

It is this day adjudged, touching the claim of E. F. to certain goods and chattels *[or the proceeds of sale [or value] of certain goods and chattels]* taken in execution under process issuing out of this court at the instance of the said *[execution creditor]*, and for damages arising out of the said execution, and which the said E. F. claims against the said *[execution creditor]* and the high bailiff of this court, and in respect of which damages the said *[execution creditor]* *[or the said high bailiff]* has paid into court the sum of £ , that the said goods and chattels *[or proceeds of sale]* *[or value]* *[or part of the said goods and chattels or proceeds of sale or value]*, to wit, *[specifying them or it]* are the property of the said E. F., but that the said sum paid into court is sufficient to satisfy all damages arising out of the said execution which the said E. F. is entitled to recover against the said *[execution creditor]* *[or the said high bailiff]* *(as the case may be)*:

Order 27,
Rule 14

And it is ordered that the said *[execution creditor]* do pay the sum of £ for costs to the registrar of this court for the use of the said E. F., on or before the day of 19 :

And that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the high bailiff of this court, on or before the day of 19 , *[or such other order as the judge shall think fit to make as to costs]*.

[Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any moneys paid into court are to be disposed of; see Form 214.]

To E. F. *[the claimant]*,
and to *[execution creditor]*,
and to the high bailiff.

220.

Order on Interpleader Summons where both Goods and Damages are claimed, and Money is paid into Court in respect of the latter, and the Claim to the Goods is established, and the Money paid into Court is adjudged insufficient.

[Not to be printed, but to be used as a precedent.]

[Heading as in Interpleader Summons.]

*Order 27,
Rule 14.* It is this day adjudged, touching the claim of E. F. to certain goods and chattels [or the proceeds of sale] [or value] of certain goods and chattels taken in execution under process issuing out of this court at the instance of the said [execution creditor], and for damages arising out of the said execution, and which E. F. claims against the said [execution creditor] and the high bailiff of this court, and in respect of which damages the said [execution creditor] [or the said high bailiff] has paid into court the sum of £ , that the said goods and chattels [or proceeds of sale] [or value] [or part of the said goods and chattels or proceeds of sale or value], to wit, [specifying them or it] are the property of the said E. F., and that the said sum of £ paid into court is not sufficient to satisfy the damages arising out of the said execution, and that the said E. F. is entitled to recover the further sum of £ for damages against the said [execution creditor] and the high bailiff of this court :
[Or, and that the said E. F. is entitled to recover the further sum of £ for damages against the said [execution creditor], but is not entitled to recover any further damages against the high bailiff of this court :]
[Or, and that the said E. F. is entitled to recover the further sum of £ for damages against the high bailiff of this court, but is not entitled to recover any further damages against the said [execution creditor] :]
And it is ordered that the said [execution creditor] and the high bailiff of this court do pay the said further sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 :
[Or, that the said [execution creditor] do pay the said further sum of £ for damages, and the sum of £ for costs, to the registrar of this court, for the use of the said E. F., on or before the day of 19 , and that the said E. F. do pay the sum of £ for costs to the registrar of this court, for the use of the high bailiff of this court, on or before the day of 19 :]
[Or, that the high bailiff of this court do pay the said further sum of £ for damages, and the sum of £ for costs, and that the said [execution creditor] do pay the sum of £ for costs to the registrar of this court, for the use of the said E. F., on or before the day of 19 :]

[Insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses ; also directions as to how any moneys paid into court are to be disposed of ; see Form 214.]

To E. F. [the claimant],
and to [execution creditor],
and to the high bailiff.

221.

Warrant of Execution against Goods of Claimant.

[Heading as in Interpleader Summons.]

Whereas at a court holden at on the day of 19 the plaintiff, by the judgment of the said court, recovered against the defendant the sum of £ for debt [or damages] and for costs :

And whereas the defendant, by an order of the court, was ordered to pay the same to the registrar of the court :

And whereas default having been made in payment according to the said order, an execution issued against the goods of the defendant, under which certain goods and chattels were seized, in respect of which E. F.,

of [address and description] made claim, and which claim was heard and decided upon at a court holden at . . . on the . . . day of . . . , 19 . . . , and it was adjudged that the goods so seized under the said execution were not the property of the said E. F. [or that certain rent alleged by the said E. F. . . . to be due to him in respect of and issuing out of certain premises on which the said goods and chattels were seized was not so due] :

And it was ordered that the said E. F. . . . should pay the sum of £ . . . for costs to the registrar of the court, for the use of the said [plaintiff], on or before the . . . day of . . . 19 . . . :

And whereas default has been made in payment according to the said last-mentioned order :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said E. F., wheresoever they may be found within the district of this court (except the wearing apparel and bedding of the said E. F. . . . or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this execution ; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for the money of the said E. F., . . . which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this . . . day of . . . 19 . . .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Costs adjudged			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said E. F.

Application was made to the registrar for this warrant at . . . minutes past the hour of . . . in the . . . noon of the . . . day of . . . 19 . . .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

222.

Claim by Execution Creditor for Damages against High Bailiff.

[Not to be printed.]

[Heading as in Interpleader Summons, adding thereto]—

and between . . .

A. B., execution creditor

claimant,

and . . .

respondent,

Take notice that I, A. B., . . . the execution creditor in the above action, claim the sum of £ . . . from you the high bailiff of this court, for

Order 27,
Rule 9.

damages arising out of the execution in this action, and that the grounds of my claim are as follows: [*here state the grounds of the claim, e.g., for that you having seized certain goods and chattels of and belonging to C. D., the execution debtor, under process issued from this court at my instance, wrongfully, and without lawful excuse, withdrew from the possession of the said goods and chattels, whereby I was deprived of the fruits of the said execution*].

[And further take notice, that I shall apply to the judge at the hearing of the interpleader summons herein to adjudicate upon such claim].

Dated this day of 19 Execution creditor.
To the high bailiff
of this court.

223.

**Order on Claim for Damages by Execution Creditor against High Bailiff
where the Claim is established.**

[*Not to be printed.*]

[*Heading as in Form 222.*]

Order 27,
Rule 14.

It is this day adjudged, touching the claim of , the execution creditor in this action, against the high bailiff of this court, for damages arising out of an execution in this action, in which process issued from this court at the instance of the said , the execution creditor, directing the high bailiff to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], that the said , the execution creditor, is entitled to recover from the high bailiff of this court the sum of £ for damages arising out of the said execution:

And it is ordered that the high bailiff of this court do, on or before the day of 19 , pay to the registrar of this court the said sum of £ , and also the further sum of £ for costs, for the use of the said , the execution creditor.

To the high bailiff
of this court.

224.

**Order on Claim for Damages by Execution Creditor against High Bailiff
where the claim is not established.**

[*Not to be printed.*]

[*Heading as in Form 222.*]

Order 27,
Rule 14.

It is this day adjudged, touching the claim of , the execution creditor in this action, against the high bailiff of this court, for damages arising out of an execution in this action, in which process issued from this court at the instance of the said , the execution creditor, directing the high bailiff to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], that the said , the execution creditor, is not entitled to recover from the high bailiff of this court any damages in respect of or in any way arising from the said execution:

And it is ordered that the said , the execution creditor, do on or before the day of 19 , pay to the registrar of this court the sum of £ for costs, for the use of the said high bailiff of this court

To , the
execution creditor.

225.

Order on Claim for Damages by Execution Creditor against High Bailiff
where the High Bailiff pays Money into Court.

[*Not to be printed.*]

[*Title as in Form 222.*]

It is this day adjudged, touching the claim of _____, the execution creditor in this action, against the high bailiff of this court, for damages arising out of an execution in this action, in which process issued from this court at the instance of the said _____, the execution creditor, directing the high bailiff to levy the sum of £ _____ of and from the goods and chattels of [the *execution debtor*], and in respect of which damages the high bailiff has paid into court the sum of £ _____, that the sum paid into court is sufficient to satisfy all damages arising out of the said execution [or that the sum paid into court is not sufficient to satisfy the damages arising out of the said execution, and that the said _____, the execution creditor, is entitled to recover the further sum of £ _____ for damages from the high bailiff:]

And it is ordered that the said _____, the execution creditor, do pay to the registrar of this court, on or before the _____ day of _____ 19____, the sum of £ _____ for costs, for the use of the high bailiff [or that the high bailiff do pay to the registrar of this court, on or before the _____ day of _____ 19____, the said further sum of £ _____ for damages, and also the sum of £ _____ for costs, for the use of _____, the execution creditor].

To the effect, the court held that the creditor's right to execution creditor.

[Or To the high bailiff
of this court.]

226.

Affidavit by Defendant sued by an Assignee who has had Notice that the Assignment is disputed by the Assignor, or by Defendant in Action for Debt, Chose in Action, or Chattel, who has had Notice of any opposing or conflicting Claim.

[Not to be printed.]

In the county court of _____ holden at _____

No. of Plaintiff.

*Order 27,
Rule*

Between A. B., plaintiff,
and

C. D., defendant.

I, C. D., of _____, the above-named defendant, make oath and say as follows:—

1. The summons in this action was issued on the _____ day of _____, and was served on me on the _____ day of _____.

2. The action is brought to recover the sum of £ _____, which is alleged to be due from me to _____ of _____, but which sum is alleged to have been assigned by the said _____ to the plaintiff:

[or 2. The action is brought to recover. *[state what]*

3. The said sum of £ [or the sum of £ , part of the sum of £] is due from me, [or the said is in my possession, but I claim no interest therein, except for charges and costs].

4. I have received notice from the said [assignor] [or from _____], who claims under the said [assignor], that he disputes the assignment of the said sum of £ _____ [or of £ _____ part of the said sum of £ _____] to the plaintiff.

[or 4. I have received notice from _____ of _____ that the right to the said subject-matter of this action [or to _____ part of the said subject-matter of this action] is claimed by him.]

5. I admit the claim of the plaintiff to £ , part of the said sum of £ , which is not claimed by the said [or I admit the claim of the plaintiff to part of the said subject-matter of this action, which is not claimed by the said].

6. I do not in any manner collude with the said [opposing claimant] or with the above-named plaintiff, but I am ready to bring into court the said , or to pay or dispose of the same in such manner as the court may order or direct.

Sworn, &c.

227.

Interpleader Summons to Assignor or other Person disputing Assignment, or Person making opposing or conflicting Claim to Debt, Chose in Action, or Chattel sued for.

[Title of Action.]

Order 27,
Rule 15 (4).

Whereas the defendant in this action (copy of the summons and particulars wherein is hereto annexed) has filed an affidavit (copy whereof is also hereto annexed) stating that he has received notice from you that you dispute the assignment of the subject-matter of this action [or of £ , part of the subject-matter of this action] [or that you claim the subject-matter of this action] [or , part of the subject-matter of this action]:

You are therefore summoned to appear at a court to be holden at on the day of , at in the noon, when the dispute or claim to the subject-matter of this action will be determined, and judgment will be given determining the rights and claims of the plaintiff, the defendant, and yourself.

If the plaintiff appears and withdraws or abandons his claim, and you request the judge to make an order in your favour against the defendant, the hearing fee must be paid before such order is made.

Dated this day of 19 .

Registrar.

To E. F., of, &c. [here insert name, address, and description of the person to be summoned].

NOTE.—You are called upon, five clear days at least before the day of hearing, to leave at the office of the registrar either three copies of a notice that you relinquish your claim, or three copies of particulars stating the grounds on which you dispute the assignment or found your claim to the subject-matter of the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.

228.

Notice to Plaintiff where Interpleader Summons issued to Assignor or other Person disputing Assignment, or Person making opposing or conflicting Claim to Debt, Chose in Action, or Chattel sued for.

[Title of Action.]

Order 27,
Rule 15 (4).

Whereas the defendant in this action has filed an affidavit (copy whereof is hereto annexed) stating that he has received notice from , of , that he disputes the assignment of the subject-matter in this action [or of £ , part of the subject-matter of this action] [or that he claims the subject-matter in this action or , part of the subject-matter of this action]:

Take notice, that a summons has been issued to the said to appear at a court to be holden at , on the day of , at in the noon, and that the hearing of this action has been adjourned to the same place, day, and hour, when the dispute or claim to the subject-matter in this action will be determined, and judgment will be given

determining the rights and claims of yourself, the defendant, and the said

Dated this day of 19 .

Registrar.

To the above-named plaintiff.

NOTE.—*The claimant is called upon, five clear days at least before the day of hearing, to leave at the office of the registrar either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on which he disputes the assignment or founds his claim to the subject-matter of the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.*

229.

Notice to Defendant of Issue of Interpleader Summons.

[*Title of Action.*]

Whereas you have filed an affidavit stating that you have received notice from , of , that he disputes the assignment of the subject-matter in this action [*or of £ , part of the subject-matter of this action*] [*or that he claims the subject-matter in this action or , part of the subject-matter of this action*]:

Order 27,
Rule 15 (4).

Take notice, that a summons has been issued to the said to appear at a court to be holden at on the day of , at in the noon, and that the hearing of this action has been adjourned to the same place, day, and hour, when the dispute or claim to the subject-matter in this action will be determined, and judgment will be given determining the rights and claims of the plaintiff, yourself, and the said

Dated this day of 19 .

Registrar.

To the above-named defendant.

NOTE.—*The claimant is called upon, five clear days at least before the day of hearing, to leave at the office of the registrar either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on which he disputes the assignment or founds his claim to the subject-matter in the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff, and one other of such copies to the defendant.*

230.

Particulars of Grounds on which Assignment is Disputed or Subject-Matter Claimed.

[*Not to be printed.*]

[*Heading as in Form 231.*]

Take notice, that I dispute the assignment of the subject-matter in this action [*or of £ , part of the subject-matter of this action*], to the plaintiff, and that the grounds on which I dispute the same are

Order 27,
Rule 15 (6).

[*state grounds*].

[*or Take notice, that I claim to be entitled to the subject-matter in this action [or to , part of the subject-matter of this action], and that the grounds of my claim are*

[*state grounds*].

Take notice, that I relinquish my claim to the subject-matter of this action].

Dated this day of 19 .

E. F.

To the registrar of the court
and

To the plaintiff, A. B.,
and the defendant, C. D.

231.

Order where Assignment is adjudged Invalid, or Opposing Claim is Sustained.

In the county court of _____, holden at _____ No. of Plaintiff.

Between A. B., plaintiff,

and

C. D., defendant,

and

E. F., made party by summons, dated
the _____ day of _____ 19 ____.

Order 27,
Rule 15 (7).

It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that there is no such assignment as alleged [or touching the claim of the plaintiff to the subject-matter of this action, that he has no claim thereto], and that the above-named E. F. do recover against the plaintiff the sum of £ _____ for costs, and that the defendant do recover against the plaintiff the sum of £ _____ for costs :

And it is further adjudged that the said E. F. do recover against the defendant the sum of £ _____ for debt, and the sum of £ _____ for costs, amounting together to the sum of £ _____ :

And it is ordered that the plaintiff do pay the said sums of £ _____ and £ _____ to the registrar of this court on the _____ day of _____ :

And it is further ordered that the defendant do pay the said sum of £ _____ to the registrar of this court on the _____ day of _____ [or by instalments of £ _____ for every _____ days, the first instalment to be paid on the _____ day of _____ 19 ____].

[If the subject-matter of the action is a chose in action or chattel, the order is to be framed accordingly.]

232.

Order where Assignment is adjudged Valid, or Opposing Claim is not Sustained.

[Heading as in last Form.]

Order 27,
Rule 15 (7).

It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that the said assignment is good [or touching the claim of the plaintiff to the subject-matter of this action, that such claim is valid], and that the plaintiff do recover against the above-named E. F. the sum of £ _____ for costs; and that the defendant do recover from the said E. F. the sum of £ _____ for costs :

And it is further adjudged that the plaintiff do recover against the defendant the sum of £ _____ for debt, and £ _____ for costs, amounting together to the sum of £ _____ :

And it is ordered that the said E. F. do pay the said sums of £ _____ and £ _____ to the registrar of this court on the _____ day of _____ :

And it is further ordered that the defendant do pay the said sum of £ _____ to the registrar on the _____ day of _____ [or by instalments of £ _____ for every _____ days, the first instalment to be paid on the _____ day of _____ 19 ____].

[If the subject-matter of the action is a chose in action or chattel, the order to be framed accordingly.]

233.

Order where Assignment is adjudged Invalid, or Opposing Claim is Sustained, and Defendant files a Counter-claim against Plaintiff.

[Title as in Form 231.]

Order 27,
Rule 15 (7).

It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that there is no such

assignment as alleged [or touching the claim of the plaintiff to the subject-matter of this action, that he has no claim thereto], and that the counter-claim of £ by the defendant against the plaintiff is sustained [or is not sustained]:

And it is adjudged that the said E. F. do recover against the plaintiff the sum of £ for costs:

And it is further adjudged that the above-named E. F. do recover against the defendant the sum of £ for debt, together with the sum of £ for costs, amounting together to the sum of £ :

And it is further adjudged that the defendant do recover against the plaintiff the sum of £ in respect of his counter-claim, and the sum of £ for costs, amounting together to the sum of £ [or that judgment be entered for the plaintiff upon the counter-claim with costs].

And it is ordered that the defendant do pay the said sum of £ to the registrar of this court on, &c.

And it is further ordered that the plaintiff do pay the said sums of £ and £ to the registrar on, &c. [or that the plaintiff do pay the said sum of £ to the registrar on the day of for the costs of the said E. F., and that the defendant do pay to the registrar on the day of the further sum of £ for the plaintiff's costs of the defendant's counter-claim].

[If the subject-matter of the action is a chose in action or chattel, the order to be framed accordingly.]

234.

Certificate of Deposit.

I hereby certify that the plaintiff [or defendant] has paid into my 51 & 52 Vict. hands the sum of £ [here state the proceeding which has rendered the c. 43, s. 10. deposit necessary].

Dated this day of , 19 .

Registrar.

235.

Notice of Proposed Sureties.

[Not to be printed.]

Take notice, that the sureties whom I propose as my security in the above action [here state the proceeding which has rendered the sureties necessary] are [here state the full names and additions of the sureties, whether householders or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any].

Order 29,
Rule 1.

Dated this day of 19 .

To the

236.

Affidavit of Justification.

[Not to be printed.]

I, , of one of the sureties for the defendant, make oath and say:

Order 29.
Rule 2.

1. That I am a householder [or freeholder, as the case may be], residing at [describe particularly the county or city, the street or place, and the number of the house, if any].

2. That I am worth property to the amount of £ [the amount required by the practice of the court] over and above what will pay my just debts [if security in any other action or for any other purpose, add and every other sum for which I am now security].

3. That I am not bail or security in any other action or proceeding or for any other person [*if security in any other action or actions, add, except for C. D., at the suit of E. F., in the court of in the sum of £ for G. H., at the suit of I. K., in the court of in the sum of £ specifying the several actions, with the courts in which they are brought and the sums in which he has become bound*].

4. That this my property, to the amount of the said sum of £ [*if security in any other action, &c., add over and above all other sums for which I am now security as aforesaid*], consists of [*here specify the nature and value of the property in respect of which the deponent proposes to become bondsman, as follows, stock in trade in my business of , carried on by me at , of the value of £ , good book debts owing to me to the amount of £ , furniture in my house at of the value of £ , a freehold [or leasehold] farm of the value of £ , situate at , occupied by [or a dwelling-house of the value of £ , situate at occupied by] [or other property, particularising each description of property, with the value thereof]*].

5. That I have for the last six months resided at [*describing the place of such residence, or if he has had more than one residence during that period, state in the same manner as above directed*].

237.

Notice by Registrar of Day and Hour upon which Bond to be Executed.

Order 29,
Rule 1.

Take notice, that I have appointed the day of 19 , at o'clock in the forenoon, at my office situate at for the and his sureties to execute the bond proposed to be given in the above action. [*To be added to notice to obligee:—And further take notice, that if you have any valid objection to make to the sureties, or either of them, such objection must then be made.*]

Dated this day of 19 .

To the plaintiff [*or defendant*].

Registrar.

238.

Judgment against an Executor who has wasted Assets.

In the county court of holden at . No. of Plaintiff.

Between A. B., plaintiff,
and

C. D., defendant, executor [*or administrator*] of , deceased.

Order 30,
Rule 4.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and £ for costs:

And it is ordered that the defendant do pay the same to the registrar of this court, on or before the day of 19 , [*or by instalments of for every days, the first instalment to be paid on the day of , 19*]:

It is also adjudged that the defendant, being the executor [*or administrator*] of the said deceased, has made away with, wasted, and put to his own use divers goods and chattels [*or moneys, as the case may be*], to the amount of the said sum, which were the property of the said deceased, and which came to the hands of the defendant as executor [*or administrator*] as aforesaid, to be administered:

Wherefore it is ordered, that if the defendant shall make default in the payment of the said sums, the same shall be levied by distress and sale of the goods and chattels which were of the said deceased and which came to the

hands of the defendant as executor [*or* administrator] if the defendant has so much thereof in his hands to be administered; and if he has not, then that the said sums shall be levied of the proper goods and chattels of the defendant.

238A.

Judgment against an Executor or Administrator who does not appear, or appears and admits his Representative Character and Plaintiff's Demand, and does not deny Assets.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs.

Order 30,
Rule 4a.

And it is ordered that the defendant do pay the same to the registrar of this court forthwith [*or* on or before the day of] [*or* by instalments of for every days, the first instalment to be paid on the day of]:

And the defendant not having appeared at the trial [*or* having appeared and admitted his representative character and the plaintiff's demand, and not having denied that he has assets of the said deceased which came to his hands to be administered],

It is ordered that if the defendant shall make default in the payment of the said sums the same shall be levied as follows: The sum of £ [*the debt or damages and costs*] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the sum of £ [*the costs*] shall be levied of the proper goods and chattels of the defendant.

239.

Judgment against an Executor or Administrator who admits his Representative Character and denies the Demand.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs:

Order 30,
Rule 5.

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of , 19 [*or* by instalments of for every days, the first instalment to be paid on the day of 19]:

And the defendant having admitted his representative character, but denied the plaintiff's demand, and the plaintiff having proved the same, it is further ordered, that if the defendant shall make default in payment of the said sums, the same shall be levied as follows: The sum of £ [*the debt or damages and costs*] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the sum of £ [*the costs*] be levied of the proper goods and chattels of the defendant.

240.

Judgment against an Executor or Administrator where he admits his Representative Character, but denies the Demand, and alleges total or partial Administration of Assets, and the Plaintiff proves his Demand, and the Defendant proves Administration.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs:

Order 30,
Rule 6.

And it is ordered that the defendant do pay the same to the registrar of this court, on or before the day of 19 [*or* by instalments of for every days, the first instalment to be paid on the day of 19]:

And the defendant having admitted his representative character, but

denied the plaintiff's demand, and having also alleged a total [*or partial*] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or administrator*] to be administered, it appears to the court that the plaintiff has proved to the court his demand, and also that the defendant has proved the administration alleged :

Wherefore it is ordered that in default of such payment the sum of £ , being the costs incurred by the plaintiff in proving his demand, shall be levied on the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or administrator*], if the defendant has so much thereof in his hands to be administered ; and if he has not, then that the said sum be levied of the proper goods and chattels of the defendant ; and as to the sum of £ the plaintiff's demand, it is ordered that it be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or administrator*] as aforesaid to be administered.

And it is further ordered, that the plaintiff do pay to the registrar of the court, on or before the day of 19 , the sum of £ , being the costs incurred by the defendant in proving the administration alleged.

[*N.B.—If the defendant is shown to have some assets, the judgment must be for that amount de bonis testatoris, and for the residue quando acciderint.*]

241.

Judgment against an Executor or Administrator where he admits his Representative Character, but denies the Demand, and alleges total or partial Administration of Assets, and the Plaintiff proves his Demand, and the Defendant does not prove the Administration.

Order 30,
Rule 7.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs :

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of 19 [*or by instalments of for every days, the first instalment to be paid on the day of 19*]:

And the defendant having admitted his representative character, but denied the plaintiff's demand, and having also alleged a total [*or partial*] administration of the goods of the said deceased which came to the hands of the defendant as executor [*or administrator*] to be administered, it appears to the court that the plaintiff has proved to the court his demand, and also that the defendant has not proved the administration alleged :

Wherefore it is ordered, that if the defendant shall make default in payment of the said sums, the same shall be levied as follows : The sum of £ [*debt and costs*] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or administrator*], if the defendant has so much thereof in his hands to be administered ; and if he has not, then that the residue of the sum of £ [*debt*] be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or administrator*] as aforesaid to be administered ; and that the sum of £ [*the costs*] be levied of the proper goods and chattels of the defendant.

242.

Judgment against an Executor or Administrator who admits his Representative Character and the Plaintiff's Demand, but alleges a total or partial Administration of Assets, and proves the Administration.

Order 30,
Rule 8.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs :

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of 19 , [*or by instalments of for every days, the first instalment to be paid on the day of 19*]:

And the defendant having admitted his representative character and also the plaintiff's demand, and having alleged a total [or partial] administration of the goods of the said deceased, which came to the hands of the defendant as executor [or administrator] to be administered, it appears to the court that the defendant has proved to the court the administration alleged.

Wherefore it is ordered, that in default of such payment the said sums of £ and £ shall be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [or administrator] as aforesaid to be administered.

And it is further ordered that the plaintiff do pay to the registrar of this court, on or before the day of 19 , the sum of £ , being the costs incurred by the defendant in proving the administration alleged.

243.

Judgment against an Executor or Administrator who admits his Representative Character and the Plaintiff's Demand, but alleges a total or partial Administration of Assets, and does not prove the Administration.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and £ for costs :

Order 30,
Rule 9.

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of 19 [or by instalments of for every days, the first instalment to be paid on the day of 19]:

And the defendant having admitted his representative character, and also the plaintiff's demand, and having alleged a total [or partial] administration of the goods of the said deceased which came to the hands of the defendant as executor [or administrator] to be administered, it appears to the court that the defendant has not proved to the court the administration alleged.

Wherefore it is ordered, that if the defendant shall make default in payment of the said sums, the same shall be levied as follows: The sum of £ [debt and costs] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [or administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the residue of the sum of £ [debt] be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [or administrator] as aforesaid to be administered; and that the sum of £ [the costs] be levied of the proper goods and chattels of the defendant.

244.

Summons to an Executor where Plaintiff intends to apply to the Court where Assets have come to Defendant's Hands since Judgment.

In the county court of holden at
Between A. B., plaintiff.

[Address.]

[Description.]

and

C. D., executor [or administrator] of
deceased, defendant.

[Address.]

[Description.]

The plaintiff, having learned that property of the deceased has come to your the above-named (defendant's) hands as executor [or administrator] since the judgment recovered in this action to be administered [if the plaintiff alleges waste, add and that you have withholden and wasted the same], intends to apply to the judge at a court to be holden at on the day of , at the hour of in the noon, an order that the debt [or damages] and costs adjudged to be recovered

Order 30,
Rule 10.

in this action shall be levied of the goods and chattels of the said deceased, if you have so much thereof in your hands to be administered; and if you have not, then that the costs shall be levied of your proper goods and chattels [*or if the plaintiff alleges waste*, and if you have not, then that the said debt [*or damages*] and costs shall be levied of your proper goods and chattels].

You are therefore hereby summoned to appear at the said court at the time and place aforesaid, to answer touching the matters aforesaid.

To the defendant C. D., executor [*or administrator*] of deceased.

245.

Warrant of Execution against Goods of Testator or Intestate.

Whereas at a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant, as executor [*or administrator*] of deceased, for the sum of for due and owing to the plaintiff by the said deceased in his lifetime, and the sum of for costs of action :

And thereupon it was ordered by the court that the defendant should pay the same to the registrar of the court, on or before the day of 19 [*or by instalments of for every days*]:

And whereas default has been made in payment according to the said order :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said deceased in his lifetime, in the hands of the defendant to be administered, wheresoever they may be found within the district of this court, the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, which were the property of the said deceased in his lifetime, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, if the defendant has so much thereof in his hands to be administered; and if he has not so much thereof in his hands to be administered, then these are to require and order you to make and levy of the proper goods and chattels, money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum of £ for the costs of action above mentioned, together with the costs of this execution and of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Debt or damages adjudged			
Costs			
Paid into court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—*The goods and chattels are not to be sold until after the end of*

five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of In the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

[Warrants of execution upon judgments according to Forms 238 to 243 may be drawn from this form, altered accordingly from those forms.]

246.

Judgment against an Executor on a Devastavit since Judgment.

Upon hearing the plaintiff's application in this action at a court holden this day, it is adjudged that property of deceased has come to the hands of the defendant, as his executor [*or administrator*] since the judgment recovered in this action, to be administered, and that the defendant has wasted the same property, whereby the judgment recovered herein remains unsatisfied: It is therefore ordered that the defendant do pay the sum of £ recovered by [*or remaining due upon*] the said judgment, together with the sum of £ for the costs of this order, to the registrar of this court on or before [*or as the case may be*].

And it is further adjudged that if the defendant make default in payment thereof, execution may issue to make and levy the above-mentioned sums of the goods and chattels of the said deceased, if the defendant has so much thereof in his hands to be administered, and if he has not, then to make and levy the same of the proper goods and chattels of the defendant.

247.

Summons for Recovery of Possession of Tenement against Tenant or other Person holding over.

[Heading as in Form 22.]

You are hereby summoned to appear at a court to be holden at on the day of 19 , at the hour of in the forenoon, to answer the plaintiff, wherefore you neglect or refuse to deliver up to him possession of ⁽¹⁾ situate at in the county of within the district of this court, let on a tenancy which has been duly determined by a notice to quit [*or has expired*].

And take notice, that the plaintiff also claims of you for rent [and mesne profits] the sum of , the particulars of which are hereunto annexed.

And further take notice, that if you do not appear at the said court, and show cause why you do not deliver up possession as aforesaid, the court may order that possession of the said premises be given by you to the plaintiff forthwith, or on or before such day as it shall name, and that if such order be made and be not obeyed a warrant may issue to give possession to the plaintiff.

Dated the day of 19 .
To the defendant.

Registrar.

	£	s.	d.
Claim for	.	.	.
Costs of this summons	.	.	.
Solicitor's costs	.	.	.
Total	£		

*Order 80,
Rule 10.*

*Order 5,
Rule 3.*

⁽¹⁾ Describe the premises let.

51 & 52 Viet.
c. 48, s. 140.

TAKE NOTICE.—If the plaintiff in this action be not your immediate landlord, you must, upon your being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord, and if you do not give such notice you will be liable, under section 140 of the County Courts Act, 1888, to forfeit to your immediate landlord three years' rackrent of the premises held by you of him, in respect of which the summons shall have issued.

See BACK.

If you and the plaintiff can agree as to the time when possession shall be given, and the amount due for rent [and mesne profits] and the mode of payment, and will, before the action is called on, sign a memorandum of such agreement and deliver the same to the registrar, you will save half the hearing fees.

If you give up possession and pay the amount claimed for rent [and mesne profits] and costs, as stated in the summons, into the registrar's office, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, you will avoid further costs, unless the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment; but you may give up possession and pay the amount claimed at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you give up possession and admit a part only of the claim for rent [and mesne profits], you may, by paying into the Registrar's office the amount so admitted, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, together with costs proportionate to such amount, avoid further costs and if the court thinks fit recover your further costs against the plaintiff, unless the plaintiff proves at the trial an amount exceeding your payment, or the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

If you intend to dispute the plaintiff's claim for rent [and mesne profits] on any of the following grounds:—

1. That you have a set-off or counter-claim against the claim of the plaintiff;
2. That you were under twenty-one when the debt claimed was contracted;
3. That the debt claimed is more than six years old;
4. That you have been discharged from the plaintiff's claim under any Bankruptcy Act;
5. That you have already tendered to the plaintiff what is due;
6. That you have a Statutory or Equitable Defence;
7. That you intend to rely on fraud or misrepresentation;

you must give notice thereof to the registrar five clear days [or if the claim exceeds £50, ten clear days] before the day of trial; and such notice must contain the particulars prescribed by the County Court Rules; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your defence be a set-off or counter-claim, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into court the amount tendered.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the registrar of this court, upon payment of the proper fee.

Amended by County Court Rules, 1926 (No. 1).

248.

Summons for Recovery of Possession of Tenement for Non-payment of Rent.*(Heading as in Form 22.)*

You are hereby summoned to appear at a court to be holden at on the day of 19 , at the hour of in the forenoon, to answer the plaintiff why possession of (1) situate at in the county of within the district of this court should not be recovered by the plaintiff, by reason of the rent payable in respect thereof by you being half a year in arrear, and the plaintiff having right by law to re-enter for the non-payment thereof.

Order 5,
Rule 3.(4) Describe
premises
claimed.

If you pay to the registrar the rent in arrear, and the costs of this action, as stated at the foot of this summons, five clear days before the day on which you are required to appear to this summons, this action will cease.

And take notice, that if you do not pay such rent in arrear and costs, or appear at the said court, and show cause why possession of the said premises should not be recovered against you, the court may order that possession of the said premises be given up by you to the plaintiff on or before such day not being less than four weeks from the day of hearing as the court shall name unless within that period the rent in arrear and the costs are paid into court, and that if such order be not obeyed, a warrant may issue to give possession of the said premises to the plaintiff.

Dated this day of 19 .

Registrar.

	£	s.	d.
Rent in arrear	.	.	.
Costs of this summons	.	.	.
Solicitor's costs	.	.	.
Total	£		

TAKE NOTICE.—If the plaintiff in this action be not your immediate landlord you must upon being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord, and if you do not give such notice you will be liable, under section 140 of the County Courts Act, 1888, to forfeit to your immediate landlord three years' rackrent of the premises held by you of him, in respect of which the summons shall have issued.

51 & 52 Vict.
c. 48, s. 140.**See BACK.**

If you pay the rent in arrear and costs, as stated in the summons, into the registrar's office, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, you will avoid further costs, unless the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment; but you may pay the same at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you admit a part only of the rent in arrear you may, by paying into the registrar's office the amount so admitted, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, together with costs proportionate to such amount, avoid further costs, and if the court thinks fit, recover your further costs against the plaintiff unless the plaintiff proves at the trial an amount exceeding your payment, or the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

If you intend to dispute the plaintiff's claim on any of the following grounds:—

1. That you have already tendered to the plaintiff the amount due for rent;

2. That you have a statutory or equitable defence;

3. That you intend to rely on fraud or misrepresentation;

you must give notice thereof to the registrar five clear days [*or if the claim exceeds £50, ten clear days*] before the day of trial; and such notice must contain the particulars prescribed by the County Court Rules; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your defence be a tender, you must pay into court the amount tendered.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the registrar of this court, upon payment of the proper fee.

Amended by County Court Rules, 1926 (No. 1).

249.

Order for Recovery of Possession of Tenement against Person holding over.

Order 5,
Rule 3.

Upon the trial of this action at a court holden this day, it is ordered that the defendant do give to the plaintiff possession of a certain house [*or messuages with appurtenances, or part of a certain house, or as the case may be*], situate at forthwith [*or on the day of*]:

And it is adjudged that the plaintiff do recover against the defendant the sum of £ for rent [*or mesne profits*] [*or for rent and mesne profits*] and £ costs, making together the sum of £ :

And it is ordered, that the defendant do pay to the registrar of the court the sum above mentioned on or before the day of 19 , [*or as may be ordered*].

To the defendant.

TAKE NOTICE.—That *if possession be not given and payment made as above ordered a warrant or warrants* may issue requiring the bailiff of the court to give possession of the said to the plaintiff, and to levy the sum of £ above mentioned, together with further costs.

Words in italics were added by County Court (No. 1) Rules, 1922.

250.

Order for Recovery of Possession of Tenement for Non-payment of Rent.

Order 5,
Rule 3.

Upon the trial of this action at a court holden this day, it is ordered that the defendant do give to the plaintiff possession of a certain situate at on or before the day of , 19 , unless the rent in arrear for the said premises, amounting to £ , and the costs of this action, be paid into court before such day of , 19 .

And it is adjudged that the plaintiff do recover against the defendant the sum of £ for costs of this action.

And it is ordered that the defendant do pay the same to the registrar of this court on or before the day of 19 .

To the defendant.

TAKE NOTICE.—That if you do not pay the said rent and costs, or give such possession, a warrant *or warrants* may issue requiring the bailiff of the court to give possession of the said to the plaintiff, and to levy the sum of £ above mentioned, together with further costs.

Words in italics were added by County Court (No. 1) Rules, 1922.

251.

Warrant for Recovery of Possession of Tenement.

Whereas at a court holden at on the day of 19 , it was ordered by the court, that the defendant should give the plaintiff possession of a certain [*as in the order*] situate at [*and that the plaintiff should recover against the defendant*] the sum of £ for rent [*or mesne profits*] [*or rent and mesne profits*] and costs:

Order 5,
Rule 3.Order 25,
Rule 64.

And whereas the defendant has not obeyed the said order:

These are therefore to authorise and require you to forthwith give possession of the said hereinbefore mentioned premises to the plaintiff:

And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this warrant and execution; and also to seize and take any money or bank-notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Rent [<i>or mesne profits</i>] [<i>or rent and mesne profits</i>]			
Costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

252.

Summons in Action of Ejectment.

(Heading as in Form 22.)

You are hereby summoned to appear at a court to be holden at
on the day of 19 , at the hour of in the forenoon,
to answer the plaintiff's claim to recover possession of (1) situate at
in the county of within the district of this court.

Order 5,
Rule 3.

And take notice, that the plaintiff also claims of you for rent [*and mesne profits*] the sum of £ , the particulars of which are hereunto annexed.
And further take notice, that if you do not appear at the said court, and show cause why possession of the said (1) should not be recovered

(1) Describe
premises
claimed.

against you, the court may order that possession of the said premises be given by you to the plaintiff forthwith, or on or before such day as it shall name, and that if such order be made and be not obeyed a warrant may issue to give possession to the plaintiff.

Dated the day of 19 .

To the Defendant.

Registrar.

	£	s.	d.
Claim for			
Costs of this summons			
Solicitor's costs			
Total			

15 & 16 Vict.
c. 76, s. 209.

TAKE NOTICE.—If you, the defendants, or any of you, be only tenants of the property or some part thereof, you must upon being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord or his bailiff or receiver, and if you do not give such notice you will be liable, under section 145 of 15 Geo. 5, c. 20, to forfeit to your landlord three years' rackrent of the premises demised to you, or holden in your possession of him, in respect of which this summons has issued.

NOTE.—A claim for rent or mesne profits may be added to this Form as in Form 247.

See BACK.

If you and the plaintiff can agree as to the time when possession shall be given, and the amount due for rent [and mesne profits], and the mode of payment, and will, before the action is called on, sign a memorandum of such agreement, and deliver the same to the registrar, you will save half the hearing fee.

If you give up possession and pay the amount claimed for rent and mesne profits and costs, as stated in the summons, into the registrar's office, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, you will avoid further costs, unless the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment: but you may give up possession and pay the amount claimed at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you give up possession and admit a part only of the claim for rent [and mesne profits], you may, by paying into the registrar's office the amount so admitted, five clear days [or if the claim exceeds £50 or the rent or value of the premises exceeds £50 a year, ten clear days] before the day of trial, together with costs proportionate to such amount, avoid further costs and if the court thinks fit recover your further costs against the plaintiff, unless the plaintiff proves at the trial an amount exceeding your payment, or the court orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

If you intend to dispute the plaintiff's claim for rent and mesne profits on any of the following grounds:—

1. That you have a set-off or counter-claim against the claim of the plaintiff;
2. That you were under twenty-one when the debt claimed was contracted;
3. That the debt claimed is more than six years old;
4. That you have been discharged from the plaintiff's claim under any Bankruptcy Act;
5. That you have already tendered to the plaintiff what is due;

6. That you have a statutory or equitable defence ;

7. That you intend to rely on fraud or misrepresentation ;

you must give notice thereof to the registrar five clear days [*or if the claim exceeds £50, ten clear days*] before the day of trial ; and such notice must contain the particulars prescribed by the County Court Rules ; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your defence be a set-off or counter-claim, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into court the amount tendered.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the registrar of this court, upon payment of the proper fee.

Amended by County Court (No. 1) Rules, 1926.

253.

Notice of Withdrawal of Action of Ejectment as to the Whole or Part of the Property.

[*Not to be printed.*]

Take notice, that I, the above-named plaintiff, will not proceed in this action [*if so, in respect of the portion of the property hereinafter described, that is to say, here describe the said portion of the property*].

Order 9,
Rule 1.

Plaintiff,

254.

Notice in Action of Ejectment or for Recovery of Possession that a Person not originally made a Defendant will appear and defend.

Take notice, that M. N. has filed the affidavit, a copy of which is hereunto annexed, and that by leave of the court he will appear at the trial as a defendant.

Order 10,
Rule 4.

To the plaintiff.

255.

Notice in Action of Ejectment or for Recovery of Possession that Defendant will Limit his Defence to Part of the Property.

[*Not to be printed.*]

Take notice, that the above-named defendant K. L. will at the trial of this action limit his defence to a part only of the property mentioned in the particulars annexed to the summons ; that is to say [*here describe the part to which the defence is limited, with reasonable certainty*].

Order 10,
Rule 5.

To the registrar of the court,
and to the plaintiff.

256.

Confession in Ejectment by Defendant of Plaintiff's Title to the Property.

[*Not to be printed.*]

I, the above-named defendant, hereby confess and admit the plaintiff's title to the property mentioned in the particulars annexed to the summons in this action, and sought to be recovered therein, and that the plaintiff is entitled to the immediate possession thereof.

Order 9,
Rule 7.

Dated this day of 19

Defendant.

Signed by the defendant in the presence of

To the registrar of the court.

[*To be altered as required, in case of confession in action for recovery of tenement ; see Form 65.*]

257.

Judgment in Ejectment for all the Plaintiffs for the Whole Property.

The day on which the summons issued, or the day stated in the summons as that on which the title of plaintiffs accrued.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiffs were, on the * day of 19 , and still are entitled to the possession of the property mentioned in the particulars annexed to the summons in this action ; that is to say, [*describe the property as set out in the particulars*].

And it is ordered that the defendants do give the plaintiffs possession of the said above-mentioned property forthwith [*or on the day of*] :

And it is adjudged that the plaintiffs do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

To the defendants.

TAKE NOTICE.—That if possession be not given, and payment made as above ordered, a warrant *or warrants* may issue requiring the bailiff of the court to give possession of the said property to the plaintiffs, and to levy the sum above mentioned, together with further costs.

(*Words in italics were added by County Court (No. 1) Rules, 1922.*)

258.

Judgment in Ejectment for all the Plaintiffs for Part of the Property against one of the Defendants, and for the other Defendants as to the Residue of the Property.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiffs were, on the day of 19 , and still are entitled to the possession of part of the property mentioned in the particulars annexed to the summons in this action ; that is to say [*describe the part the plaintiffs are adjudged entitled to*], and for which part the defendant G. H. defended separately ; but that the plaintiffs were not nor are entitled to the possession of the residue of the property described in the particulars annexed to the summons, for which the defendants I. J. and K. L. defended :

And it is ordered that the defendant G. H. do give the plaintiffs possession of the said part of the said property, for which the said G. H. defended separately, forthwith [*or on the day of 19*] :

And it is adjudged that the plaintiffs do recover against the defendant G. H. the sum of £ for costs, and that the defendants I. J. and K. L. do recover against the plaintiffs the sum of £ for costs.

And it is ordered that the defendant G. H. do pay the said sum of £ and the plaintiffs do pay the said sum of £ to the registrar of this court on or before the day of 19 .

To the defendant G. H. and to the plaintiffs.

TAKE NOTICE.—That unless possession be given and payment made as above ordered, a warrant *or warrants* may issue, requiring the bailiff of the court to give possession of the said property to the plaintiffs, and to levy the sums above mentioned from the parties ordered to pay the same respectively, together with further costs.

259.

Judgment in Ejectment for one of the Plaintiffs for all the Property against all the Defendants.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff A. B. was, on the day of 19 , and still is entitled to the possession of the property mentioned in the particulars annexed

to the summons in this action; that is to say [*describe the property as set out in the particulars annexed to the summons*];

And it is ordered that the defendants do give the said plaintiff A. B. possession of the said above-mentioned property forthwith, [*or on the day of*];

And it is adjudged that the said plaintiff A. B. do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this court the sum above mentioned on or before the day of 19 .
To the defendants.

TAKE NOTICE.—That unless possession be given, and payment made as above ordered, a warrant *or warrants* may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff A. B. , and to levy the sum above mentioned, together with further costs.

(*Words in italics were added by County Court (No. 1) Rules, 1922.*)

260.

Judgment in Ejectment for Plaintiff whose Title has Expired before Trial.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff was on the day of 19 , and thence until and at the time of the entry of the plaint and of the service of the summons in this action, entitled to the possession of the property mentioned in the particulars annexed to the summons in this action; that is to say [*here describe the property as set out in the particulars*], but his title to the same has since that time and before this day expired;

Order 23,
Rule 16.

And it is further adjudged that the plaintiff do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

261.

Judgment in Ejectment for Defendant.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff was not on the day of 19 , nor thence hitherto hath been nor is he now entitled to the possession of the property, or of any part of the property mentioned in the particulars annexed to the summons in this action; that is to say [*here describe the property as set out in the particulars*];

And it is adjudged that judgment be entered for the defendant, and that the defendant do recover against the plaintiff the sum of £ for costs.

And it is ordered that the plaintiff do pay the same to the registrar of this court on or before the day of 19 .

To the plaintiff.

262.

Order in Ejectment for Defendant's Costs, where Plaintiff does not Appear.

Whereas the plaintiff has not appeared, either by himself or his solicitors at the court holden this day, being the day appointed for the trial of this action, and the defendant has appeared in person [*or by his solicitor*]:

It is therefore ordered that the action be struck out, and that the defendant do recover against the plaintiff the sum of £ for costs:

And it is ordered that the plaintiff do pay the same to the registrar of this court on or before the day of 19 .

To the plaintiff.

263.

Warrant of Possession.

Order 25,
Rule 64.

Whereas, according to the tenor and true meaning of an order, bearing date the day of 19 , made in this action, the said defendant, C. D. was ordered to deliver up possession to A. B. in the said order named of all that, &c. [*as in order*]:

And whereas a copy of such order was duly served upon the said C. D., yet nevertheless he the said C. D. and other ill-disposed persons, his accomplices, have refused to pay obedience thereto, and detain and keep the possession of the said messuage [*or tenement and premises*]:

These are therefore to authorise and require you to forthwith enter into and upon the said messuage [*or tenement and premises*], and to remove, eject, and expel the said C. D. his tenants, servants, and accomplices, each and every of them, out of and from the said messuage [*or tenement and premises*], and every part and parcel thereof, and to place and put the said A. B. and his assigns into the full, peaceable, and quiet possession thereof, and to defend and keep him and his said assigns in such peaceable and quiet possession when and as often as any interruption may or shall from time to time be given or offered to them or any of them, according to the true intent and meaning of the said order; and herein you are not in anywise to fail.

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

NOTE.—The above form is given as an example of a warrant of possession issued pursuant to an order in an action other than an action of ejectment.

264.

Warrant of Possession in Ejectment for Possession and Costs.

Order 25,
Rule 64.

Whereas at a court holden at on the day of 19 , it was adjudged that the plaintiffs on the day of 19 , and at the date of the judgment were entitled to the possession of the property mentioned in the particulars annexed to the summons in this action; that is to say [*describe the property as set out in the particulars*]; and it was ordered that the defendants should give the plaintiffs possession of the said above-mentioned property forthwith [*or on the day of*]; and it was adjudged that the plaintiffs should recover against the defendants the sum of £ for costs; and it was ordered that the defendants should pay the said sum to the registrar of this court forthwith [*or on the day of*]:

And whereas the defendants have not obeyed the said order:

These are therefore to authorise and require you to forthwith give possession of the said hereinbefore-mentioned property to the plaintiff:

[And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendants, wheresoever they may be found within the district of this court (except, as regards each defendant, the wearing apparel and bedding of such defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this warrant and execution; and also to seize and take any money

or bank notes (whether of the Bank of England or any other bank) and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendants, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof].

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Costs adjudged			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendants.

Application was made to the registrar for this warrant at minutes
past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

NOTE.—When separate warrants are required for possession and costs pursuant to Ord. XXV. r. 66, the words in brackets should be omitted, and Form 163, so far as it relates to costs, used. Form 165 should be used for defendant's costs.

265.

Special Warrant of Possession in Ejectment for Possession and Costs where one of Several Plaintiffs has Died after Judgment and before Execution executed.

Whereas at a court holden at on the day of 19 , it was adjudged that the plaintiffs on the day of 19 , and at the date of the judgment, were entitled to the possession of the property mentioned in the particulars annexed to the summons in this action, that is to say [*describe the property as set out in the particulars*]; and it was ordered that the defendants should give the plaintiffs possession of the said above-mentioned property forthwith [*or as in the judgment*]; and it was adjudged that the plaintiff should recover against the defendants the sum of £ for costs; and it was ordered that the defendants should pay the said sum to the registrar of this court forthwith [*or as in the judgment*]:

And whereas the defendants have not obeyed the said order:

And whereas C. D., one of the plaintiffs, has died since judgment was given and before execution executed:

These are therefore to authorise and require you to forthwith give possession of the said hereinbefore-mentioned premises to the surviving plaintiffs, A. B. and E. F. on behalf of themselves and of the legal representatives of the deceased plaintiff C. D.

And these are therefore further, &c. [*conclude as in last form*].

Order 25,
Rule 64.

266.

Judgment in Ejectment for Plaintiff, where Defendant is Joint Tenant, Tenant in Common, or Coparcener with Plaintiff, and an actual Ouster is proved.

51 & 52 Vict.
c. 48, s. 59.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff and defendant were on the day of 19 , and still are entitled to the joint possession of the property mentioned in the particulars annexed to the summons in this action as joint tenants [*or as tenants in common or as coparceners*]; that is to say, [*describe the property as set out in the particulars*]:

And it having been proved to the satisfaction of the court that the defendant did before the commencement of this action actually oust the plaintiff from the possession of the said property, and thence hitherto hath kept and still keeps the plaintiff ousted therefrom, it is adjudged and ordered that judgment be entered for the plaintiff, and that the defendant do give the plaintiff jointly with him the defendant possession of the said above-mentioned property forthwith [*or on the day of*], and that the plaintiff do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

To the defendant.

TAKE NOTICE.—That if possession be not given and payment made as above ordered, a warrant [*or warrants*] may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff jointly with the defendant, and to levy the sum above mentioned, together with further costs.

267.

Judgment in Ejectment for Defendant, where Defendant is Joint Tenant, Tenant in Common, or Coparcener with the Plaintiff, and no actual Ouster is proved.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff and the defendant were on the day of 19 , and still are entitled to the joint possession of the property mentioned in the particulars annexed to the summons in this action as joint tenants [*or as tenants in common or as coparceners*]; that is to say [*describe the property as set out in the particulars*]:

And it not having been proved to the satisfaction of the court that the defendant has actually ousted the plaintiff from the possession of the said property or of any part thereof, it is adjudged and ordered that judgment be entered for the defendant, and that the defendant do recover against the plaintiff the sum of £ for costs.

And it is ordered that the plaintiff do pay to the registrar of this court the sum above mentioned on or before the day of , 19 .

To the plaintiff.

268.

Order in Ejectment for Substitution of Personal Representative of sole Plaintiff who dies before the Return Day for such deceased Plaintiff, and for continuation of Action in Name of such Representative.

Upon reading the affidavit of E. F. , and upon hearing the solicitors of the said E. F. and of the defendant, and it appearing to the court that the plaintiff A. B. died on the day of now last past, and since the commencement of this action, and that the said E. F. is the personal representative of the said A. B. and as such is

entitled to whatever estate or interest the said A. B. had in the property sought to be recovered in this action [*or as the case may be*],

It is ordered that the name of the said E. F. as personal representative [*or as the case may be*] of A. B. deceased be substituted in the proceedings in this action for the name of the said A. B. deceased as plaintiff in this action, and that the said E. F. be at liberty to continue this action in his own name as plaintiff, and to proceed therein as if he had been originally the plaintiff therein, and that the said E. F. do pay to the registrar of this court, on or before the day of 19, the sum of £ for the costs occasioned to the defendant by this application, and that the trial of this action be forthwith proceeded with [*or be adjourned to the day of 19*].

To the defendant.

N.B.—In explanation of this form it may be mentioned that after the amendment the title of the action will stand thus:—

Between E. F. (the personal representative of A. B., the original plaintiff, deceased) Plaintiff,
and
C. D. Defendant.

269.

Order in Ejectment for Substitution of Personal Representative of one of several Plaintiffs who dies before the Return Day for such deceased Plaintiff, and for continuation of Action in Names of surviving Plaintiff and Personal Representative of deceased Plaintiff.

Upon reading the affidavit of K. L., and upon hearing the solicitor of the said K. L. and of the defendants, and it appearing to the court that the plaintiff C. D. died on the day of now last past, and since the commencement of this action, and that the said K. L. is the personal representative [*or as the case may be*] of the said C. D., and as such is entitled to whatever estate or interest the said C. D. had in the property sought to be recovered in this action,

It is ordered that the name of the said K. L. as personal representative [*or as the case may be*] of C. D. deceased be substituted in the proceedings in this action for the name of the said C. D. deceased as one of the plaintiffs, and that the action be continued and proceeded with in the names of A. B. and K. L. as plaintiffs as if the said A. B. and K. L. had been originally the plaintiffs therein, and that the said K. L. do pay to the registrar of this court on or before the day of 19, the sum of £ for the costs occasioned to the defendants by this application, and that the trial of this action be forthwith proceeded with [*or be adjourned to the day of 19*].

To the defendants.

270.

Judgment in Ejectment for substituted Plaintiff.

No. of plaintiff.

In the county court of holden at
Between E. F., the personal representative of A. B. [*the original plaintiff*] deceased Plaintiff,
and
C. D. Defendant.

Whereas the plaintiff A. B. died after the commencement of this action, and before the return day of the summons therein, and by an order of the court made this day [*or on the day of last*], it was ordered amongst other things, that the name of the said E. F. as per-

sonal representative of A. B. deceased, should be substituted in the proceedings in this action for the name of the said A. B. deceased as plaintiff, and that the action should be continued in the name of the said E. F. as plaintiff as aforesaid :

Now, upon the trial of this action at a court holden this day, it is adjudged that the said A. B., on the day of 19 , and thence until the day of his death, was entitled to the possession of the property mentioned in the particulars annexed to the summons in this action ; that is to say [*describe the property as set out in the particulars*] ; and that the said plaintiff E. F. is the personal representative of the said A. B., and as such became on the death of the said A. B. and still is entitled to the possession of the said above-mentioned property ;

And it is ordered that the defendant do give the plaintiff E. F. possession of the said above-mentioned property forthwith [*or on the day of 19*] :

And it is adjudged that the plaintiff E. F. do recover against the defendant the sum of £ for costs :

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

Given under the seal of the court this day of 19 .

By the court,
Registrar.

To the defendant.

TAKE NOTICE.—That if possession be not given and payment made as above ordered, a warrant *or warrants* may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff, and to levy the sum above mentioned, together with further costs.

(*Words in italics were added by County Court (No. 1) Rules, 1922.*)

271.

Judgment in Ejectment for surviving and substituted Plaintiffs.

No. of plaint.

In the county court of holden at .

Between A. B. and K. L., the personal representative of C. D.
(one of the original plaintiffs) deceased Plaintiffs,
and

E. F. and G. H. Defendants.

Whereas one of the plaintiffs, C. D., died after the commencement of this action and before the return day of the summons therein, and by an order of this court made this day [*or on the day of last*] it was ordered, amongst other things, that the name of the said K. L. as personal representative of C. D. deceased, should be substituted in the proceedings in this action for the name of the said C. D. deceased, as one of the plaintiffs, and that the action should be continued in the names of the said A. B. and K. L. as plaintiffs as aforesaid :

Now upon the trial of this action at a court holden this day, it is adjudged that the said A. B. and C. D. deceased were on the day of 19 , and thence until the day of the death of the said C. D. entitled to the possession of the property mentioned in the particulars annexed to the summons in this action, that is to say [*describe the property as set out in the particulars*] ; and that the said plaintiff K. L. is the personal representative of the said C. D. deceased, and that on the death of the said C. D., the said A. B. and K. L. became and still are entitled to the possession of the property in the said particulars mentioned ;

And it is ordered that the defendants do give the plaintiffs A. B. and K. L. possession of the property above mentioned and described forthwith [*or on the day of 19*] .

And it is adjudged that the plaintiffs A. B. and K. L. do recover against the defendants the sum of £ for costs :

And it is ordered that the defendants do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

Given under the seal of the court this day of 19 .

By the court, Registrar.

To the defendants.

TAKE NOTICE, &c. [*as in Form 270*].

272.

Order in Ejectment, giving Leave to a Party claiming the Property on death of Defendant, who dies before the Return Day, to appear and defend in Place of such deceased Defendant.

Upon reading the affidavit of E. F. and upon hearing the solicitor of the said E. F. and of the plaintiff, and it appearing to the court that the defendant has died since the commencement of this action, and that upon the death of the defendant the said E. F. became entitled to whatever estate or interest the defendant C. D. had in the property sought to be recovered in this action,

It is ordered that the said E. F. be at liberty to appear and defend the said property above mentioned and described in the place of the said C. D., deceased, and that the name of the said E. F. be substituted for that of the said C. D. deceased, as defendant in the proceedings in this action, and that this action be continued as if the said E. F. had been originally made defendant therein; and that the said E. F. do pay to the registrar of this court on or before the day of 19 , the sum of £ for the costs occasioned to plaintiff by this application, and that the trial of this action be forthwith proceeded with [*or be adjourned to the day of 19*].

To the plaintiff.

[N.B.—In explanation of this form it may be mentioned that after the amendment the title of the action will stand thus :

Between A. B., plaintiff,
and

E. F. (substituted for C. D., deceased), defendant,
and all subsequent proceedings will be against E. F. as if he had been originally defendant.]

273.

Judgment in Ejectment for Plaintiff who has withdrawn the Action as to Part of the Property.

Whereas the plaintiff has withdrawn this action as to part of the property mentioned in the particulars annexed to the summons in this action; that is to say [*describe the part of the property as set out in plaintiff's notice*], and the action has proceeded for the recovery of the remainder of the said property :

Now upon the trial of this action at a court holden this day, it is adjudged that the plaintiff was on the day of 19 , and still is entitled to the possession of the remainder of the property mentioned in the particulars annexed to the summons in this action; that is to say [*describe the remainder of the property*]:

And it is ordered that the defendant do give the plaintiff possession of the said lastly above-mentioned property forthwith [or on the day of]:

And it is adjudged that the plaintiff do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this court the sum above mentioned on or before the day of 19 .

To the defendant.

TAKE NOTICE, &c. [as in Form 270].

[N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, this form must be altered accordingly.]

274.

Confession in Ejectment by Defendant defending separately for Part of the Property of Plaintiff's Title to such Part.

[Not to be printed.]

Order 9,
Rule 1.

I, C. D., one of the above-named defendants, defending separately for [here describe the part for which C. D. defends], being part of the property mentioned in the particulars annexed to the summons in this action, and for which no other person defends, do hereby confess and admit the plaintiff's title to the above-mentioned part of the said property, and that he is entitled to the immediate possession thereof.

Dated this day of 19 .

C. D., one of the defendants.

Signed by C. D., one of the defendants, in the presence of
To the registrar of the court.

275.

Judgment in Ejectment for Plaintiff where Defendant defending separately for Part of the Property admits Plaintiff's Title to such Part, and Action proceeds for Recovery of Remainder of the Property.

Order 9,
Rule 7.

Whereas C. D., one of the defendants, defending separately for [here describe the part for which C. D. defends], being part of the property mentioned in the particulars annexed to the summons in this action, and for which no other person defends, has confessed and admitted the plaintiff's title to the said part of the said property, and that the plaintiff is entitled to the possession thereof;

And whereas the action has proceeded for the recovery of the remainder of the said property:

Now, upon the trial of this action at a court holden this day, it is adjudged that the plaintiff was on the day of 19 , and still is entitled to the possession of the remainder of the property mentioned in the particulars annexed to the summons in this action;

And it is ordered that the defendant C. D. do give the plaintiff possession of the said [describe the part defended by C. D.] forthwith [or on the day of 19], and that the defendant E. F. do give the plaintiff possession of the said [the remainder of the property] forthwith [or on the day of 19];

And it is adjudged that the plaintiff do recover against the defendant C. D. . . . the sum of £ . . . for costs, and against the defendant E. F. the sum of £ . . . for costs :

And it is ordered that the defendants do respectively pay the said sums above mentioned to the registrar of this court on or before the . . . day of 19 . . .

To the defendants.

TAKE NOTICE.—That unless possession be given and payment made as above ordered, a warrant or warrants may issue, requiring the bailiff of the court to give possession of the said property to the plaintiff, and to levy the sums above-mentioned, together with further costs.

[N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, the above form must be altered accordingly.]

276.

Notice in Ejectment by Mortgagee against Mortgagor that Defendant has paid into Court a Sum of Money for Principal, Interest, and Costs.

Take notice, that the defendant has paid into court the sum of £ . . . as being all that is due for principal and interest upon the mortgage upon which this action is brought, and for costs ; and further take notice, that if you are willing to accept the said sum so paid into court you need not appear on the return day of the summons ; but if you do not agree to accept the said sum so paid in as aforesaid, you should appear at the court on that day, as the court will then proceed to determine whether the said sum of £ . . . so paid into court as aforesaid is sufficient to satisfy all such principal, interest, and costs as aforesaid, and will in either case make such order in the matter as to the court shall seem fit.

Dated this . . . day of . . . 19 . . .

Registrar.

To the plaintiff.

277.

Order in Ejectment by Mortgagee against Mortgagor (all Money due for Principal, Interest, and Costs having been paid into Court) upon Plaintiff to reconvey to Defendant the Mortgaged Property.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into court the sum of £ . . . for principal, interest, and costs due upon or in respect of the said mortgage :

Now upon the trial of this action at a court holden this day, the plaintiff not appearing, [*or the plaintiff agreeing to accept the said sum of £ . . . for such principal, interest, and costs as aforesaid, or the plaintiff, alleging that the said sum of £ . . . is not sufficient to satisfy such principal, interest, and costs as aforesaid,*] it is adjudged that the said sum is sufficient to satisfy such principal, interest, and costs, as aforesaid :

And it is ordered that within . . . days from this day the plaintiff do, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and do deliver up to the defendant all title deeds and writings relating thereto.

To the plaintiff and to the defendant.

278.

Order in Ejectment by Mortgagee against Mortgagor (a certain Sum having been paid into Court for Principal, Interest, and Costs), that Defendant shall pay a further Sum into Court, and that upon such Payment being made Plaintiff shall reconvey the Mortgaged Property to Defendant.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into court the sum of £ for principal, interest, and costs due upon or in respect of the said mortgage :

Now upon the trial of this action at a court holden this day, the plaintiff refusing to accept the said sum so paid into court as aforesaid, it is adjudged that the said sum of £ is not sufficient to satisfy the principal, interest, and costs due upon or in respect of the said mortgage, and that the furthersum of £ is due from the defendant to the plaintiff for the same :

And it is ordered that the defendant do on or before the day of 19 , pay to the registrar of this court the said last-mentioned sum, together with £ for the plaintiff's costs in this action, and that upon the said sums of £ and £ , amounting together to the sum of £ , being paid into court on or before the said day of 19 , the plaintiff do, within days from the said last-mentioned day, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and deliver up to him all title deeds and writings relating thereto :

And it is further ordered that if the defendant shall not, on or before the said day of 19 , pay the said last-mentioned sum, then execution shall forthwith issue on the application of the plaintiff for the recovery of the possession of the property described in the particulars annexed to the summons in this action, and for the sum of £ [the costs of this action], together with the costs of the execution ; and the registrar shall return the money paid into court to the defendant.

To the plaintiff and to the defendant.

279.

Particulars or Statement of Cause of Action under Section 60 of the County Courts Act, 1888.

[Not to be printed.]

51 & 52 Vict.
c. 43, s. 60.
Order 6,
Rule 4.
Interruption
of light of
way.

A. The plaintiff is possessed of a cottage, and by reason thereof is entitled to a right of way from and to the said cottage, over and through a certain inclosed yard of the defendant, to a certain spring of water, for the purpose of getting water from the said spring, and the defendant has prevented the plaintiff from using the said way and having thereby access to the said spring, and still hinders and prevents him therefrom ; and neither the annual value nor the yearly rent of the lands, tenements, or hereditaments, in respect of which or on, through, or over which such easement is claimed exceeds the sum of £50 ; and the plaintiff claims £ damages.

Interruption
of drainage.

B. The plaintiff is possessed of a cottage and premises, and by reason thereof is entitled to have all the sewage and waste water arising on and from the said cottage and premises flow along and through a drain through and under the surface of a garden in the occupation of defendant into a cesspool there, and the defendant, by stopping up the said drain, has prevented and still prevents such sewage and waste water from flowing through and along the said drain into the said cesspool ; and neither, &c. [as in the last Form], and the plaintiff claims £2 damages.

Obstruction
of light and
air.

C. The plaintiff was possessed of a house, in which there were divers windows, and by reason thereof was entitled to the free access of air and light into the said house through the said windows, and the defendant by building a wall close to and in front of the said windows has darkened the plaintiff's house, and prevented and still prevents the access of light and

air into the plaintiff's house as the plaintiff before enjoyed the same; and neither the annual value nor the yearly rent of either plaintiff's house, or of the land on which the defendant has built the said wall, exceeds the sum of £50; and the plaintiff claims £ . . . damages.

[The above Forms are given merely as examples, and the statement in all cases must be in accordance with the right claimed, and be as concise as possible.]

280.

Particulars of Plaintiff's Demand or Cause of Action in Action of Contract ordered to be tried in a County Court.

[Not to be printed.]

In the county court of . . . holden at

Between A. B., plaintiff,

[Address and Description.]

and

C. D., defendant.

[Address and Description.]

Being an action of contract commenced in the High Court of Justice, and sent by order of a judge [or master or district registrar] thereof under section 1 of the County Courts Act, 1919, to be tried in this court.

Order 33,
Rule 1.

This action is brought for [state the particulars of the plaintiff's demand or cause of action according to the facts, adding]

Above are the particulars of the plaintiff's demand [or cause of action].

Dated this . . . day of . . . 19 .

A. B., plaintiff,

or

E. F., plaintiff's solicitor.

To the registrar of the court
and to the defendant.

281.

Notice of Trial of Action of Contract ordered to be tried in a County Court.

[Heading as in Form 280.]

Being an action of contract commenced in the High Court of Justice, and sent by order of a judge [or master or district registrar] thereof under section 1 of the County Courts Act, 1919, to be tried in this court.

Order 33,
Rule 1.

Take notice, that this action will be tried at a court to be holden on the . . . day of . . . at . . . o'clock in the . . . noon

Dated this . . . day of . . . 19 .

The hearing fee must be paid before the case is called on.

Registrar.

To the plaintiff and defendant.

[N.B.—To the notice sent to the defendant the registrar must annex a copy of the plaintiff's particulars of demand or cause of action, where given.]

282.

Statement of Plaintiff's Cause of Action in Action of Tort remitted for Trial in a County Court.

[Not to be printed.]

[Heading as in Form 280.]

Being an action of tort commenced in the High Court of Justice, and transferred by order of a judge [or master or district registrar] thereof, under section 1 or section 2 of the County Courts Act, 1919, to be tried in this court.

Order 23,
Rule 1.
Malicious
prosecution.

A. The defendant maliciously and without reasonable or probable cause laid an information before E. F., a justice of the peace for the county of . . . against the plaintiff for having feloniously stolen a bushel of

wheat belonging to the defendant, upon which charge the plaintiff was committed to the county gaol at _____, and was there imprisoned for two months, and the defendant afterwards maliciously and without reasonable or probable cause caused the plaintiff to be prosecuted, indicted, and tried at the last assizes for the said county upon the said charge, when the plaintiff was acquitted, and the prosecution came to an end, by reason whereof the plaintiff was injured in his person and character, and was put to expense in defending himself against the said charges; and the plaintiff claims £100 damages.

Illegal arrest. B. The defendant wrongfully and unlawfully gave the plaintiff into the custody of a policeman, and caused him to be handcuffed, and to be imprisoned in a police station, and thence to be taken in custody to a police office, and there to be further imprisoned, whereby the plaintiff was put to expense in procuring his liberation from such imprisonment and in finding bail for his subsequent appearance before a justice of the peace; and the plaintiff claims £30 damages.

Illegal distress. C. The defendant, under a certain distress for rent due from the plaintiff to him, seized and sold more goods and chattels of the plaintiff both in quantity and value than were reasonably sufficient to satisfy the arrears of rent due, and the costs of the distress; and the plaintiff claims £20 damages.

Assault. D. The defendant assaulted, beat, and wounded the plaintiff, in consequence whereof the plaintiff suffered much pain, and was confined to his bed, and put to expense in obtaining medical advice and attendance to cure him of the injuries inflicted by such beating and wounding; and the plaintiff claims £100 damages.

Libel. E. The defendant falsely and maliciously wrote and published of and concerning the plaintiff the words following: "*he is a liar, a blackguard, and a scoundrel*;" and the plaintiff claims £200 damages.

Libel of plaintiff in the way of his trade. F. The defendant falsely and maliciously caused to be printed and published of and concerning the plaintiff in the way of his trade as a grocer, the words following: "*Mr. A. B. sands his sugar and dusts his pepper*," whereby the plaintiff was injured in his trade, and lost the custom of several persons, particularly X., Y., and Z., who had before dealt at the plaintiff's shop; and the plaintiff claims £50 damages.

Slander. G. The defendant falsely and maliciously spoke and published of and concerning the plaintiff the words following: "*A. B. is a thief, and stole Mr. Brown's ducks*;" and the plaintiff claims £30 damages.

Slander of plaintiff in the way of his calling. H. The defendant falsely and maliciously spoke and published of and concerning the plaintiff, in the way of his business and calling as a ratcatcher, the words following: "*A. B. is a great rogue, and instead of doing his best to kill the rats he encourages the breed, so that he may have more employment from the farmers*," whereby the plaintiff was injured in his business, and several farmers, particularly X., Y., and Z., who had usually employed him to kill the rats on their farms, ceased to do so; and the plaintiff claims £20 damages.

Seduction. J. The defendant debauched and carnally knew M. G. then being the daughter and servant of the plaintiff, whereby the said M. G. became pregnant, and was delivered of a child; and the plaintiff thereby lost her services, and incurred expense in nursing and obtaining medical assistance and attendance for her; and the plaintiff claims £100 damages.

Above is the statement of the plaintiff's cause of action.

Dated this _____ day of _____ 19 _____.

A. B. plaintiff,

or

E. F. plaintiff's solicitor,

To the registrar of the court _____
and to the defendant.

[N.B.—The above Forms are only given as examples; and the statement of the plaintiff's cause of action must in all cases be in accordance with the facts and be as concise as possible.]

283.

Notice of Trial of Action of Tort remitted for Trial in a County Court.

[Heading as in Form 280.]

Being an action of tort commenced in the High Court of Justice, and transferred by order of a judge [*or master or district registrar*] thereof, under section 1 or section 2 of the County Courts Act, 1919, to be tried in this court.

Order 33,
Rule 1.

Take notice, that this action will be tried at a court to be holden on the day of at o'clock in the noon.

The hearing fee must be paid before the case is called on.

[*N.B.—To the notice sent to the defendant the registrar must annex a copy of the statement of the plaintiff's cause of action, where given.*]

283A.

Application to Paymaster-General or District Registrar for transmission to County Court of Money paid into High Court in Action or Matter remitted or transferred to County Court.

In the county court of holden at (Seal.)

Order 33,
Rule 3a.

In the matter of an action [*or matter*] remitted [*or transferred*] from the High Court of Justice.

19 . (Letter) No. .

Between

A. B.

Plaintiff,

and

C. D.

Defendant.

The above action [*or matter*] having been remitted [*or transferred*] from the High Court of Justice to and entered for trial in this court, pursuant to an order of dated the day of 19 , I hereby request that the sum of £ paid into the High Court in the said action [*or matter*] may be transmitted to this court by cheque payable to my order and crossed to the account of the county court of holden at at the bank.

Dated this day of .

Registrar.

To the Paymaster-General,
Royal Courts of Justice,
London, W.C.

[*or* To the District Registrar
High Court of Justice,
District Registry,

.]

283B.

Notice of Trial of Issue directed to be Tried in a County Court.

In the county court of holden at Between

A. B.

(Address and

Description) Plaintiff.

and

C. D.

(Address and

Description) Defendant.

Being an issue directed by the High Court of Justice and ordered by a judge [*or master or district registrar*] thereof under section 3 of the County Courts Act, 1919, to be tried in this court.

9 & 10
Geo. 5,
c. 73, ss. 3, 4.
Order 33,
Rule 4a.

Take notice, that this issue will be tried at a court to be holden on the day of , 19 , at the hour of 30 30 in the noon.

The hearing fee must be paid before the issue is called on.

Dated this day of , 19 .

Registrar.

To the plaintiff and defendant.

283c.

Certificate of Result of Trial of Issue directed to be Tried in a County Court.

[Heading as in Form 283B.]

9 & 10
Geo. 5,
c. 73,
ss. 3—4.

I hereby certify that the issue directed in this matter to be tried in this court was tried on the day of , and that the result of the trial was

[state result].

Order 33,
Rule 4c.

I return the documents lodged in this court.

I beg to report that the should pay the costs of the issue and the trial thereof

[or as the case may be].

Dated this day of , 19

Judge of the court.

284.

Statement to be delivered by Claimant when Interpleader transferred from High Court.

[Not to be printed.]

[Heading as in Form 280.]

Order 28,
Rule 9.

The following are the names and addresses of the parties and solicitors to the interpleader proceeding directed to be transferred to this court by an order of the High Court of Justice dated—

Viz.:—of the claimant, A. B., of (address and description).
of his solicitor, C. D., of
of the execution creditor, E. F., of
of his solicitor, G. H., of

The proceeding transferred is an issue to try whether certain goods seized by the sheriff of Middlesex, under an execution from the High Court in an action in which the said E. F. was plaintiff and I. K. was defendant are the property of the said A. B., the claimant, or of the said E. F., the execution creditor.

I request that the said issue may be entered for hearing.

Claimant.

To the registrar.

285.

Notice of Hearing of Interpleader transferred from High Court.

[Commence as in Form 280.]

Order 8,
Rule 9.

Being a proceeding by way of interpleader directed to be transferred to this court by an order of the High Court of Justice dated the day of 19 .

Take notice, that this proceeding will be heard at a court to be holden at on the day of 19 , at o'clock in the noon.

The hearing fee must be paid before the case is called on.

Dated this day of 19 .

Registrar of the county court
of holden at .

To the claimant and the
execution creditor and
to Messrs. the
London agents of the
sheriff of

NOTE.—*The claimant is called upon five clear days at least [or, if the time has been reduced under Order XXXIII. Rule 13 (2) (a), clear days at least] before the day of hearing, to lodge with the registrar of this court, at his office situate at two copies of the particulars of the goods and chattels alleged to be the property of the claimant, and of the grounds of his claim; and the registrar is required to forthwith send by post to the execution creditor one of the copies of such particulars; Order XXXIII. Rule 10.*

Order 3
Rule 10.

286.

Notice to Distrainer of Goods or Cattle intended to be Replevied.

In the county court of holden at .

Take notice, that A. B. of, &c., whose goods [*or cattle*] you have distrained, intends to replevy the same, and has proposed as his sureties for the due prosecution of an action of replevin against you in the [*here mention the court in which the action is to be brought*], E. F. of, &c., and G. H. of, &c., and that if you have any valid objection to make to the proposed sureties, or either of them, you must attend at [*here insert place of office of registrar*], on the day of 19 , at the hour of , when the bond will be submitted to me for approval.

J. K.,

To Registrar.
of .

287.

Bond in Replevin where Action to be commenced in High Court.

[*Not to be printed.*]

Know all men by these presents, that we, A. B. of, &c., C. D. of, &c., and E. F. of, &c., are held and firmly bound unto G. H. (a) of, &c., in the sum of 51 & 52 Vict. c. 43, s. 135. £ to be paid to the said G. H. or his certain attorney, executors, adminis- (a) The distrainer, trators, or assigns, for which payment to be well and truly made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. I approve this bond. 1.K. Sealed with our seals, and dated this day of one thousand nine Registrar. hundred and .

Whereas the above-named C. D. and E. F., at the request of the said A. B., (L.S.) have agreed to enter into the above-written obligation, and this security has been approved of by , the registrar of the county court of holden at , as appears by his allowance in the margin hereof: The bond does not require a stamp.

Now the condition of this obligation is such, that if the above-bounden A. B. do and shall within one week from the date of the said obligation commence an action of replevin against the above-named G. H. in the High Court of Justice, for taking and unjustly detaining certain goods and chattels of the said , to wit, [*here insert the description of the goods and chattels*], and prosecute such action with effect and without delay, and unless judgment be obtained thereon by default, do and shall

prove before the said court that he the said had good ground for believing that the title to the hereditament in respect of which the distress was made was in question [*or*, that the title to a toll *or* market *or* fair *or* franchise was in question], [*or*, that the alleged rent or damage in respect of which the distress was made exceeded twenty pounds], and do and shall also make return of the said goods and chattels, if return thereof shall be adjudged, then this obligation shall be void and of no effect, otherwise the same shall be and remain in full force.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of .

51 & 52 Vict. NOTE.—If a deposit of money be made, the memorandum thereof should
c. 43, s. 109. follow the terms of the conditions of the bond, and will not require a stamp.

288.

Bond in Replevin where Action to be commenced in County Court.

[*Not to be printed.*]

(a) The dis- Know all men by these presents, that we, A. B. of, &c., C. D. of, &c., and
trainer. E. F. of, &c., are held and firmly bound unto G. H. (a) of, &c., in the sum of £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of one thousand nine hundred and .

I approve of Whereas the above-named C. D. and E. F., at the request of the said A. B.,
this bond. have agreed to enter into the above-written obligation, and this security has
I.K., been approved of by , the registrar of the county court of holden
Registrar. at , as appears by his allowance in the margin hereof :

(L.S.)
This bond
does not
require a
stamp.

Now the condition of this obligation is such, that if the above-bounden A. B. do and shall within one month from the date of the said obligation commence an action of replevin against the above-named G. H. in the county court of holden at for taking and unjustly detaining certain goods and chattels of the said , to wit, [*here insert the description of the goods and chattels*], and prosecute such action with effect and without delay, and do and shall also make return of the said goods and chattels, if return thereof shall be adjudged, then this obligation shall be void and of no effect, otherwise the same shall be and remain in full force.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of .

51 & 52 Vict. NOTE.—If a deposit of money be made, the memorandum thereof should
c. 43, s. 109. follow the terms of the conditions of the bond, and will not require a stamp.

289.

Warrant to High Bailiff to Replevy.

In the county court of)
holden at)

Whereas hath given security as well to commence his action of replevin against for taking and unjustly detaining certain goods and chattels [*or cattle*] of the said that is to say (*insert description of the goods and chattels*); and prosecute such action with effect and without delay, as also to make return of the said goods and chattels if return thereof shall be adjudged :

Now, as registrar of the above-mentioned county court, and by virtue of the provisions of the County Courts Act, 1888, I hereby authorise and direct you without delay to replevy and deliver the said goods and chattels [*or cattle*] to the said , and forthwith to return to me this warrant and what you shall have done under the same.

Dated the day of 19 .

Registrar.

To the high bailiff of the court.

In obedience to this warrant, I have replevied and caused to be delivered to the within-named the within-mentioned goods and chattels [*or cattle*].

Dated this day of 19 .

High bailiff.

(*For judgment for plaintiff in replevin, see Form 151 (1).*)

290.

Judgment for Defendant in Replevin for Rent.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do return to the defendant the goods and chattels, [*or cattle*] hereinafter mentioned, that is to say [*stating the particulars thereof*], and do pay to the registrar of the court, forthwith [*or on the day of*] the sum of £ for costs of action [*or*, It is adjudged that the amount due for rent in arrear from the plaintiff to the defendant is £ , and that the goods and chattels [*or cattle*] of the plaintiff taken and detained by the defendant, were of the value of £ , and that the plaintiff do forthwith [*or on the day of*] pay to the registrar of this court, the said sum of £ , and also the sum of £ for the defendant's costs].

Order 84,
Rules 3, 4.

291.

Judgment for Defendant in Replevin of Cattle Damagefeasant.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do return to the defendant the cattle hereinafter mentioned, that is to say [*here specify the cattle*], [*or do pay to the registrar of this court, forthwith*] [*or on the day of*] 19 , the sum of £ which is now adjudged to be the amount of damage sustained by the defendant] :

Order 84,
Rules 3, 5.

It is also adjudged that the plaintiff do pay to the registrar of this court forthwith [*or on the day aforesaid*] the sum of £ for the defendant's costs,

292.

Judgment for Delivery of Goods.Order 23,
Rule 3a.

Upon the trial of this action at a court holden this day, it is adjudged that the plaintiff do recover against the defendant the following goods and chattels of the plaintiff wrongfully detained by the defendant; that is to say, [*here enumerate the chattels which the court decides to have been detained*] of the value of £ , and also the sum of £ for damages for the detention of the said goods and chattels, and the sum of £ for costs.

[And it is ordered that the defendant do return the said goods and chattels to the plaintiff, or do pay the said sum of £ their value to the registrar of this court on the day of 19 .]

And it is further ordered that the defendant do pay the said sums of £ and £ for damages and costs to the registrar of this court on the day of 19 .

If the judge makes an order at the trial for a return of the goods and chattels without giving the defendant the option of returning them, omit the words in brackets and substitute the following:—

Order 25,
Rule 69.

And it is ordered that the defendant do return the said goods and chattels to the plaintiff on the day of 19 , and that in default of his so doing a warrant of delivery do issue.

293.

Warrant of Delivery of Goods.Order 25,
Rules 69, 70.

Whereas at a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant for the recovery of [*here enumerate the goods and chattels which the court has ordered to be recovered of the defendant*], and thereupon it was ordered by the court that the defendant should return the said goods and chattels to the plaintiff on the day of 19 , and that in default of his so doing a warrant of delivery should issue:

And whereas the defendant did not on the said day of 19 , return the said goods and chattels to the plaintiff:

These are therefore to require and order you forthwith to seize the said goods and chattels so not returned as aforesaid, wheresoever they may be found within the district of this court, and to deliver the same to the plaintiff:

And if the same cannot be found by you within such district, you are required and ordered to distrain all the lands and chattels of the defendant wheresoever they may be found within the district of this court, and them hold until the defendant shall deliver the said goods and chattels to you, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

Application was made to the registrar for this warrant at minutes
past the hour of in the noon of the day of 19 .

294.

Warrant of Delivery of Goods, and of Execution for Damages and Costs.

Whereas at a court holden at on the day of 19 , the *Order 25, Rules 69, 70.*
 plaintiff obtained a judgment against the defendant for the recovery of
 [here enumerate the goods and chattels which the court has ordered to be
 recovered of the defendant], and for the payment of £ for damages
 for the detention of the said goods and chattels, and of £ for costs :
 and thereupon it was ordered by the court, that the defendant should
 return the said goods and chattels to the plaintiff on the day of ,
 and that in default of his so doing, a warrant of delivery should issue ; and
 it was further ordered that the defendant should pay the said sums of
 £ and £ for damages and costs to the registrar of this court on
 the day of :

And whereas the defendant did not on the said day of 19 ,
 return the said goods and chattels to the plaintiff, and default has been
 made in payment according to the said order :

These are therefore to require and order you forthwith to seize the said
 goods and chattels so not returned as aforesaid, wheresoever they may be
 found within the district of this court, and to deliver the same to the
 plaintiff :

And if the same cannot be found by you within such district, you are re-
 quired and ordered to distrain all the lands and chattels of the defendant,
 wheresoever they may be found within the district of this court, and them
 hold until the defendant shall deliver the said goods and chattels to you :

And these are further to require and order you forthwith to make and
 levy by distress and sale of the goods and chattels of the defendant
 wheresoever they may be found within the district of this court, (except
 the wearing apparel and bedding of him or his family, and the tools
 and implements of his trade, if any, to the value of five pounds), the
 sum stated at the foot of this warrant, being the amount due to the
 plaintiff under the said order, together with the costs of this execution ; and
 also to seize and take any money or bank notes (whether of the Bank of
 England or of any other bank), and any cheques, bills of exchange, pro-
 missory notes, bonds, specialties, or securities for money of the defendant,
 which may there be found, or such part or so much thereof as may be suffi-
 cient to satisfy this execution and the costs of making and executing the
 same, and to pay what you shall have so levied to the registrar of this
 court, and to make return of what you have done under this warrant
 immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
 and others the bailiffs thereof.

	£	s.	d.
Damages for detention of goods			
Costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of
 five days next following the day on which they were seized, unless they
 be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at _____ minutes
past the hour of _____ in the _____ noon of the _____ day of _____ 19 _____.

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

295.

Warrant of Delivery where, if Goods are not Returned, Levy is to be made for their Value.

*Order 25,
Rules 69, 70.*

Whereas at a court holden at _____ on the _____ day of _____ 19 _____, the plaintiff obtained a judgment against the defendant for the recovery of [here enumerate the goods and chattels which the court has ordered to be recovered of the defendant], of the value of £ _____, and for the payment of £ _____ for damages for the detention of the said goods and chattels, and of £ _____ for costs; and thereupon it was ordered by the court, that the defendant should return the said goods and chattels to the plaintiff or pay the said sum of £ _____ their value to the registrar of this court, on the _____ day of _____ 19 _____; and it was further ordered that the defendant should pay the said sums of £ _____ (*damages for the detention*) and £ _____ (*costs*) to the registrar of this court on the _____ day of _____:

And whereas the defendant did not on the said _____ day of _____ 19 _____, return the said goods and chattels to the plaintiff, and default has been made in payment according to the said order:

These are therefore to require and order you forthwith to seize the said goods and chattels so not returned as aforesaid, wheresoever they may be found within the district of this court, and to deliver the same to the plaintiff:

And if the same cannot be found by you within such district, you are required and ordered to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of £ _____ (*the assessed value of the goods and chattels*):

And you are further required and ordered to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except, as hereinbefore excepted, the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sums of £ _____ (*damages for detention*) and £ _____ (*costs*), together with the costs of this execution:

And also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this _____ day of _____ 19 _____.

By the court, _____
Registrar.

To the high bailiff of the said court, and others the bailiffs thereof.

	£	s.	d.
Assessed value of the goods and chattels			
Damages for detention of goods			
Costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

296.

Order for Specific Performance of Contract to deliver Specific or Ascertained Goods, under Sect. 52 of the Sale of Goods Act, 1893.

Upon the trial of this action (the same being for breach of contract to deliver specific goods for a price in money) at a court holden this day, it being adjudged that the plaintiff is entitled to recover, it is, upon the application of the plaintiff, found and adjudged that the goods in respect of the non-delivery of which the plaintiff is entitled to recover, and which remain undelivered, are as follows; (that is to say,) [here enumerate the goods undelivered]; and that the plaintiff would have been liable to pay the sum of £ [here insert the sum to be paid by plaintiff for the delivery] for the delivery thereof; and that the plaintiff will have sustained damages to the amount of £ [here insert the sum assessed for damages if the goods be delivered] if the said goods shall be delivered as hereinafter mentioned, and to the amount of £ [here insert the sum assessed for damages in the event of the non-delivery of the goods] if the said goods shall not be so delivered; And thereupon judgment being now given for the plaintiff, it is, upon the application of the plaintiff, ordered that the said goods be delivered by the defendant to the plaintiff on the payment by the plaintiff of the said sum of £ [here insert the sum to be paid by plaintiff for the delivery] on or before the day of now next ensuing, and that in default thereof execution do issue for the delivery to the plaintiff, on payment by the plaintiff of the said sum of £ [here insert the sum to be paid by plaintiff for the delivery] of the said goods; and that the defendant shall not have the option of retaining the same upon payment of the damages lastly assessed in the event of the non-delivery of the goods; and that the plaintiff do recover against the defendant the said sum of £ [here insert the sum assessed for damages if the goods be delivered] for damages and for costs:

And it is ordered that the defendant do pay the said last-mentioned sums of £ and £ to the registrar of this court on or before the day of 19 :

And it is further ordered that if the said goods or any part thereof cannot be found within the district of this court, the bailiff of this court shall distrain the defendant by all his lands and chattels within the district of this court till the defendant deliver the said goods, or, at the option of the plaintiff, the said bailiff shall cause to be made of the defendant's goods the said sum secondly above assessed for damages, or a due proportion thereof.

297.

Distringas for Delivery of Goods, and Warrant of Execution against Defendant's Goods for the Amount of Damages (supposing the Goods delivered under the Distringas), and Costs, under Sect. 52 of the Sale of Goods Act, 1893.

56 & 57 Vict.
c. 71, s. 52.
Order 25,
Rules 69, 70.

Whereas at a court holden at _____ on the _____ day of _____ 19____, the plaintiff obtained a judgment against the defendant for the delivery to the plaintiff upon payment by the plaintiff of the sum of £ _____ [*here insert the sum to be paid by plaintiff for the delivery*] of the following goods: that is to say [*here enumerate the goods enumerated in the judgment*]: and by the said judgment it was found and adjudged that the plaintiff would have sustained damages to the amount of £ _____ [*here insert the sum assessed for damages if the goods be delivered*] if the said goods should be delivered to the plaintiff, and to the amount of £ _____ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*] if the said goods should not be so delivered; and judgment being then given for the plaintiff, it was thereupon ordered that the said goods should be delivered by the defendant to the plaintiff, on payment by the plaintiff of the said sum of £ _____ [*here insert the sum to be paid by plaintiff for the delivery*] on or before the _____ day of _____ 19____, and that in default thereof execution should issue for delivery to the plaintiff, on payment by the plaintiff of the said sum of £ _____ [*here insert the sum to be paid by the plaintiff for the delivery*], of the said goods, and that the defendant should not have the option of retaining the said goods upon payment of the said sum of £ _____ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], and that the plaintiff should recover against the defendant the said sum of £ _____ [*here insert the sum assessed for damages if the goods be delivered*] for damages, and £ _____ for costs; and that the defendant should pay the said last-mentioned sums of £ _____ and £ _____ to the registrar of this court on or before the _____ day of _____ 19____:

And it was further ordered that if the said goods or any part thereof should not be found within the district of this court, the bailiff of this court should distrain the defendant by all his lands and chattels within the district of this court till the defendant should deliver the said goods, or, at the option of the plaintiff, the said bailiff should cause to be made of the defendant's goods the said sum of £ _____ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], or a due proportion thereof:

And whereas the said goods have not been delivered according to the said order, and the said sum of £ _____ so payable by the plaintiff as aforesaid has been paid to the registrar of this court, and the plaintiff has not expressed his option to have the said sum of £ _____ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], or a due proportion thereof, made of the goods of the defendant:

These are therefore to require and order you forthwith to seize the said goods so not delivered as aforesaid, wheresoever they may be found within the district of this court, and to deliver the same to the plaintiff, and to pay over to the defendant upon seizure of the said goods the said sum of £ _____ [*here insert the sum to be paid by the plaintiff for the delivery*] which is delivered to you together with this warrant:

And if the said goods cannot be found by you within such district, you are required and ordered to distrain all the lands and chattels of the defendant, wheresoever they may be found within the district of this court, and them hold until the defendant shall deliver the said goods to you:

And you are further required and ordered to make and levy, by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under

the said order, together with the costs of this execution ; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Amount assessed for damages if the goods be delivered .			
Sum adjudged for costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels seized for damages and costs are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes
past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

[N.B.— When a plaintiff sues out this warrant, he must pay to the registrar the amount found by the judgment to be payable by the plaintiff for the delivery of the goods, and the registrar must hand over such amount to the bailiff with this warrant, for the bailiff to pay to the defendant, if either the defendant delivers the goods to the bailiff or the bailiff obtains possession of them under this warrant.]

298.

Warrant of Execution against Defendant's Goods, under Sect. 52 of the Sale of Goods Act, 1893, where Plaintiff exercises the Option of having the Damages assessed for the Non-delivery of the Goods (where the Goods are not delivered pursuant to the Order) levied by Distress and Sale of Defendant's Goods.

Whereas at a court holden at on the day of 19 , the plaintiff obtained a judgment against the defendant for the delivery to the plaintiff, upon payment by the plaintiff of the sum of £ [here insert the sum to be paid by plaintiff for the delivery] of the following goods, that is to say [here enumerate the goods enumerated in the judgment] ; and by the said judgment it was found and adjudged that the plaintiff would have sustained damages to the amount of £ [here insert the sum assessed for damages if the goods be delivered] if the said goods should be delivered to the plaintiff, and to the amount of £ [here insert the sum assessed for damages in the event of the non-delivery of the goods] if the said goods should not be so delivered ; and judgment being then given for the plaintiff, it was thereupon ordered that the said goods be delivered by the defendant to the plaintiff, on payment by the plaintiff of the said sum of [here insert the sum to be paid by the plaintiff for the delivery], on or before

the day of and that in default thereof execution should issue for the delivery to the plaintiff on payment by the plaintiff of the said sum of £ [here insert the sum to be paid by plaintiff for the delivery] of the said goods, and that the defendant should not have the option of retaining the said goods upon payment of the said sum of £ [here insert the sum assessed for damages in the event of the non-delivery of the goods], and that the plaintiff should recover against the defendant the said sum of £ [here insert the sum assessed for damages if the goods be delivered], for damages, and £ for costs; and that the defendant should pay the said last-mentioned sums of £ and £ to the registrar of this court on or before the day of 19 :

And it was further ordered that if the said goods or any part thereof should not be found within the district of this court, the bailiff of this court should distrain the defendant by all his lands and chattels within the district of this court till the defendant should deliver the said goods, or, at the option of the plaintiff, the said bailiff should cause to be made of the defendant's goods the said sum of £ [here insert the sum assessed for damages in the event of the non-delivery of the goods], or a due proportion thereof:

And whereas the said goods have not been delivered according to the said order, and the plaintiff has expressed his option to have the said sum of £ [here insert the sum assessed for damages in the event of non-delivery of the goods] made of the goods and chattels of the defendant:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, where-soever they may be found within the district of this court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Amount assessed for damages if the goods be not delivered			
Sum adjudged for costs			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

299.

Order appointing Receiver of Real and Personal Estate.*[Not to be printed.]*

Upon the application of _____ and upon reading an affidavit of _____ and upon hearing _____

Order 13,
Rule 1.

It is ordered that _____ of _____ be appointed *[if so ordered, without giving security]* to receive the rents and profits of the real and leasehold estates of and to get in the outstanding personal estate of _____ the testator *[or intestate]* named in the particulars annexed to the summons in this action; and the tenants of the real and leasehold estates are to attorn and pay their rents in arrear and growing rents to such receiver.

And it is ordered that the defendants, the executors of the testator *[or administrators of the intestate]*, do deliver over to such receiver all securities in their hands for such outstanding personal estate, together with all books and papers relating thereto.

[And it is ordered that the said _____ do on or before the _____ day of _____ 19____, give security pursuant to Order XIII. Rule 2, of the County Court Rules in the sum of £ _____.]

[Add, if so ordered, And the plaintiff undertaking to be responsible for the acts and defaults of the said receiver until such security is given, it is further ordered that the said receiver be at liberty to act at once.]

300.

Order appointing Receiver of Partnership.*[Not to be printed.]*

Upon the application of _____ and upon reading an affidavit of _____ and upon hearing _____

Order 13,
Rule 1.

It is ordered that _____ of _____ be appointed *[if so ordered, without giving security]* to collect, get in, and receive the debts now due and outstanding and other assets and property belonging to the partnership business of _____ at _____ and out of the first moneys received to pay the debts due from the said business:

And it is further ordered that the plaintiff and defendant respectively do deliver over to the said _____ all the stock-in-trade and effects of the said partnership, and also all securities in their or either of their hands for such outstanding partnership estate, together with all books and papers relating thereto.

[And it is ordered that the said _____ do on or before the _____ day of _____ 19____, give security pursuant to Order XIII. Rule 2, of the County Court Rules in the sum of £ _____.]

[Add, if so ordered, And the plaintiff undertaking to be responsible for the acts and defaults of the said receiver until such security is given, it is further ordered that the said receiver be at liberty to act at once.]

300A.

Interim Order for Appointment of Receiver.

In the county court of _____ holden at _____

No. of Plaintiff.

Order 13,
Rule 15.

Between A. B., of &c., plaintiff,
and _____

C. D., of &c., defendant

Upon the application of Mr. _____, solicitor for the plaintiff and the

plaintiff by his undertaking to be answerable for all sums to be received by the receiver hereinafter named.

It is ordered that be appointed without security until the day of next inclusive or further order to receive the rents and profits of the following property, that is to say, but without prejudice to the rights of any prior incumbrancer or his possession (if any), and the tenants of the said premises are (without prejudice as aforesaid) to attorn and pay their rents in arrear and growing rents to the said so long as he shall continue to be such receiver; and that all questions as to passing his accounts and payments thereunder and all further questions be reserved until further order.

Defendant to be at liberty to apply in the meantime.

Dated the day of , 19 .

Registrar.

300B.

Final Order for Appointment of Receiver.

Order 13,
Rule 15.

In the county court of holden at

No. of Plaintiff.

Between A. B., of &c., plaintiff,
and

C. D., of &c., defendant.

Upon hearing Mr. , solicitor for the plaintiff, and upon reading the affidavits of filed the day of , 19 , and upon hearing Mr. , solicitor for the defendant [*or* the defendant in person] [*or* the defendant not appearing in person or by solicitor],

It is ordered as follows:—

1. That of be and he is hereby appointed [*if so ordered*, without giving security] to receive the rents, profits and moneys receivable in respect of the following property, that is to say:

But this appointment is to be without prejudice to the rights of any prior incumbrancers upon the said premises who may think proper to take possession of or receive the same by virtue of their respective securities, or, if any prior incumbrancer is in possession, then without prejudice to such possession.

2. That the tenants of the said premises do (without prejudice as aforesaid) attorn and pay their rents in arrear and growing rents to such receiver.

3. That the receiver be at liberty, if he shall think proper (but not otherwise), out of the rents, profits, and moneys to be received by him, to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments (if any) in passing his accounts.

4. That the allowance to the receiver be

5. That the total amount to be allowed for fees and costs (exclusive of the allowance to the receiver) shall be the amount provided by Order XIII. Rule 14, of the County Court Rules.

6. That the receiver shall not without leave of the judge receive more than the amount required to keep down the interest upon prior incumbrances, and to provide for the allowance to the receiver and the allowed fees and costs of obtaining this order, and to pay to the plaintiff what shall be due to him in respect of the debts and costs due to him, amounting to £ for debt and £ for costs, making together the sum of £ .

7. That the receiver shall submit his accounts and pay over to the registrar the balance in his hands in pursuance of Rules 4 to 7 of Order XIII. aforesaid within 12 calendar months from the date of this order, or so soon as the

amount receivable by him under the preceding clause of this order has been received, whichever shall first happen, or whenever he may be called upon by the registrar so to do.

8. That the sums paid into court by the receiver shall be applied in or towards satisfaction of the allowance to the receiver, and the fees and costs of obtaining this order, and the amount due to the plaintiff in respect of debt and costs as aforesaid; but if there shall be no sums received or the amount shall be insufficient to satisfy such fees and costs as aforesaid, then upon the certificate of the registrar being given stating the amount of the deficiency (such certificate to be given after passing the final account) the amount of the deficiency so certified shall be paid by the defendant to the registrar for the use of the plaintiff.

9. That the balance (if any) remaining after making the several payments aforesaid shall be paid by the receiver into court to the credit of this action, subject to further order.

10. *Where the judgment is against a married woman, a widow, or a divorced woman, under Form 151A, paragraph 1, 2, or 3, add—*

Provided that nothing in this order shall authorise the receiver to receive any portion of the above-mentioned property of the defendant which consists of separate estate of the defendant which she is [or was during her coverture] restrained from anticipating, unless by reason of section 19 of the Married Women's Property Act, 1882, such property shall be available to satisfy the judgment obtained in this action notwithstanding such restriction.

11. *If security is ordered, add—*

And it is ordered that the receiver do on or before the . . . day of . . . give security pursuant to Order XIII. Rule 2, of the County Court Rules in the sum of £ . . .

[*Add if so ordered, and the plaintiff undertaking to be answerable for the acts and defaults of the said receiver until such security is given, it is further ordered that the receiver be at liberty to act at once.*]

12. And lastly it is ordered that any of the parties be at liberty to apply to the court as there may be occasion.

Dated this . . . day of . . .

Registrar.

301.

Notice to Receiver to produce his Accounts for Audit.

You are hereby required, on or before the . . . day of . . . 19 . . ., to leave at my office your accounts as receiver in this action [*or matter*], duly verified by affidavit, and to attend at my office aforesaid on . . . the . . . day of . . . 19 . . ., at . . . o'clock in the . . . noon for the purpose of having such accounts audited; and you are required to bring with you all receipts, papers, and vouchers necessary for verifying such accounts.

Order 13,
Rule 6.

To E. F.,
Receiver in this action [*or matter*].

302.

Order on Receiver to Pay to Beneficiary.

[*Not to be printed.*]

Upon the application of . . . it is ordered that E. F., of . . . appointed by an order of this court dated the . . . day of . . . the . . .

Order 13,
Rule 10.

receiver in this action [*or matter*], do pay at the end of each quarter to the moneys received by him during the quarter as such receiver after deducting his own remuneration and all other proper disbursements; and that he be allowed such payments in passing his accounts.

[NOTE.—Where the court at the time of appointing the receiver adds a direction to this effect, it can be prepared from this form.]

303.

Bond to be Given by Receiver.

[*Not to be printed.*]

Order 13,
Rule 2.

Know all men by these presents, that we, E. F., of, &c., and I. K., of, &c., and L. M., of, &c., are jointly and severally held and firmly bound to G. H., registrar of the county court of _____, in the sum of £ _____ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____ one thousand nine hundred and _____

Whereas an action has been commenced in this court by A. B. against C. D. for the purpose of [*here insert object of action*]:

And whereas the said E. F. has been appointed, by order of the above-mentioned court, to receive the rents and profits of the real [*or freehold, or copyhold, or leasehold*] estate [*or estates*] [and to get in the outstanding personal estate] of N. O., the testator in the said action named:

Now the condition of this obligation is such, that if the above-bounden E. F. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estates, and in respect of the personal estate, of the said N. O. [*or as may be*] at such periods as the said court shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said court has directed or shall hereafter direct, then this obligation shall be void and of none effect, otherwise the same shall remain in full force and virtue.

E. F. (L.S.)

I. K. (L.S.)

L. M. (L.S.)

Signed, sealed, and delivered by the above-bounden _____ in the presence of _____

NOTE.—If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.

304.

Order for Accounts and Inquiries.

[*Not to be printed, but to be used as a precedent.*]

Order 12,
Rule 5.

This court doth order that the following accounts and inquiry be taken and made; that is to say,

1. An account of the personal estate not specifically bequeathed of N. O. deceased, the testator in the particulars in this action named, come to the hands of the defendants C. D. and X. Y., the executors of his will, or of

either of them, or to the hands of any other person by the order or for the use of the said defendants or either of them.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the legacies and annuities (if any) given by the testator's will.

5. An inquiry what parts (if any) of the testator's personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by the defendants C. D. and X. Y., the executors of his will, or either of them, or by any other person by the order or for the use of the said defendants or either of them.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the judge, free from incumbrances (if any) of such of the incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent, and that the money to arise by the sale of the testator's real estate be paid into court to the credit of this action, to an account entitled "Proceeds of sale of the testator's real estate," subject to further order; and if such money shall arise from real estate sold with the consent of incumbrancers, the money so arising is to be applied in the first place in payment of what shall appear to be due to such incumbrancers according to their priorities.

11. And it is ordered that _____ shall have the conduct of the sale of the said real estate, and shall prepare the conditions and contracts of sale, and the abstract of title, subject to the approval of the registrar, and that in case any doubt or difficulty shall arise the papers shall, with the like approval, be submitted to _____, Esquire, to settle.

12. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the registrar shall advertise in the newspapers according to the practice of the court, or shall make such inquiries in any other way which shall appear to the registrar to give the most useful publicity to such inquiries.

13. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the _____ day of _____, and that the registrar do certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the _____ day of _____.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply to the court as they may be advised.

[Such part only of this order is to be used as is applicable to the particular case.]

305.

Order for Sale of Personal Estate.*[Not to be printed.]**Order 23,
Rule 23.*

It appearing to me that it will be for the benefit of the estate that the remaining outstanding debts be sold, I do order that the debts now due to the estate of N. O., the testator [*or* intestate] mentioned in the plaintiff's particulars of claim, be sold as soon as conveniently may be by [the receiver] by private contract [*or* public auction] for the highest price that can be obtained for the same.

Dated this day of 19 .

Judge.

306.

Order for Sale of Real Estate.*[Not to be printed.]**Order 23,
Rule 18.*

It appearing to me that it is necessary for carrying out the objects of this action that the real estate [*or* part of the real estate] of the deceased be sold, I do order that all that freehold [*copyhold or leasehold*] messuage or tenement, &c. [*setting out parcels as in last conveyance*], being the real [*or* part of the real] estate of N. O., late of in the county of , deceased, the testator [*or* intestate] mentioned in the plaintiff's particulars of claim, be offered for sale by public auction at the Hotel at by Mr. , auctioneer, and be then and there sold, subject to a reserved price to be fixed by the court [*or* to the highest bidder without reserve].

Dated this day of 19 .

Judge.

307.

Order for Reference in Foreclosure Action by Mortgagees.*[Not to be printed.]*

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest under or by virtue of the indenture of mortgage dated the day of mentioned in the particulars in this action (making allowance on one side or the other for any rents or profits received by the plaintiff and for any sums of money lawfully expended by the plaintiff about the mortgaged premises), and to tax the plaintiff's costs of this action, and that the registrar do certify to the court on the day of what he shall find to be due for principal and interest as aforesaid and for costs: And upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff do reconvey the said mortgaged premises, free and clear from all incumbrances made by him, or any person or persons claiming by, from, or under him, to the defendant, or as he shall direct, and do deliver up to the registrar, on oath if required, all deeds and writings in his custody or power relating thereto; and that upon such reconveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the defendant do thenceforth stand absolutely debarred and foreclosed of and from all right, title, interest, and equity of redemption of, in, and to the

said premises, and that after the expiration of the said six months the plaintiff shall be at liberty to apply to the court for a judgment for the foreclosure of the said mortgage [*add, if neither the value nor the rent of the property exceeds 50*l.* a year, and delivery of possession is asked for and ordered by the court, and for an order directing the defendant to deliver up possession to the plaintiff of the hereditaments comprised in the said indenture of mortgage*]: And either of the parties is to be at liberty to apply to the court as he may be advised.

[N. B.—*Where the state of the account is ascertained at the first hearing, instead of the order of reference to the registrar, begin,* It is declared that the sum of £ is now due to the plaintiff for principal and interest on the indenture of mortgage mentioned in the particulars in this action, and it is ordered that the registrar do tax the plaintiff's costs of this action, and that the registrar do certify, &c.]

308.

Order for Sale in Action by Mortgagee or Person entitled to a Lien.

[*Not to be printed.*]

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or equitable mortgage or lien*], dated the day of , mentioned in the particulars in this action, and to tax the plaintiff's costs of this action, and that the registrar do certify to the court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs: And upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff [do reconvey the said mortgaged premises, free and clear from all incumbrances made by him, or any person or persons claiming by, from, or under him, to the defendant, or as he shall direct, and] do deliver up to the registrar, on oath if required, all deeds and writings in his custody or power relating to the premises, subject to the said mortgage [*or equitable mortgage or lien*]; and that upon such [reconveyance being made, and] deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid, for principal, interest, and costs; but in default of the defendant paying into court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [*or the premises subject to the said equitable mortgage or lien*] be sold with the approbation of the judge: And it is ordered that the money to arise by such sale be paid into court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant.

309.

Judgment for Foreclosure.

[*Not to be printed.*]

Whereas it appears to the court that the defendant has not paid into court the sum of , which was on the day of certified by the registrar to be due to the plaintiff for principal and interest upon the indenture of mortgage dated the day of , mentioned in the particulars in this action, and for costs, pursuant to the order made in this action on the day of last, and that the period of six months has elapsed since the said day of :

It is ordered that the defendant do stand absolutely debarred and foreclosed of and from all right, title, interest, and equity of redemption of, in, and to the said mortgaged premises [*add, if neither the value nor the rent of the property exceeds 50l. a year, and delivery of possession is asked for and ordered by the court, and that the defendant do deliver up possession to the plaintiff of the hereditaments comprised in the said indenture of mortgage, the particulars of which are set forth in the schedule hereto*].

310.

Order in Action for Foreclosure or Sale where an Immediate Sale is directed under sect. 91 of the Law of Property Act, 1925.

[*Not to be printed.*]

15 Geo. 5,
c. 20, s. 91.

This action coming on for trial this day, upon hearing, &c., this court doth declare that the plaintiff is entitled to an equitable mortgage for the sum of £ and interest at per cent. upon the premises mentioned in the particulars; and the plaintiff requesting that an immediate sale of the said mortgaged hereditaments may be directed, and it appearing by the evidence of that the rents of the said mortgaged hereditaments are insufficient to keep down the interest on the said mortgage debt, and that the said hereditaments are an insufficient security for payment of the said mortgage debt and interest, and that it is therefore proper that an immediate sale of the property be ordered without giving the mortgagor the usual time to redeem, it is ordered that the said mortgaged hereditaments be sold, with the approbation of the judge [*add directions for sale, &c.*]; and it is ordered that an account be taken of what is due to the plaintiff for principal and interest on his said mortgage, and for his costs of this action, to be taxed by the registrar: and it is ordered that the money to arise from the sale hereinbefore directed be applied in payment of what shall appear to be due to the plaintiff for principal, interest, and costs as aforesaid, and be in the meantime paid into court to the credit of this action; and it is ordered that the further hearing of this action be adjourned till ; and either of the parties is to be at liberty to apply to the court as he may be advised.

311.

Particulars in Foreclosure Action where the Debt is under £50, and Plaintiff claims that Defendant may be ordered personally to Pay the Debt.

[*Not to be printed.*]

Order 6,
Rule 1.

1. By an indenture dated the 10th day of May, 1897, made between the defendant of the one part and the plaintiff of the other part, the defendant, in consideration of £40 advanced to him by the plaintiff, conveyed to the plaintiff and his heirs a house and premises situate at Hastings, in the county of Sussex, by way of mortgage to secure the repayment of the said sum of £40 and interest at 5 per cent., and the defendant covenanted with the plaintiff to repay him the said sum of £40, together with interest as aforesaid, on the 10th day of November, 1897.

2. The said sum of £40, together with an arrear of interest amounting in the whole to £45, remains due and owing to the plaintiff.

3. The defendant is in occupation of the said mortgaged premises.

4. Neither the value nor the rent of the mortgaged premises exceeds £50 a year.

5. The plaintiff claims that the defendant may be ordered personally to pay to the registrar of this court the said sum of £45, together with the plaintiff's costs of this action, and that in default the defendant may be foreclosed of his equity of redemption of the mortgaged premises [and ordered to deliver up possession thereof to the plaintiff].

312.

Judgment in Foreclosure Action where the Debt is under £50, and Plaintiff claims that Defendant may be Ordered personally to pay the Debt.

[*Not to be printed.*]

It is this day adjudged that the plaintiff do recover against the defendant the sum of £ for debt and £ for costs of this action up to and including the hearing ; and it is ordered that the defendant do pay the same to the registrar of this court on the day of ; and in case the defendant do pay the same as aforesaid, it is ordered [*usual directions for reconveyance of the mortgaged property, &c., see Form 307*] ; but in default of payment it is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage of the house in the plaintiff's particulars mentioned, and to tax the plaintiff his costs of this action, regard being had in taking the said account to the amount (if any) which may be paid by the defendant or recovered by the plaintiff under the judgment hereinbefore contained ; and it is ordered that the registrar do certify to the court on the day of what he shall find to be due to the plaintiff for principal, interest, and costs ; and upon the defendant paying into court what shall be certified, &c., &c., within six months after the registrar shall have presented his certificate [*usual directions for reconveyance, &c., see Form 307*] ; but in default [*usual directions for foreclosure and delivery of possession, with liberty to apply, see Form 307*].

313.

Particulars in Action for Specific Performance.

[*Not to be printed.*]

1. By an agreement in writing the plaintiff agreed to sell to the defendant and the defendant agreed to purchase of the plaintiff, a freehold house situate at , to which the plaintiff is entitled in fee simple, for the sum of £400.
2. The said agreement is contained in two letters, dated respectively the 4th and 5th days of March, 19 , the former of such letters, which was addressed to the defendant, being signed by the plaintiff, and the latter, which was addressed to the plaintiff, being signed by the defendant.
3. The defendant has refused to perform the said agreement.
4. The purchase money does not exceed the sum of £500.
5. The plaintiff claims that the said agreement be specifically performed by the defendant.
6. The plaintiff has always been ready and willing, and hereby offers specifically to perform the said agreement on his part.
7. The plaintiff claims £50 damages from the defendant for breach of the said agreement.

Order by,
Rule 1.

or,

1. The defendant by an agreement in writing dated the 7th day of March, 19 , and signed by him, agreed to grant to the plaintiff a lease of a cottage and ten acres of land, situate at , and called or known as Whitehouse, at the yearly rent of £20, for the term of seven years, commencing from the 25th day of March, 19 .
2. The defendant has refused to perform the said agreement.
3. The plaintiff has always been ready and willing, and hereby offers specifically to perform the said agreement on his part.
4. The plaintiff claims to have the said agreement specifically performed, and to have a lease granted to him accordingly.
5. The value of the said cottage and land does not exceed the sum of £500

314.

Judgment in Action for Specific Performance.*[Not to be printed.]*

The court doth adjudge that the agreement in the plaintiff's particulars mentioned ought to be specifically performed and carried into execution, provided a good title can be made to the house therein mentioned, and doth order the same accordingly.

And it is ordered that the following inquiries be made, that is to say, (1) An inquiry whether a good title can be made to the house in the said agreement mentioned :

(2) And in case it shall appear that a good title can be made to the said house, an inquiry when it was first shown that such good title could be made.

And it is ordered that the further hearing of this action be adjourned to _____, and that either of the said parties be at liberty to apply to the court as he may be advised.

Further Order after Inquiry and Certificate of good Title.

It is ordered

(1) That interest be computed at the rate of £5 per cent. per annum from the _____ day of _____ 19 on the sum of £400, the purchase money for the house comprised in the agreement in the plaintiff's particulars mentioned ; and

(2) That an account be taken of the rents and profits of the said house received by the plaintiff or by any other person by his order or for his use, from the said _____ day of _____ 19 ; *[in case the plaintiff is in occupation of the house, then add—*and if it shall appear that the plaintiff has occupied the said house, then it is ordered that an annual value by way of rent be set thereon, and that the plaintiff be charged therewith in the account of rents and profits].

And it is ordered that what shall appear to be due on the said account of rents and profits be deducted from the said sum of £400, and what shall appear to be due to the plaintiff for interest thereon as aforesaid, and that the balance be certified by the registrar.

Add, if the court so directs, And it is ordered that it be referred to the registrar to tax the plaintiff's costs of this action.

And upon the plaintiff executing to the defendant at the defendant's expense a proper conveyance of the said house (such conveyance to be settled by the judge in case the parties differ), and delivering to the defendant, upon oath if required, all deeds and writings in his custody or power relating to the said house, it is ordered that the defendant pay into court the balance payable in respect of the said purchase money and interest, together with the amount of the plaintiff's costs when so taxed.

And either of the said parties is to be at liberty to apply to the court as he may be advised.

or,

Adjudge specific performance of the agreement (*as in previous form omitting proviso as to title*).

And it is ordered that the defendant do execute a lease of the cottage and land comprised in the said agreement for the term therein mentioned to the plaintiff, the said lease to contain the usual covenants [*where a question is raised as to any special covenant being inserted,* and also a covenant on the part of the plaintiff to _____], and it is ordered that such lease be settled by the judge in case the parties differ, and it is ordered that the plaintiff do execute to the defendant a counterpart of the said lease.

Directions as to costs. Liberty to either party to apply to the court as he may be advised.

315.

Order.—Dissolution of Partnership.*[Not to be printed.]*

It is declared and adjudged that the partnership mentioned in the plaintiff's particulars between the plaintiff and defendant ought to stand dissolved as from the date of this judgment [*or* the day of]; and it is ordered that the dissolution thereof as from that day be advertised in the *London Gazette*, and in [*state name of newspaper*]:

And it is ordered that be the receiver of the partnership estate and effects in this action, and do get in all the outstanding book debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property, and effects now belonging to the said partnership.

2. An account of the debts and liabilities of the said partnership.

3. An account of all dealings and transactions between the plaintiff and defendant from the foot of the settled account exhibited in this action and marked (A.), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the particulars mentioned, and the property and effects belonging thereto, be sold under the direction of the registrar, and that the registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties are to be at liberty to bid at the sale, and that the moneys to arise from such sale be paid into court to the credit of this action.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the registrar do certify the result of the accounts, and the balance (if any) due to either of the parties to this action by the partnership, for advances as distinguished from capital, and in respect of capital, and the balance (if any) due by either of the parties to the partnership, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this action do stand adjourned for giving judgment to the day of , and that either of the parties is to be at liberty to apply to the court as he may be advised.

316.

Partnership.—Judgment.*[Not to be printed.]*

It is ordered that the fund now in court to the credit of this action, amounting to the sum of £ , with any interest thereon, be applied as follows:—

1. In payment of the debts due by the partnership set forth in the registrar's certificate, amounting to £ .

2. In payment to the plaintiff [*or* defendant] of the sum of £ being the amount found by the registrar's certificate to be due to the plaintiff [*or* defendant] by the partnership for advances as distinguished from capital.

And it is ordered that it be referred to the registrar to tax the costs of the plaintiff and the defendant in this action.

And it is ordered that out of the balance of the said sum of £ and interest, after payment of the said debts and of the said sum of £ so found due to the plaintiff [*or* defendant], the said costs of the plaintiff and defendant, or any such apportionment in respect thereof as hereinafter mentioned, be paid to the plaintiff and defendant respectively.

And it is ordered that the residue (if any) of the said sum of £ and interest be applied in payment to the plaintiff and defendant respectively, and rateably *inter se*, of the respective sums of £ and £ found by the registrar's certificate to be due to the plaintiff and defendant respectively in respect of capital, and that the ultimate balance (if any) of the said sum and interest be apportioned between and paid to the plaintiff and defendant respectively in the following proportions, viz. [*according to the shares in which profits were divisible*].

But if the balance of the said sum of £ and interest shall be insufficient to pay the said costs in full, then it is ordered that such balance be apportioned rateably between the plaintiff and the defendant in proportion to the amounts of their said costs when taxed, and that the amounts so apportioned be certified and paid to the plaintiff and defendant respectively.

And either of the parties is to be at liberty to apply to the court as he may be advised.

[*If any sum be found due from either partner to the partnership in respect of capital withdrawn or otherwise, order payment of that sum by him into court. If the sum in court is insufficient to pay the balance found due to the plaintiff or defendant, as the case may be, order the other party to pay to the party to whom such balance is found due a proportionate part of the deficiency, and insert directions as to costs, in accordance with the rules in force in the Chancery Division of the High Court—Hamer v. Giles, 11 Ch. D. 942; Potter v. Jackson, 13 Ch. D. 845; Ross v. White, 1894, 3 Ch. 326.*]

317.

**Notice of Judgment or Order to Party directed to be Served with
Notice thereof.**

*Order 3,
Rules 27, 28.* Take notice, that on the day of the judgment [*or order*] of which a copy is hereunto annexed was made in this action [*or matter*], and that from the time of the service of this notice on you you will be bound by the proceedings in this action [*or matter*] in the same manner as if you had been originally made a party to it, and that you may attend the proceedings under the said judgment [*or order*], and that you may apply to the court to discharge, vary, or add to the said judgment. [*or order*].

Dated this day of , 19 .

Registrar.

To .

318.

Summons to Parties to attend upon taking Accounts.

*Order 24,
Rule 2.* Let all parties concerned attend me at my office at on the day of 19 , at o'clock in the noon, to proceed with the accounts and inquiries directed by the judgment [*or order*] herein, dated the day of 19 .

Dated this day of , 19 .

Registrar.

319.

Notice to Creditor to prove his Claim.

*Order 24,
Rule 18, 19.* You are hereby required to prove the claim sent in by you against the estate of A. B., deceased, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me, on or before the day of next, and by attending at my office at on the day of 19 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of , 19 .

Registrar.

To .

320.

Notice to Creditor of Allowance of Claim.

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of _____, with interest thereon at _____ per cent. per annum, from the _____ day of _____ 19____, and _____ for costs.

Order 24,
Rule 19.

[*If part only allowed, add*—If you claim to have a larger sum allowed, you are hereby required to prove such further claim, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me on or before the _____ day of _____ next, and by attending at my office at _____ on the _____ day of _____ 19____, at _____ o'clock in the _____ noon.]

Dated this _____ day of _____ 19____.

Registrar.

321.

Registrar's Certificate.

[*Not to be printed.*]

In obedience to the order of this court made in the above action [*or matter*] I hereby certify that the result of the accounts and inquiries [*or of the sale and apportionment*] which have been taken and made in pursuance of the judgment [*or order*] given [*or made*] in this action [*or matter*] dated the _____ day of _____ 19____, is as follows:—

Order 24,
Rule 27.

The plaintiffs and defendants have attended by themselves or by their respective solicitors.

Notice of order.

Notice of the said judgment [*or order*] of the _____ day of _____ 19____, has been served upon _____.

The persons so served include all the _____ now living, and the personal representatives of such of them as are dead, except such as are parties to this action [*or matter*], and except _____ hereinafter named.

Service of notice of the said judgment [*or order*] upon the said _____ was dispensed with.

Personal estate account.

The defendants _____ the executors [*or administrators*] of _____ the testator [*or intestate*] named in the said judgment [*or order*] have received personal estate to the amount of £ _____, and they have paid or are entitled to be allowed on account thereof sums to the amount of £ _____, leaving a balance due from [*or to*] them of £ _____, on that account.

References to account.

The particulars of the above receipts and payments appear in the account marked A. verified by the affidavit of the said defendant _____ filed the _____ day of _____, and the account marked B. verified by the affidavit of _____ filed the _____ day of _____, and which accounts are to be filed with this certificate.

Variations from accounts.

Except that in addition to the sums appearing in such account to have been received, the said defendants [*or plaintiff*] are [*or is*] charged with the following sums; (that is to say,) £ _____, and except that of the items of disbursement in the said account I have disallowed those numbered _____ and I have deducted from the item numbered _____ the sum of £ _____ and from the item numbered _____ the sum of £ _____, and in addition to the disbursements appearing in such account the said defendants [*or plaintiff*] have [*or has*] paid and been allowed the sum of £ _____.

Special allowances in accounts.

The payments allowed to the said defendants [*or plaintiff*] in the said account include the sum of £ _____ paid into court to the credit of this action, on the _____ day of _____ 19____.

Reference to transcript of account.

The before-mentioned account marked A. has been altered, and the account marked A. B., and which is also to be filed with this certificate, is a transcript of the said account marked A. as altered and passed.

No personal estate received.

The defendants the executors [*or* administrators] of the testator [*or* intestate] named in the said judgment [*or* order] have not, nor hath any or either of them, or any person by their or any or either of their order, or for their or any or either of their use, received any part of the personal estate of the said testator [*or* intestate].

Funeral expenses.

The funeral expenses of the testator [*or* intestate], amounting to the sum of £ , have been paid and are allowed the defendant [*or* plaintiff] the executor [*or* administrator] of the said testator [*or* intestate] in the said account of personal estate.

Debts.

The debts of the testator [*or* intestate], including the plaintiff's which have been allowed, are set forth in the schedule hereto, and, with the interest thereon, and costs mentioned in the said schedule, are due to the plaintiff and the other persons named therein, and amount altogether to . No other person has been allowed or come in and proved any debt against the estate of the said testator [*or* intestate], and the time fixed by advertisement for that purpose has expired.

Such of the said debts as are specialty are set forth in the first part of the said schedule, and amount to £ ; such as are simple contract are set forth in the second part of said schedule, and amount to £ .

Interest on debts.

The interest on such debts is computed down to the date of this certificate, at and after the rate of £4 per centum per annum, from the day of 19 , the date of the said judgment [*or* order], unless otherwise specified in the said schedule.

Legacies and annuities.

The legacies given by the testator, other than annuities, are set forth in the first part of the schedule hereto, and, with the interest therein mentioned, remain due to the persons therein named, and amount altogether to £ .

The annuities given by the testator, with the arrears due thereon, are set forth in the second part of the said schedule. Such arrears amount to £ .

Interest on legacies.

The interest on such legacies is computed down to the date of this certificate, at and after the rate of £4 per centum per annum, from the day of 19 , the end of one year after the testator's death, unless otherwise specified in the said schedule.

The arrears of the annuities are computed to the date of this certificate and from the testator's death, unless otherwise specified in the said schedule.

Outstanding estate.

The personal estate of the said testator [*or* intestate] [not specifically bequeathed] outstanding or undisposed of consists of the particulars set forth in the schedule hereto.

Real estate.

The real estate which the said testator [*or* intestate] was seised of or entitled to consists of the particulars set forth in the schedule hereto.

Incumbrances on real estate.

The incumbrances affecting the said testator's [*or* intestate's] real estate are specified in the schedule hereto.

Rents and profits account.

The defendants [*or plaintiff*] the trustees named in the said judgment [*or order*], have received rents and profits of the testator's real estate to the amount of £ , and they have paid or are entitled to be allowed on account thereof sums to the amount of £ , leaving a balance due from [*or to*] them of £ on that account.

No rents and profits received.

The defendants [*or plaintiff*] the trustees named in the said judgment [*or order*], have not, nor hath any or either of them, or any person by their or any or either of their order, or for their or any or either of their use, received any sum of money on account of the rents and profits of the testator's [*or intestate's*] real estate.

Sale of real estate.

The real estates of the testator [*or intestate*] directed to be sold have been sold, and the purchase moneys, amounting altogether to £ , have been paid into court.

Next of kin.

The next of kin, according to the statutes for the distribution of the effects of intestates, of the intestate named in the said judgment [*or order*], living at the time of his death were , of whom the said have since died.

The legal personal representative of the said is .

The legal personal representative of the said is .

The legal personal representative of the said is .

[If there is no legal personal representative, this fact must be stated.]

Dated day of , 19 .

Registrar.

N.B.—The paragraphs are to be numbered with numbers corresponding to those in the judgment or order. After each statement the evidence produced is to be stated as follows:—

The evidence produced on this account [*or inquiry*] consists of the probate of the testator's will, the affidavit of filed the day of and paragraph of the affidavit of filed the day of .

322.

Notice that Registrar's Certificate may be inspected.

Take notice, that the certificate of the result of the inquiries made and accounts taken by me under the judgment [*or order*] of this court made on the day of in this action [*or matter*] lies in my office, and can be inspected by you up to and inclusive of the day of [here insert the day before that on which the action or matter is to be further heard].

Order 24,
Rule 31.

To Registrar.

323.

Administration Action.—Order on further Consideration.

[Not to be printed.]

This action coming on this day to be heard on further consideration now upon reading the judgment [*or order*] of this court given [*or made*] on the day of 19 [original order for accounts and inquiries], and the certificate of the registrar, dated the day of 19, made in pursuance of the said judgment [*or order*], and the orders of this court dated the day of 19, and the day of 19; and upon hearing the solicitors for [names of parties appearing] [no one appearing for though served with notice of the said judgment [*or order*]]:

Order 24,
Rules 33, 34.

It is ordered that the costs of all parties to this action be taxed, including in the costs of the defendant G. H. any costs, charges, and expenses properly incurred by him as executor and trustee of the will of the testator, not being costs of action.

If balance in
hands of
G. H. not
paid into
court,

And it is ordered that the defendant G. H. be at liberty, out of the sum of £ by the said certificate found due from him on account of the personal estate of the testator, to retain the amount of his said costs when taxed.

And it is ordered that the said defendant G. H. do pay the balance of the said sum of £ found due from him as aforesaid remaining after such retainer as aforesaid into court to the credit of this action, the account of the testator's personal estate.

And it is ordered that the costs of all other parties when taxed be paid out of the moneys in court to the credit of this action, the account of the testator's personal estate.

And it is ordered that out of any moneys standing to the last-mentioned account remaining after providing for the said costs, the debts of the testator included in the schedule to the registrar's certificate, with interest at 4 per cent. from the foot of the registrar's certificate, the amount to be verified [*state mode of verification*], be paid to the creditors to whom such debts are certified to be due, and that out of any moneys to the credit of the last-mentioned account, after providing for payment of the costs and the debts as aforesaid, the two legacies by his said certificate found due be paid, together with interest at 4 per cent. from the foot of the certificate [*state mode of verification*], to the said legatees respectively.

And the court doth declare that according to the true construction of the testator's will the ultimate balance of the testator's personal estate, and the proceeds of the sale of the testator's real estate, are divisible as follows:—

[*Order for distribution amongst parties entitled, and payment, the shares of infants being carried over to accounts intituled according to circumstances.*]

And it is ordered that any of the parties are to be at liberty to apply to the court as they may be advised

Dated this day of 19 .

Forms 324—330 made under the Partition Acts, 1868 and 1876, are now obsolete, (see Part V. under Partition Acts.)

331.

Order for Transfer of Action or Matter to High Court.

[*Not to be printed.*]

Order 33,
Rules 5, 6.

Whereas it appears that the subject-matter of this action [*or matter*] exceeds in amount the sum of £500: It is ordered that this action [*or matter*] be transferred to the High Court of Justice, together with the annexed certificate of the registrar of this court, showing the state of the action [*or matter*] and the proceedings that have been had therein in this court.

Dated this day of 19 .

By the court,

Registrar...

332.

Consent to act as Trustee.

[Not to be printed.]

I, A. B., of _____ hereby consent to act as a trustee of the [here describe the instrument]. Order 19,
Rule 13.

(Signed) A. B.

I, C. D., of _____ solicitor, hereby certify that the above written signature is the signature of A. B., the person mentioned in the above written consent.

Dated this _____ day of _____ 19 _____

C. D.,

Solicitor for the said A. B.

333.

Affidavit under Section 70 of the County Courts Act, 1888.

[Not to be printed.]

In the county court of _____, holden at _____

In the matter of The County Courts Act, 1888, and _____

In the matter of [add the title of the particular trust, as "the trusts of a certain indenture of mortgage, dated the _____ day of _____, and made between A. B. and C. D."], 51 & 52 Vict.
c. 43, s. 70.
Order 38,
Rules 9, 10.

I, C. D., of [address and description], make oath and say as follows:—

1. State place for service, as—My house being _____ is the place where I am to be served with any notice or application relating to the trust fund hereinafter mentioned.

2. State the amount of money or stock proposed to be paid or transferred, or security deposited in trust to attend the orders of the court, as—Under the provisions of the above-mentioned Act, I desire to pay into the Post Office Savings Bank the sum of _____ hereinafter mentioned.

3. Set out a short description of the trust and of the instrument creating it, as—By the indenture before mentioned a certain messuage situate at _____, with the appurtenances, was mortgaged by the said A. B. to me, my heirs and assigns, for securing to me the repayment on the _____ day of 19 _____, of the sum of £ _____, with interest for the same at the rate of £ _____ per cent. per annum, and the said indenture contained a power of sale in case of default in payment, and it was by the said indenture declared that the moneys to arise from any such sale should, after retaining thereout the expenses of executing the said power, and the said principal money and interest, be paid to the said A. B., his heirs or assigns.

The said A. B. died on or about the _____ day of _____, and by his will, dated the _____ day of _____, appointed E. F. of *, executor thereof, and devised the said hereditaments, subject to the said mortgage, unto G. H. of * and J. K. of * in trust for the said E. F., for his life, and after his death upon certain trusts for sale, and for the division of the proceeds amongst the following persons, namely, the testator's son M. N., of *, and his children or child, and the testator's daughter O., the wife of P. Q. of *, and her children or child.

The said E. F. proved the said will in [state in what court], and is still living.

The said G. H. never acted in the trusts of the said will, &c.

On or about the _____ day of _____, I sold the said hereditaments by public auction to X. Y., of [address and description], at the price of £ _____

After retaining out of the said £ _____ the costs of sale, and the sum of _____, being the total amount of principal moneys and interest due upon the said mortgage, and the sum of £ _____ being the costs of paying the above-mentioned fund into court, a balance of £ _____ now remains in my hands, and the sum of £ _____, which I desire to pay into the Post

* Here insert present address and description. If the address of any person interested be unknown to the trustee this fact must be set forth in the affidavit.

Office Savings Bank, in trust to attend the orders of this court, is the said balance of £

4. *State the names of the persons interested in, or entitled to, the fund, to the best of the trustee's knowledge or belief, as—*

To the best of my knowledge and belief, the said G. H. and J. K., as such trustees as aforesaid, and the said E. F., M. N., and his children or child [stating, if known, their names], and O. P. and her children or child [stating, if known, their names], are the only persons interested in the said fund.

5. *Add submission to answer inquiries, as—*

I submit to answer all such inquiries relating to the application of the said fund of £ as the court may think proper to make or direct.

Sworn at, &c.

334.

Certificate in case of Money.

In the county court of holden at

In the matter of the County Courts Act, 1888 ; and

In the matter of the trusts of [as the case may be].

I hereby certify that [state name, address, and description of party making the application] has this day filed with me, the registrar of this court, an affidavit intituled as above mentioned, with reference to a trust fund or sum of therein mentioned, which sum, as therein stated, he desires to pay into my name as such registrar as aforesaid into a Post Office Savings Bank, as provided by the above Act.

Dated this day of 19

Registrar.

335.

Certificate in case of Transfer of Stock.

In the county court of holden at

In the matter of the County Courts Act, 1888 ; and

In the matter of the trusts of (as the case may be).

I hereby certify that [state name, address, and description of party making application] has this day filed with me, the registrar of this court, an affidavit intituled as above mentioned, with reference to a trust fund of £ Bank £2 15s. per Cent. Consolidated Annuities in the books of the governor and company of the Bank of England, which, as therein stated, he desires to transfer into the names of the treasurer [or superintendent of the county court department of the Treasury] and of the registrar of this court, as provided by the above Act.

Dated this day of 19

Registrar.

336.

Acknowledgment of Filing of Receipt or Transfer Ticket.

In the county court of holden at

In the matter of the County Courts Act, 1888 ; and

In the matter of the trusts of (as the case may be).

I hereby acknowledge that [state the name, address, and description of the party giving to the registrar the receipt of the Post Office Savings Bank, in the case of money, or the transfer ticket in the case of stock] has this day delivered to me, the registrar of the court, a receipt dated the day of 19 , and signed by [name of officer of the Post Office Savings Bank], for the sum of £ , stating that [state receipt] [or a transfer ticket of the governor and company of the Bank of England], stating that [state as in ticket].

Dated this day of 19

Registrar.

51 & 52 Vict.
c. 43, s. 70.

Order 38,
Rules 15, 16.

51 & 52 Vict.
c. 43, s. 70.

Order 38,
Rules 15, 17.

51 & 52 Vict.
c. 43, s. 70.

Order 38,
Rule 21.

337.

Certificate of Deposit of Security.

In the county court of . . . , holden at . . .

In the matter of the County Courts Act, 1888; and

In the matter of the trusts of the will of A. B., deceased, so far as regards one moiety of his residuary estate bequeathed to C. D. and her children. 51 & 52 Vict.
c. 43, s. 70.

I hereby certify that [state the name, address, and description of the party depositing with the registrar the security] has this day deposited with me, the registrar of this court, in the name of myself and the treasurer [or superintendent of the county court department of the treasury] [here state the nature of the security deposited].

Dated this . . . day of . . . 19 . . .

Order 38,
Rule 21.

Registrar.

338.

Notice to Treasurer.

In the county court of . . . , holden at . . .

In the matter of the County Courts Act, 1888; and

In the matter of the trusts of the will of A. B., deceased, so far as regards one moiety of his residuary estate bequeathed to C. D. and her children. 51 & 52 Vict.
c. 43, s. 70.

Take notice, that on the . . . day of . . . [state name, address, and description of party who has deposited the security] under the said Act deposited with the registrar of this court, in the names of yourself and myself, in trust to attend the orders of this court [here describe security].

Dated this . . . day of . . . 19 . . .

Order 38,
Rule 19.

Registrar.

To E. F., treasurer

[or as the case may be].

339.

Notice of Payment into Post Office Savings Bank, or of Transfer of Stock or Deposit of Security.

In the county court of . . . , holden at . . .

In the matter of the County Courts Act, 1888; and

In the matter of the trusts of the will of A. B., deceased, so far as regards one moiety of his residuary estate bequeathed to C. D. and her children. 51 & 52 Vict.
c. 43, s. 70.

Take notice, that on the . . . day of . . . [state name, address, and description of party who has paid in the money] under the above-mentioned Act paid into the Post Office Savings Bank at . . . in the name of me, the registrar of this court, the sum of £ . . . in trust to attend the orders of this court [or transferred into the names of . . . of . . . and of me, the registrar of this court, in the books of the governor and company of the Bank of England, the sum of £ . . . Bank £2 15s. per cent. Consolidated Annuities, in trust to attend the orders of this court, or deposited with me in the names of . . . of . . . and of me the registrar of this court, in trust to attend the orders of this court [here describe security], and in his affidavit filed in this court on the . . . day of . . . shortly described the instrument creating the trust, and stated the names of the persons interested in or entitled to the said fund [or security]. to the best of his knowledge and belief, as follows: that is to say [state from the affidavit the paragraph containing the names of the persons interested or entitled].

And further take notice, that any person interested in or entitled to the said fund [or security] may apply to this court respecting the investment, payment out, or distribution of the said fund [or security], or of the income thereof, according to the practice of the court,

Dated this . . . day of . . . 19 . . .

Order 38,
Rule 22.

Registrar.

340.

Petition.

[Not to be printed.]

51 & 52 Viet.
c. 43, s. 70.Order 38,
Rule 28.

In the county court of _____, holden at _____,
 In the matter of the County Courts Act, 1888; and
 In the matter of the trusts of the will of A. B., deceased, so far as regards
 one moiety of his residuary estate bequeathed to C. D. and her children.
 To his honour the judge of the said court.
 The petition of E. F., of _____,
 Sheweth—

1. That G. H. of _____, under the provisions of the above-mentioned Act,
 on the _____ day of _____, 19____, paid into the Post Office Savings Bank
 situate at _____ in the name of the registrar of this court, in trust to attend
 the orders of this court, the sum of £ _____.

2. On the occasion of his making the said payment the said G. H. made
 an affidavit, intituled as aforesaid, and sworn the _____ day of _____, 19____,
 pursuant to the rules and orders of the court. Your petitioner to save ex-
 pense has not set forth the contents of the said affidavit, but your petitioner
 craves leave to refer thereto.

3. In addition to the matters stated in the said affidavit, your petitioner
 sheweth that [*state any material facts not set forth in the affidavit, or which
 it is necessary to state in correction or qualification of the statements in the
 affidavit*].

4. Your petitioner is the same person as C. D. in the _____ paragraph of
 the said affidavit named as one of the persons interested in the said trust
 fund.

5. Your petitioner, under the trusts of the said will of the said A. B., is
 entitled to the income of the said trust fund during her life.

Your petitioner prays that the dividends and income to accrue due on the
 said trust fund during the life of your petitioner may be ordered to be
 paid to her during her life or until further order.

Note.—It is not intended to serve this petition on the persons interested
 in the capital of the said trust fund,

or, where petition is by remainder-man after death of tenant for life,

1. That G. H., of _____, under the provisions of the above-mentioned Act,
 on the _____ day of _____, 19____, paid into the Post Office Savings Bank,
 situate at _____ in the name of the registrar of this court, in trust to attend
 the orders of the court, the sum of £ _____.

2. On the occasion of his making the said payment, the said G. H. made
 an affidavit, intituled as aforesaid, and sworn the _____ day of _____, 19____;
 pursuant to the rules and orders of the court. Your petitioner to save ex-
 pense has not set forth the contents of the said affidavit, but your petitioner
 craves leave to refer thereto.

If named in
the affidavit.

3. Your petitioner is the same person as _____ in the _____ paragraph of
 the said affidavit named as one of the persons interested in the said trust fund,
or,

If not named
in the affi-
davit.

Your petitioner is one of the children of C. D. in the _____ paragraph of
 the said affidavit mentioned as being interested in the said trust fund.

4. By an order of the court made in the above matters on the _____ day
 of _____, 19____, upon the petition of the said C. D., it was, amongst other
 things, ordered that the dividends and income thereafter to accrue due during
 the life of the said C. D., in respect of the said sum of £ _____ should be paid
 to the said C. D. during her life or until further order.

5. The said C. D. died on the _____ day of _____, 19____, having duly
 received all the dividends and income payable to her under the said order,
 but an apportioned part of the interest accrued on the said sum of £ _____
 since the _____ day of _____, 19____, will be payable to the representative of
 the said C. D.

6. There were four children of the said C. D. entitled, subject to her life interest, to the said trust fund, viz. [*state persons interested in principal moneys*], and your petitioner, as one of such children, is entitled to one-fourth share of the said trust fund and the interest accrued in respect thereof since the day of , 19 , other than the apportioned part payable to the representative of the said C. D. deceased.

[*Add statement as to whether any duty payable to the revenue has or has not been paid.*]

Your petitioner prays that the costs of your petitioner and of all other parties to this application may be taxed as between solicitor and client and paid out of the said trust fund, and that the residue of the said trust fund and the interest accrued due thereon, other than the apportioned part of such interest payable to the representative of the said C. D., deceased, may [*add, if so, after payment of any duties payable to the revenue*] be divided into equal parts, and that one of such parts may be paid to your petitioner.

Note.—It is proposed to serve this petition on the said G. H., and on [*other persons interested in the trust fund*].

341.

Notice of Day upon which Petition will be Heard.

In the county court of , holden at

In the matter of the County Courts Act, 1888; and

In the matter of the trusts of [*as the case may be*].

Order 38,
Rule 3.

Take notice, that the petition, a sealed copy of which is served herewith, will be heard at a county court to be holden at on the day of 19 , at the hour of o'clock in the noon, and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just.

Dated this day of 19 .

Registrar.

To

342.

Order on Petition.

[*Not to be printed.*]

In the county court of , holden at

In the matter of the County Courts Act, 1888; and

In the matter of the trusts of the will of A. B., deceased, so far as regards

51 & 52 Vict.
c. 43, s. 70.

one moiety of his residuary estate bequeathed to C. D. and her children.

Upon the petition of E. F., of , and upon reading the affidavit of

G. H. [*trustee or other person paying money into court*], and the several

affidavits of , filed in the above matters and sworn respectively on

the day of and day of [and the order of this

court dated], and upon hearing the solicitor for the petitioner and the

solicitor for I. K., L. M., N. O., infants under the age of 21 years, appearing

as respondents to the said petition by their guardian *ad litem*;

And it appearing that according to the true construction of the will of

the said A. B., and in the events that have happened, the moiety of the

residuary estate of the said testator bequeathed to C. D. and her children has

become vested in the petitioner, and in the said I. K., L. M., and N. O., in

equal shares as tenants in common:

It is ordered that the costs of all parties appearing on the said petition

Order 38,
Rules 8, 27.

Any pre-
vious order
on the above
matters.

be taxed, and that the said costs when taxed be paid out of the sum of £ standing in the name of the registrar of this court in the Post Office Savings Bank, at , to the credit of the above matters ;

And it is ordered that out of the accrued interest on the said sum of £ the sum of £ , being the apportioned part of the said interest from the day of to the day of , the day of the death of the said C. D. , be paid to the representative of the said C. D., and that the residue of such accrued interest and the residue of the said sum of £ remaining after payment of the said costs be [*if so, after payment of the duties payable to the revenue in respect of the said sum*] divided by the registrar into four equal parts, and that one of such fourth parts be paid to the petitioner, and that the registrar do carry over one other of such fourth parts to the separate account of I. K., an infant, his share of the moiety of the residuary estate of A. B., deceased, bequeathed to C. D. and her children [*similar directions as to the remaining two other fourth parts*] ;

And it is ordered that the said I. K., L. M., N. O. be at liberty to apply to the court for payment to them respectively of their said shares on their respectively attaining the age of 21 years.

And any of the parties are to be at liberty to apply to the court as they may be advised.

343.

Letter to Commissioners of Treasury as to Drawing out Money.

(Seal.)

County Court Office, .

My lords,

Order 37,
Rule 3.

I have the honour to request that an authority may be addressed to the Postmaster-General to allow me to draw out of the Post Office Savings Bank the sum of £ [*here insert the sum desired to be drawn out, adding where the sum is not to pay interest*] being the sum I am directed to draw out by order of court dated the day of 19 .

I am, my lords,

Your obedient servant,
Registrar of the county court
of ; holden at .

344.

Notice of Application for Interlocutory Order in the Nature of an Injunction.

[*Not to be printed.*]

Order 12,
Rules 6, 8.

Take notice, that I, A. B., intend to apply at the sitting of the court to be held at [*or to his honour the judge at*] on the day of 19 , at o'clock in the noon for an order in the nature of an injunction to restrain C. D., of from receiving and giving discharges for any of the debts due to the partnership between us, for the winding up of which this action was commenced [*or from digging the turf from the land which was agreed to be sold by him to me by the agreement the specific performance of which this action is commenced to enforce, or as the case may be*].

Dated this day of 19 A. B.

To the registrar of the court ,
and (*if the application is not made ex parte*)
To C. D., of .

345.

Interlocutory Order in the Nature of an Injunction.

The plaintiff undertaking [by his counsel *or* solicitor] to abide by any order this court may make as to damages, in case this court shall hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay: Now, therefore, C. D., the defendant in this action, his servants, agents, and workmen, are hereby strictly enjoined and restrained from pulling down or suffering to be pulled down the house being Number _____ Street, in the county of _____, and from selling the materials whereof the said house is composed [*or* from entering into any contract or contracts, and from accepting, drawing, indorsing, or negotiating any bills or bill of exchange, notes, or note, or written securities or security, in the name of the partnership firm of _____, and from contracting any debts or debt, and buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing or causing to be done any acts or act in the name or on the credit of the said partnership firm, or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sums or sum of money, or for the performance of any contract, promise or undertaking, *or, as the case may be,*] until the day after the day upon which this action shall be tried, or until further order [*or* until the _____ day of _____, upon which day this court will consider whether this order shall be further continued].

Order 12,
Rules 6, 8.

Dated this _____ day of _____ 19 _____.

If you, the said C. D., [your servants, agents, or workmen,] act in disobedience to this order, you, the said C. D., will be liable to be committed to prison by this court.

346.

Notice to be Indorsed on Order under Order XXIII. Rule 9, and Order XXV. Rule 58.

[*Not to be printed.*]

To C. D., of _____.

Take notice, that, unless you obey the directions contained in this order, you will be guilty of a contempt of court and will be liable to be committed to prison.

Dated this _____ day of _____ 19 _____.

Registrar.

Order 23
Rule 9.
Order 25,
Rules 58, 71
(2).

347.

Notice of Application for Committal.

[*Not to be printed.*]

Take notice, that the plaintiff A. B. will on the _____ day of _____ 19 _____, at the hour of _____ in the _____ noon, apply to this court for an order for your committal to prison for having disobeyed the order of this court made on the _____ day of _____ 19 _____, enjoining and restraining you [*here set out the terms of the injunction*] [*or* for having neglected to obey the order made on the _____ day of _____ 19 _____, requiring you] [*here set out the mandatory part of the order*]; and further take notice that you are hereby required to attend the court on the first-mentioned day to show cause why an order for your committal should not be made.

Dated this _____ day of _____ 19 _____.

Registrar.

To C. D., the defendant.

Order 25,
Rule 59.

348.

Order of Committal for Breach of or Neglect to obey Order.*[Not to be printed.]*Order 25,
Rule 60.

Whereas by an order of this court, dated the _____ day of _____ 19 [here recite the order]: Now, upon the application of the plaintiff, and upon hearing the defendant [or if the defendant does not appear, reading the affidavit of X. Y., or where service has been by a bailiff, the indorsement of L. M., a bailiff of this court, [or the county court of _____ holden at _____], showing, [or being satisfied on oath] that a copy of the said order and notice of this application have been severally served upon the defendant C. D., and upon reading the affidavit of, &c. [or enter such other evidence as may have been given], the court being of opinion, upon consideration of the facts disclosed by the said affidavit [or such other evidence as may have been given], that the said defendant C. D. has been guilty of a contempt of this court by a breach of [or by neglecting to obey] the said order, that is to say, by [here set out the particular matter of contempt], doth order that the said defendant C. D. do stand committed to [here insert prison used by the court] for his said contempt, and that a warrant of attachment for the arrest of the said C. D. be forthwith issued.

[And it is ordered that the said defendant C. D. do pay the costs of the plaintiff of this application and of the said attachment, such costs to be taxed by the registrar and paid by the said defendant to the registrar within fourteen days from the date of the certificate of taxation.]

[Add, if so ordered—And it is further ordered that any application for the release of the said C. D. from custody shall be made to the judge.]

349.

Warrant of Attachment.Order 25,
Rule 57.

To the high bailiff and others the bailiffs of the said court and all peace officers within the jurisdiction of the said court, and to the governor of the [here insert prison used by the court].

Whereas by an order bearing date the _____ day of _____ it was ordered that the defendant C. D. should stand committed to prison for contempt of this court:

These are therefore to require you forthwith to arrest and apprehend the defendant C. D., and him safely convey and deliver to the governor of the [prison used by this court], and you, the said governor, to receive the defendant C. D. until the further order of this court.

Dated this _____ day of _____ 19 _____.

Registrar.

350.

Notice of Application for Discharge from Custody.*[Not to be printed.]*Order 25,
Rules 62, 63.

Take notice, that I intend on the _____ day of _____ 19 _____, to apply to the judge of this court [or the registrar of this court] to discharge me from custody, I being desirous of clearing my contempt.

Dated this _____ day of _____ 19 _____.

To A. B., plaintiff.

_____ C. D. defendant.

351.

Order of Discharge from Custody.

Upon application made this day of by for the defendant, *Order 25,*
 who was committed to prison for contempt, by order of this court, dated *Rules 62, 63.*
 the day of 19 , and upon reading the affidavit of the defendant
 filed the day of 19 , showing that he is desirous of clearing his
 contempt, and upon hearing for the plaintiff [*or if no one appears for*
plaintiff, then upon being satisfied that the notice of this application has
been duly served upon the plaintiff],

It is ordered that the said defendant be discharged out of the custody
 of the governor of [*here insert name of prison*] as to the said contempt.

[*Add, if so ordered*—And it is ordered that the said defendant do pay
 the costs of the plaintiff of this application, such costs to be taxed by the
 registrar and paid by the defendant to the registrar within fourteen days
 from the date of the certificate of taxation.]

Dated this day of 19 .

 Registrar.

352.

Notice of Change of Solicitor.

[*Not to be printed.*]

Take notice, that I, A. B. [*or C. D.*], who have hitherto employed G. H.
 of as my solicitor in the above-mentioned action [*or matter*], have *Order 51,*
 ceased to employ him, and that my present solicitor is I. K. of *Rule 6.*
 A. B. [*or C. D.*]

Dated this day of 19 .

To the registrar of the court,
 and to the above-named plaintiff
 [*or defendant*], or his solicitors.
 [*or* _____]

Take notice, that [*name and address of new solicitor*] has [*or have*] been
 appointed to act as solicitor [*or solicitors*] for the above-named plaintiff [*or*
defendant] in the place of [*original solicitor*].

Dated this day of 19 .

Yours, etc.,

[*Signature of new solicitor*].

To the registrar of the court,
 and to the above-named plaintiff
 [*or defendant*], or his solicitors.

353.

Notice to High Bailiff of Foreign Court of Complaint against him.

[*Not to be printed.*]

Take notice, that, unless you show cause to the contrary, his honour the *Order 2,*
 judge of this court will on the day of 19 , make an order *Rule 29.*
 directing you to pay to the plaintiff such sum as the judge may think
 reasonable as compensation for loss of time and expense incurred by him
 owing to your neglect to return the copy of the summons in this action
 within due time.

Dated this day of 19 .

 Registrar.

To the high bailiff of
 the county court of holden at

354.

**Notice to High Bailiff of Foreign Court of Order against him
for Neglect.**

[Not to be printed.]

Order 2,
Rule 29.

Take notice, that on the application of the above-named plaintiff made the day of , and you not having shown good cause to the contrary, it was ordered by the judge of this court that within days of the service of this order upon you, you should pay to me for the use of the said plaintiff the sum of £ as compensation for loss of time and expense incurred by him owing to your neglect to return to me the copy of the summons in this action within due time.

Dated this day of 19 Registrar.

To the high bailiff of
the county court of , holden at .

355.

51 & 52 Vict. c. 43, s. 48. **Summons under Section 48 of the County Courts Act, 1888, for Assaulting
a Bailiff whilst in the Execution of his Duty.**

Order 52,
Rule 1.

In the county court of holden at .
In the matter of a complaint made by C. D. of , one of the
bailiffs of the county court of holden at , and section 48 of the
County Courts Act, 1888.

To A. B., of .

You are hereby summoned to appear at a county court to be holden at
on the day of 19 , at o'clock in the noon
to answer a complaint made against you by C. D., one of the bailiffs
of the said court, and to show cause why an order should not be made against
you under section 48 of the County Courts Act, 1888, for payment of a sum
not exceeding 5*l.*, for an assault committed by you on the day
of upon the said bailiff whilst in the execution of his duty as such
bailiff [and also for that you did on the same day rescue [or attempt to
rescue] certain goods levied by the said bailiff under process of this court].

Dated this day of 19 .

Registrar.

To be served personally two clear days before the return day.

356.

51 & 52 Vict. c. 43, s. 48. **Order under Section 48 of the County Courts Act, 1888, imposing a fine
for Assaulting a Bailiff.**

Order 52,
Rule 2.

In the county court of , holden at .
In the matter of a complaint made by C. D. of , one of the
bailiffs of the county court of , holden at , and section 48 of
the County Courts Act, 1888.

It is this day adjudged that A. B. of , do forfeit and pay a sum
of £ , for an assault committed by him on the day of upon
the said bailiff whilst in the execution of his duty as such bailiff [and also
for that the said A. B. did on the same day rescue [or attempt

to rescue] certain goods levied by the said bailiff under process of this court], and the sum of £ for costs, amounting together to the sum of £

And it is ordered that the said A. B. do pay the said sum of £ to the registrar of this court on the day of [or by instalments of for every days, the first instalment to be paid on the day of]:

And that in default of payment of the said sums according to this order, payment thereof may be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said A. B. for any period not exceeding the period which under the Summary Jurisdiction Acts may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction.

Given under the seal of the court this day of, 19

By the court,

Registrar.

357.

Warrant of Execution against Goods for Fine under Section 48.

In the county court of holden at

In the matter of a complaint made by C. D. of, one of the bailiffs of the county court of holden at, and section 48 of the County Courts Act, 1888.

Whereas at a court holden on the day of it was adjudged that A. B. of should forfeit and pay a sum of £ for an assault committed by him on the day of upon the said bailiff whilst in the execution of his duty as such bailiff [and also for that the said A. B. did on the same day rescue [or attempt to rescue] certain goods levied by the said bailiff under process of this court], and the sum of £ for costs, amounting together to the sum of £

And it was ordered that the said A. B. should pay the said sum of £ to the registrar of the court on the day of [or by instalments of for every days, the first instalment to be paid on the day of, 19]:

And that in default of payment of the said sums according to the said order, payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution:

And whereas the said sums have not been paid according to the said order, and the judge of this court has ordered them to be levied as herein-after mentioned:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said A. B. wheresoever they may be found within the district of this court [except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds], the sum stated at the foot of this warrant, being the amount remaining unpaid under the said order, together with the costs of this execution; and also to take and seize any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to the said A. B. which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay

Order 52,
Rule 3.

And it was ordered that the said A. B. should pay the said sum of £ . . . to the registrar of the court on the . . . day of . . . [or by instalments of . . . for every . . . days, the first instalment to be paid on the . . . day of . . . 19]:

And that in default of payment of the said sums according to the said order, payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. . . . under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said A. B. . . . for any period not exceeding the period which under the Summary Jurisdiction Acts may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction:

* And whereas default having been made in payment of the sums due under the said order the high bailiff and others the bailiffs of this court were by warrant of execution dated the . . . day of . . . , and issued by order of the judge, required to levy the sum of £ . . . by distress and sale of the goods and chattels of the said A. B.:

And whereas it appears that no sufficient distress whereon to levy the said sum could be found [and that a balance of £ . . . is due under the said order]:

It is hereby ordered by the judge that the said A. B. be imprisoned in His Majesty's prison at . . . , and there kept for the space of . . . , unless the said sum of £ . . . remaining due under the said order, and the costs of the said distress and the costs of this warrant, be sooner paid:

And these are therefore to require you, the said high bailiff, bailiffs, and others to take the said A. B. . . . and to deliver him to the governor of the above-named prison, together with this warrant, and you the said governor to receive the said A. B. . . . into your custody, and him safely to keep in the said prison for the space of . . . , unless the sum stated at the foot of this warrant, being the amount remaining due under the said order, and the costs of the said distress and the costs of this warrant, be sooner paid.

Given under the seal of the court this . . . day of . . . 19 . . .

By the court,

Registrar.

	£	s.	d.
Amount remaining due under order			
Costs of warrant of execution			
Poundage for issuing this warrant			
Total sum upon payment of which the prisoner is to be discharged			

360.

Commitment in lieu of Distress for Fine under Section 48.

In the county court of . . . holden at . . .

In the matter, &c. [as in Form 355].

To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and

To the governor of [prison used by the court].

Whereas at a court holden on the . . . day of . . . it was adjudged that A. B. . . . of . . . should forfeit and pay a sum of £ . . . for an assault committed by him on the . . . day of . . . upon the said bailiff whilst in the execution of his duty as such bailiff [and also for that the said

Order 52.
Rule 8.

A. B. did on the same day rescue [or attempt to rescue] certain goods levied by the said bailiff under process of this court], and the sum of £ for costs, amounting together to the sum of £ ;

And it was ordered that the said A. B. should pay the said sum of £ to the registrar of the court on the day of [or by instalments of £ for every days, the first instalment to be paid on the day of 19]

And that in default of payment of the said sums according to the said order, payment thereof might be enforced, upon the order of the judge, pursuant to section 167 of the County Courts Act, 1888, by distress and sale of the goods of the said A. B. under warrant of execution, or, in default or in lieu of distress, by imprisonment of the said A. B. for any period not exceeding the period which under the Summary Jurisdiction Acts may be imposed in respect of the default of sufficient distress to satisfy a similar sum adjudged to be paid on summary conviction :

* And whereas default has been made in payment of the sums due under the said order, and the sum of £ remains due under the said order :

42 & 43 Vict. c. 49, s. 21(3), Summary Jurisdiction Rules, 1886, Form 29.

And whereas it appears to the judge that the said A. B. has no [sufficient] goods whereon to levy a distress [or that the levy of a distress will be more injurious to the said A. B. and his family than imprisonment] :

It is hereby ordered by the judge that the said A. B. be imprisoned in His Majesty's prison at , and there kept for the space of unless the said sum of £ remaining due under the said order, and the costs of his commitment, be sooner paid.

See 42 & 43 Vict. c. 49, ss. 5, 21 (4) (Appendix, Part III.)

And these are therefore to require you the said high bailiff, bailiffs, and others to take the said A. B., and to deliver him to the governor of the above-named prison, together with this warrant, and you the said governor to receive the said A. B. into your custody, and him safely to keep in the said prison for the space of , unless the sum stated at the foot of this warrant, being the amount remaining due under the said order, and the costs of this warrant, be sooner paid.

Given under the seal of the court this day of 19 .
By the court, Registrar.

	£	s.	d.
Amount remaining due under order			
Poundage for issuing this warrant			
Total sum upon payment of which the prisoner is to be discharged			

361.

51 & 52 Vict. c. 43, s. 49.
Order 52, Rule 4.

Summons under Section 49 of the County Courts Act, 1888, for Neglect to levy Execution.

In the county court of holden at .
Between A. B., plaintiff,
and
C. D., defendant,

and in the matter of a complaint made by of and section 49 of the County Courts Act, 1888.

To E. F. of bailiff of the said court.

You are hereby summoned to appear at a county court to be holden at on the day of at o'clock in the forenoon,

to answer a complaint made against you by _____ of _____ that you being employed to levy an execution against the goods and chattels of _____ did by neglect [*or connivance or omission*] lose the opportunity of levying such execution, and to show cause why an order should not be made against you under section 49 of the County Courts Act, 1888, for payment of such damages as it shall appear that the said _____ has sustained by such your neglect [*or connivance or omission*].

Dated this _____ day of _____ 19 _____

Registrar.

[*To be served personally ten clear days before the return day.*]

362.

**Order under Section 49 of the County Courts Act, 1888, awarding
Damages for neglect to levy Execution.**

51 & 52 Vict.
c. 43, s. 49.

[*Heading as in last preceding Form.*]

It is this day adjudged that E. F. _____ of _____, bailiff of this court do pay the sum of £ _____ for damages sustained by _____ of _____ by reason of the said E. F. _____ having by neglect [*or connivance or omission*] lost the opportunity of levying an execution against the goods and chattels of _____, and the sum of £ _____ for costs, amounting together to the sum of £ _____;

Order 52,
Rule 5.

And it is ordered that the said E. F. _____ do pay the said sum of _____ to the registrar of this court on the _____ day of _____ [*or* by instalments of _____ for every _____ days, the first instalment to be paid on the _____ day of _____].

363.

Summons under Section 50 of the County Courts Act, 1888, for Extortion or Misconduct.

51 & 52 Vict.
c. 43, s. 50.

In the county court of _____ to be holden at _____

Between A. B., plaintiff,

and _____

C. D., defendant,

and in the matter of a complaint made by _____ of _____, and section 50 of the County Courts Act, 1888.

Order 52,
Rule 4.

To E. F. _____ of _____, bailiff [*or other officer*] of the said court.

You are hereby summoned to appear at a county court to be holden at _____ on the _____ day of _____ at _____ o'clock in the forenoon, to answer a complaint made against you by _____ of _____ that you have while acting under colour or pretence of the process of the court been guilty of extortion [*or misconduct*] in that you [*here state particulars of extortion or misconduct alleged*] [*or as stated in the particulars annexed (annex particulars of extortion or misconduct alleged)*] [*or that you have not duly paid or accounted for certain moneys levied by you against _____ of _____ at the suit of _____ under the authority of the County Courts Act, 1888*], and to show cause why an order should not be made against you under section 50 of the County Courts Act, 1888, for the repayment of the money extorted by you [*or for the due payment of the moneys so levied by you*], and for the payment of such damages and costs as the judge shall think just, and for the payment of a fine not exceeding 10*l.* for each offence so committed by you.

Dated this _____ day of _____

Registrar.

[*To be served personally ten clear days before the return day.*]

364.

51 & 52 Vict. Order under Section 50 of the County Courts Act, 1888, for Repayment
c. 43, s. 50. of Money extorted, or Payment of Money levied, and for Damages,
Costs, and Fine.

[Heading as in last preceding Form.]

Order 52,
Rule 5.

It is this day adjudged that E. F. of , bailiff [or other officer] of the court, do repay the sum of £ extorted by him from under colour or pretence of the process of this court [or do pay the sum of £ levied by him against of at the suit of under the authority of the County Courts Act, 1888, and not duly paid over or accounted for by him] and the sum of £ for damages sustained by of by reason of such extortion [or the neglect of the said E. F. to pay over the said moneys so levied by him] [or by reason of the misconduct of the said E. F. while acting under colour or pretence of the process of the court, in that [here state particulars of the misconduct proved] and the sum of £ for costs :

And it is further adjudged that the said E. F. do forfeit and pay the sum of £ for the offence [or for each offence] so committed by him in [here state particulars of each offence in respect of which a fine is imposed] the sums to be paid by the said E. F. amounting together to the sum of £

And it is ordered that the said E. F. do pay the said sum of £ to the registrar of this court on the day of [or by instalments of for every days, the first instalment to be paid on the day of].

365.

51 & 52 Vict. Order under Section 162 of the County Courts Act, 1888, for Imprisonment
c. 43, s. 162. or Fine for Insult or Misbehaviour.

Order 52,
Rule 8.

In the county court of , holden at .
Whereas on the day of A. B. wilfully insulted his honour the judge during his sitting in court [or in going to [or returning from] the court] [or C. D., the registrar or E. F. the high bailiff or G. H. a bailiff [or officer of the court] or J. K. a juror [or witness] during his attendance at the court] [or in going to [or returning from] the court] [as the case may be], or wilfully interrupted the proceedings of the court or misbehaved in the court :

It is hereby ordered that the said A. B. do stand committed for days to His Majesty's prison at [here insert prison used by the court] for such offence.

Or, it is hereby ordered that the said A. B. do forfeit and pay the sum of £ for such offence :

And it is ordered that the said A. B. do pay the said sum of £ to the registrar of this court forthwith :

And that in default of payment the said A. B. be imprisoned in His Majesty's prison at , and there kept for the space of days, unless the said fine be sooner paid.

Given under the seal of the court this day of 19 .

Judge.

366.

Warrant of Commitment under Section 162 of the County Courts Act, 1888, for Insult or Misbehaviour. 51 & 52 Vict. c. 43, s. 162.

In the county court of _____, holden at _____
To the high bailiff and others the bailiffs of the said court, and all peace officers within the jurisdiction of the said court, and
To the governor of the [*prison used by the court*].

Order 52,
Rule 8.

Whereas on the _____ day of _____ A. B. wilfully insulted his honour the judge during his sitting in court [*or as the case may be, reciting the insult or misbehaviour as stated in the order, Form 365*], and his honour the judge thereupon ordered that the said A. B. should stand committed for days to His Majesty's prison at _____ for such offence :

These are therefore to require you, the said high bailiff, bailiffs, and others to take the said A. B. _____, and to deliver him to the governor of the above-named prison, together with this warrant, and you the said governor to receive the said A. B. _____, and him safely to keep in the said prison for days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.

Given under the seal of the court this _____ day of _____ 19 ____ Judge.

367.

Warrant of Commitment under Section 162 of the County Courts Act, 1888, in Default of Payment of Fine for Insult or Misbehaviour. 51 & 52 Vict. c. 43, s. 162.

In the county court of _____, holden at _____
To the high bailiff, &c. [*as in last Form*].

Order 52,
Rule 8.

Whereas [*recite insult or misbehaviour as stated in the order, Form 365*], and his honour the judge thereupon ordered that the said A. B. should forfeit and pay the said sum of £ _____ for such offence, and that the said A. B. should pay the said sum of £ _____ to the registrar of the court forthwith, and that in default of payment the said A. B. should be imprisoned in His Majesty's prison at _____, and there kept for the space of _____ days, unless the said fine should be sooner paid :

And whereas default has been made in payment of the said fine :

These are therefore to require you the said high bailiff, bailiffs, and others to take the said A. B. _____ and to deliver him to the governor of the above-named prison, together with this warrant, and you the said governor to receive the said A. B. _____, and him safely to keep in the said prison for days from the arrest under this warrant, unless the said fine be sooner paid.

Given under the seal of the court this _____ day of _____ 19 ____ Judge.

For Forms 368—414, see Part III, "Admiralty"; for Forms 415—422, "Agricultural Holdings Act," Part V., under heading "Agricultural Holdings Act"; for Forms 423—429, "Parliamentary Elections Acts," Part V., under "Parliamentary Elections Acts."

430.

Certificate to be given by a County Court.

The Inferior Courts Judgments Extension Act, 1882.

45 & 46 Vict.
c. 31.

Order 45,
Rules 3, 4.

I, _____, certify that [*here state name, business, or occupation and address of person obtaining judgment, and whether plaintiff or defendant*] on the

day of 19, obtained judgment against [here state name, business, or occupation and address of person against whom judgment was obtained, and whether plaintiff or defendant] in the county court of holden at for payment of the sum of £ on account of [here state shortly the nature of the claim with the amount of costs (if any) for which judgment was obtained] [add, where the order was for payment by instalments, and it was thereupon ordered by the said court that the said defendant [or plaintiff] should pay the same by instalments of for every days].

Dated this day of 19 Registrar.

Indorsement to be made on certificate granted by a county court.
No. of plaint.

	£	s	d.
Amount for which judgment was obtained			
Paid into court			
Remaining due on judgment			
Fee and costs for obtaining certificate of the judgment (45 & 46 Vict. c. 31, s. 4).			
Total			

NOTE OF PRESENTATION to be appended to a certificate sought to be registered in a county court.

The above certificate is presented by me for registration in the county court of holden at, in accordance with the provisions of the Inferior Courts Judgments Extension Act, 1882.

Here insert place, &c., in which the goods are.

Signature of solicitor or creditor.

Address.

Date.

431.

Warrant of Execution.

45 & 46 Vict.
c. 51.

Order 45,
Rule 10.

*As given
in certi-
ficate.

The Inferior Courts Judgments Extension Act, 1882.

In the county court of, holden at
Between Plaintiff,

[Address and description, *]

and
Defendant, [Address and description, *]

Whereas on the day of 19, the plaintiff [or defendant] obtained a judgment against the defendant [or plaintiff] in [here set forth the court mentioned in the certificate], for payment of the sum of £ for debt and costs [or damages and costs or for costs] add where the certificate shows that judgment was to be paid by instalments, and it was thereupon ordered by the said court that the defendant [or plaintiff] should pay the same by instalments of for every days.

And whereas the said judgment has been duly registered in this court pursuant to the Inferior Courts Judgments Extension Act, 1882:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant [*or plaintiff*], wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him or his family and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff [*or defendant*] under the said judgment, together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant [*or plaintiff*] which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of *JUN* 19 .

By the court, Registrar.

To the high bailiff of the said court and others the bailiffs thereof.

	£	s.	d.
Amount for which judgment was obtained			
Paid as stated in certificate			
Costs for obtaining and registering certificate of the judgment (45 & 46 Vict. c. 31, s. 4).			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the debtor.

Application was made to the registrar for this warrant at minutes 51 & 52 Vict.
past the hour of in the noon of the day of 19 c. 43, s. 146.

Here state for the information of the high bailiff the place, &c., where the goods are stated to be.

See BACK.

For indorsement of fees for execution of warrant, see Form 163.

For Forms 431A and 432B see Part V., "Trade Union Act, 1913"; for Form 432, see Part V., "The Employers and Workmen Act, 1875"; for Form 433, see Part V., "The Married Women's Property Act, 1882"; for Forms 434—442, see Part V., "The Charitable Trusts Acts, 1853 to 1887"; for Forms 443—445, see Part V., "The Court of Probate Acts, 1857 and 1858"; for Forms 446—448, see Part V., "The Merchant Shipping Act, 1894," s. 610; for Forms 449—452, see Part V., "The National Health Insurance Act, 1924"; for Form 453. see Army Act, Part V.

454.

Order 50.
Rule 59.**Particulars on Application under the Housing Act, 1925 (15 Geo. 5, c. 14),
Section 7, Sub-section (4).**

The Housing Act, 1925, section 7 (4).

In the county court of holden at .
Between Plaintiffs,
and Defendants.

PARTICULARS OF CLAIM.

1. The plaintiffs (*state name of local authority*) are the local authority for (*state name of district*) within the meaning of section 7 of the Housing Act, 1925.

2. The plaintiff [*or defendant*] is a person having an interest in certain premises situate in the said district and known as , which are intended [*or used*] for occupation by the working classes, and are being occupied by more than one family [*or are intended to be converted for occupation by members of more than one family*].

3. The said holds the premises under a lease [*or an agreement*] dated the day of . The defendant is the lessor of the said and the defendant is the superior landlord of the said premises.

4. Bye-laws made under sections 6 and 7 of the said Act impose upon the said the duty of executing certain works required to comply with the said bye-laws, to wit:—

[*State the works required.*]

5. The said has satisfied the local authority that compliance with such bye-laws is contrary to the lease [*or agreement*] under which he holds the said premises [*or or and*] has satisfied the local authority that the whole or part of the expenses of carrying out the obligations imposed on him ought to be borne by his lessor or by the superior landlord of the said premises].

6. The local authority therefore apply to the court pursuant to the said section 7 for an order that the provisions of the said lease [*or agreement*] be relaxed so far as they are inconsistent with the requirements of the said bye-laws [and will, on proof to their satisfaction that the works necessary for compliance with the bye-laws have been properly carried out, further apply to the court to grant to the person who carries out the works a charging order charging on the premises an annuity to repay the expenses properly incurred in carrying out the work, or such part of those expenses as the court may consider ought to be so charged].

NOTE.—*This form is not to be printed : it is to be used as a precedent only, with such modifications as may be necessary.*

Amended by County Court Rules, 1925 (No. 2).

455.

Particulars on Application under the Housing Act, 1925 (15 Geo. 5, c. 14),
Section 102.

The Housing Act, 1925, section 102.

In the county court of _____ holden at _____ *Order 50,
Rule 59.*
Between _____
Plaintiffs,
and _____
Defendants.

PARTICULARS OF CLAIM.

1. The plaintiffs (*state name of local authority*) are the local authority for the (*state name of district*) within the meaning of section 102 of the Housing Act, 1925.

2. The plaintiff (*state name of person interested*) is interested in a house situate in the (*state name of district*) and known as _____, the nature of his interest being as follows (*state the same*):—

3. The defendants and _____ are also persons interested in the said house, their respective interests being as follows (*state the same*):—

4. Owing to changes in the character of the neighbourhood in which the said house is situate it cannot readily be let as a single tenement, but it could readily be let for occupation if converted into two or more tenements, but by reason of the provisions of the lease of the said house [*or of restrictive covenants affecting the said house, or (state other reason, if any)*] such conversion is prohibited or restricted.

5. The local authority [*or the said*] therefore apply [*or applies*] to the court pursuant to the said section for an order varying the terms of the lease [*or other instrument*] imposing the prohibition or restriction so as to enable the said house to be converted subject to such conditions and upon such terms as the court may think just.

NOTE.—*This form is not to be printed: it is to be used as a precedent only, with such modifications as may be necessary.*

Amended by County Court Rules, 1925 (No. 2).

456.

Particulars on Application under the Housing Act, 1925 (15 Geo. 5, c. 14), *Order 50,
Rule 59.*
Section 30 or Section 53.

The Housing Act, 1925, section 30 (*or section 53 as the case may be*).

In the county court of _____ holden at _____
Between _____
Plaintiffs,
and _____
Defendants.

PARTICULARS OF CLAIM.

1. The plaintiff is entitled to an interest in certain land situate in the (*state name of district*) and known as _____, which is used wholly or in part as a site for houses for the working classes, the nature of his interest being as follows (*state the same*):—

2. The defendant holds the said land under a lease [*or an agreement*] from the applicant dated the _____ day of _____, and the defendant is an underlessee of the said _____.

3. The premises on the said land are [or are likely to become] dangerous [or injurious to health or unfit for human habitation] and the interests of the applicant are thereby prejudiced.

[or The defendants the (state name of local authority) are the local authority of the said district and have approved a scheme of reconstruction [or improvement] affecting the said land, and the plaintiff desires to be entrusted with the carrying out of the said scheme.]

4. The plaintiff therefore applies to the court pursuant to section 30 (or section 53) of the Housing Act, 1925, for an order empowering him forthwith to enter on the said land and within a time to be fixed by the order to execute such works as may be necessary, and for an order that the lease [or agreement for a lease] of the said land held from the applicant and any derivative underlease shall be determined, subject to such conditions and to the payment of such compensation as the court may think just.

5. The applicant will submit to the inclusion in the order of provisions to secure that the proposed works are carried out, and to an order authorising the local authority to exercise such supervision or take such action as may be necessary for that purpose.

NOTE.—This form is not to be printed: it is to be used as a precedent only, with such modifications as may be necessary.

Amended by County Court Rules, 1925 (No. 2).

457.

**Form of Charging Order under the Housing Act 1925 (15 Geo. 5, c. 14),
Section 7, Sub-section 4.**

Order 50,
Rule 59.

The Housing Act, 1925.

County of

Parish of

No.

CHARGING ORDER.

Pursuant to sub-section (4) of section 7 of the Housing Act, 1925, the county court of holden at , doth by this Order under the hand of the registrar and the seal of the court charge the inheritance or fee of the premises mentioned in the schedule hereto with the payment to of the sum of £ payable yearly on the day for the term of years, in consideration of an expenditure of £ incurred by him in respect of the said premises.

Schedule.

Dated this day of

By the court,
Registrar.

458. [1925]

Application by Registrar for transmission to County Court of sum paid into High Court for benefit of infant; person of unsound mind; or widow.

In the County Court of

holden at

In the matter of section 205 of the Supreme Court of Judicature (Consolidation) Act, 1925.

In the matter of an action [or matter] in the High Court of Justice.

Between 19 (Letter).....No.....

and

Plaintiff,

Defendant.

Pursuant to an order of

dated the

day of

19, made in the

above action [*or matter*], directing the transfer to this Court of the sum of £ _____ paid into the High Court for the benefit of the above-mentioned _____, I hereby request that the said sum may be transmitted to this Court by cheque payable to the order of "The Registrar of the County Court at _____," and crossed to the account of the County Court at _____, at the _____ Branch of the _____ Bank.

Dated this _____ day of _____, 19____ Registrar.

To the Accountant General.
Royal Courts of Justice,
London, W.C. 2.

or
To the District Registrar.
High Court of Justice,
District Registry.

459. [1925]

Notice by Registrar to party interested of transfer from High Court of sum paid for benefit of infant; person of unsound mind; or widow.

In the County Court of _____

holden at _____

In the matter of section 205 of the Supreme Court of Judicature (Consolidation) Act, 1925.

In the matter of an action [*or matter*] in the High Court of Justice.

19 . (Letter).....No.....

Between _____

and _____

Plaintiff,

Defendant.

Take notice that pursuant to an order of dated the _____ day of _____, 19____, made in the above action [*or matter*], the sum of £ _____ paid into the High Court for the benefit of the above-mentioned _____ has been transferred to this Court to be invested, applied, or otherwise dealt with for the benefit of the said person [*or persons*] as this Court in its discretion shall think fit.

The said sum has, after deduction of £ _____, the prescribed fee for investment, been invested in the name of the Registrar of this Court in the Post Office Savings Bank.

Application as to the mode of dealing with the sum so invested may be made to this Court by or on behalf of the said _____ notice of the application being given to the Registrar.

Dated this _____ day of _____, 19____ Registrar.

To (1) _____

(1) Next friend, guardian ad litem; Committee or widow.

For Forms 460—465, see Part V., "Legitimacy Act, 1926."
For Forms 466—486, Part V., see "Landlord and Tenant Act, 1927."

EDITOR'S (LATE) ADDITIONAL FORMS.

1.

Particulars of Demand (a) in Ordinary Claims for Debt or Damages.

a.

Goods sold.	Particulars of plaintiff's claim for the price of goods sold and delivered :							
	1881—							£ s. d.
5 Jan.	To butcher's meat ...	...	...	...	...	...	...	3 10 0
6 June	" " ...	...	...	...	...	...	...	2 0 0
14 Sept.	" " ...	...	...	...	...	...	...	4 5 0
								9 15 0
	1882—1st February.—Paid							5 0 0
	Balance due ...							£4 15 0
Dated the								

(Signed, if entered by solicitor) L. M.

Solicitor for the above-named plaintiff

[who will accept service of proceedings on behalf of the plaintiff at his office, No. , Street,].

b.

Money received.	Particulars of the plaintiff's claim for money received by the defendant for the use of the plaintiff :							
	1882—1st January.—							
	To amount of rent of No. 5, Smith Street, collected by the defendant...							£ s. d.
		...	...	...	...	...	...	22 10 0
	To deposit on intended sale of Eva Villa							10 0 0
	Amount due ...							£32 10 0

c.

Breach of contract.	Particulars of plaintiff's claim for damages for breach of defendant's contract to deliver to the plaintiff 100 sacks of flour known as seconds, at 35s. per sack :							
	20 sacks not delivered, loss 5s. per sack...							£ s. d.
		...	...	...	...	...	...	5 0 0
	80 sacks delivered of inferior quality, loss 4s. per sack							16 0 0
								£21 0 0

d.

False imprisonment.	Particulars of the plaintiff's claim for damages against the defendant for assaulting him and giving him into the custody of a police officer on the day of , who detained him in custody for a long time.							
	General damages, £50.							

(a) Framed on High Court forms.

e.

Particulars of the plaintiff's claim for damages against the defendant for Detinue.
detaining from the plaintiff his goods and chattels, that is to say, a horse
harness, and gig :

Value of the said goods and chattels	£
Damages for their detention	10

The plaintiff claims a return of the said goods or their value, and £10
damages.

f.

Particulars of the plaintiff's claim for damage suffered by the plaintiff, Negligent
through the negligent driving by the defendant or his servants on the
day of of a horse and cart in Street, driving.

Personal injuries—General damages	£
Charges of Mr. X., surgeon	30
Injury to plaintiff's carriage—Repairs...	5
	10
	45

g.

Particulars of the plaintiff's claim for damage suffered by him at his Nuisance by
dwelling-house, No. Street, from offensive and pestilential smells.
smells and vapours caused by the defendant.
General damages, £50.

The plaintiff also claims an injunction to restrain the defendant from the
continuance or repetition of the said injury or the committal of any injury
of a like kind in respect of the same property.

2.

Particulars of Claim on Bill of Exchange or Promissory Note (a).

a.

Particulars of the plaintiff's claim against the defendant as maker of a pro- Payee
missory note for £30, dated 1st January, 1882, payable four months after date. against
maker of
promissory
note.

Principal	£
Interest	30
	3
	33

b.

Particulars of the plaintiff's claim against the defendant, as acceptor of a Indorsee
bill of exchange for £40, dated 1st January, 1882, drawn by A. B., payable against
acceptor of
a bill of
exchange.
three months after date to the order of E. F., and indorsed to the plaintiff.

Principal	£
Interest	40
	10
	50

c.

Particulars of the plaintiff's claim against the defendant A.B. as acceptor, Indorsee
and against the defendant C. D. as drawer, of a bill of exchange for £30, against
acceptor
and drawer
of a bill of
exchange
severally.
dated 1st January, 1882, payable three months after date, and indorsed by
the defendant C. D. to the plaintiff, of the dishonour of which on presentation
the defendant C. D. had notice.

Principal	£
Interest	30
	5
	35

(a) Summary procedure under Bills of Exchange Act, 1855, is now abolished
See County Courts Act, 1919, Sched. See Order VII. r. 29B.

3.

Particulars of Claim in Action for Recovery of Land.

Ejectment. The plaintiff is entitled to, and claims possession from the defendant, of a farm and premises called Church Farm, in the parish of St. James, in the county of Surrey. The last rent paid for the said premises (is not known) or was £ per . The weekly value of the said premises is estimated at £ .
 51 & 52 Vict. c. 43, s. 59. The plaintiff also claims £20 for mesne profits at the rate of £20 per annum from the day of .
 Order 6, Rule 3.
 Order 4, Rule 1.

4.

Particulars in Action for Recovery of Possession of Tenement.

a.

On determination of tenancy. The plaintiff is entitled to and claims possession of a farm and premises called Church Farm in the parish of St. James, in the county of Surrey, which was let by the plaintiff to the defendant, at £ : per , for the term of 5 years from the 29th September, 1880, which term has expired [or as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th September, 1885].
 51 & 52 Vict. c. 43, s. 138. The plaintiff also claims £ for mesne profits at the rate of £50 per annum, from the day of to the day of .
 Order 5, Rule 3.

For non-payment of rent.

51 & 52 Vict. c. 43, s. 139.

The plaintiff is entitled to and claims possession of a house and premises, being No. in Street, in , in the county of , let to the defendant at a rent of £50 a year, payable on the 25th March and the 29th September in each year. A half-year's rent due on the 29th September, 1885, is now due and in arrear, and the plaintiff is by the terms of the tenancy entitled to re-enter.

5.

Particulars in Equity Actions.

a.

Administration. The plaintiff is a creditor of X. Y., deceased, of whom the defendant C. D. is executor [or administrator] and the defendant E. F. is heir-at-law [or devisee].
 51 & 52 Vict. c. 43, s. 67.

Particulars of the claim :

Principal due on the bond of the testator [or intestate] dated the day of 19 £200 0 0
 Interest from the of at 5 per cent. 25 0 0

£225 0 0

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X. Y. administered.

(Signed)

Delivered

b.

Execution of trust.

51 & 52 Vict. c. 43, s. 67.

1. By a settlement dated June 10, 1856, upon trust for A. B. and C. B. successively for life, with remainder for their children who should attain 21, the following property was assured :

a. A sum of 57l. 14s. 2d. consolidated 3l. per cent. annuities.

b. 40l. invested on mortgage of land at X.

c. One-fifth of the residuary estate of D. deceased, subject to a prior life interest.

2. On August 15, 1862, C. B. died.

3. On February 18, 1875, A. B. died.

4. On September 10, 1879, D. died.

5. A. B. and C. B. had five children only, of whom the plaintiff is one.

6. The defendants are the present trustees of the settlement.

The plaintiff claims:

1. Execution of the trusts of the settlement.
2. All necessary accounts and inquiries.
3. A receiver.

c.

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:

- (a.) [Date and names of mortgagor and mortgagee.]
- (b.) [Sum secured.]
- (c.) [Rate of interest.]
- (d.) [Property subject to mortgage.]
- (e.) [Amount now due.]

Foreclosure
or sale.
51 & 52 Vict.
c. 43, s. 67

[If the plaintiff's title is a derivative title state shortly the assignments under which he claims.]

[If the plaintiff is mortgagee in possession add]:

3. The plaintiff took possession of the mortgaged property on the of , and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure (and possession).

d.

1. By an agreement [or letters] dated [or made verbally at interviews on or about] the day of , the plaintiff agreed to sell to the defendant the Home Farm, Kent, for £ . The sale was to be completed on the of

Specific
perform-
ance.
51 & 52 Vict.
c. 43, s. 67.

[If the agreement was verbal, add]:

2. The agreement so entered into has been part performed as follows [state how].

The plaintiff claims specific performance of the above agreement.

e.

1. The plaintiff on December 20th, 1875, entered into partnership articles with the defendant for ten years.

2. The defendant has broken the partnership articles as follows:—

Dissolution
of partner-
ship.

- a.
- b.

51 & 52 Vict.
c. 43, s. 67.

The plaintiff claims:—

1. Dissolution.
2. Accounts and inquiries.
3. A receiver.

6.

Notice of Motion on Appeal to High Court.

In the High Court of Justice.

Queen's Bench Division.

On Appeal from the county court of shire, holden at

Between A. B., plaintiff,

and

C. D., defendant.

Take notice, that this court will be moved on day the day of , or so soon thereafter as counsel can be heard, by of counsel for the above-named plaintiff [or defendant] on his behalf, that the judgment of nonsuit directed by his honour judge herein, on the day of , and the order of the said judge that the plaintiff should pay the defendant's costs may be set aside, and that a new trial may be directed to be had between the parties [or that judgment may be entered for the plaintiff for the agreed sum of 30*l.* and costs pursuant to leave reserved at the trial].

[Or that so much of the judgment of his honour judge given on the defendant's counterclaim herein as adjudges that the defendant should

recover against the plaintiff 20*l.* damages and costs, may be set aside or varied, and that in lieu thereof judgment may be entered for the plaintiff.]

[*Or* that the judgment of his honour judge made herein on the day of , whereby he adjudged that the plaintiff should recover from the defendant the sum of 30*l.* damages and costs may be set aside or varied, and that in lieu thereof judgment may be entered for the defendant, or a new trial had between the parties.]

The following are the grounds of appeal [*state the grounds particularly*] as, That there was evidence of a defect in the condition of the defendant's machinery, and that such defect was known to the defendant, and that he negligently omitted to repair or remedy the same.

That the judge improperly rejected evidence tendered by the plaintiff to prove the knowledge of the defendant of the said defect.

That there was no evidence of any negligence on the part of the plaintiff [*or* defendant].

That there was no evidence of contributory negligence on the part of the plaintiff [*or* defendant].

That the judge misdirected the jury in telling them that the plaintiff was responsible for the trespass of E. F., and that they ought to find for the plaintiff if they found that E. F. had in fact committed the alleged trespass.

Dated the day of .

(Signed)

G. H.,

Solicitor to the above-named plaintiff [*or* defendant].

To J. K.,

Solicitor to the above-named defendant [*or* plaintiff].

7.

Notice of Cross Appeal.

[*Title and heading as in Form 9.*]

Take notice that upon the hearing of the appeal herein the defendant will, if necessary, object to so much of the ruling of the judge at the trial as ruled that the defendant was not at liberty to rely on his objection that the plaintiff had given insufficient notice of injury because the defendant had not given notice of his objection as a statutory defence, pursuant to Order X. rr 10, 18, of the County Court Rules. And take notice that the court will, if necessary, be asked to affirm the judgment entered at the trial for the defendant on the grounds aforesaid, notwithstanding that it may be of opinion that the grounds upon which judgment was given at the trial were erroneous.

[*Or* the plaintiff will contend that the judge at the trial ought to have given judgment for the plaintiff for the sum of 10*l.* claimed by the plaintiff as special damage for [*state grounds*], in addition to the sum of 20*l.* for which judgment was in fact given, and the plaintiff will, on the hearing of the appeal, contend that the judgment ought to be varied accordingly.]

Dated, &c.

(Signed)

I. K.,

Solicitor to the above-named defendant [*or* plaintiff].

8.

Affidavit for Leave to Defend under Bills of Exchange Act.

Now abolished. See County Courts Act, 1919, Sched.

9.

Substituted Service by Advertisement.

In the county court of holden at .

To of in the county of . Take notice that a plaint has been entered and a summons issued against you in the above county

court by of aforesaid for an account of the partnership dealings between himself and you, under, and in pursuance of a certain partnership deed dated the , and also that the partnership may be dissolved under the order of the court, and for an injunction restraining you from collecting or receiving any of the partnership moneys, or any debt or debts due to the partnership, and also from in anywise dealing or interfering with or wasting the partnership assets, or any part thereof; and an order has been made that the publication of a notice of the entry of such plaint in the *London Gazette*, the and the shall be deemed to be service of the summons upon you. The summons will be heard at the court house, situate in in aforesaid, on the day of next, at eleven o'clock in the forenoon, on which day you are required to appear; and if you do not appear, either in person or by your solicitor, at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient,
Dated this day of 19 .

Registrar.

A. B.,

Plaintiff's Solicitor.

10.

Affidavit in support of Motion for a Prohibition.

In the High Court of Justice,
King's Bench Division.

I, A. B., of make oath and say as follows:—

1. I was on the day of served with a summons issued by the county court of holden at commanding me to appear at the said court on the day of . A true copy of the said summons is now produced and shown to me, and is hereunto annexed and marked A. [*Annex a copy marked A.*]

2. A document, which I believe to be a copy of the plaintiff's particulars of demand, was annexed to the said summons. A true copy of the said document is now produced and shown to me, and is hereunto annexed and marked B. [*Annex a copy marked B.*]

3. I appeared at the said court, in obedience to the said summons, on the said day of and on the cause being called on objected to the jurisdiction of the said court, on the ground that the particulars of demand in the action disclosed a claim for damages for not within the jurisdiction of the court.

4. The judge overruled my objection and proceeded to hear the evidence on behalf of the plaintiff, and at the end of the plaintiff's case I declined to call any witnesses, or to give evidence, and the judge gave a verdict for the plaintiff for 25*l.*

5. No application was made by the plaintiff for the amendment of his particulars of demand, and no amendment was, I believe, made by the judge.

APPENDIX (α).

PART III.

(1.)

Statutory Provisions as to Service of Summonses on Companies.

Order 7,
Rule 26.

8 & 9 Vict.
c. 16.

THE COMPANIES CONSOLIDATION ACT, 1845.

[8 & 9 VICT. C. 16.]

135. Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

8 & 9 Vict.
c. 18.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

[8 & 9 VICT. C. 18.]

134. Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or, in case there be no secretary, the solicitor of the said promoters.

8 & 9 Vict.
c. 20.

THE RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

[8 & 9 VICT. C. 20.]

138. This section is identical in terms with 8 & 9 Vict. c. 16, s. 135, *supra*.

COMPANIES (CONSOLIDATION) ACT, 1908.

8 Edw. VII.
c. 69.

[8 EDW. VII. C. 69.]

62. (1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the registrar of companies, who shall record the same.

116. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

(a) Part II. of the Appendix, containing the forms of books to be used in county courts, is useless to practitioners, and is omitted; Part IV. (Tables of Costs) is printed in Part II. of the Volume.

(2.)

Provisions of the Summary Jurisdiction Acts as to Imprisonment in default or in lieu of Distress to satisfy sums adjudged to be paid on Summary Conviction.

THE SUMMARY JURISDICTION ACT, 1848.

11 & 12 Vict.
c. 43.

[11 & 12 VICT. C. 43.]

18. In all cases of summary conviction or of orders made by a justice or justices of the peace it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reasonable in that behalf; and in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal, to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, with or without hard labour, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

Power to justice to award costs which shall be specified in conviction or order of dismissal and may be recovered by distress.

19. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorising such conviction or order such penalty, compensation, or sum of money, is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of distress for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an indorsement on such warrant, signed with his hand, authorising the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place:

Power to justice to issue warrant of distress.

How warrant to be backed.

21. If at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same shall return that he could find no goods or chattels or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue

In default of sufficiency of distress, justice may commit defendant to prison.

his warrant of commitment under his hand and seal directed to the same or any other constable, reciting the conviction, or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough, or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

Note.—Words in italics repealed by Criminal Justice Administration Act, 1914 (4 & 5 Geo. V. c. 58).

In all cases of penalties, convictions, orders, where the statute provides no remedy in default of distress, justice may commit defendant to prison.

22. And whereas by some Acts of Parliament justices of the peace are authorised to issue warrants of distress to levy penalties or other sums recovered before them by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; in all such cases, and in all cases of convictions or orders where the statute on which the same are respectively founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant shall have been issued can be found, it shall nevertheless be lawful for the justice to whom such return is made, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, if he or they shall think fit, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol as aforesaid for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

On payment of penalty, &c., distress not to be levied, or the party, if imprisoned for non-payment, shall be discharged.

28. In all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for non-payment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

42 & 43 Vict. c. 49.

THE SUMMARY JURISDICTION ACT, 1879.

Scale of imprisonment for non-payment of money.

[42 & 43 VICT. C. 49.]

5. The period of imprisonment imposed by a court of summary jurisdiction under this Act or under any other Act, whether past or future, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the contrary in any past Act, be such period as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale; that is to say,

Where the amount of the sum or sums of money adjudged to be paid by a conviction, as ascertained by the conviction,	The said period shall not exceed,
Does not exceed ten shillings	Seven days.
Exceeds ten shillings, but does not exceed one pound	Fourteen days.
Exceeds one pound but does not exceed five pounds	One month.
Exceeds five pounds but does not exceed twenty pounds	Two months.
Exceeds twenty pounds	Three months.

Note.—Remainder of section repealed by Criminal Justice Administration Act, 1914.

21. (1) A court of summary jurisdiction to whom application is made either to issue a warrant of distress for any sum adjudged to be paid by a conviction or order, or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or in the case of a sum not a civil debt by an order, or for default of sufficient distress to satisfy any such sum, may, if the court deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to the court may seem just.

(2) The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

Sub-sections (3) and (4) of section 21 are repealed by the Criminal Justice Administration Act, 1914 (4 & 5 Geo. V. c. 58), and by section 25 of that Act the following provision is substituted for sub-section (3):—

“Where a sum is adjudged to be paid by a conviction of a court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, and on default of payment of such sum a warrant of distress is authorised to be issued, the court may, in any case in which it appears expedient to do so, instead of issuing a warrant of distress, issue a warrant of commitment: Provided that where time is not allowed for the payment of such sum, a warrant of commitment shall not be issued in the first instance unless it appears to the court that the offender has no goods or insufficient goods to satisfy the money payable or that the levy of distress will be more injurious to him or his family than imprisonment.”

Sub-section (4) (repealed) provided that where part of the fine had been paid the term of imprisonment in the warrant should be altered to a term not exceeding the maximum term in the scale applicable to the amount of the unsatisfied balance. The corresponding provision in the Criminal Justice Administration Act, 1914, is contained in section 3 (1), which is as follows:—

“Where a term of imprisonment is imposed by a court of summary jurisdiction in respect of the non-payment of any sum of money adjudged to be paid by a conviction or order of that or any other court of summary jurisdiction, that term shall, on payment of a part of such sum to any person authorised to receive it, be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid: Provided that, in reckoning the number of days by which any term of imprisonment would be reduced under this section, the first day of imprisonment shall not be taken into account, and that, in reckoning the sum which will secure the reduction of a term of imprisonment, fractions of a penny shall be omitted.”

PART IV.(a)

TABLES OF COSTS.

(a) See separate Chapter on Costs, Part II.

PART V.

Documents requiring the Seal of the Court.

1. The forms numbered as follows in Part I. of this Appendix :—

2, 8 (1), 8A, 9, 9A, 19, 20, 21, 22, 22A, 23, 25, 44, 46, 47, 51, 56, 57, 58, 59, 61, 62, 64, 77, 81, 90, 91, 92, 93A, 94, 96, 100, 102, 105, 106, 108, 118, 120, 123, 124, 126, 127, 128, 129, 131, 132, 134, 134A, 134B, 137, 144, 144A, 144B, 144C, 145, 146, 147, 148, 149, 150, 151, 151A, 152, 153, 154, 155, 157, 158, 159, 160, 161, 162, 163, 164, 165, 167, 168, 169, 173, 173A, 175, 177, 178, 181, 182, 183, 184, 186, 187, 189, 190, 191, 191A, 193, 194, 195, 197, 199, 199A, 201, 202, 206, 207, 208, 209, 210, 212A, 213, 214, 215, 216, 217, 218, 219, 220, 221, 223, 224, 225, 227, 231, 232, 233, 238, 238A, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 277, 278, 283A, 283C, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 300A, 300B, 302, 304, 305, 306, 307, 308, 309, 310, 314, 315, 316, 317, 318, 321, 323, 326, 327, 328, 329, 330, 331, 334, 335, 337, 342, 343, 345, 346, 347, 348, 349, 351, 355, 356, 357, 359, 360, 361, 362, 363, 364, 365, 366, 367, 370, 371, 372, 377, 384, 385, 386, 393, 394, 395, 396, 397, 399, 403, 408, 412, 413, 425, 425A, 428, 430, 431, 432B, 433, 434, 435, 438, 439, 440, 441, 444, 445, 457, 458, 464, 465, 467, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 481, 482, 483 and 484.

2. The forms numbered as follows in the Appendix to the Consolidated Workmen's Compensation Rules, 1926, as amended :—

20, 24, 28, 30, 32, 35, 45, 48, 50, 51, 63, 64, 70, 72, 74, 77, 78, 80 and 81.

3. The forms numbered 11 and 12 in the Schedule to the Regulations dated June 21st, 1907, made by the Secretary of State and the Treasury under section 8 of the Workmen's Compensation Act, 1906.

4. The forms headed F and G in the Schedule to the Regulations dated December 17th, 1923, made by the Secretary of State and the Treasury under Schedule I. and Schedule II. of the Workmen's Compensation Act, 1906.

5. The forms numbered as follows in the Appendix to the County Court (Registration Appeals) Rules, 1918.

6, 7, 8 and 12.

6. The forms numbered as follows in the Appendix to the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, as amended :—

1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16.

7. The forms numbered as follows in the Appendix to The Bankruptcy (Administration Order) Rules, 1902, as amended by the Bankruptcy (Administration Order) Rules, 1914 :—

3, 4, 4A, 4B, 5, 7, 8, 9, 13, 14, 15, 16, 16A and 18.

8. The forms numbered as follows in the Appendix to the Companies (Winding-Up) Rules, 1909, as amended :—

3, 4, 5, 10, 15, 16, 18, 28, 31, 32, 39, 40, 49, 54, 57, 61, 68, 69 and 106.

9. The forms numbered as follows in the Appendix to The Tithe Rent-charge Recovery Rules, 1891, made by the Lord Chancellor under section 3 of the Tithe Act, 1891 :—

4, 8, 9, 11, 13, 14, 18, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32 and 35.

10. The forms numbered 1 and 3 in the Second Schedule to the Lunacy Act, 1890.

11. The forms numbered P.1, P.2, P.7 and P.9 in the Schedule to the Mental Deficiency Act Provisional Regulations, 1914, made by the Secretary of State under the Mental Deficiency Act, 1913.

12. The forms numbered 2, 4, 5 and 6 in Appendix B to the Rules of the Court of Survey, 1876, made by the Lord Chancellor under section 9 of the Merchant Shipping Act, 1876.

13. The forms numbered 11 and 12 in the Appendix to the Deeds of Arrangement Rules, 1915.

14. Such of the forms in the First Appendix to the Bankruptcy Rules, 1915, as have usually been sealed in pursuance of Rule 14 of those Rules.

15. The forms numbered 4 and 5 in the Appendix to the Adoption of Children (County Court) Rules, 1926.

APPENDIX A.

TABLE OF INTERLOCUTORY APPLICATIONS BEFORE THE TRIAL.

NOTE.—The word “Court” when used in the County Courts Act, 1888, means the judge or registrar of the Court. Sect. 186. The word “Court” when used in the County Court Rules includes the judge or registrar exercising the powers of the Court in Chambers as well as in open Court: Order LV. “Court.”

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application to be made.
Leave to enter plaint under Sect. 74 of Act.	J. or R.	C. C. Act, s. 74; O. 5, R. 13.	O. 5, R. 13; O. 12, R. 11, by affidavit.
Default or special default summons.	J. or R.	—	O. 5, R. 13 (5).
Leave to join different causes of action.	J. or R.	O. 4, Rr. 1, 2, 3.....	O. 12, R. 11.
Separate trials when different causes of action joined.	Judge.	O. 4, R. 7	O. 12, R. 11; O. 15.
Conduct of action.....	J. or, in his absence, R.	O. 54, R. 11	O. 12, R. 11; O. 15.
Leave to defend for others in same interest.	J. or R.	O. 3, R. 7	O. 3, R. 8; O. 12, R. 11.
Leave in administration action to appear on claim of third person.	J. or R.	O. 3, R. 34..	O. 12, R. 11; O. 15.
Application for directions.....	J. or R.	O. 15, R. 1..... (see note)	O. 12, R. 1; O. 15, Rr. 2, 3.
Leave to issue default summons or special default summons under sect. 74 of Act.	J. or R.	O. 7, R. 29B (3)	O. 5, R. 13.
Leave to issue default summons after twelve months.	Registrar.	O. 7, R. 30 (2)	O. 7, R. 30.
Leave to third person to defend in ejectment.	J. or R.	O. 10, R. 4.....	O. 10, R. 4; O. 12, R. 11; O. 15.

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application to be made.
Amendment of parties.....	J. or R.	O. 14, Rr. 1 to 9 ...	O. 14, R. 10; O. 12, R. 11; O. 15.
Substitution of parties to or upon whom interest or liability has devolved.	Registrar.	O. 17, Rr. 2, 3	O. 17, Rr. 2, 3.
Order to continue proceedings between new parties in consequence of change of interest, &c.	J. or R.	O. 17, R. 4.....	O. 17, Rr. 4, 5.
Variation of last order at instance of person under disability.	J. or R.	O. 17, R. 6.....	O. 12, R. 11; O. 15.
Security for costs on bankruptcy of plaintiff.	Judge.	C. C. Act, s. 94; O. 17, R. 9.	O. 21, R. 11; O. 15.
Amendment of proceedings...	Judge.	C. C. Act, s. 87	O. 12, R. 11; O. 15.
Amendment of particulars ...	J. or R.	C. C. Act, s. 87; O. 14, Rr. 12, 15.	O. 12, R. 11; O. 15.
Amendment of particulars in action begun by default or special default summons.	J. or Registrar (in cases within his jurisdiction).	C. C. Act, 1919.....	O. 14, R. 12A.
Delivery of further particulars.	J. or R.	O. 6, R. 7; O. 22A, R. 6; O. 55; C. C. Act, s. 164.	O. 12, R. 11; O. 15.
Substituted service of summons, documents, &c.	J. or R.	O. 7, R. 40.....	O. 12, R. 11; O. 15.
Service out of England and Wales.	J. or deputy judge.	O. 7, Rr. 41—49 ...	O. 12, R. 11.
Leave to issue default summons in certain cases.	J. or R.	C. C. Act, s. 86; O. 5, R. 15; O. 7, R. 30.	O. 5, R. 15; O. 12, R. 11.
Leave to proceed under default summons as if personal service effected.	J. or R.	C. C. Act, s. 86; O. 7, R. 33A.	O. 12, R. 11; O. 7, R. 33A.
Leave to plaintiff to serve default summons.	Registrar.	O. 7, R. 33.....	O. 12, R. 11.
Leave to issue successive default summonses.	Registrar.	O. 7, R. 30.....	O. 12, R. 11.

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application be made.
Leave to defend default summons though notice to defend not given.	J. or R.	C. C. Act, s. 86.....	O. 12, R. 11.
Leave to stakeholder and others to interplead.	Judge.	Jud. Act, 1925, s. 202.	O. 12, R. 11; O. 27, R. 15.
„ „	Registrar.	O. 27, R. 15	O. 12, R. 11.
Leave to interplead when chose in action assigned.	Registrar.	O. 27, R. 15	O. 12, R. 11.
Consolidation of actions	Judge.	O. 8, Rr. 1, 2, 4, 7.	O. 8, R. 3; O. 12, R. 11; O. 15.
Certificate for purpose of objection to jurisdiction.	Judge.	C. C. Act, s. 62; O. 10, R. 6.	O. 10, R. 6; O. 12, R. 11.
Leave to make third person defendant to counterclaim.	J. or R.	O. 10, R. 22; O. 14, R. 2.	O. 12, R. 11; O. 15.
Directions when third party notice served.	Judge.	O. 11, R. 4	O. 12, R. 11; O. 15.
Staying proceedings under Arbitration Act, 1889.	Judge. R. doubtful.	Arb. Act, 1889, s. 4.	O. 12, R. 11.
Assessors..	Judge.	C. C. Act, s. 103; O. 21, Rr. 7, 8.	O. 21, Rr. 7, 12.
Jury.....	J. or R.	C. C. Act, s. 101; O. 22, Rr. 1, 2, 3, 4; O. 22A, R. 24.	O. 12, R. 11; O. 15.
Adjournment, generally	Judge.	C. C. Act, s. 106...	O. 12, R. 11.
„ „	J. or R.	O. 15, R. 1	O. 15.
Adjournment, where practice not complied with.	J. or R.	O. 12, R. 15	O. 12, R. 11; O. 15.
Adjournment, by consent ...	J. or R.	O. 12, R. 12	O. 12, Rr. 11, 12.
Adjournment, on account of pending interlocutory proceedings.	J. or R.	O. 12, R. 13	O. 12, Rr. 11, 13; O. 15.
Discovery of documents	J. or R.	O. 16, R. 10; O. 15, R. 1	O. 12, R. 11; O. 15.
Further affidavit of documents	Judge.	Jud. Act, 1925, s. 202.	O. 12, R. 11; O. 15.
Production of documents	J. or R.	O. 16, R. 12	O. 12, R. 11; O. 15.
Inspection of documents ...	J. or R.	O. 16, R. 16	O. 12, R. 11; O. 16, R. 16; O. 15.
Inspection of bankers' books	Judge.	42 Vict. c. 11.....	O. 12, R. 11; O. 15.

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application to be made.
Interrogatories	J. or R.	O. 16, R. 1	O. 12, R. 11 ; O. 15.
Further answer to ditto	J. or R.	O. 16, R. 9	O. 12, R. 11 ; O. 16, R. 9.
Amendment of admission of facts.	J. or R.	O. 9, R. 3 ; O. 55 ; C. C. Act, s. 186	O. 12, R. 11 ; O. 15.
Leave to issue summons to witness in blank.	J. or R.	O. 18, R. 3	O. 12, R. 11 ; O. 15.
Bringing up prisoner for criminal offence as witness.	Judge.	C. C. Act, s. 112 ...	O. 12, R. 11 ; O. 15.
Oral examination of witness.	J. or R.	O. 18, Rr. 2, 14 ; O. 52 ; C. C. Act, s. 186, but see O. 18, R. 15.	O. 12, R. 11 ; O. 15.
Order to prove fact or facts by affidavit.	Judge.	O. 18, R. 2	O. 12, R. 11.
Order for examination of witness out of court.	Judge.	O. 18, R. 2 ; R. 10.	O. 12, R. 11.
Attendance of witness before examiner.	J. or R.	O. 18, R. 18 ; O. 55 ; C. C. Act, s. 186.	O. 12, R. 11 ; O. 15.
Attendance when witness refuses to attend or be sworn.	Judge.	O. 18, R. 26	O. 12, R. 11 ; O. 15.
Accounts and inquiries	Judge.	O. 12, Rr. 5, 6	O. 12, Rr. 6, 8, 11.
Receiver	Judge.	Jud. Act, 1925, s. 45 ; O. 13, R. 1.	O. 12, Rr. 6, 8, 11.
Mandamus	Judge.	Jud. Act, 1925, s. 45	C. C. Act, s. 9 ; O. 12, R. 11.
Injunction	Judge.	Jud. Act, 1925, s. 45 ; O. 12, R. 6.	O. 12, Rr. 6, 8, 11.
Preservation of property, &c.	J. or R.	O. 12, Rr. 1, 2, 3 ...	O. 12, R. 11 ; O. 15.
Payment into court when lien claimed.	Judge.	O. 12, R. 7	O. 12, Rr. 7, 8, 11 ; O. 15.
Plaintiff to make deposit as security for costs of defendant out of jurisdiction.	Registrar.	O. 12, R. 9	O. 12, R. 9.
Reference to arbitration	Judge.	C. C. Act, s. 104 ; O. 20, R. 1.	O. 12, R. 11 ; O. 15.
Transfer to another court ..	Judge. {	C. C. Act, ss. 42, 85 {	O. 12, R. 11 ; O. 15
“ “ “	“ {	O. 8, R. 8 ; O. 22, R. 23. }	

Order for	To whom application to be made.	Act or Rule governing jurisdiction.	How application to be made.
Transfer of equity cases	J. or R.	C. C. Act, ss. 75, 186	O. 12, R. 11 ; O. 15.
Approval of bond as security	Registrar.	O. 29, R. 1.....	O. 29, Rr. 1, 2, 3.
Approval of deposit as security	Registrar.	C. C. Act, s. 109 ...	C. C. Act, s. 109.
Repayment of money deposited as security.	Judge.	C. C. Act, s. 109 ...	O. 12, R. 11 ; O. 15.
Extension of time for taking proceeding.	J. or R.	C. C. Act, s. 106 ; O. 54, R. 12.	O. 54, R. 12 ; O. 12, R. 11 ; O. 15.
Setting aside proceeding for irregularity.	J. or R.	O. 54, Rr. 24, 25 ...	O. 12, R. 11 ; O. 54, R. 25.

APPENDIX B.

TIME TABLE.

SHEWING THE TIMES LIMITED BY RULES OF COURT FOR THE TAKING OF VARIOUS PROCEEDINGS IN THE COUNTY COURT.

Clear Days.]—These must be reckoned exclusive both of the first and the last day (Ord. LV.).

Month means calendar month (Order LV.).

Period not exceeding 48 hours.]—No part of any Sunday or day on which the offices of the court need not be open is to be included in the computation (Order LIV. r. 17).

Time expiring on day when office is closed.]—If by reason of the office of the court being closed, any act or proceeding cannot be done or taken on that day, such act or proceeding shall be held to be duly done or taken if done or taken on the day on which the offices shall next be open (Order LIV. r. 18).

Enlargement or abridgment of time.]—As to procedure for obtaining an enlargement or abridgment of the time fixed for taking any step or filing any document or giving any notice, see Order LIV. r. 12.

ABANDONMENT OF PART OF CLAIM. Any time before action called on or in opening the case (Ord. XIV. r. 13).

ACCOUNTS AND INQUIRIES.

Advertisements (where ordered), insertion of.

Claims, not sent in by creditors in due time, when may be.

Notice of non-allowance of claim and of attendance to prove it.

Registrar's certificate to be prepared and ready for inspection.

Return day of summons.

Return day of summons where advertisements are ordered.

Fourteen days previous to day appointed (Ord. XXIV. r. 2).

Two days before day to which the adjudication is adjourned (Ord. XXIV. r. 20).

Not less than seven days after notice (Ord. XXIV. r. 19).

Seven days before day appointed for presenting it (Ord. XXIV. r. 31).

Not less than seven days from date of order (Ord. XXIV. r. 2).

Not less than twenty-one days from date of order (Ord. XXIV. r. 2).

ADMISSIONS

of truth of statements in plaintiff's particulars,

in actions not exceeding £50.

in actions exceeding £50.

of liability for whole or part of claim, but decision of court required as to time and mode of payment.

Five clear days before return day (Ord. IX. r. 5).

Ten clear days before return day (Ord. XXIIA. r. 8).

Five clear days before return day (Ord. IX. r. 2 (2)).

ADMISSIONS OF FACTS ON NOTICE.

- (a) Notice to admit
 in actions not exceeding £50. Six clear days before return day (Ord. IX. r. 8).
 in actions exceeding £50. Twelve clear days before return day (Ord. XXIIA. r. 9).
- (b) Delivery of admission
 in actions not exceeding £50. Three clear days before return day (Ord. IX. r. 8).
 in actions exceeding £50. Six clear days before return day (Ord. XXIIA. r. 9).

AGREEMENT

- between plaintiff and defendant as to amount and terms of payment. Any time before return day (Ord. IX. r. 4).

AMENDMENT,

of default summons.

At any time during its currency (Ord. VII. r. 30A).

joinder of defendant under Air Navigation Act, 1920.

Notice to be given five clear days before return day (Ord. XIV. r. 2 (A)).

APPEAL TO HIGH COURT,

Entry of.

Twenty-one days from date of judgment or order (R. S. C., Ord. LIX. r. 12).

Notice of motion.
 Service of.

Eight days (R. S. C., Ord. LIX. r. 10).
 Twenty-one days from date of judgment or order (R. S. C., Ord. LIX. r. 12).

Stay of proceedings by making deposit or giving security.

Ten days after decision (R. S. C., Ord. LIX. r. 14).

ASSESSORS,

- Application for,
 in actions not exceeding £50.
 in actions exceeding £50.
 under Employers' Liability Act, 1880.
 under Workmen's Compensation Act, 1925.

- Six clear days before return day (Ord. XXI. r. 7).
 Twelve clear days before return day (Ord. XXIIA. r. 19).
 Ten clear days before return day (Ord. XLIV. r. 6).
 Eight clear days before arbitration day (Rule 55 (1)).

ATTACHMENT. *See* "Enforcement of Judgments and Orders."

CHANGE OF SOLICITORS.

Notice to registrar and parties.

Forty-eight hours' notice (Ord. LIV. r. 6).

COMMITTAL ORDER. *See* "Enforcement of Judgments and Orders."

CONFESSIONS,

Of debt under s. 98, delivery to registrar,

in actions not exceeding £50.

Five clear days before return day (Ord. IX. r. 2).

in actions exceeding £50.

Ten clear days before return day (Ord. XXIIA. r. 8).

in action of ejectment or for recovery of possession.

At any time before return day (Ord. IX. r. 7).

Costs. *See* "Security for Costs" and "Taxation of Costs."

COUNTERCLAIM. *And see* "Defence and Counterclaim."

Notice of, to be filed.

In actions exceeding £50.

Objection to, under s. 203 of Supreme Court of Judicature Act, 1925 (*ante*, p. 36).

Five clear days before return day (Ord. X. r. 10).

Ten clear days before return day (Ord. XXIIA. r. 13).

Within two clear days after receipt of notice (Ord. X. r. 3).

DEFAULT AND SPECIAL DEFAULT SUMMONS.

Notice when case will be disposed of when claim in a default or special default summons is wholly admitted.

Notice of trial where default summons or special default summons is defended.

Amendment of notice of defence, or affidavit of defence of default or special default summons when returned for amendment.

Service of default or special default summons.

Extension of time for service of default or special default summons.

Affidavit of service of a default or special default summons, when not served by a bailiff.

Judgment on, where no notice or affidavit of defence or leave to defend.

Exchange of, for ordinary summons.

Notice to defend default summons.

Affidavit of defence to special default summons.

Striking out.

Proceedings in case of death where issue saves Statute of Limitations running.

At least six days before the day fixed (Ord. VII. r. 34D).

At least ten clear days before day fixed for trial (Ord. VII. r. 34C).

Twelve days from date of service (Ord. VII. r. 34B).

Within twelve months from its date (Ord. VII. r. 30).

Within twelve months from its date (Ord. VII. r. 30).

Within three clear days after day of service (Ord. VII. r. 34).

After eight days from day of service, but within two months from date of service (Ord. VII. r. 29C and r. 36).

Within twelve months of issue (Ord. VII. r. 38).

Within eight days after service inclusive of day of service (Ord. VII. r. 29C).

Within eight days of day of service (Ord. VII. r. 29C).

Where not returned to registrar within twelve months from issue, unless time extended (Ord. VII. r. 35).

Within one year from service (Ord. VII. r. 37).

DEFENCE AND COUNTERCLAIM. *See also* "Counterclaim."

1. Counterclaim, Objection to.

Notice by plaintiff objecting to counterclaim which exceeds court's jurisdiction being dealt with.

Within two clear days after receipt of notice of counterclaim (Ord. X. r. 3).

DEFENCE AND COUNTERCLAIM—

Continued.

2. Ejectment and Recovery of Possession.

(i.) Affidavit of person not named as defendant, but desirous to appear and defend, to be filed.

(a) Where yearly value or rent does not exceed £50.

Five clear days, before return day (Ord. X. r. 4).

(b) Where yearly value or rent exceeds £50.

Ten clear days, before return day (Ord. XXIIA. r. 11).

(ii.) Notice, where sum claimed exceeds £20, by plaintiff to defendant to state his defence in writing.

Seven clear days before return day (Ord. X. r. 9 (9)).

Where claim exceeds £50.

Twelve clear days before return day (Ord. X. r. 9A).

Time within which defendant must comply with the above notice.

Four clear days from the service of the notice (Ord. X. r. 9A).

(The above notice applies to a counterclaim exceeding £20 as well as a claim.)

(iii.) Limitation of defence.

Notice by defendant to registrar.

(a) Where yearly value or rent does not exceed £50.

Five clear days, before return day (Ord. X. r. 5).

(b) Where yearly value or rent exceeds £50.

Ten clear days, before return day (Ord. XXIIA. r. 11).

(iv.) Notice of limitation of defence by registrar to plaintiff.

(a) Where yearly value or rent does not exceed £50.

Three clear days, before return day (Ord. X. r. 5).

(b) Where yearly value or rent exceeds £50.

Eight clear days, before return day (Ord. XXIIA. r. 11).

3. Objection to jurisdiction under s. 62 of the Act.

Notice by defendant to registrar and to plaintiff.

(a) In actions not exceeding £50.

Five clear days before return day (Ord. X. r. 6).

(b) In actions exceeding £50.

Ten clear days before return day (Ord. XXIIA. r. 12).

DEFENCE AND COUNTERCLAIM—

Continued.

4. Notice of special defences mentioned in Ord. X. rr. 12 to 20 and 21A, and of set-off or counterclaim.

(i.) To be filed by defendant.

(a) In actions not exceeding £50.

(b) In actions exceeding £50.

(c) In libel and slander actions.

(ii.) Notice by registrar to plaintiff of special defence.

5. Amendment of special defence.

Five clear days before return day (Ord. X. r. 10).

Ten clear days before return day (Ord. XXIIA. r. 13).

Five clear days before return day (Ord. XXXIII. r. 4).

Within twenty-four hours after receipt from defendant (Ord. X. r. 10).

At any time before return day (Ord. XIV. r. 12).

DIRECTIONS.

Notice of application for.

Three clear days' notice in writing to every party affected (Ord. XV. r. 2).

DISCHARGE FROM CUSTODY (other than under Debtors Act, 1869).

(a) By judge.

Two clear days' notice to opposite party before making of application (Ord. XXV. r. 62).

The same (Ord. XXV. r. 63).

(b) By registrar.

DISCOVERY AND INSPECTION.

1. Interrogatories.

(a) Delivery of.

Within the time specified in the order giving leave (Ord. XVI. r. 2).

(b) Answer to.

Within the time named in the order giving leave to interrogate (Ord. XVI. r. 8).

(c) Further answer.

Notice of application for.

Two clear days (Ord. XVI. r. 9).

2. Production and Inspection of Documents.

(a) Notice to produce.

At any time (Ord. XVI. r. 13).

(b) Order to produce.

At any time (Ord. XVI. r. 12).

(c) Time for inspection.

Within three days from delivery of notice to inspect (Ord. XVI. r. 15).

To be filed within time named in order (Ord. XVI. r. 11).

3. Affidavit of Documents.

DOCUMENTS, Admission of. *See* "Evidence."

ENFORCEMENT OF JUDGMENTS AND ORDERS.

1. Execution against goods.

(a) Length of time in force.

One year from day of issue and exclusive of that date, unless renewed (Ord. XXV. r. 6).

(b) Leave required.

When no payment made by judgment debtor within twenty-four months previously (Ord. XXV. r. 10).

ENFORCEMENT OF JUDGMENTS AND ORDERS—*Continued.*

1. Execution against goods—*Continued.*
 - (c) Execution against firm.
Where leave sought to issue execution against person not admitted or adjudged to be liable as a partner, etc. Two clear days' notice of intention to apply for leave (Ord. XXV. r. 11).
 - (d) Application to issue process on change of parties after judgment. Six clear days before proceedings issue on the order (Ord. XXV. r. 15).
 - (e) Private sale under Bankruptcy Acts. Notice of application to be served four clear days before day appointed for hearing of application (Ord. XXV. r. 24 (3)).
 - (f) Appraisement of goods taken in execution. Not before fifth day of possession by bailiff, unless goods of perishable nature, or sold at request of party or removed (Ord. XXV. r. 21).
2. Execution in action of ejectment.
 - (a) If judgment for plaintiff. On day named in judgment; if no day named, after expiration of fourteen clear days from day on which judgment given (Ord. XXV. r. 65).
 - (b) If judgment for defendant. The same (Ord. XXV. r. 67).
3. Judgment summons.
 - (a) Issue and service of.
In ordinary cases. Issue not less than ten clear days, and service not less than five clear days before hearing (Ord. XXV. r. 31).
Where judgment debtor about to remove or avoiding service. At any time before hearing (Ord. XXV. r. 32).
 - (c) Limitation of time for issue, where summons not successive. At any time within three months (Ord. XXV. r. 33).
Twenty-four months from date of last payment into court, or (if no payment into court) from date of default (Ord. XXV. r. 28), with certain exceptions.
4. Committal order.
 - (a) Duration of order. In force for one year from date, (exclusive of day of date) unless renewed (Ord. XXV. r. 46 (4)).
 - (b) Payment to bailiff on arrest. At any time before delivery of body of debtor into custody of gaoler (Ord. XXV. r. 48).
 - (c) Part-payment after arrest but before delivery to custody of gaoler.
 - (a) Where payment into foreign court. As soon as may be the registrar must notify payment to high bailiff, or to bailiff (Ord. XXV. r. 48a).

ENFORCEMENT OF JUDGMENTS AND ORDERS—*Continued.*

4. Committal order—*Continued.*

(c) Part payment after arrest but before delivery to custody of gaoler—*Continued.*

(b) Where payment into home court after order sent for re-issue to a foreign court.

As soon as may be notice must be given to registrar of foreign court (Ord. XXV. r. 48a).

(d) Part payment after debtor lodged in gaol.

Same as (d) above (Ord. XXV. r. 49 (a)).

5. Attachment of person.

(a) Notice to attend to show cause.

Not less than three days after service of copy order on person to be bound by the order (Ord. XXV. r. 59).

(b) Service of copy order for attachment.

Before or at time of execution of warrant, unless judge otherwise orders (Ord. XXV. r. 61).

6. Attachment of debts.

Service of garnishee summons.

Ten clear days before return day (Ord. XXVI. r. 1).

Notice to judgment debtor of issue of garnishee summons.

Five clear days before return day (Ord. XXVI. r. 4 (b)).

EVIDENCE.

Admission and inspection of documents.

Notice to admit and inspect.

(a) In actions not exceeding £50.

Five clear days before trial (Ord. XVIII. r. 6).

(b) In actions exceeding £50.

Ten clear days before trial (Ord. XXIIA. r. 17).

Admissions, when should be made.

(a) In actions not exceeding £50.

Within three days after receipt of notice (Ord. XVIII. r. 6).

(b) In actions exceeding £50.

Within five days after receipt of notice (Ord. XXIIA. r. 17).

Affidavits, notice of intention to use at trial.

(a) In actions not exceeding £50.

Not less than four clear days before trial (Ord. XVIII. r. 11).

(b) In actions exceeding £50.

Not less than eight clear days before trial (Ord. XXIIA. r. 18).

Notice of objection to use of affidavit.

(a) In actions not exceeding £50.

Two clear days before trial (Ord. XVIII. r. 11).

(b) In actions exceeding £50.

Four clear days before trial (Ord. XXIIA. r. 18).

Witness, summons to.

To be served within reasonable time (Ord. XVIII. r. 4).

EXECUTION. See "Enforcement of Judgments and Orders."

GUARDIAN AD LITEM.

Where it is apparent on face of proceedings that defendant is of unsound mind or an infant.

Appointment of, on defendant's application.

(a) In actions not exceeding £50.

(b) In actions exceeding £50.

Appointment of, on plaintiff's application.

(a) Service of notice of application and copy of affidavit in support.

Where such defect not apparent on face of proceedings.

Person named as guardian by defendant.

In other cases.

Application on behalf of defendant.

(b) Application by plaintiff (where none on behalf of defendant).

After service of summons and not less than six clear days before return day (Ord. VII. r. 50 (1)).

After service of summons and not less than twelve clear days before return day (Ord. XXIIA. r. 7).

Three clear days at least before day for hearing application (Ord. VII. r. 50 (5)).

On appearance at trial (Ord. VII. r. 51 (1)).

Within six days of its being made to appear that defendant is infant or of unsound mind (Ord. VII. r. 51 (2)).

Three clear days at least before day named in notice for hearing application (Ord. VII. r. 51 (2), and r. 50 (5)).

NOTE: It should be observed that, where an infant is sued for a debt or liquidated demand, paragraphs 4 to 6 of Ord. VII. r. 50 (as to appointment of guardian *ad litem*) do not apply unless otherwise ordered (Ord. VII. r. 50 (7)).

INTERPLEADER.

Particulars and grounds of claim.

To be delivered to high bailiff or left at registrar's office.

Execution creditor's notice of admission of claimant's title.

Execution creditor's notice to high bailiff to withdraw from possession.

Notice to execution creditor of claim for possession fees.

Notice of application to court for protection order by high bailiff.

Claim for damages against high bailiff, notice to registrar and high bailiff.

Interpleader where assignor of debt, &c., disputes assignment, or defendant has notice of conflicting claim.

Application for interpleader summons.

Particulars of claim or notice of relinquishment.

Five clear days at least before return day (Ord. XXVII. r. 5).

Within four days after receipt of notice of claim from high bailiff (Ord. XXVII. r. 1 (2)).

The same (Ord. XXVII. r. 1 (2)).

Three clear days (Ord. XXVII. r. 1 (2)).

Three clear days (Ord. XXVII. r. 2).

Five clear days before return day of summons (Ord. XXVII. r. 9).

Within five days of service of summons in action (Ord. XXVII. r. 15 (1)).

Five clear days before return day of interpleader summons (Ord. XXVII. r. 15 (5)).

INTERROGATORIES. *See* "Discovery and Inspection."

ENTRY OF JUDGMENTS OR ORDERS.

Judgment on default summons where no notice of defence or leave to defend.

Ordinary judgment, payment under.

Payment by instalments where no period mentioned in order.

Special judgment, application to judge to settle draft of.

JUDGMENT SUMMONS. *See* "Enforcement of Judgments and Orders, 3."

JURISDICTION, OBJECTION TO. *See* "Defence and Counterclaim, 3."

JURY.

Notice of demand of.

Under Employers' Liability Act, 1880.

Application under s. 19 (1) (a) or (c) of Administration of Justice Act, 1925, that action be tried with or without jury.

LIBEL OR SLANDER.

Notice to registrar of special defence in remitted action.

NEW TRIAL.

1. Where defendant appears at trial.

(a) Application for.

(b) Notice of application.

2. Where defendant does not appear at trial.

3. Where judgment given by registrar.

4. When ordered of Court of Appeal.
Entry for trial.

PARTICULARS.

1. Of claim or demand, except in actions by ordinary summons for debt or damages not exceeding forty shillings (a).

(a) In actions under s. 60 of the Act, and in actions by moneylenders where loan made after Dec. 31st, 1927,

Not after two months from date of service (Ord. VII. r. 36).

Within fourteen days from date of judgment, unless otherwise ordered (Ord. XXIII. r. 11).

On twenty-eighth day from making of order and on each successive twenty-eighth day (Ord. XXIII. r. 11).

Four days' notice (Ord. XXIII. r. 4).

Ten clear days before return day (Ord. XXII. r. 1).

Fifteen clear days before return day (Ord. XLIV. r. 4).

If for trial with a jury, ten clear days, or if for trial without a jury, six clear days, before return day (Ord. XXII. r. 3).

Five clear days before day appointed for trial (Ord. XXXIII. r. 4).

(i.) On day of trial if parties present, or

(ii.) At first court held next after expiration of twelve clear days from trial (Ord. XXXI. r. 1).

Seven clear days before holding of court (Ord. XXXI. r. 1).

Application at same or any subsequent court (51 & 52 Vict. c. 43, s. 91).

Same as 1 and 2 *supra* (Ord. XXXI. r. 4).

At court held next after twelve clear days from deposit of order with registrar (Ord. XXXII. r. 3).

To be filed at time of entry of plaint (Ord. VI. r. 1).

particulars must be filed, whatever may be the amount claimed (Ord. VI. rr. 4 and 5A).

PARTICULARS—Continued.

2. Further particulars, notice by defendant of requirement of.

(a) in actions not exceeding £50.

(b) in actions exceeding £50.

Filing and delivery of.

3. Amendment of claim or defence.

PAYMENT INTO COURT.

With denial of liability.

In actions not exceeding £50.

In actions exceeding £50.

Generally.

In actions not exceeding £50.

In actions exceeding £50.

PETITIONS.

Under s. 67, sub-ss. 5 and 6 of County Courts Act, 1888, or under the Trustee Act, 1925 (except under s. 63), or under the Settled Land Act, 1925.

Service of.

RECEIVER.

Audit of accounts, notice by registrar to produce accounts.

Interval between audits.

SECURITY.

1. By bond.

Notice by registrar to sureties of time and place for executing.

2. Deposit in lieu of bond.

Notice by party making deposit to opposite party.

3. Deposit by plaintiff where defendant resides twenty miles from court.

Affidavit of merits to be sent by defendant by registered post to registrar.

(a) In actions not exceeding £50.

(b) In actions exceeding £50.

Deposit to be made by plaintiff.

Five clear days before return day (Ord. VI. r. 7).

Fifteen clear days before return day (Ord. XXIIA. r. 6).

Within two clear days of service upon plaintiff of defendant's notice (Ord. VI. r. 7).

At any time before return day (Ord. XIV. r. 12).

Five clear days before return day (Ord. IX. r. 12 (1)).

Ten clear days before return day (Ord. XXIIA. r. 10).

At any time less than five clear days before return day (Ord. IX. r. 12 (3)) (x).

At any time less than ten clear days before return day (Ord. XXIIA. r. 10) (x).

(x) In these cases liability may not be denied, except by leave of the court (Ord. IX. r. 12 (3); Ord. XXIIA. r. 10).

Ten days at least before hearing (Ord. XXXVIII. r. 4).

Seven days (Ord. XIII. r. 6).

Not more than one year (Ord. XIII. r. 7).

Forthwith upon receipt of notice from party of proposed sureties (Ord. XXIX. r. 1).

Forthwith upon deposit being made (Ord. XXIX. r. 4).

Seven clear days before return day (Ord. XII. r. 9).

Ten clear days before return day (Ord. XXIIA. r. 15).

Within three clear days from date of registrar's notice (Ord. XII. r. 9).

SUMMONS.

1. Ordinary summons not exceeding £50.

(a) Delivery to bailiff.

For service in home district.

Fifteen clear days before return day (Ord. VII. r. 9).

For service in foreign district.

Eighteen clear days before return day (*ib.*).

(b) Service (in any district).

Ten clear days before return day (Ord. VII. r. 9).

Where defendant about to remove out of district.

At any time before return day (*ib.*).

(c) Successive summons.

Issue of.

Not after three months from entry of plaint (Ord. VII. r. 6 (4)).

Affidavit of service (otherwise than by bailiff) to be filed.

Within three clear days after day of service, unless time extended by registrar (Ord. VII. r. 29a (3)).

2. Ordinary summons, exceeding £50.

(a) Issue of.

For service in home district.

Twenty-five clear days before return day (Ord. XXIIA. r. 2).

For service in foreign district.

Twenty-eight clear days before return day (*ib.*).

(b) Service of (in any district).

Twenty clear days before return day (*ib.*).

(c) Affidavit of service (otherwise than by bailiff) to be filed.

Within three clear days after day of service, unless time extended by registrar (Ord. XXIIA. r. 4).

3. Default or special default summons.

See *ante*, p. 921.

4. Summons in ejectment.

(a) Delivery to bailiff.

Same time as ordinary summons now under Ord. VII. r. 9.

(b) Service of.

Same time as ordinary summons now under Ord. VII. r. 9.

5. Under Employers' Liability Act, 1880.

(a) Delivery to bailiff.

For service in home district.

Thirty-five clear days before return day (Ord. XLIV. r. 1).

For service in foreign district.

Thirty-eight clear days before return day (*ib.*).

(b) Service of (in any district).

Thirty clear days before return day (*ib.*).

6. Judgment summons. See "Enforcement of Judgments and Orders."

TAXATION OF COSTS.

Bills to be lodged.

On day on which action or matter is tried or heard, or within four days thereafter (Ord. LIII. r. 2 (1)).

Notice of taxation.

One day's notice (Ord. LIII. r. 2 (1) and r. 3).

Penalty for delay.

Forfeiture of fees for drawing bill and attending taxation (Ord. LIII. r. 2 (2)).

TAXATION OF COSTS—Continued.

Objections to be delivered to other party and carried in before registrar.

Review by judge :

If taxed day of hearing.

If taxed after.

Before certificate or allocatur is signed (Ord. LIII. r. 47).

Same day (Ord. LIII. r. 49 (2)).

Four days from completion of taxation unless time is extended (Ord. LIII. r. 49 (3)).

THIRD PARTY.

Defendant wishing to bring in third party to file notice of claim—

(a) In actions not exceeding £50.

(b) In actions exceeding £50.

Five clear days before return day (Ord. XI. r. 1).

Ten clear days before return day (Ord. XXIIA. r. 14).

TRANSFER OF PROCEEDINGS.

Notice of application for.

Three clear days, unless judge otherwise orders (Ord. VIII. r. 9).

TRIAL.

1. Notice of,

(a) Where selected action tried and judgment given in favour of defendant, plaintiffs in stayed actions to give registrar notice to set down for trial.

Within one month from date of judgment (Ord. VIII. r. 5).

(b) Where judgment in selected action given against defendant, plaintiffs in stayed actions to give notice to set down for trial.

Within one month from date of judgment (Ord. VIII. r. 6).

2. Where trial adjourned generally,

(a) Notice to other party of application to set down for trial.

Three clear days, but by consent at any time (Ord. XV. r. 5).

(b) Where so set down, notice of day of trial to be served on all other parties.

(i.) In actions not exceeding £50.

Eight clear days before day fixed for trial unless otherwise ordered (Ord. XV. r. 6).

(ii.) In actions exceeding £50.

Ten clear days before day fixed for trial, unless otherwise ordered (Ord. XXIIA. r. 16).

3 Remitted Actions.

Notice of trial to be given by registrar to parties.

Ten clear days before day fixed for trial (Ord. XXXIII. r. 1 (3)). twenty clear days if claim exceeds £50 (Ord. XXXIII. r. 3B).

TRIAL—*Continued.*

4. Issue sent for trial from High Court.

Notice of trial to be given by registrar to parties.

Ten clear days before day fixed for trial (Ord. XXXIII. r. 4A).

5. Trial with Jury. *See ante*, "Jury."

6. Postponement of Trial.

Notice of application for, to be given to every party affected.

Three clear days (Ord. XV. r. 2).

WITNESS.

Service of summons to.

Within a reasonable time (Ord. XVIII. r. 4).

APPENDIX C.

ORDER AS TO PRISONS.

Court.	Name of Prison to which Prisoners are committed (a).	
	Males.	Females.
Aberayron	Swansea.	Cardiff.
Aberdare and Mountain Ash	Swansea.	Cardiff.
Abergavenny and Blaenavon	Cardiff.	Cardiff.
Aberystwith.....	Swansea.	Cardiff.
Accrington.....	Preston.	Preston.
Alcester.....	Birmingham.	Birmingham.
Alfreton	Nottingham.	Birmingham.
Alnwick.....	Durham.	Durham.
Altrincham.....	Manchester.	Manchester.
Andover.....	Winchester.	Winchester.
Appleby.....	Preston.	Preston.
Arundel.....	Portsmouth.	Portsmouth
Ashbourne.....	Manchester.	Manchester.
Ashby-de-la-Zouch.....	Leicester.	Nottingham.
Ashford.....	Maidstone.	Holloway.
Ashton-under-Lyne and Staly- bridge.....	Manchester.	Manchester.
Atherstone.....	Leicester.	Birmingham.
Axminster.....	Exeter.	Exeter.
Aylesbury.....	Oxford.	Holloway.
Aylsham	Norwich.	Holloway.
Bakewell.....	Manchester.	Manchester.
Bala and Corwen.....	Shrewsbury.	Liverpool.
Banbury.....	Oxford.	Birmingham.
Bangor.....	Liverpool.	Liverpool.
Barnard Castle.....	Durham.	Durham.
Barnet.....	Brixton.	Holloway.
Barnsley.....	Leeds.	Manchester.
Barnstaple.....	Exeter.	Exeter.
Barrow-in-Furness and Ulvers- ton	Preston.	Preston.
Barry.....	Cardiff.	Cardiff.
Barton-on-Humber.....	Hull.	Hull.
Basingstoke.....	Winchester.	Winchester.
Bath.....	Bristol.	Cardiff.
Beccles and Bungay	Norwich.	Holloway.
Bedford.....	Bedford.	Holloway.
Berwick-on-Tweed	Durham.	Durham.
Beverley.....	Hull.	Hull.
Bideford.....	Exeter.	Exeter.
Biggleswade.....	Bedford.	Holloway.
Birkenhead.....	Liverpool.	Liverpool.
Birmingham.....	Birmingham.	Birmingham.

(a) Occasionally varied by order of the Home Secretary

Court.	Name of Prison to which Prisoners are committed.	
	Males.	Females.
Bishop Auckland.....	Durham.	Durham.
Bishop's Castle.....	Shrewsbury.	Birmingham.
Bishop's Stortford.....	Brixton.	Holloway.
Bishop's Waltham.....	Winchester.	Winchester.
Blackburn and Clitheroe.....	Preston.	Preston.
Blackpool.....	Preston.	Preston.
Blandford.....	Dorchester.	Exeter.
Bloomsbury	Brixton.	Holloway.
Bodmin.....	Plymouth.	Exeter.
Bolton.....	Manchester.	Manchester.
Boston.....	Lincoln.	Nottingham.
Bourne.....	Lincoln.	Nottingham.
Bow	Brixton.	Holloway.
Bradford (Yorks.).....	Leeds.	Manchester.
Brampton	Preston.	Preston.
Brecknock.....	Swansea.	Cardiff.
Brentford.....	Brixton.	Holloway.
Brentwood.....	Brixton.	Holloway.
Bridgend.....	Swansea.	Cardiff.
Bridgnorth.....	Shrewsbury.	Birmingham.
Bridgewater.....	Shepton Mallet, or Exeter.	Exeter.
Bridlington	Hull.	Hull.
Bridport.....	Dorchester.	Exeter.
Brigg and Scunthorpe	Hull, or Lincoln.	Hull.
Brighton and Lewes	Portsmouth.	Portsmouth.
Bristol	Bristol.	Cardiff.
Bromley.....	Maidstone.	Holloway.
Brompton (W. London).....	Brixton.	Holloway.
Bromsgrove.....	Birmingham.	Birmingham.
Bromyard.....	Gloucester.	Birmingham.
Buckingham.....	Oxford.	Holloway.
Builth.....	Shrewsbury.	Cardiff.
Burnley... ..	Preston.	Preston.
Burslem	Manchester.	Manchester.
Burton-on-Trent.....	Birmingham.	Birmingham.
Bury.....	Manchester.	Manchester.
Bury St. Edmunds.....	Norwich.	Holloway.
Buxton, Chapel-en-le-Frith and New Mills.....	Manchester.	Manchester.
Calne	Shepton Mallet.	Cardiff.
Cambridge.....	Bedford.	Holloway.
Cambridge (Boro') (Court of Pleas)	Bedford.	Holloway.
Camelford	Plymouth.	Exeter.
Canterbury	Maidstone.	Holloway.
Cardiff	Cardiff.	Cardiff.
Cardigan.....	Swansea.	Cardiff.
Carlisle.....	Preston.	Preston.
Carmarthen, Llandilofawr and Ammanford	Swansea.	Cardiff.
Carnarvon.....	Liverpool.	Liverpool.
Chard	Exeter.	Exeter.

Court.	Name of Prison to which Prisoners are committed.	
	Males.	Females.
Chelmsford	Brixton.	Holloway.
Cheltenham	Gloucester.	Birmingham.
Chepstow	Bristol.	Cardiff.
Chesham	Brixton.	Holloway.
Chester	Liverpool.	Liverpool.
Chesterfield	Nottingham.	Manchester.
Chichester	Portsmouth.	Portsmouth.
Chippenham	Shepton Mallet.	Cardiff.
Chipping Norton	Oxford.	Birmingham.
Chorley	Preston.	Preston.
Cirencester	Gloucester.	Birmingham.
Clerkenwell	Brixton.	Holloway.
Colchester, Clacton and Halstead	Brixton.	Holloway.
Colne and Nelson	Preston.	Preston.
Congleton and Sandbach	Manchester.	Manchester.
Consett	Durham.	Durham.
Conway, Llandudno and Colwyn Bay	Liverpool.	Liverpool.
Coventry	Birmingham.	Birmingham.
Crewkerne	Dorchester.	Exeter.
Crickhowell	Cardiff.	Cardiff.
Croydon	Brixton.	Holloway.
Darlington	Durham.	Durham.
Dartford	Maidstone.	Holloway.
Daventry	Northampton, or Leicester.	Birmingham.
Deal	Maidstone.	Holloway.
Denbigh and Ruthin	Liverpool.	Liverpool.
Derby and Long Eaton	Birmingham.	Birmingham.
Devizes	Shepton Mallet.	Winchester.
Dewsbury	Leeds.	Manchester.
Diss and Eye	Norwich.	Holloway.
Dolgelly	Shrewsbury.	Liverpool.
Doncaster	Leeds, or Lincoln, or Hull.	Hull.
Dorchester	Dorchester.	Exeter.
Dorking	Brixton.	Holloway.
Dover	Maidstone.	Holloway.
Downham Market	Norwich.	Holloway.
Dudley	Birmingham.	Birmingham.
Dunmow and Braintree	Brixton.	Holloway.
Durham	Durham.	Durham.
Dursley	Gloucester.	Birmingham.
Easingwold	Leeds.	Hull.
Eastbourne	Maidstone.	Holloway.
East Dereham	Norwich.	Holloway.
East Grinstead	Maidstone.	Holloway.
East Retford	Lincoln.	Nottingham.
Edmonton and Wood Green ...	Brixton.	Holloway.
Ely	Norwich.	Holloway.
Epsom	Brixton.	Holloway.
Evesham	Gloucester.	Birmingham.

Court.	Name of Prison to which Prisoners are committed.	
	Males.	Females.
Exeter	Exeter.	Exeter.
Fakenham	Norwich.	Holloway.
Falmouth and Truro.....	Plymouth.	Exeter.
Farnham and Aldershot.....	Winchester.	Winchester.
Faversham.....	Maidstone.	Holloway.
Folkestone.....	Maidstone.	Holloway.
Frome.....	Shepton Mallet.	Cardiff.
Gainsborough	Lincoln.	Hull.
Gateshead	Durham.	Durham.
Glossop.....	Manchester.	Manchester.
Gloucester.....	Gloucester.	Birmingham.
Goole	Hull.	Hull.
Grantham	Lincoln.	Nottingham.
Gravesend.....	Maidstone.	Holloway.
Grays Thurrock	Brixton.	Holloway.
Great Driffeld.....	Hull.	Hull.
Great Grimsby	Hull.	Hull.
Great Malvern.....	Gloucester.	Birmingham.
Great Yarmouth.....	Norwich.	Holloway.
Greenwich and Woolwich.....	Brixton.	Holloway.
Guildford.....	Brixton.	Holloway.
Halesworth and Saxmundham	Norwich.	Holloway.
Halifax.....	Leeds.	
Haltwhistle and Alston.....	Durham.	Durham.
Hanley and Stoke-upon-Trent	Manchester.	Manchester.
Harleston.....	Norwich.	Holloway.
Harrogate.....	Leeds.	Hull.
Harwich... ..	Norwich.	Holloway.
Hastings.....	Maidstone.	Holloway.
Hay	Cardiff.	Cardiff.
Hayward's Heath.....	Portsmouth.	Portsmouth
Helmsley.....	Hull.	Durham.
Helston	Plymouth.	Exeter.
Henley-on-Thames.....	Oxford.	Holloway.
Hereford	Gloucester.	Birmingham.
Hertford	Brixton.	Holloway.
Hexham and Bellingham.....	Durham.	Durham.
High Wycombe.....	Oxford.	Holloway.
Hinckley.....	Leicester.	Birmingham
Hitchin.....	Bedford.	Holloway.
Holbeach	Lincoln.	Nottingham.
Holsworthy	Exeter.	Exeter.
Holt	Norwich.	Holloway.
Holyhead, Llangefni and Menai		
Bridge.....	Liverpool.	Liverpool.
Holywell and Flint.....	Liverpool.	Liverpool.
Honiton	Exeter.	Exeter.
Horsham	Portsmouth.	Portsmouth.
Howden	Hull.	Hull.
Huddersfield.....	Leeds.	Manchester.
Hungerford.....	Winchester.	Winchester.
Huntingdon.....	Bedford.	Holloway.
Hyde	Manchester.	Manchester.

Court.	Name of Prison to which Prisoners are committed.	
	Males.	Females.
Hythe and New Romney.....	Maidstone.	Holloway.
Ilkeston.....	Nottingham.	Nottingham.
Ipswich.....	Norwich.	Holloway.
Keighley.....	Leeds.	Manchester.
Kendal.....	Preston.	Preston.
Keswick.....	Preston.	Preston.
Kettering.....	Bedford.	Birmingham.
Kidderminster.....	Birmingham.	Birmingham.
Kingsbridge.....	Exeter.	Exeter.
King's Lynn.....	Norwich.	Holloway.
Kingston-on-Hull.....	Hull.	Hull.
Kingston-on-Thames.....	Brixton.	Holloway.
Kington.....	Shrewsbury.	Birmingham.
Kirkby Lonsdale.....	Preston.	Preston.
Knighton.....	Shrewsbury.	Birmingham.
Lambeth.....	Brixton.	Holloway.
Lampeter.....	Swansea.	Cardiff.
Lancaster.....	Preston.	Preston.
Langport.....	Dorchester.	Exeter.
Launceston.....	Plymouth.	Exeter.
Ledbury.....	Gloucester.	Birmingham.
Leeds.....	Leeds.	Manchester.
Leek.....	Manchester.	Manchester.
Leicester.....	Leicester.	Nottingham.
Leigh.....	Manchester.	Manchester.
Leighton Buzzard.....	Bedford.	Holloway.
Leominster.....	Shrewsbury.	Birmingham.
Leyburn.....	Leeds.	Durham.
Lichfield.....	Birmingham.	Birmingham.
Lincoln and Horncastle.....	Lincoln.	Nottingham.
Liskeard.....	Plymouth.	Exeter.
Liverpool.....	Liverpool.	Liverpool.
Llandovery.....	Swansea.	Cardiff.
Llandrindod Wells.....	Shrewsbury.	Cardiff.
Llanelli.....	Swansea.	Cardiff.
Llanfyllin.....	Shrewsbury.	Birmingham.
Llanidloes.....	Shrewsbury.	Birmingham.
Llanrwst.....	Liverpool.	Liverpool.
London, The Mayor's and City of.....	Brixton.	Holloway.
Loughborough.....	Leicester.	Nottingham.
Louth.....	Lincoln.	Hull.
Lowestoft.....	Norwich.	Holloway.
Ludlow.....	Shrewsbury.	Birmingham.
Luton.....	Bedford.	Holloway.
Lymington.....	Winchester.	Winchester.
Macclesfield.....	Manchester.	Manchester.
Machynlleth.....	Shrewsbury.	Birmingham.
Madeley (Salop).....	Shrewsbury.	Birmingham.
Maidstone.....	Maidstone.	Holloway.
Maldon.....	Norwich.	Holloway.
Malmesbury.....	Gloucester.	Cardiff.
Manchester.....	Manchester.	Manchester.

Court.	Name of Prison to which Prisoners are committed.	
	Males.	Females.
Mansfield	Nottingham or Lincoln.	Nottingham.
March	Norwich.	Holloway.
Margate	Maidstone.	Holloway.
Market Drayton	Shrewsbury.	Birmingham.
Market Harborough	Leicester.	Birmingham.
Market Rasen and Caistor	Lincoln.	Hull.
Marlborough	Shepton Mallet.	Winchester.
Marylebone	Brixton.	Holloway.
Melksham	Shepton Mallet.	Cardiff.
Melton Mowbray	Leicester.	Nottingham.
Merthyr Tydvil	Swansea.	Cardiff.
Middlesborough	Durham.	Durham.
Midhurst	Portsmouth.	Portsmouth.
Mildenhall	Norwich.	Holloway.
Mold	Liverpool.	Liverpool.
Monmouth	Cardiff.	Cardiff.
Morpeth and Blyth	Durham.	Durham.
Nantwich and Crewe	Shrewsbury.	Liverpool.
Neath and Port Talbot	Swansea.	Cardiff.
Newark	Lincoln.	Nottingham.
Newbury	Winchester.	Winchester.
Newcastle-in-Emlyn	Swansea.	Cardiff.
Newcastle-under-Lyme	Manchester.	Manchester.
Newcastle-upon-Tyne	Durham.	Durham.
Newent	Gloucester.	Birmingham.
New Malton	Hull.	Hull.
Newmarket	Bedford.	Holloway.
Newnham	Gloucester.	Cardiff.
Newport (I. of W.) and Ryde..	Portsmouth.	Portsmouth.
Newport (Mon.)	Cardiff.	Cardiff.
Newport Pagnell	Bedford.	Holloway.
Newquay	Plymouth.	Exeter.
Newton Abbot	Exeter.	Exeter.
Newtown	Shrewsbury.	Birmingham.
North Shields	Durham.	Durham.
North Walsham	Norwich.	Holloway.
Northallerton	Leeds.	Durham.
Northampton	Bedford.	Birmingham or Holloway.
Northleach	Gloucester.	Birmingham.
Northwich	Manchester.	Manchester.
Norwich	Norwich.	Holloway.
Nottingham	Nottingham.	Nottingham.
Nuneaton	Leicester.	Birmingham.
Oakham	Leicester.	Nottingham.
Okehampton	Exeter.	Exeter.
Oldham	Manchester.	Manchester.
Oswestry	Shrewsbury.	Liverpool.
Otley	Leeds.	Manchester.
Oxford	Oxford.	Holloway.
Pembroke Dock, Narberth and Haverfordwest	Swansea.	Cardiff.

Court.	Name of Prison to which Prisoners are committed.	
	Males.	Females.
Penrith.....	Preston.	Preston.
Penzance	Plymouth.	Exeter.
Pershore.....	Birmingham.	Birmingham.
Peterborough.....	Leicester.	Holloway.
Petersfield.....	Portsmouth.	Portsmouth.
Petworth.....	Portsmouth.	Portsmouth.
Plymouth.....	Plymouth.	Exeter.
Pocklington.....	Hull.	Hull.
Pontefract	Leeds.	Hull.
Pontypool.....	Cardiff.	Cardiff.
Pontypridd, Ystradyfodwg and Porth.....	Cardiff.	Cardiff.
Poole and Bournemouth.....	Dorchester.	Winchester.
Portmadoc and Festiniog	Liverpool.	Liverpool.
Portsmouth.....	Portsmouth.	Portsmouth.
Presteign.....	Shrewsbury.	Birmingham.
Preston.....	Preston.	Preston.
Pwllheli.....	Liverpool.	Liverpool.
Ramsgate.....	Maidstone.	Holloway.
Rawtenstall.....	Manchester.	Manchester.
Reading	Oxford.	Holloway.
Redditch	Birmingham.	Birmingham.
Redhill.....	Brixton.	Holloway.
Redruth.....	Plymouth.	Exeter.
Rhyl.....	Liverpool.	Liverpool.
Richmond (Yorks).....	Durham.	Durham.
Ringwood.....	Dorchester.	Winchester.
Ripon.....	Leeds.	Hull.
Rochdale.....	Manchester.	Manchester.
Rochester.....	Maidstone.	Holloway.
Romford and Ilford	Brixton.	Holloway.
Romsey.....	Winchester.	Winchester.
Ross.....	Gloucester.	Cardiff.
Rotherham.....	Lincoln.	
Royston.....	Brixton.	Holloway.
Rugby.....	Leicester.	Birmingham.
Runcorn., ...	Liverpool.	Liverpool.
Saffron Walden.....	Brixton.	Holloway.
St. Albans	Brixton.	Holloway.
St. Austell	Plymouth.	Exeter.
St. Helens and Widnes	Liverpool.	Liverpool.
St. Neots.....	Bedford.	Holloway.
Salford.....	Manchester.	Manchester.
Salisbury.....	Winchester.	Winchester.
Scarborough	Hull.	Hull.
Seaham Harbour	Durham.	Durham.
Selby.....	Leeds.	Hull.
Sevenoaks	Maidstone.	Holloway.
Shaftesbury.....	Shepton Mallet.	Exeter.
Sheerness.....	Maidstone.	Holloway.
Sheffield.....	Leeds.	Manchester.
Shipston-on-Stour.....	Gloucester.	Birmingham.
Shoreditch.....	Brixton.	Holloway.

Court.	Name of Prison to which Prisoners are committed.	
	Males.	Females.
Shrewsbury	Shrewsbury.	Birmingham.
Sittingbourne.....	Maidstone.	Holloway.
Skipton and Settle.....	Leeds.	Manchester
Sleaford.....	Lincoln.	Nottingham.
South Molton.....	Exeter.	Exeter.
Southport and Ormskirk.....	Liverpool.	Liverpool.
South Shields and Jarrow.....	Durham.	Durham.
Southampton	Winchester.	Winchester.
Southend	Brixton.	Holloway.
Southwark.....	Brixton.	Holloway.
Spalding.....	Lincoln.	Nottingham.
Spilsby.....	Lincoln.	Hull.
Stafford	Shrewsbury.	Birmingham.
Stamford.....	Lincoln.	Nottingham
Stockport.....	Manchester.	Manchester.
Stockton-on-Tees.....	Durham.	Durham.
Stokesley and Guisborough...	Durham.	Durham.
Stone.....	Shrewsbury.	Birmingham.
Stourbridge	Birmingham.	Birmingham.
Stow-on-the-Wold.....	Gloucester.	Birmingham.
Stowmarket.....	Norwich.	Holloway.
Stratford-on-Avon.....	Birmingham.	Birmingham.
Stroud.....	Gloucester.	Birmingham.
Sudbury.....	Brixton.	Holloway.
Sunderland.....	Durham.	Durham.
Swaffham.....	Norwich.	Holloway.
Swanage.....	Dorchester.	Exeter.
Swansea.....	Swansea.	Cardiff.
Swindon.....	Gloucester.	Cardiff.
Tadcaster.....	Leeds.	Hull.
Tamworth.....	Birmingham.	Birmingham.
Taunton.....	Exeter.	Exeter.
Tavistock	Exeter.	Exeter.
Tenbury.....	Birmingham.	Birmingham.
Tenterden and Cranbrook.....	Maidstone.	Holloway.
Tewkesbury.....	Gloucester.	Birmingham
Thame.....	Oxford.	Holloway.
Thetford.....	Norwich.	Holloway.
Thirsk.....	Leeds.	Durham.
Thornbury.....	Bristol	Cardiff.
Thorne	Hull.	Hull.
Thrapston and Oundle.....	Bedford.	Birmingham.
Tiverton.....	Exeter.	Exeter.
Todmorden	Preston or Leeds.	Preston or Man- chester.
Tonbridge.....	Maidstone.	Holloway.
Torquay.....	Exeter.	Exeter.
Torrington.....	Exeter.	Exeter.
Totnes	Exeter.	Exeter.
Tredegar, Abertillery and Bar- goed	Cardiff.	Cardiff
Trowbridge.....	Shepton Mallet.	Cardiff.
Tunbridge Wells.....	Maidstone.	Holloway.

Court.	Name of Prison to which Prisoners are committed.	
	Males.	Females.
Uttoxeter.....	Birmingham.	Birmingham
Uxbridge.....	Brixton.	Holloway.
Wakefield.....	Leeds.	Hull.
Wallingford.....	Oxford.	Holloway.
Walsall.....	Birmingham.	Birmingham.
Waltham Abbey.....	Brixton.	Holloway.
Wandsworth.....	Brixton.	Holloway.
Wantage.....	Oxford.	Holloway.
Warminster.....	Shepton Mallet	Cardiff.
Warrington.....	Liverpool.	Liverpool.
Warwick.....	Birmingham.	Birmingham.
Watford.....	Brixton.	Holloway.
Wellingborough.....	Bedford.	Birmingham.
Wellington (Salop).....	Shrewsbury.	Birmingham.
Wellington (Somerset).....	Exeter.	Exeter.
Wells (Somerset).....	Shepton Mallet	Exeter.
Welshpool.....	Shrewsbury.	Birmingham.
West Bromwich.....	Birmingham.	Birmingham.
West Hartlepool.....	Durham.	Durham.
West London (Brompton).....	Brixton.	Holloway.
Westminster.....	Brixton.	Holloway.
Weston-super-Mare.....	Bristol.	Exeter.
Weymouth.....	Dorchester	Exeter.
Whitby.....	Durham.	Durham.
Whitchurch.....	Shrewsbury.	Liverpool.
Whitechapel.....	Brixton.	Holloway.
Whitehaven and Millom.....	Preston.	Preston.
Wigan.....	Liverpool or Preston.	Liverpool or Preston.
Wigton and Silloth.....	Preston.	Preston.
Williton.....	Exeter.	Exeter.
Wimborne Minster.....	Dorchester.	Exeter.
Wincanton.....	Shepton Mallet.	Exeter.
Wincombe.....	Gloucester.	Birmingham.
Winchester.....	Winchester.	Winchester.
Windermere.....	Preston.	Preston.
Windsor.....	Brixton.	Holloway.
Wirksworth and Matlock.....	Nottingham.	Manchester.
Wisbech.....	Norwich.	Holloway.
Witney.....	Oxford.	Winchester.
Wolverhampton.....	Birmingham.	Birmingham.
Woodbridge and Felixstowe...	Norwich.	Holloway.
Worcester.....	Gloucester.	Birmingham.
Workington and Cockermouth	Preston.	Preston.
Worksop.....	Lincoln.	Nottingham.
Worthing.....	Portsmouth.	Portsmouth.
Wrexham.....	Shrewsbury.	Liverpool.
Wymondham.....	Norwich.	Holloway.
Yatton.....	Bristol.	Cardiff.
Yeovil.....	Dorchester.	Exeter.
York.....	Leeds.	Hull.

APPENDIX D.

HOLIDAYS IN ALL COUNTY COURT OFFICES.

COUNTY COURT RULES, 1903, ORDER I., RULE 3, AND
ORDER OF LORD CHANCELLOR, DATED 3RD DECEMBER, 1897.

Day before Christmas Day, Christmas Day and three following days (not including Sunday); Good Friday and following day, Easter Monday and Tuesday; Whit Monday; First Monday in August. Any day appointed for public fast, humiliation or thanksgiving. Any day ordered by the Lord Chancellor.

ADDITIONAL HOLIDAYS.

The Schedule below summarises additional days of closing in certain courts by order of the Lord Chancellor.

SCHEDULE.

Places.	Days.
Altrincham, Ashton-under-Lyne & Stalybridge, Birkenhead, Bury, Buxton, Chapel-en-le-Frith & New Mills, Glossop, Leigh, Liverpool, Manchester, Oldham, Rochdale, Runcorn, St. Helen's & Widnes, Salford, Southport & Ormskirk, Stockport, Barrow-in-Furness & Ulverston, Warrington, Wigan	IN WHITSUN WEEK. Tuesday to Saturday inclusive. Tuesday to Friday inclusive. Tuesday to Thursday inclusive.
Blackburn, Blackpool, Burnley, Lancaster, Preston ...	
Coventry, Stourbridge	
Neath, Aberdare & Mountain Ash, Abergavenny & Blaenavon, Accrington, Alfreton, Ashbourne, Bakewell, Barnsley, Barry, Birmingham, Bradford, Bridgend, Bristol, Burton-on-Trent, Cardiff, Chepstow, Chester, Chesterfield, Colne & Nelson, Darlington, Derby, Dewsbury, Doncaster, Dudley, Durham, East Retford, Evesham, Goole, Gt. Malvern, Halifax, Harrogate, Huddersfield, Hull, Keighley, Kendal, Leeds, Leicester, Lichfield, Llanelly, Loughborough, Mansfield, Melton Mowbray, Merthyr Tydfil, Middlesbrough, Monmouth, Newark, Newport (Mon.), North Shields, Nottingham, Otley, Pontefract, Pontypool, Pontypridd, Ystradyfodwg & Porth, Ripon, Rotherham, Scarborough, Seaham Harbour, Selby, Sheffield, Skipton & Settle, South Shields & Jarrow, Stockton-on-Tees, Stokesley & Guisborough, Sunderland, Swansea, Tadcaster, Thorne, Tredegar, Wakefield, Walsall, West Bromwich, West Hartlepool, Wirksworth & Matlock, Wolverhampton, Worcester, Worksop, Wrexham	Tuesday and Wednesday.
Hyde, Rawtenstall, Todmorden	Friday and Saturday. Tuesday.
Kidderminster	
Burslem, Hanley & Stoke-upon-Trent, Newcastle-under-Lyme	Week following the first Sunday in August.
Macclesfield	First full week after June 22.

SCHEDULE—*continued.*

Places.								Days.
Congleton	...	...	...	...	...	...	...	Week following the first Sunday after the 11th August in each year.
Glossop...	...	...	...	...	...	...	...	Week following the first Sunday after the 15th day of August.
Bolton ...	...	...	...	...	...	...	...	Week following the last Friday in June.
Accrington	...	...	...	...	...	...	...	Week following the fourth Saturday in July.

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It will be useful here to consider some of the most usual rules of evidence and principles of law of common occurrence in county courts.

What Facts may be Proved.]—With respect to the question what facts may be proved in an action, the first broad rule is that the evidence must

be confined to the issue. And in a county court the usual issue is, whether the plaintiff is entitled to recover in respect of the cause of action alleged in the summons and particulars.

Facts Relevant.]—This rule does not of course mean that no fact can be proved except those actually put in issue, as constituting the cause of action itself; but that no facts can be proved which are not relevant to the issue in the sense that they afford ground for a reasonable inference in favour of a finding one way or the other. What facts are in this sense relevant depends upon no technical rule of law, but upon the general experience of men, the conclusions from which are equally applicable in courts of justice and out of them. Whatever facts are relevant in this sense are in general admissible in evidence in court. But this proposition must be taken subject to certain qualifications.

Res Inter Alios not Admissible.]—Any transaction actually forming a constituent part of the plaintiff's cause of action, or of the defendant's defence, may and must of course, be proved in evidence, whoever be the parties to it. A plaintiff making title to land must show the conveyance to himself, whether the defendant was a party to it or not. A man relying upon the act of an agent must prove the fact that he authorised the act, whether the authority was conferred in the presence of his opponent or not. And so it is with any other fact having an actual legal operation upon the rights of the parties. But as to facts not falling within this description the rule of law is that *res inter alios actæ* cannot be given in evidence against one who was a stranger to them. Statements therefore not made in the presence of the party against whom they are sought to be used, transactions to which he was no party, are not admissible against him. A judgment in an action to which he is neither party nor privy cannot be used against him; except, indeed, in the case of what is called a judgment *in rem*, that is to say, a judgment which not only determines facts in controversy between the parties to the cause, but affects status (as in the case of a decree for divorce), or disposes of property (as in the case of a decree for sale in a court of Admiralty), as against all the world. Such a judgment is a fact having an actual legal operation upon rights, and is therefore admissible for or against anybody whose rights it may affect. (As to the distinction between judgments *in rem* and judgments *in personam*, see *Duchess of Kingston's Case*, (1776) 2 Smith's L. C. 754, 12th edit.; *Castrique v. Imrie*, (1870) L. R. 4 H. L. 414; 39 L. J. C. P. 350.)

The record of an inquest before a coroner is not even *prima facie* evidence against any person of the facts found by the coroner's jury (*Bird v. Keep*, (1918) 34 T. L. R. 513; *Barnett v. Cohen*, (1921) 90 L. J. K. B. 1307).

Collateral Matters.]—Again, the law excludes evidence of facts purely collateral to the matter in question. That is to say, when you are inquiring into one circumstance or one transaction, you must not go into another circumstance or transaction, however similar to it, if unconnected with it, in order to draw any inference from the one to the other. Thus, if the question be as to the terms of a contract of sale, one party cannot prove as against the other the terms of other contracts of sale entered into by the latter on other occasions for the purpose of showing that the contract in question contained the same terms (*Hollingham v. Head*, (1858) 4 C. B. N. S. 388; 27 L. J. C. P. 241). Nor in order to rebut the implied authority of the servant or agent of a horse-dealer to warrant the soundness of a horse which he is entrusted to sell, is evidence admissible of a practice amongst horse-dealers not to warrant where the horse has been examined and certified to be sound (*Howard v. Sheward*, (1866) L. R. 2 C. P. 148; 36

L. J. C. P. 42). Nor if the question be whether A., a brewer, sold good beer to B., is evidence admissible to prove that he sold good beer to C. and D. (*Holcombe v. Hewson*, (1810) 2 Camp. 391; 11 R. R. 746).

In order to make such evidence admissible, it is necessary to establish some substantial connection between the two sets of circumstances, such as to show that an inference may properly be drawn from one to the other as if in the case last cited it were shown that the beer was all of the same brew. If the question be as to the validity of the acceptance of a bill of exchange, and the case turn upon an alleged general authority to accept bills, of which evidence has been given, evidence of an admission of liability upon another bill accepted under the same general authority is admissible (*Llewellyn v. Winckworth*, (1845) 13 M. & W. 598; 14 L. J. Ex. 329; 67 R. R. 751). So where the question was as to the ownership of a strip of unenclosed land in a manor on the border of a high road, evidence was admitted that other strips similarly situated on the edge of the same road belonged to the lord as wastes of the manor (*Doe v. Kemp*, (1835) 7 Bing. 332; 9 L. J. C. P. 102; 33 R. R. 487; (1835) 2 Bing. N. C. 102; 4 L. J. (N. S.) Ex. 331; 33 R. R. 492; and see *Jones v. Williams*, (1837) 2 M. & W. 326; 6 L. J. (N. S.) Ex. 107; 46 R. R. 611). And where the question was as to a custom making brokers in the London fruit trade personally liable on their contracts, evidence was admitted of a similar custom in a closely allied trade—the colonial trade—in the same city (*Fleet v. Murton*, (1871) L. R. 7 Q. B. 126; 41 L. J. Q. B. 49).

How Facts Admissible are to be Proved.—Upon the subject of how facts admissible are to be proved, the first great rule of evidence is that the best evidence (the best in degree, not in amount) must be adduced. In considering the meaning and application of this rule, it will be convenient to distinguish, first, the case of documents; secondly, the case of facts other than the contents of documents, which can of course only be proved by human testimony.

Documents must be Produced.—Whenever the contents of a document are to be proved, the document itself must be produced. Thus, a copy of any instrument is never evidence if the original can be produced; but if the absence of the primary evidence is sufficiently accounted for, secondary or parol evidence of its contents is admitted, and when once the rule is broken through, there are no degrees of secondary evidence; therefore parol evidence of the contents of a document is not excluded by a copy, nor is a second copy by a first.

It follows from this rule, that where a contract has been reduced into writing by the parties it must be produced, and to this there is no exception; and in no case can a witness be asked as to the contents of a written instrument which is neither produced nor its absence accounted for (*M'Donnell v. Evans*, (1852) 11 C. B. 930; 21 L. J. C. P. 141); but it is otherwise where the writing is a mere memorandum of an event, as a receipt (*Rambert v. Cohen*, (1802) 4 Esp. 213; 6 R. R. 854), or a promise to pay (*Singleton v. Barrett*, (1832) 2 C. & J. 368; 1 L. J. (N. S.) Ex. 134; 37 R. R. 742), in such case, the fact may be proved by parol, although a record of it has been reduced into writing.

Exceptions.—It must be remembered that where the witness is a party to a cause, the above rule does not prevent his being asked as to his knowledge of any fact, although that knowledge is derived solely from written documents (see also as to the cross-examination of a witness respecting previous statements made by him in writing, 17 & 18 Vict. c. 125, ss. 24, 103).

Admissions.]—Parol admissions are primary evidence against the party making them, although they relate to the contents of a written instrument (*Slatterie v. Pooley*, (1840) 6 M. & W. 664; 10 L. J. Ex. 8; 55 R. R. 760); but statements made by witnesses on behalf of a litigant in former proceedings against other parties are not evidence against him in subsequent litigation (*British Thomson-Houston Co. v. British Insulated and Helsby Cables*, (1924) 93 L. J. Ch. 467).

Secondary Evidence.]—Secondary evidence of the contents of a document becomes admissible if the original is shown or appears to be in the possession or power of the opposite party, and he, after notice to produce it, does not do so (as to notice to produce, see O. XVIII. r. 5); or if the original is shown or appears to be in the possession or power of a stranger not legally bound to produce it, and who refuses to produce it after being served with a summons to produce it, or after having been sworn as a witness and asked for the document and having admitted that it is in court; or when the original has been destroyed or lost, and proper search has been made for it (Stephen's Digest of the Law of Evidence, Article 71); or where it is physically impossible to produce the document, as in the case of an inscription on a tombstone; or where the document is abroad and its production cannot be obtained (*Alivon v. Furnival*, (1834) 1 C. M. & R. 277; 3 L. J. (N. S.) Ex. 241; 40 R. R. 561); or where the document is a public record, which it would not be convenient to carry about from court to court, such as a register of births or deaths. These are common law exceptions to the general rule requiring the production of the original document. Many statutory provisions facilitating the proof of documents will be noticed further on in this chapter.

Secondary evidence is also admissible when the originals consist of numerous documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection: provided that that result is capable of being ascertained by calculation. In such case secondary evidence is admissible as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents.

Questions as to the existence of facts rendering secondary evidence of the contents of documents admissible must be decided by the judge.

Parol Explanations of Written Instruments.]—A further branch of this rule is, that parol evidence is not admitted to vary or contradict the terms of a written instrument where there is no ambiguity (*Meres v. Ansell*, (1771) 3 Wils. 275; *Adams v. Wordley*, (1836) 1 M. & W. 374; 5 L. J. Ex. 158; *Harnor v. Groves*, (1855) 15 C. B. 667; 24 L. J. C. P. 53; 100 R. R. 535; *Aynsley, In re*, (1915) 1 Ch. 172; 84 L. J. Ch. 211; *Great Western Rail. Co. and Midland Rail. Co. v. Bristol Corporation*, (1918) 87 L. J. Ch. 414); but such evidence is admitted to supplement the writing by showing that it was not intended to contain the whole contract, and to add terms consistent with it (*Malpas v. L. & S. W. Rail. Co.*, (1866) L. R. 1 C. P. 336; 35 L. J. C. P. 166), or to show a separate parol contract collateral to the written one (*Lindley v. Lacey*, (1864) 17 C. B. N. S. 578; 34 L. J. C. P. 7; 142 R. R. 525; *Morgan v. Griffith*, (1871) L. R. 6 Ex. 70; 40 L. J. Ex. 46; *Erskine v. Adeane*, (1873) L. R. 8 Ch. 756; 42 L. J. Ch. 835), or to show that a writing purporting to be a contract was not intended to be a contract at all (*Pym v. Campbell*, (1856) 6 E. & B. 370; 25 L. J. Q. B. 277; 106 R. R. 632; *Rogers v. Hadley*, (1863) 2 H. & C. 227; 32 L. J. Ex. 241; 133 R. R. 652), or that the parties have by parol waived or annulled an alleged written agreement (*Goss v. Lord Nugent*, (1833) 5 B. & Ad. 58; 2 L. J. (N. S.) K. B. 127; 39 R. R. 392; *Eden v. Blake*, (1845) 13 M. & W.

614; 14 L. J. Ex. 194; 67 R. R. 757 (as to the rescission of agreements required to be in writing by the Statute of Frauds, see *Noble v. Ward*, (1867) L. R. 1 Ex. 117; 35 L. J. Ex. 81; *Ib.* (1867) L. R. 2 Ex. 135; 36 L. J. Ex. 91); as explained and dealt with under sect. 4 of the Sale of Goods Act, 1893, by the House of Lords, in *Morris v. Baron & Co.*, (1918) A. C. 1; 87 L. J. K. B. 145, or that the instrument, whether a deed or simple contract, is void by reason of fraud, illegality or error (*Doe v. Allen*, (1799) 8 T. R. 147; *per Lord Abinger*, *Hutchins v. Scott*, (1837) 2 M. & W. 816; 6 L. J. Ex. 186; 46 R. R. 770).

Parol evidence of custom or usage is also admissible to annex incidents to written contracts on matters with respect to which they are silent. Hence in commercial contracts evidence of usage is admissible to ingraft terms on the contract (2 Sm. L. C., 12th edit., notes to *Wigglesworth v. Dallison*) and to explain the terms of the contract itself (2 Sm. L. C., 12th edit., 620 *et seq.*; *Olympia Oil and Cake Co. v. Produce Brokers Co.*, (1916) 85 L. J. K. B. 1695), but not when the custom is inconsistent with the terms of the written contract itself (*Westacott v. Hahn*, (1918) 1 K. B. 495; 87 L. J. K. B. 555; *L. Walford (London), Ltd. v. Les Affréteurs Réunis Société Anonyme*, (1918) 87 L. J. K. B. 1215). A custom, said to have grown up since the war, to alter in the case of carriage of goods the place of discharge of the goods, and which was inconsistent with the express terms of the written contract, it was held could not be set up (*Sutro & Co. v. Heilbut, Symons & Co.*, (1917) 86 L. J. K. B. 330). As to the custom of merchants, assuming its continued existence, by which the agent for an undisclosed foreign principal is personally liable on the contract, see *Miller, Gibb & Co. v. Smith and Tyrer, Ltd.*, (1917) 2 K. B. 141; 86 L. J. K. B. 1259. So in contracts between landlord and tenant, evidence is admissible to annex terms to the contract and explain it (2 Sm. L. C., 12th edit., 622, 623; *Hutton v. Warren*, (1836) 1 M. & W. 466, 475; 5 L. J. Ex. 234; 46 R. R. 368). Parol evidence may also be given to explain a latent ambiguity; which means that where a doubt is raised by extrinsic parol evidence, the same is admitted to solve it. Where, however, the ambiguity is patent no evidence is admissible to explain it, but user by the parties to show their intention is (*Watcham v. Attorney-General of East African Protectorate* (1918), (1919) A. C. 533; 87 L. J. P. C. 150).

Parol evidence is not admissible to connect written documents, so that they may together constitute a memorandum of a verbal agreement within sect. 4 of the Statute of Frauds (*Chaproniere v. Lambert*, (1917) 86 L. J. Ch. 726).

Hearsay not Evidence.—The rule which requires the production of the best evidence, when applied to facts other than the contents of a document, is in effect this:—Hearsay is not evidence; that is, a witness may not relate a fact which he has heard from another but of which he has no personal knowledge; since the oath of the first relator, and the opportunity of cross-examining him as a witness, are wanting (Taylor on Evid., Part III. Chap. II. (9th edit.)).

Exceptions.—To this rule there are, however, exceptions, the most important of which are—*first*, in proving matters of public or general interest, as boundaries of parishes, rights of common or customs, evidence of reputation is admissible (Taylor on Evid., Part III. Chap. III.); *secondly*, in questions of pedigree and relationship, statements made by deceased members of the family may be proved (*Ib.* Part III. Chap. IV.; *Doe v. Davies*, (1847) 10 Q. B. 314; 16 L. J. Q. B. 218; 74 R. R. 299); *thirdly*, on a second trial between the same parties, the evidence of a witness

examined at a former trial, in which the same question was in issue, and since deceased, may be proved by any one who heard it (*Wright v. Doe d. Tatham*, (1834) 1 A. & E. 3; *Morgan v. Nicholl*, (1866) L. R. 2 C. P. 117; 36 L. J. C. P. 86); *fourthly*, declarations made by persons since deceased against their pecuniary or proprietary interest are admissible, such as admissions by a person that he has no title to an estate or easement, or accounts by which a man charges himself with the receipt of money (*Higham v. Ridgway*, (1808) 10 East, 109; 2 Smith's L. C. 301 (12th edit.); 10 R. R. 235), but the interest must be *proprietary* or *pecuniary* (*Smith v. Blakey*, (1867) L. R. 2 Q. B. 326; 36 L. J. Q. B. 156), and the relation of an act which would make the relator liable to prosecution is no exception (*Sussex Peerage Case*, (1844) 11 Cl. & Fin. 85, 103; 65 R. R. 11). *Lastly*, declarations in the ordinary course of office business or employment, by deceased persons who had no interest in stating an untruth, with respect to acts done by them within the scope of their duty, and which are made contemporaneously with the acts to which they relate (*Price v. Lord Torrington*, (1704) Salk. 285; 2 Smith's L. C. 294 (12th edit.); *Smith v. Blakey*, (1867) L. R. 2 Q. B. 326; 36 L. J. Q. B. 156), but the whole of the entry is not evidence, but only such part of it as is shown to have been the duty of the deceased person to make (*Chambers v. Bernasconi*, (1834) 1 C. M. & R. 347; 3 L. J. Ex. 373; 40 R. R. 604).

Res Gestæ.—There are other statements which are admissible in evidence as part of the *res gestæ*, namely, where a statement is made by a person accompanying an act, and which tends to explain or show the intention of such act; as what a person says on entering on land, on forfeiture, etc., departing from his dwelling, secreting himself, or when he does any act the character of which it is material to understand (Taylor on Evid., sect. 584 (9th edit.)); and generally, where any transaction is being inquired into, all that was said at the time is admissible in evidence. See *Tustin v. Arnold & Sons*, (1915) 84 L. J. K. B. 2214.

Of Documentary Evidence.—Acts of Parliament.—Public Acts of Parliament require no proof, as of these the court takes judicial cognizance.

Copies of private or local and personal Acts are evidence, if purporting to be printed by the King's printer.

Royal and other Proclamations.—Copies of parliamentary journals or royal proclamations, purporting to be printed by the printers of the Crown, or of either House (8 & 9 Vict. c. 113, s. 3), are likewise evidence.

Any proclamation, order or regulation issued by the King, the Privy Council, the Commissioners of the Treasury, the Board of Admiralty, any secretary of state, the Board of Trade, or the Poor Law Board, may be proved *primâ facie* by producing a copy of the *Gazette* purporting to contain the proclamation, order or regulation in question; or a copy purporting to be printed by the King's printer or the government printer of any colony or possession; or a copy or extract purporting to be certified to be true, if the document be issued by the King or the Privy Council, by the clerk or any member of the Privy Council; if by the Treasury, by any commissioner, secretary or assistant secretary of the Treasury; if by the Admiralty, by a lord of the Admiralty or a secretary; if by a secretary of state, by any secretary or under secretary of state, and if by the Board of Trade, or Poor Law Board, then by any member of such Board or a secretary or assistant secretary (31 & 32 Vict. c. 37, s. 2).

Records and Proceedings of Courts.—Records of the superior courts, if the issue be upon their existence, can only be proved by production of the original, or exemplification under the great seal. The proper course was

to get the record removed by *certiorari* into Chancery, and that court would send it by *mittimus* to the county court (*Winsor v. Dunford*, (1848) 12 Q. B. 603; 18 L. J. Q. B. 14). Since the Judicature Acts, the power exercised by the Court of Chancery in this respect may be exercised by any division of the High Court. In other cases, if complete, they may be proved by examined copies of the original (Evidence Act, 1851, s. 14).

Orders or rules of court, and judges' orders, may, except in the cases already mentioned, be proved in the same way; the latter may be proved by production, the court being bound to take judicial cognizance of the signature (8 & 9 Vict. c. 113, s. 2).

Convictions must be proved either by production of the record, or under sect. 13 of the Evidence Act, 1851 (14 & 15 Vict. c. 99) (*Mash v. Darley*, (1914) 3 K. B. 1226; 83 L. J. K. B. 1740).

Judgments of inferior courts must be proved by their production from their proper custody, or by examined copies. All proceedings in county courts may be proved by a copy of the entry thereof in the book of the court, bearing the seal of the court, and purporting to be signed and certified as a true copy by the registrar (County Courts Act, 1888, s. 28; see *ante*, p. 16).

Proceedings or copies of proceedings in bankruptcy appearing to be sealed with the seal of the court, or purporting to be signed by a judge having bankruptcy jurisdiction, are evidence (Bankruptcy Act, 1914, s. 139).

Foreign Law.]—It is for the judge, and not the jury, when the case is being tried by a judge with a jury, to decide what is the law of any other country. See sect. 102 of Supreme Court of Judicature (Consolidation) Act, 1925. Foreign law must be proved. This is generally done by the evidence of an expert.

Banker's Books.]—By the 42 Vict. c. 11 (The Bankers' Books Evidence Act, 1879), subject to the provisions contained in the Act, copies of any entries made in a banker's book may be received in evidence. See *Waterhouse v. Wilson Barker*, (1924) 2 K. B. 759; 93 L. J. K. B. 897, where it was alleged that the entries if produced would tend to incriminate.

Public Entries and Documents.]—Entries in books and documents of a public nature, which it would be inconvenient on public grounds to remove, as parish registers (*Doe v. Barnes*, (1834) 1 Moo. & R. 386; 42 R. R. 809), and bank books (*Mortimer v. M'Callan*, (1840) 6 M. & W. 58; 9 L. J. Ex. 73; 55 R. R. 503), etc., may be proved by copies; so may inscriptions on tombstones, writings affixed to walls, and the like, which it would be impossible or extremely difficult to produce in court; and whenever by an Act of Parliament any certificate, official or public document, or document or proceeding of any corporation or company, or certified copy of a document, bye-law, entry in a register or other book, or of any other proceeding, is receivable "in evidence of any particular, the same are admissible, provided they purport to be sealed, stamped or signed as required or directed, without any proof of the seal, stamp, or signature, or official character of the person signing, and without any further proof thereof, in every case in which the original could have been received" (8 & 9 Vict. c. 113, s. 1; see *Doe d. Hemming v. Willetts*, (1849) 7 C. B. 709; 18 L. J. C. P. 240).

Certified copies of entries purporting to be sealed or stamped with the seal of the registrar-general's office, are received as evidence of birth, death or marriage (6 & 7 Will. IV. c. 86, s. 38). There are numerous other statutes allowing certain public or *quasi* public documents to be proved by certified copies, which will be found in Taylor on Evid. Part V. Chap. IV.

Also, whenever any book or other document is of such a public nature as

to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof, or extract therefrom, will be admissible in evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed as a true copy or extract by the officer to whose custody the original is entrusted (Evidence Act, 1851, s. 14). As to objections at the trial to the admission of documents apparently genuine, see Order XVIII., r. 9.

Ancient Records.—Ancient records and writings, as ecclesiastical tenures, manor books, and the like, are proved by being produced from the proper custody. It need not be from the most proper custody (*Doe v. Keeling*, (1848) 11 Q. B. 884; 75 R. R. 658), provided it is where it would reasonably be expected that they should be found (*Croughton v. Blake*, (1843) 12 M. & W. 205; 132 L. J. Ex. 78; 67 R. R. 310), as a terrier from the parish chest or an expired lease from the possession of the lessor (*Plaxton v. Dare*, (1829) 10 B. & C. 17; 8 L. J. (O. S.) K. B. 98; *Reg. v. Hall*, (1866) L. R. 1 Q. B. 632; 35 L. J. M. C. 251). It is not enough merely to produce them, but a witness must be called to speak to their custody (*Evans v. Rees*, (1839) 10 A. & E. 151; 50 R. R. 366).

Wills and Probate.—Before the Probate Act, 1857, in order to prove a devise of lands, the will must have been produced (*Doe v. Calvert*, (1810) 2 Camp. 389; 11 R. R. 745), unless it had been lost, in which case an examined copy was evidence; but by s. 64 of that Act if notice be given, ten days before the trial, of a party's intention to give in evidence the probate or letters of administration with the will annexed, stamped with the seal of the court of probate, or a copy so stamped, and a notice is not given by the other side within four days that he disputes the validity of the devise, the probate is sufficient evidence of the will and of its validity and contents. The failure to give the counter notice does not, however, preclude a party from contesting at the trial the validity of the will (*Barraclough v. Greenhough*, (1867) L. R. 2 Q. B. 612; 36 L. J. Q. B. 251). Sect. 64 (*supra*) is repealed by the Judicature Act, 1925, but is preserved in cases where the death occurred before January 1st, 1926 (15 & 16 Geo. V. c. 49, s. 175).

Where title to personal property is derived under a will, it must be proved by the probate, not by the will itself (*Pinney v. Pinney*, (1828) 8 B. & C. 335; 6 L. J. K. B. 353; 32 R. R. 400). Administration is proved by the letters. The seal of the court needs no proof (Supreme Court of Judicature (Consolidation) Act, 1925, s. 174). As to colonial probates, etc., see 55 Vict. c. 6.

Documents thirty years old.—The general rule of law is that where any document purporting or proved to be thirty years old, is produced from any custody which the judge in the particular case considers proper, it is presumed that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested; and the attestation or execution need not be proved, even if the attesting witness is alive and in court.

Proper Custody.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as

to render such an origin probable (Stephen's Digest of the Law of Evidence, Article 88; see, however, next paragraph for the rule in county courts).

Documents produced from Proper Custody.—In county courts, however, where any documents, which would, if duly proved, be admissible in evidence, are produced to the court from proper custody, they must be read without further proof, if, in the opinion of the court, they appear to be genuine, and no objection is taken to them. If the admission of any document so produced is objected to, the court may adjourn the hearing for proof of the documents, and the party objecting must be ordered to pay the costs caused by the objection, if the documents are afterwards proved, unless the judge otherwise orders (Order XVIII. r. 9).

Deeds.—To prove a deed or other written instrument to which there is an attesting witness, if the instrument is one to the validity of which attestation is requisite, he must be called (*Bowman v. Hodgson*, (1867) L. R. 1 P. & M. 362; 36 L. J. P. 124), unless he is dead, insane (*Currie v. Child*, (1812) 3 Camp. 283), or absent in a foreign country (*Prince v. Blackburn*, (1802) 2 East, 250), or he cannot be found on diligent inquiry (*Cunliffe v. Sefton*, (1802) 2 East, 183; *Spooner v. Payne*, (1847) 4 C. B. 328; 16 L. J. C. P. 225).

In these and some other cases evidence of the witness's handwriting is admissible, and the handwriting of the party who executed the instrument need not be proved except, perhaps, for the purpose of establishing his identity (*Nelson v. Whittall*, (1817) 1 B. & A. 19). A party to a deed requiring attestation cannot also attest it (*Seal v. Claridge* (C. A.), (1881) 7 Q. B. D. 516; 50 L. J. Q. B. 316). If the instrument is one to the validity of which attestation is not requisite, the attesting witness need not be called. It may be proved by admission or otherwise, as if there had been no attesting witness (17 & 18 Vict. c. 125, s. 26; see, however, *Re Rice* (C. A.), (1886) 32 Ch. D. 35; 55 L. J. Ch. 799).

When a deed is produced under a notice to produce, the party calling for it must still prove its execution if it be objected to (*Gordon v. Secretan*, (1807) 8 East, 548), unless the party who produces it claims a beneficial interest under it (*Pearce v. Hooper*, (1810) 3 Taunt. 60).

In accordance with the rule mentioned above, no proof is required if the deed purports, or is proved, to be thirty years old, if it is produced from custody which the judge considers proper; and even if less than thirty years old a party objecting to a genuine deed, if it comes within Order XVIII. r. 9, may have to pay the costs occasioned by his objection.

Sale of Goods.—See Sale of Goods Act, 1893, and cases in notes thereto, *post*, Part V. In any action founded upon a contract of sale of goods the plaintiff must prove the contract of sale. If the goods be of the value of 10*l.* or upwards, there must, to satisfy the Sale of Goods Act, 1893, be a note or memorandum in writing, or a part payment of the price, or earnest, or an acceptance and actual receipt of part of the goods. Sect. 4(1).

As to the note or memorandum, what is required is a written document in existence when the action commenced (*Lucas v. Dixon* (C. A.), (1889) 22 Q. B. D. 357; 58 L. J. Q. B. 161); whether contemporaneous with the contract or not, whether intended to be a memorial of the contract or not, and whether addressed to the other contracting party or not, signed by the party against whom it is used or his agent, containing a statement of the terms of the contract (*Bailey v. Sweeting*, (1861) 9 C. B. N. S. 843; 30 L. J. C. P. 150; 127 R. R. 896; *Gibson v. Holland*, (1865) L. R. 1 C. P. 1; 35 L. J. C. P. 5; *Wilkinson v. Evans*, (1866) L. R. 1 C. P. 407; 35 L. J. C. P. 224; *Buxton v. Rust*, (1872) L. R. 7 Ex. 1, 279; 41 L. J.

Ex. 1; *Reuss v. Picksley*, (1866) L. R. 1 Ex. 342; 35 L. J. Ex. 218; 143 R. R. 797; *Auerbach v. Nelson*, (1919) 2 Ch. 383).

Acceptance and Receipt.—As to acceptance and receipt, there must be both acceptance and actual receipt. Acceptance without receipt will not satisfy the requirements of the statute (*Farina v. Home*, (1846) 16 M. & W. 119; 16 L. J. Ex. 73; 73 R. R. 433); nor will receipt without acceptance, as where goods are delivered to and received by a carrier named by a purchaser (*Hart v. Bush*, (1858) E. B. & E. 494; 27 L. J. Q. B. 271; 113 R. R. 744; *Smith v. Hudson*, (1865) 6 B. & S. 431; 34 L. J. Q. B. 145; 141 R. R. 459).

Acceptance.—It is not necessary that the acceptance should be such as would preclude the purchaser from rejecting goods as not according to contract. Acceptance, for the purpose of the statute, means such a dealing with the goods as amounts to a recognition of the existence of the contract, and it may precede delivery (*Morton v. Tibbett*, (1850) 15 Q. B. 428; 19 L. J. Q. B. 382; 81 R. R. 666; *Kibble v. Gough* (C. A.), (1878) 38 L. T. 204; *Page v. Morgan* (C. A.), (1885) 15 Q. B. D. 228; 54 L. J. Q. B. 434). Thus the exercise of any act of ownership, such as marking (*Hodson v. Le Bret*, (1808) 1 Camp. 233), weighing (*Simmonds v. Humble*, (1862) 13 C. B. N. S. 258; 134 R. R. 526), or re-selling (*Morton v. Tibbett*, *supra*), is evidence of acceptance. So, examination and selection of goods prior to delivery is evidence of acceptance (*Cusack v. Robinson*, (1861) 1 B. & S. 299; 30 L. J. Q. B. 261; 124 R. R. 566). On a sale by sample, inspection after delivery, in order to see if the bulk corresponds with the sample, is evidence of acceptance (*Page v. Morgan*, *supra*). Where goods are sold under an implied warranty and resold several times, and the defect can only be discovered by the ultimate purchaser or consumer, the damages recoverable include not only the amount paid in damages to the ultimate purchaser, but also all costs reasonably incurred by all sub-vendors in respect of claims by their sub-vendees (*Kasler and Cohen v. Slavonski*, (1927) 1 K. B. 78; 96 L. J. K. B. 850). Where the seller knows the place of delivery is not the final destination of the goods, and that the goods cannot, having regard to their nature and the way they are packed, be conveniently examined at this place, then the place of examination for the purpose of acceptance or rejection may be the final destination of the goods, otherwise it is the place where the seller undertakes to deliver the goods, though it is not the final destination of the goods (*Saunt v. Belcher and Gibbons, Ltd.*, (1921) 90 L. J. K. B. 541). Keeping goods for an unreasonable time after delivery, without giving notice of rejection, is also evidence of acceptance (*Bushel v. Wheeler*, (1844) 15 Q. B. 442; 81 R. R. 675; *Norman v. Phillips*, (1845) 14 M. & W. 277; 14 L. J. Ex. 306).

Receipt.—Receipt is the co-relative term to delivery, and to constitute actual receipt for the purposes of the statute it is necessary, on the one hand, that the vendor should have parted with the possession of the goods so as to deprive himself of his right of lien (*Bill v. Bament*, (1841) 9 M. & W. 36, 41; 11 L. J. Ex. 81; 60 R. R. 658, *per* Parke, B.; *Baldey v. Parker*, (1823) 2 B. & C. 37, 44; 1 L. J. K. B. 229; 26 R. R. 260, *per* Holroyd, J.); on the other, that the purchaser or his agent should have received them. Where the delivery is made to a carrier selected by the purchaser, the carrier becomes for this purpose his agent (*Hart v. Bush*, (1858) E. B. & E. 494; 27 L. J. Q. B. 271; 113 R. R. 744). But if the delivery be to a wharfinger for shipment, or on board a ship not named by the purchaser, there is no receipt for the purpose of the statute (*Hart v. Bush*,

supra; *Meredith v. Meigh*, (1853) 2 E. & B. 364; 22 L. J. Q. B. 401; 95 R. R. 603). To make a wharfinger or other person in whose custody goods are placed by the vendor the agent to receive them for the purchaser, there must be, so to speak, an attornment, whereby the wharfinger or other person agrees with the purchaser to hold them for him (*Farina v. Home*, (1846) 16 M. & W. 119, 123; 16 L. J. Ex. 73; 73 R. R. 433, *per Parke, B.*; *Meredith v. Meigh, supra*). Where goods, selected by a purchaser, were, at his request, forwarded by a carrier whom he named to a wharfinger whom he also named, receipt by the wharfinger was held to be a good receipt within the statute (*Cusack v. Robinson*, (1861) 1 B. & S. 299; 30 L. J. Q. B. 261; 124 R. R. 566).

Part Payment.—The retention of money due by purchaser to vendor, though such retention be a term of the contract, is not part payment which satisfies sect. 4, sub-s. 1 of the Sale of Goods Act, 1893 (*Norton v. Davison*, (1899) 1 Q. B. 401; 68 L. J. Q. B. 265).

Goods sold and delivered.—In an action for goods sold and delivered, the contract of sale, either express or implied, and the delivery of the goods to the defendant or his authorised agent must be proved; delivery to a carrier or other person, in pursuance of the contract or with the assent of the defendant, is sufficient for this purpose (*Dutton v. Solomonson*, (1803) 3 B. & P. 582; 7 R. R. 883; *Meredith v. Meigh, supra*). If goods delivered “on sale or return” are not returned within a reasonable time, the sale becomes absolute, and the price may be recovered as for goods sold and delivered (*Moss v. Sweet*, (1851) 16 Q. B. 493; 20 L. J. Q. B. 167; 83 R. R. 560). If a wife is living with her husband an order by and delivery to her of goods for household use is *primâ facie* sufficient, though her presumed authority may be disproved (*Jolly v. Rees*, (1864) 15 C. B. N. S. 628; 33 L. J. C. P. 177; 137 R. R. 688; *Debenham v. Mellon*, (1880) 6 App. Cas. 24). If, however, she live separate from him, the burden of proof is shifted; if the husband allows her a sufficient maintenance, he is not bound by her contracts, though the person supplying the goods had no notice of the allowance (*Mizen v. Pick*, (1838) 3 M. & W. 481; 7 L. J. Ex. 153; 49 R. R. 694; *Travers v. Sen*, (1917) 33 T. L. R. 202).

If the goods were to be paid for by bill or on credit, it must be shown that the defendant has refused to give the bill, or that the credit has expired (*Webb v. Fairmaner*, (1838) 3 M. & W. 473; 7 L. J. Ex. 140; 49 R. R. 690; *Mussen v. Price*, (1803) 4 East, 147), or that the bill has been dishonoured (*Fry v. Hill*, (1817) 7 Taunt. 397; 18 R. R. 512).

Defence.—The defendant may deny the sale or delivery, or may show that the credit has not expired. He may prove that the goods were sold by description and do not correspond therewith (*Varley v. Whipp*, (1900) 1 Q. B. 513; 69 L. J. Q. B. 333). Having given the proper notice (C. C. Act, s. 82), he may rely on infancy, coverture, the Statute of Limitations, or his discharge under the Bankruptcy Act. He may show that the goods were sold under an illegal contract, or prove payment, a tender, or (having given the proper notice) a set-off against the plaintiff's claim, or a counterclaim, or may pay money into court. Payment must be made in the regular manner by the debtor finding out his creditor and paying him by a legal tender or in the manner expressly authorised by the contract or impliedly authorised by the dealings between the parties. There is no general rule of law that authority to an agent to sell goods implies or confers authority to receive payment (*Butwick v. Grant* (1924), 2 K. B. 483; 93 L. J. K. B. 972). When the money is sent in an irregular, unauthorised and unusual manner, *i.e.*, a large sum through the post, in Treasury notes, this is not a good payment (*Mitchell-Henry v. Norwich Union Life*

Insurance Co., (1918) 34 T. L. R. 359). He may likewise prove that the goods were inferior in quality to those bargained for, which will afford a defence *pro tanto* (*Mondel v. Steel*, (1841) 8 M. & W. 858; 10 L. J. Ex. 426; 58 R. R. 890; *Davis v. Hedges*, (1871) L. R. 6 Q. B. 687; 40 L. J. Q. B. 276).

Plaintiff's Answer.—Where infancy is proved, the plaintiff may show in answer that the goods were necessities (*Peters v. Fleming*, (1840) 6 M. & W. 42; 9 L. J. Ex. 81; 55 R. R. 495). In answer to the Statute of Limitations, he may prove part payment or an acknowledgment in writing by the defendant within six years. But the acknowledgment must either contain an actual promise of payment, or else be an unconditional acknowledgment from which a promise may be implied (*Smith v. Thorne*, (1852) 18 Q. B. 134; 21 L. J. Q. B. 199; 88 R. R. 555; *Tanner v. Smart*, (1827) 6 B. & C. 603; 5 L. J. K. B. 218; 30 R. R. 461; *Chasemore v. Turner*, (1875) L. R. 10 Q. B. 500; *Green v. Humphreys* (C. A.), (1884) 26 Ch. D. 474; 53 L. J. Ch. 625). An acknowledgment by one of two jointly liable will not take the case out of the statute against the other (9 Geo. 2, c. 14, sect. 1 (Lord Tenterden's Act)). If part payment is relied on, it must be shown that the payment was on account of the debt for which the action was brought, and that it was made as part payment of a greater debt (*Tippets v. Heane*, (1834) 1 C. M. & R. 252; 3 L. J. Ex. 281; 40 R. R. 549; *Burn v. Boulton*, (1846) 2 C. B. 476; 15 L. J. C. P. 97; 69 R. R. 508), and that it was a voluntary promise from which a promise to pay the balance may be implied (*Morgan v. Rowlands*, (1872) L. R. 7 Q. B. 493; 41 L. J. Q. B. 187). The payment may be by goods (*Hooper v. Stephens*, (1835) 4 A. & E. 71; 5 L. J. K. B. 4; 43 R. R. 306). Payment by one of two jointly liable will not take the case out of the statute against both (19 & 20 Vict. c. 97, s. 14).

Goods sold but not delivered.—Where the property in goods has passed by sale to the purchaser, but there has been no delivery to him, the seller may maintain an action for the price, unless he was bound to deliver before calling for payment and is himself in default (*Atkinson v. Bell*, (1828) 8 B. & C. 277; 6 L. J. K. B. 258; 32 R. R. 382; *Alexander v. Gardner*, (1835) 1 Bing. N. C. 671; 4 L. J. C. P. 223; 41 R. R. 651). The plaintiff is entitled to recover the whole price of the goods (*Hankey v. Smith*, (1796) 1 Peake, 57).

Not accepting Goods.—If the property in the goods has not passed to the buyer, and he refuses to accept them according to contract, the seller's remedy is by action for damages for not accepting. The damages will generally be the difference between the contract price and the market price at the time when the goods ought to have been accepted (*Boorman v. Nash*, (1829) 9 B. & C. 145; 7 L. J. K. B. 150; 32 R. R. 607). If the purchaser wrongfully repudiates the contract it is not necessary for the vendor to prove that he was ready and willing to deliver the goods in accordance with the contract at date of repudiation (*British and Benington's, Ltd. v. North Western Cacher Tea Co.*, (1923) 92 L. J. K. B. 62 (H. L.)). Where the action is for non-acceptance of goods to be manufactured by the plaintiff, defendant may show in mitigation of damages that plaintiff's mills and machinery were, during the time they would have been engaged on the goods ordered by the defendant, employed on work as profitable as the contract work (*John Hall & Son, Ltd. v. Showell*, (1918) 87 L. J. K. B. 1106).

The defendant, in addition to the defences already pointed out with respect to actions for the price of goods, may show, where the sale is by sample or description, that he rejected the goods because they did not correspond with the sample or description (*Heilbutt v. Hickson*, (1872) L. R.

7 C. P. 438; 41 L. J. C. P. 228; *Bowes v. Shand*, (1877) 2 App. Cas. 455, 480; 46 L. J. Q. B. 561; see *per* Lord Blackburn; *Varley v. Whipp*, (1900) 1 Q. B. 513; 69 L. J. Q. B. 333). After giving notice of rejection he is not bound to return them, but he must not use them (*Grimoldby v. Wells*, (1875) L. R. 10 C. P. 391; 44 L. J. C. P. 203; *Lucy v. Mouisset*, (1860) 5 H. & N. 229; 29 L. J. Ex. 110; 120 R. R. 555). Where a sale is of specific goods so that the property passes by the sale, and a warranty is given with them, as in the case of a sale of a horse with a warranty, this is a thing collateral, and its breach does not entitle the purchaser to reject the things bought (*Street v. Blay*, (1831) 2 B. & Ad. 456; 36 R. R. 626); see Sale of Goods Act, 1893, Part V.

Not delivering Goods.—If the vendor refuses to deliver goods sold, the buyer may bring an action for damages for breach of contract. If the property has passed to the buyer, he may instead sue in trover for a conversion: but the measure of damages in both cases will generally be the same, viz., the difference between the contract price and the market price (*Chinery v. Viall*, (1860) 5 H. & N. 288; 29 L. J. Ex. 180; 120 R. R. 588), but the vendor may show that the purchaser has not sustained damage, or the damage claimed, as by proving in an action for breach of contract to deliver raw materials for manufacture that the plaintiffs were in consequence enabled to execute other contracts, whereby they made profits, which might be taken into consideration in reduction of the damages which they had sustained by the vendor's breach of contract (*John Hall & Son v. Showell & Sons, Ltd.*, (1918) 87 L. J. K. B. 1106 (H. L.)). Where the sale is of specific or ascertained goods the buyer may in an action for breach of contract obtain an order for specific delivery pursuant to the Sale of Goods Act, 1893 (56 & 57 Viet. c. 71, s. 52).

Goods not according to Contract.—If goods delivered are not according to contract, or if being sold with a warranty the warranty is not complied with, the purchaser may, in an action for damages, recover the difference between the price contracted for and the real value of the goods (*Mondel v. Steel*, (1841) 8 M. & W. 858, 870; 10 L. J. Ex. 426; 58 R. R. 890, *per* Parke, B.), together with such special damage as may be applicable to the case (*Hadley v. Baxendale*, (1854) 9 Ex. 341; 23 L. J. Ex. 179; 96 R. R. 742). And he may maintain this action even though he has been sued for and has paid the price of the goods (*Davis v. Hedges*, (1871) L. R. 6 Q. B. 687; 40 L. J. Q. B. 276).

Gift of Goods or Chattels.—A gift of goods or chattels (unless by deed) must be manifested by a delivery of the goods to the donee. If the gift is a *donatio mortis causa*, delivery is still generally essential. If the goods or chattels are already in the possession of the donee as bailee or in any other capacity, delivery is not necessary. See *Flower's Case*, (1597) Noy, 67; *Cain v. Moon*, (1896) 2 Q. B. 283; 65 L. J. Q. B. 587; *Irons v. Smallpiece*, (1819) 2 B. & Ald. 551; *Winter v. Winter*, (1861) 4 L. T. 639; *Wasserberg, In re*, (1914) 84 L. J. Ch. 214; (1915) 1 Ch. 195; *Stoneham, In re, Stoneham v. Stoneham*, (1919) 1 Ch. 149; 88 L. J. Ch. 77, explaining *Cochrane v. Moore*, (1890) 25 Q. B. D. 57. See also gift by incomplete cheque not cashed at time of donor's death, *Swinburne, In re, Sutton v. Featherley*, (1926) 95 L. J. K. B. 104; gift where donor contemplated suicide *Dudman, In re, Dudman v. Dudman*, (1926) 95 L. J. Ch. 204.

Services Rendered.—An action lies when work, either bodily or mental (*Grafton v. Armitage*, (1845) 2 C. B. 336; 15 L. J. C. P. 20), has been done by the plaintiff for the defendant under a contract, express or implied. If materials have been provided, a claim for their value may be joined. The

plaintiff must prove, first, the express contract, if there be one, if not, the circumstances from which it arises; secondly, the performance on the plaintiff's part; and lastly, the value of the work, by the agreement, if any, if not, generally.

If plaintiff contracts to do particular work for a certain sum, and does not complete it, he cannot generally sue for a *quantum meruit* proportioned to the part of the work which he has done (see *Cutter v. Powell*, 2 Smith's Leading Cases, 12th edit., p. 1, and cases there referred to; *H. Dakin & Co., Ltd. v. Lee*, (1916) 1 K. B. 566; *Vigers v. Cook*, (1919) 2 K. B. 475).

Defence.—The defendant may show in defence that he did not order the work; that credit was not given to him, but to another; that the work was not done; or that the work was done under an entire contract not yet completed (*Sinclair v. Bowles*, (1829) 9 B. & C. 92; 7 L. J. K. B. 178; 32 R. R. 589; *Cutter v. Powell*, (1795) 2 Sm. L. C. (12th edit.), p. 1; 3 R. R. 185; *Appleby v. Myers*, (1867) L. R. 2 C. P. 651); or, if completed, in reduction of the claim, that it was improperly done (*Mondel v. Steel*, (1841) 8 M. & W. 858, 870; 10 L. J. Ex. 426; 58 R. R. 890, *per Parke, B.*).

Breach of Duty.—A person who undertakes, or who is under a duty to another, must exercise such duty honestly and with reasonable care and skill. Even though the duty is undertaken voluntarily and for no valuable consideration, the law requires that it be executed with a certain amount of skill and care (see notes to *Coggs v. Bernard*, (1704) 1 Sm. L. C.). A person holding himself out as possessing special skill, as a doctor or lawyer, must show the degree of skill naturally expected from a person in such profession.

A person who undertakes to give advice voluntarily, or for some valuable consideration, is under a duty to use reasonable care (see *Banbury v. Bank of Montreal*, (1918) 87 L. J. K. B. 1158 (H. L.), where the law upon the question is exhaustively discussed).

Solicitors.—Solicitors must prove the retainer by the defendant, that the business was done, and that a signed bill was duly delivered to the defendant one month before action (6 & 7 Vict. c. 73, s. 37). An agency bill is taxable, and must therefore be delivered (*Smith v. Dimes*, (1849) 4 Ex. 32; 19 L. J. Ex. 60; 80 R. R. 473). Even if the defendant has assented to the items, if no bill has been delivered plaintiff cannot recover as an account stated (*Brooks v. Bockett*, (1847) 9 Q. B. 847; 16 L. J. Q. B. 178). The bill may be proved by a copy, or duplicate original, without notice to produce (*Colling v. Treweek*, (1827) 6 B. & C. 394; 5 L. J. K. B. 132; 30 R. R. 366). A solicitor cannot recover costs if his agreement with his client is of a champertous nature (*Wild v. Simpson*, (1919) 2 K. B. 544). As to lien of solicitor on the papers, etc., upon a change of solicitors, see *Dessau v. Peters, Rushton & Co.*, (1922) 91 L. J. Ch. 254.

Defence.—The defendant may show that the plaintiff is uncertificated (37 & 38 Vict. c. 68, s. 12), or was not duly admitted (*Hill v. Sydney*, (1838) 7 A. & E. 956; 7 L. J. Q. B. 87), or that no signed bill has been delivered (6 & 7 Vict. c. 73, s. 26), or that he has failed to show reasonable care in the work undertaken, and that consequently his services have been of no value to defendant; but where, as in the last instance, the defence is a statutory defence, notice of special defence must be given under Order X. rr. 10, 18. The plaintiff's negligence is no defence (*Templer v. M'Lachlan*, (1806) 2 N. R. Bos. & P. 136; *Cox v. Leech*, (1857) 1 C. B. N. S. 617; 26 L. J. C. P. 125; 107 R. R. 829), except it has deprived the defendant of all benefit (*Bracey v. Carter*, (1840) 12 A. & E. 373; 54 R. R. 575); even the disbursements cannot then be recovered (*Lewis v. Samuel*, (1846) 8 Q. B. 685; 15 L. J. Q. B. 218; 70 R. R. 582). A solicitor is assumed

to know the public statutes of the realm. If in a case to which the Public Authorities Protection Act, 1893, applies, the solicitor allows the time within which the action may be brought to expire without bringing it, he is liable to his client for such negligence (*Fletcher & Son v. Jubb, Booth & Helliwell*, (1920) A. C. 581; 1 K. B. 275). The defendant may prove a special agreement, to charge only costs out of pocket, or the like (*Jones v. Reade*, (1836) 5 A. & E. 529; 6 L. J. K. B. 9; 33 & 34 Vict. c. 28, s. 6). As to the enforcement of such agreements, see Part V., Solicitors Acts.

Medical Practitioners, etc.]—Physicians, surgeons, and medical practitioners, before they can recover for medical or surgical advice, attendance, or for the performance of any operation, or for medicine supplied, must prove registration under the Medical Act (21 & 22 Vict. c. 90, s. 32; 22 Vict. c. 21; 23 & 24 Vict. c. 7); but should they be fellows of a college of physicians, the fellows of which are prohibited by bye-law from recovering at law their expenses, charges, or fees, the defendant may rely on such bye-law as a defence (49 & 50 Vict. c. 48, s. 6; sect. 31 of the 21 & 22 Vict. c. 90, is repealed by 49 & 50 Vict. c. 48, s. 28); notice of the intention to rely on it should, as a statutory defence, be given pursuant to Order X. r. 18. If a duly qualified practitioner allows his assistant, an unqualified person, to attend patients for him, and renders no services himself, he cannot recover anything (*Howarth v. Brearley*, (1887) 19 Q. B. D. 303; 56 L. J. Q. B. 543).

Medical Register.]—Registration under the Medical Act is proved by a printed copy of the current annual Medical Register containing the name and qualifications of the plaintiff, or if it does not, by a certified copy of the entry on the register under the hand of the registrar of the council (21 & 22 Vict. c. 90, s. 27).

Agents.]—Generally what can be done by a person himself can be done by an agent duly authorised by him to do such act; thus a house agent instructed to sell a house at a certain price may enter into a binding contract with the purchaser, but such contract must be an open contract, and not a contract dealing with questions of title (*Keen v. Mear*, (1920) 89 L. J. K. B. 513).

Apothecaries.]—An apothecary must prove that he has obtained a certificate under the Apothecaries Act (55 Geo. III. c. 194, s. 21), dated prior to the accruing of the claim (*Leman v. Houseley*, (1874) L. R. 10 Q. B. 66; 44 L. J. Q. B. 22). The certificate proves itself when produced (Evidence Act, 1851, s. 8).

Servants.]—Servants suing for wages must prove the retainer or service and the amount of wages. If a servant quits before the term has expired or is discharged for good cause, he can recover nothing (*Huttman v. Boulnois*, (1826) 2 C. & P. 510; *Lilley v. Elwin*, (1848) 11 Q. B. 742; 17 L. J. Q. B. 132; 75 R. R. 623). A general hiring depends on the custom; it is usually for a year (*Beeston v. Collyer*, (1827) 4 Bing. 309; 5 L. J. C. P. 180; 29 R. R. 576; *Lilley v. Elwin*, *supra*), though the wages are paid monthly (*Fawcett v. Cash*, (1834) 5 B. & Ad. 904; 3 L. J. K. B. 113; 39 R. R. 709). In the case of domestic and menial servants the contract may be determined by a month's warning on either side (*Nowlan v. Ablett*, (1835) 2 C. M. & R. 54; 4 L. J. Ex. 155). If a master turn away a domestic servant without good cause, he must pay a month's wages, not board wages, in advance (*Robinson v. Hindman*, (1800) 3 Esp. 235; *Gordon v. Potter*, (1859) F. & F. 644; and see *Lindsay v. Queen's Hotel Co., Ltd.*, (1919) 1 K. B. 212; 88 L. J. K. B. 535); this cannot be recovered under

a claim for work and labour; the plaintiff must specially state his cause of action (*Fewings v. Tisdal*, (1847) 1 Ex. 295; 11 Jur. 977; 17 L. J. Ex. 18; as to who are menial servants, see *Nowlan v. Ablett*, *supra*; *Todd v. Kerrich*, (1852) 8 Ex. 151; 22 L. J. Ex. 1).

Where a contract of service for an indefinite period is silent regarding the notice necessary to terminate it, it is an implied term that a reasonable notice should be given. What is "reasonable" is a question of fact, to be decided according to the circumstances of the case (*Payzu, Ltd. v. Hannaford*, (1918) 87 L. J. K. B. 1017).

A servant wrongfully discharged may treat the contract as rescinded, and sue for his actual service, or on the contract for wrongful dismissal; but having once sued on the contract, he cannot afterwards sue for his work and labour (*Goodman v. Pocock*, (1850) 15 Q. B. 576; 19 L. J. Q. B. 410; 81 R. R. 705; see also notes to *Cutler v. Powell*, (1795) 2 Sm. L. C. (12th edit.), p. 1; 3 R. R. 185).

Other Liquidated Claims.—Money Lent.]—An action lies for money lent to the defendant, or to a third person, on his sole credit; where money is lent to be repaid by the defendant on demand, or he is to do some act, the action lies if he omits to do the act (*Bristowe v. Needham*, (1842) 9 M. & W. 729; 11 L. J. Ex. 278). An I O U is not in itself evidence of money lent, for though it admits money to be due, it does not admit that it became due in any particular way (*Fesenmayer v. Adcock*, (1847) 16 M. & W. 449; 73 R. R. 567).

Money Paid.]—Where the plaintiff has paid money for the defendant at his request, either express or implied, he may recover the amount from the defendant. If the plaintiff has paid money and the defendant has expressly or impliedly contracted to indemnify him either wholly or by way of contribution (*Prior v. Hembrow*, (1841) 8 M. & W. 873; 58 R. R. 891; *Sedgwick v. Daniell*, (1857) 2 H. & N. 319; 27 L. J. Ex. 116; 115 R. R. 561), as in the case of a surety (*Kemp v. Finden*, (1844) 12 M. & W. 421; 13 L. J. Ex. 137; 67 R. R. 384; *Reynolds v. Wheeler*, (1861) 10 C. B. N. S. 561; 30 L. J. C. P. 350; 128 R. R. 836), or the accommodation acceptor of a bill (*Garrard v. Cottrell*, (1847) 10 Q. B. 679); or if the plaintiff has been compelled under a legal obligation to pay money for which the defendant is properly and primarily liable, as where a tenant under threat of distress pays taxes which his landlord is bound to pay (*Exall v. Partridge*, (1799) 8 T. R. 308; *Hooper v. Treffry*, (1847) 1 Ex. 17; 16 L. J. Ex. 233; 74 R. R. 578); this action lies although the plaintiff is not relieved from any liability by the payment (*Brittain v. Lloyd*, (1845) 14 M. & W. 762; 15 L. J. Ex. 43; 69 R. R. 816; *Lewis v. Campbell*, (1849) 8 C. B. 541; 19 L. J. C. P. 130; 79 R. R. 623). The plaintiff must prove the express agreement if there be one; if not, those facts from which a promise or legal liability to repay may be implied.

Money Had and Received.]—A claim for money had and received lies to recover money which belongs to the plaintiff, but has been obtained by the defendant by fraud (*Crockford v. Winter*, (1807) 1 Camp. 124); by extortion (*Smith v. Sleep*, (1844) 12 M. & W. 585); by the improper use of legal process (*Duke de Cadaval v. Collins*, (1836) 4 A. & E. 858; 5 L. J. K. B. 171; 43 R. R. 499); by legal duress (*Close v. Phipps*, (1844) 7 M. & G. 586; 8 Scott, N. R. 381), or wrongful detention of goods (*Ashmole v. Wainwright*, (1842) 2 Q. B. 837; 11 L. J. Q. B. 79; 57 R. R. 817; *Oates v. Hudson*, (1851) 6 Ex. 346; 20 L. J. Ex. 284; 86 R. R. 326); or by a refusal to do what the defendant was legally bound to do (*Parker v. G. W. Rail. Co.*, (1844) 7 M. & G. 253; 7 Scott, N. R. 835; 13 L. J. C. P. 105). It lies where the defendant has received money paid by the

plaintiff under a mistake or forgetfulness of facts (*Kelly v. Solari*, (1841) 9 M. & W. 54; 11 L. J. Ex. 10; 60 R. R. 666; *Townsend v. Crowdy*, (1860) 8 C. B. N. S. 477; 29 L. J. C. P. 300; *British American Continental Bank v. British Bank for Foreign Trade*, (1926) 95 L. J. K. B. 326; *R. E. Jones, Ltd. v. Waring and Gillow*, (1926) A. C. 670), but not where it has been paid under a mistake of law (*Marriott v. Hampton*, (1797) 7 T. R. 269; 2 Sm. L. C. 403 (12th ed.); 4 R. R. 439); also where it has been paid on a consideration which afterwards fails (*Young v. Cole*, (1837) 3 Bing. N. C. 724; 6 L. J. C. P. 201; 43 R. R. 783; *Westropp v. Solomon*, (1849) 8 C. B. 345; *Woodland v. Fear*, (1857) 7 E. & B. 519; 26 L. J. Q. B. 202; 110 R. R. 707), as a deposit on a bargain which has gone off without plaintiff's fault (*Simmons v. Heseltine*, (1858) 5 C. B. N. S. 554; 28 L. J. C. P. 129; 116 R. R. 764), or paid to a company for shares in an abortive scheme (*Walstab v. Spottiswoode*, (1846) 15 M. & W. 501; 15 L. J. Ex. 193; 71 R. R. 746). The plaintiff must prove the receipt of the money by the defendant, and his own title to recover it.

Where the person receiving the money is a mere agent of another to whom he is accountable (*Stephens v. Badcock*, (1832) 3 B. & Ad. 354; 1 L. J. K. B. 75; 37 R. R. 448; *Bamford v. Shuttleworth*, (1840) 11 A. & E. 926; 52 R. R. 542), or where it is paid to a third party who has not acknowledged that he holds it for the plaintiff (*Lilly v. Hays*, (1836) 5 A. & E. 548; *Moore v. Bushell*, (1857) 27 L. J. Ex. 3) the action does not lie.

Commission.—An action lies for commission earned by an agent who works upon commission. The general difficulty in such cases arises with regard to the inquiry whether or not the agent is entitled to receive commission on repeat orders (a) *during*, (b) *after*, he has left the employment. See as to this, *Bilbee v. Hasse & Co.*, (1889) 5 T. L. R. 677; *Salomon v. Brownfield*, 12 T. L. R. 239; *Faulkner v. Cooper & Co.*, 4 Com. Cas. 213; *Wilson v. Harper, Son & Co.*, (1908) 2 Ch. 370; 77 L. J. Ch. 607; *Morris v. Hunt & Co.*, 12 T. L. R. 187; *Barrett v. Gilmour & Co.*, 6 Com. Cas. 72; *Johnson v. Hunt*, 93 L. T. 470, but the general rule is that an agent for one party who is paid by him has no right to demand commission from the other party except for work actually done for him and with the knowledge and consent of his principal (*Fullwood v. Hurley*, (1927) 96 L. J. K. B. 976; (1928) 1 K. B. 498).

Interest.—Interest is recoverable in any case where there has been an express contract to pay it, and, by the custom of merchants, on bills of exchange (*Page v. Newman*, (1829) 9 B. & C. 378; 7 L. J. K. B. 267; 33 R. R. 204). In other cases it may be recovered as damages from the time when the debt was due, if payable by a written instrument at a certain time; if not, from the time when a written demand for it was made with notice that interest would be claimed (3 & 4 Will. IV. c. 42, s. 28). At common law there is no right to interest on a claim for money had and received, but in equity interest can be given in certain circumstances, the principal one being where the defendant has used for his own benefit the money upon which interest is claimed, and the money has been demanded. Interest may be given from the date of such demand (*Barclay v. Harris and Cross*, (1916) 85 L. J. K. B. 115). Interest may also be recovered where a promise to pay is to be implied from the usage of trade or other circumstances (see Mayne on Damages (9th edit.), Chap. IV.).

Account Stated.—On an account stated, the plaintiff must prove an absolute and unqualified (*Wayman v. Hilliard*, (1830) 7 Bing. 101; 9 L. J. (O. S.) C. P. 30) acknowledgment by the defendant of his claim.

It ought to appear that the account was stated with reference to former transactions (*Clarke v. Webb*, (1834) 1 C. M. & R. 29; 3 L. J. Ex. 300). An oral admission of a debt due for goods sold, is evidence of an account stated, although the agreement of sale was in writing (*Newhall v. Holt*, (1840) 6 M. & W. 662; 9 L. J. Ex. 293; 55 R. R. 758). An I O U is *primâ facie* evidence of an account stated with the party to whom it is given, though his name is not on it (*Fesenmayer v. Adcock*, (1847) 16 M. & W. 449; 73 R. R. 567; see, however, *Lemere v. Elliott*, (1861) 6 H. & N. 656; 30 L. J. Ex. 350; 123 R. R. 755); an award made by an arbitrator is not (*Bates v. Townley*, (1848) 2 Ex. 152; 12 Jur. 606; 76 R. R. 544).

Bond.]—In an action on a simple money bond, execution of the bond is all that need be proved; where conditions are annexed, in addition to this a breach must be proved. Interest may be recovered from the day for payment (3 & 4 Will. IV. c. 42, s. 28).

The defendant may prove that he did not execute the bond; and in the case of a money bond, payment before or at the day appointed; or where there is a condition, performance; and in either case, satisfaction and discharge by deed after breach; that the bond was obtained by fraud, or is void by reason of illegality, or has been altered in a material point since execution. He may (having given the proper notice) (see *ante*, p. 90) rely on infancy, coverture, the Statute of Limitations, or discharge under the Bankruptcy Act.

Guaranty.]—A guaranty is a collateral engagement to answer for the debt, default or miscarriage of another person. It is required by the Statute of Frauds to be in writing. Unless made by deed it must have a valuable consideration to support it, though such consideration need not appear in the writing (19 & 20 Vict. c. 97, s. 3).

Award.]—In debt on an *award* the execution of the award, and also the submission of the parties, must be proved (*Brazier v. Jones*, (1828) 8 B. & C. 124).

Money-Lenders Acts, 1900 and 1927.—(See these Acts in full and notes thereto in Part V.). The statutory obligations on money-lenders, and the restrictions imposed on the carrying on of money-lending business, are now contained in the Money-Lenders Acts of 1900 and 1927 (63 & 64 Vict. c. 51 and 17 & 18 Geo. V. c. 21), which are to be construed together (sect. 19, sub-s. 2, Act of 1927).

The Money-Lenders Act of 1911 is repealed.

The leading requirements and effect of the present statutes may be shortly stated as follows:—

Any court in which proceedings are taken by a money-lender for the recovery of money lent, if satisfied that the transaction is harsh and unconscionable or otherwise such as a court of equity would give relief against, may, notwithstanding any settlement or account stated, reopen the transaction and give relief from payment of excessive interest or charges, and allow the money-lender only such sum as to the court may seem reasonable; and may set aside or alter any security given for the loan, or, if the money-lender has parted with his security, order him to indemnify the borrower (sect. 1, Act of 1900). If when proceedings are taken money is still payable under the contract, but not yet due, the court may determine the contract and order the outstanding money to be paid with such interest as the court thinks right (sect. 13, sub-s. 2, Act of 1927). See *Crossingham and Park*, (1927) 1 K. B. 330.

The same powers may be exercised at the suit of the borrower or surety or other person liable, and this though the time for repayment of the loan, or any instalment of it, has not yet arrived (*ibid.*).

Where the interest on the loan is found to exceed forty-eight per cent. per annum the court must presume that the interest is excessive and that the transaction is harsh and unconscionable unless the contrary is shown, but the court may find the transaction to be harsh and unconscionable even though the interest charged does not exceed forty-eight per cent. per annum (sect. 10, sub-s. 1, Act of 1927).

Every money-lender, before the 1st of January, 1928, must take out an excise licence, whether he carries on business alone or as a member of a firm in respect of every address at which he carries on business. Every such licence expires on the 31st of July in each year. The cost of the licence is £15, or £10 if taken out not more than six months before the expiration of the licence (sect. 1, sub-s. 1, Act of 1927).

(Ten pounds is charged for the first licence, which will expire on the 31st of July, 1928, whenever it is taken out; and, subject to rules, licences may be obtained after the 1st of October, 1927 (sect. 1 and sect. 19, sub-s. 5 (*a*), Act of 1927)).

The certificates are to be in the form the Commissioners of Customs and Excise may direct, and granted by such of their officers as they may authorise to grant them. They may also make regulations for the procedure to be followed on application (sect. 1, sub-s. 2, Act of 1927).

Before a licence can be obtained the money-lender must obtain a certificate from the magistrates in petty sessions at the place in which his business is to be carried on (in the Metropolitan Police District from a police magistrate) (sect. 2, sub-ss. 1, 2, Act of 1927). This certificate can be refused by the magistrates if satisfactory evidence is not produced of the good character of the applicant or the persons responsible for the management of the business, or if evidence is produced that he is not a fit and proper person to hold a certificate, or that he is disqualified by order of a court from holding a certificate, or has not complied with the rules necessary to obtain one.

There is, however, an appeal from the magistrates' refusal of a certificate to quarter sessions (sect. 2, sub-ss. 6, 7, Act of 1927). The licence must be taken out by the money-lender in his true name, and must also show his authorised name and authorised address, otherwise it is void.

The certificate must show the true name in every case, and if there is an authorised name, this must also appear on the certificate. It must authorise him to carry on business in one name and at one address, and must not include the word "Bank" or other words implying that he carries on banking business (sect. 2, sub-s. 3).

It can only authorise him to carry on business in his own name, or the name of a firm in which he is a partner not being a firm required by the Registration of Business Names Act, 1916, to be registered, or a business name, whether of an individual or firm in which he is a partner, and he or the firm has at the passing of the Act of 1927 been registered for not less than three years under the Act of 1900, and the Registration of Business Names Act, 1916 (sect. 2, sub-s. 3 (*a*), (*b*), (*c*), Act of 1927). These names are in the Act called "authorised names."

Serious penalties are imposed on a person who takes out his licence in any name but his own, or carries on money-lending without a licence or at

other than the places authorised, or does money-lending business in other than his authorised name (sect. 1, sub-s. 3 (b), Act of 1927).

A money-lender convicted of any offence under the Acts (or the Betting and Loans (Infants) Act, 1892) may by order of the court have his certificate cancelled or suspended, and may be declared disqualified for obtaining a certificate for such time as the court thinks fit. This penalty may also be inflicted on his partner or other person responsible for the management of the business (sect. 3, sub-s. 1 (a), Act of 1927).

Particulars of a conviction and of an order made for any offence under the Acts must be endorsed on every certificate affected by it, and sent to the authority who granted the certificate and to the Commissioners of Customs and Excise. The money-lender must produce his certificate for endorsement.

An appeal is permitted (sect. 3, sub-s. 1 (b), Act of 1927).

After the 1st of January, 1928, no money-lender may send or deliver to any one (except in response to his written request) any circular, or other document advertising his name, address or telephone number, or containing an invitation to deal with him or apply at any place for information or advice as to borrowing money from a money-lender. The same restriction is imposed with respect to advertising in newspapers or by means of posters or placards—subject to the proviso to sect. 5, sub-ss. 1, 2, which does not seem very clear. He is forbidden also to employ any agent or canvasser to obtain business for him, and no person henceforth may act as such agent or canvasser or take commission directly or indirectly for introducing a borrower to a money-lender. His documents, where they purport to show the terms of interest he requires, must show the rate per cent. per annum or the rate per cent. per annum at which the interest charged or proposed to be charged works out (sect. 5, sub-ss. 1, 2, 3, 4, Act of 1927).

A transaction induced by contravention of this section is illegal unless the money-lender shows it occurred without his consent or connivance (sect. 5, sub-s. 6, Act of 1927). A contravention of the provisions of this section is also a misdemeanor (*ibid.* sub-s. 5).

A note or memorandum of every contract made with a money-lender must be signed personally by the borrower and a copy given to him within seven days of making. Neither the contract nor security is enforceable if this is not done, or if the note or memorandum was not signed before the money was lent or security given (sect. 6, sub-s. 1, Act of 1927).

This note or memorandum must contain all the terms of the contract, the date when the loan was made and the rate of interest per cent. per annum, or the rate as calculated, in accordance with the First Schedule to the Act (sect. 6, sub-s. 2, Act of 1927).

Compound interest, or increased interest in default of due payment, is illegal, but the money-lender may in case of default charge simple interest, not exceeding the legal interest charged upon the loan (sect. 7, Act of 1927).

The money-lender, on demand in writing by the borrower and tender of one shilling, must give him a signed statement setting out all particulars of the loan and the present condition existing between them as set out in sect. 8, sub-s. 1, of Act of 1927, and must also, on a like request and tender of reasonable expenses give a copy of any document relating to the loan to the borrower or person he authorises to receive it. If, after demand, he neglects to do either of these things, he cannot, so long as the default

continues, sue for anything due under the contract, or charge any interest in respect of the period of default (sect. 8, sub-s. 3).

If the demand is made after the transaction is closed and the money-lender so refuses, he becomes subject to a fine (sect. 8, sub-ss. 1, 2, 3, Act of 1927).

For the purpose of proceedings under the Bankruptcy Act, 1914, including the presentation of a petition, the interest on the loan is to be calculated at five per cent. per annum only, but, after all the debts proved are paid in full, he may receive from the estate the legal interest reserved by the contract (sect. 9, sub-s. 1, Act of 1927). No proof of a debt is to be admitted unless the affidavit verifying the debt contains full particulars required by sect. 9, sub-s. 2, of Act of 1927.

The power of a court to reopen and deal with a contract as harsh and unconscionable under sect. 1, sub-s. 2, of the Act of 1900, may now be exercised at the instance of the trustee in bankruptcy of the borrower (sect. 10, sub-s. 4, Act of 1927).

Proceedings by a money-lender in respect of the loan or security can only be taken in the High Court or county court, unless by Order in Council His Majesty confers such jurisdiction on any other inferior court (sect. 11, Act of 1927).

No costs, charges, or expenses incidental to or relating to the granting of a loan can be made, and sums so paid are recoverable (sect. 12, Act of 1927).

Proceedings for money lent after the new Act or the enforcement of any agreement or security for the loan must, after the last payment becomes due, be commenced within twelve months from the date the cause of action arose, but the time may be extended for another year by an acknowledgment in writing signed by the debtor, acknowledging the amount due, and promising to pay it (sect. 13, Act of 1927).

An exception is made in the case of a person *non compos mentis*, or person beyond the seas (subject, in the last case, to sect. 11 of the Mercantile Law Amendment Act, 1856) (sect. 13, sub-s. 1 (e), (d), Act of 1927).

The new Act also contains provisions as to Pawnbrokers' Loans (see sect. 10, sub-s. 3, and sect. 14, Act of 1927).

In the Interpretation Section of the new Act "interest" does not include any sum lawfully charged in accordance with the Act on account of costs, charges or expenses (see, however, sect. 12 of the Act), but includes any amount, by whatever name called, in excess of the principal (sect. 15, sub-s. 1, Act of 1927), and where the interest is not expressed in terms of a rate all moneys paid (subject to the proviso to sect. 7) are to be appropriated to principal and interest in the proportion the principal bears to the total interest. The interest in such cases is calculated in accordance with the provisions of the First Schedule (sect. 15, sub-s. 2, Act of 1927).

Notice of assignment of a debt, agreement or security by the money-lender must be given before the assignment to the assignee, which notice must tell him that the debt, agreement or security is affected by the operation of the new Act, and the assignor must supply the assignee with the information necessary to enable him to comply with the requirements of the Act. Serious penalties in default are imposed (sect. 16, s.s. 1, Act of 1927).

The position of the assignees of a money-lender's debts, agreements or security are rather involved, and must be gathered from the provisions contained in sect. 17 of the Act of 1927.

The penalty for false, misleading or deceptive statement, representation or promise or concealment of material facts made by a money-lender, his agent or officer of a money-lending company is fine or imprisonment (sect. 4, Act of 1900).

Where in proceedings under sect. 2 of the Betting and Loans (Infants) Act, 1892, a prohibited document is in fact sent to an infant, the money-lender is deemed to have known it, and the onus is on him to show he had reasonable ground for believing such person was of full age (sect. 5, Act of 1900).

The Act of 1900 did not include pawnbrokers (sect. 6). Now to a limited extent pawnbrokers are included in the new Act (see sect. 10, sub-s. 3, and sect. 14).

The Acts do not include Friendly Societies, or any society registered or having rules certified under sects. 2 or 4 of the Friendly Societies Act, 1896, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or the Building Societies Acts, 1874 to 1894 (see sect. 6, Act of 1900).

They do not include a body corporate, which is incorporated or empowered by special Act of Parliament to lend money in accordance with the special Act, or a person *bonâ fide* carrying on banking or insurance, or a business not having as its primary object the lending of money, or a body corporate exempted by order of the Board of Trade made and published pursuant to regulations of the Board of Trade (sect. 6, Act of 1900).

The following cases were decided under the Act of 1900 :—

The Act does not apply to a contract for a loan made and intended to be performed abroad (*Shrichand v. Laron*, (1906) 22 T. L. R. 245).

Any court in which proceedings might be taken for the recovery of money lent by a money-lender may exercise the powers above mentioned (63 & 64 Vict. c. 51, s. 1, sub-s. 2), but a trustee in bankruptcy cannot reduce a proof tendered by a money-lender on the ground that the contract is "harsh and unconscionable," though now the jurisdiction may be exercised by the court at the instance of the trustee in bankruptcy (sect. 10, sub-s. 4, Act of 1927) (*Armstrong, In re* ; *B. Lipton, Ex parte*, (1926) 95 L. J. K. B. 184).

On the above section, it was decided in *Wilton v. Osborne*, (1901) 2 K. B. 110 ; 70 L. J. K. B. 507, that the words "or otherwise is such that a court of equity would give relief" were not exclusive of the words "harsh and unconscionable," and that in order to entitle the person sued to relief the transaction must be such as a court of equity would relieve against on the ground of its being harsh and unconscionable. This decision practically limited the effect of sect. 1, sub-s. 1 of the Act to cases where the debtor could theretofore have obtained relief in a court of equity (see *Nevill v. Snelling*, (1880) 15 Ch. Div. 679 ; 49 L. J. Ch. 777). But in the case of *In re A Debtor* (C. A.), (1903) 1 K. B. 705 ; 72 L. J. K. B. 382 ; and see *Poncione v. Higgins*, (1904) 21 T. L. R. 11, the Court of Appeal held that a transaction might be re-opened which was harsh and unconscionable, although not one in which a court of equity would have given relief before the Act, and *Wilton v. Osborne* was in terms overruled. Excessive interest, having regard to the risk or absence of risk, may of itself render a transaction harsh and unconscionable (*In re A Debtor, supra* ; *Saunders v. Newbold*, (1905) 1 Ch. 260 ; 74 L. J. Ch. 120 ; (H. L.), *sub nom. Samuel v. Newbold*, (1906) A. C. 461 ; 75 L. J. Ch. 705 ; *Wells v. Allott* (C. A.), (1904) 2 K. B. 842 ; 73 L. J. K. B. 1023 ; *Part v. Bond*, (1905) 94

L. T. 390). But a high rate of interest is not necessarily excessive (*Car-ringtons v. Smith*, (1906) 1 K. B. 79; 75 L. J. K. B. 49), but see now sect. 10, sub-s. 1 of Act of 1927, which suspends interest where interest exceeds forty-eight per cent. makes, *primâ facie*, the contract harsh and unconscionable.

It has been held at *nisi prius* that the transaction may be re-opened where it appears that, by reason of a term of the bargain understood by the money-lender but not explained to or understood by the borrower, the rate of interest is considerably increased beyond that contemplated by the borrower (*Levene v. Greenwood*, (1904) 20 T. L. R. 389).

An unregistered money-lender can maintain an action for damages for fraudulent misrepresentations whereby he was induced to advance money on loan (*Dott v. Brickwell*, (1906) 23 T. L. R. 61; and see *Lipton v. Powell*, (1921) 90 L. J. K. B. 366).

Post-dated cheques are a security for money within the meaning of sect. 2 (c), now sect. 1, sub-s. 3 (b), Act of 1927 of the Act (*Stirling v. John*, (1923) 1 K. B. 557; 92 L. J. K. B. 353).

The mere fact that the loan is actually completed at the borrowers office is not an infringement of sect. 2, sub-s. 1 (b), now sect. 1, sub-s. 3 (b), Act of 1927, which requires the business to be carried on at the money-lender's authorised address and at no other address (*King v. Massey*, (1908) 24 T. L. R. 710); it may be carried on through the post (*In re Seed, Ex parte King*, (1910), 1 K. B. 661; 79 L. J. K. B. 421; *Jackson v. Price*, (1910) 1 K. B. 143; 79 L. J. K. B. 130). It is not necessary that every stage and every incident of every piece of the money-lending business should be transaction at the registered office. The question is one of fact, not of law (*Kirwood v. Gadd*, (1910) A. C. 422; 79 L. J. K. B. 815; reversing *Gadd v. Provincial Union Bank*, (1909) 2 K. B. 353; 78 L. J. K. B. 815). See also *H. Bowen & Co. v. Samuels*, (1918) 34 T. L. R. 487. A breach of the provisions of sect. 2, sub-s. 1 (b), now sect. 1, sub-s. 3 (b), of Act of 1927, subjects the money-lender to the penalties set out in the section. A money-lender registered as trading with a partner who enters into a transaction in his own name alone cannot recover on the contract (see *Vorst v. Goldstein* and others, (1924) 93 L. J. K. B. 965. See now sect. 2, sub-s. 3 (b), Act of 1927. By the Money Lenders Act, 1911 (1 & 2 Geo. V. c. 38), notwithstanding anything in sect. 2 of the Money Lenders Act, 1900, any agreement with, or security taken by a money-lender shall be, and shall be deemed to have been, valid in favour of any *bonâ fide* assignee or holder for value without notice of any defect due to the operation of that section. This Act is now repealed. See as to position of assignees, sect. 17, Act of 1927.

The transactions settled by a previous action and judgment cannot be re-opened though the judgment was given by consent (*Cohen v. Jonesco*, (1926) 1 K. B. 120; reversed in Court of Appeal, but only on ground that an order had been made to re-open the transactions, and the master had taken his accounts before the trial of this action (see (1926) 95 L. J. K. B. 1; 95 L. J. K. B. 467).

Practice.]—The powers of the county court under sect. 1, sub-s. 1 of the Act may be exercised at any stage of the proceedings, whether notice has or has not been given by the defendant of his intention to ask the court to exercise its powers, subject, where no notice has been given, to such terms as to adjournment, furnishing particulars, costs and otherwise as may be just (*Order L. r. 33 (1)*). An application to the court under sect. 1, sub-s. 2

of the Act must be by action commenced by plaint and summons, but the county court has no jurisdiction if the loan exceeded £100 (*Crossingham v. Park*, (1927) 1 K. B. 330; 96 L. J. K. B. 1036). Particulars stating concisely the grounds on which the application is made, and the relief claimed, must be filed (Order L. r. 33 (2)). Such an action, if commenced in the High Court, may be remitted to the county court under sect. 1 of the County Courts Act, 1919, as it is an action of contract (*White v. Smith*, (1927) 96 L. J. K. B. 397).

Carriage of Goods.—Common Carrier.]—A common carrier, that is to say, one whose business is to carry the goods of all persons indiscriminately for hire, is under two obligations; first, he is bound to receive all goods of the class as to which he holds himself out as a carrier duly tendered to him and for which he has room (a); and secondly, he is responsible for the safe delivery of goods, loss by the act of God or the King's enemies alone excepted (*Morse v. Shue*, (1672) Ventr. 190, 238; notes to *Coggs v. Bernard*, (1704) 1 Sm. L. C. 191 (12th edit.); *Liver Alkali Co. v. Johnson*, (1872) L. R. 7 Ex. 267; 41 L. J. Ex. 110; 9 Ex. 338; 43 L. J. Ex. 216; *James Morrison & Co. v. Shaw, Savill and Albion Co.*, (1916) 85 L. J. K. B. 724; *London & North Western Rail. Co. v. Hudson & Sons*, (1920) A. C. 324; 89 L. J. K. B. 323). And owners of carrying ships, lightermen, and the like, though they may not hold themselves out to take the first goods that offer, and though they may not ply between any fixed termini, may incur the liability of common carriers unless such liability be excluded by contract (*Liver Alkali Co. v. Johnson*, *supra*; *Nugent v. Smith*, (1876) 1 C. P. D. 19, 423; 45 L. J. C. P. 19, 697; but see *Watkins v. Cottell*, (1916) 85 L. J. K. B. 287, where case of *Liver Alkali Co. v. Johnson* is considered); also the decision of Bailhache J. in *Belfast Ropework Co. Ltd. v. Bushell*, (1918) 1 K. B. 210; 87 L. J. K. B. 740). Railway companies are under no statutory obligation to be common carriers. Even where they have acted as common carriers they may, if they wish, cease to be so at any time (*Smith & Son v. London & North Western Rail. Co.*, (1919) 88 L. J. K. B. 742). *Quære* whether, notwithstanding certain expressions in the cases as to a person "incurring the liability of a common carrier," this liability can be incurred by any one who is not in fact a common carrier. If the damage in transit is due to the sender's negligence, as for example, if it occurs through the goods being improperly packed, the carrier is not liable. He may set this up as a defence though he received the goods, knowing the condition in which they were delivered to him (*Gould v. South Eastern & Chatham Rail. Co.*, (1920) 2 K. B. 186; 89 L. J. K. B. 700).

Other Carriers.]—In the case of carriers who do not fall within the description of common carriers, or of those who incur the liabilities of common carriers as first stated, the terms of the contract of carriage in each particular case must be looked to (*Scaife v. Farrant*, (1875) L. R. 10 Ex. 358; 44 L. J. Ex. 234). In the absence of special contract, the case will fall under the general rule as to a bailee for hire, who is bound to take reasonable care of the goods entrusted to him (*Coggs v. Bernard*, *supra*).

Special Contract.]—Apart from statutory enactment (see Railway and Canal Carriage Act, 1854), there was nothing to hinder any carrier, whether a common carrier or not, from limiting or regulating his liability by special agreement. In some respects, however, the common law liability of carriers has been limited, and their common law freedom of contract has been restrained by statute.

(a) See *Littleton Collieries v. L. & N. W. Rail. Co.*, (1916) 85 L. J. K. B. 1481.

As to special contract excluding liability save for non-delivery of any package or consignment, see *Wills v. Great Western Rail. Co.*, (1917) A. C. 148; 86 L. J. K. B. 641; *Grand Trunk Rail. of Canada v. Robinson*, (1915) A. C. 740; 84 L. J. P. C. 194; *Great Northern Rail. Co. v. L. E. L. Transport, Ltd.*, (1923) 92 L. J. K. B. 807).

Land Carriers Act.—By the Carriers Act (11 Geo. IV. & 1 Will. IV. c. 68), which applies to all common carriers by land, the carrier is not liable for the loss of, or injury to, gold or silver coin, English or foreign, gold or silver manufactured or unmanufactured, precious stones, jewellery, watches, clocks, or timepieces, trinkets, bills, bank notes, English, Scotch or Irish, orders, notes or securities for payment of money, English or foreign, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate, or plated articles, glass, china, silk, manufactured or unmanufactured and whether wrought up with other materials or not, furs or lace (by 28 & 29 Vict. c. 94, s. 1, machine-made lace is excluded from the Act), contained in any parcel or package (as to what is a parcel or package, see *Whaite v. L. & Y. Rail. Co.*, (1874) L. R. 9 Ex. 67; 43 L. J. Ex. 47), if the value of such articles exceeds 10*l.* (as to computation of value, see *Treadwin v. G. E. Rail. Co.*, (1868) L. R. 3 C. P. 308; 37 L. J. C. P. 83; *Henderson v. L. & N. W. Rail. Co.*, (1870) L. R. 5 Ex. 90; 39 L. J. Ex. 55), unless at the time of delivering such articles for carriage their value and nature has been declared, and the increased charge (which the carrier is authorised to make) paid, or an agreement to pay it accepted (11 Geo. IV. & 1 Will. IV. c. 68, s. 1), if demanded by the carrier (*G. N. Rail. Co. v. Behrens*, (1862) 7 H. & N. 950; 31 L. J. Ex. 299; *Doey v. L. & N. W. Rail. Co.*, (1919) 1 K. B. 623; 88 L. J. K. B. 737). The sender is bound to declare the value and nature of the enumerated goods, wherever the delivery be; otherwise he can in no case recover their value (*Hart v. Baxendale*, (1851) 6 Ex. 769; 21 L. J. Ex. 123; 86 R. R. 465). On the other hand, the carrier is bound to post up his rates of extra charge in the warehouse, office or receiving house where such goods are received and, if required, to give a receipt for the goods, acknowledging them to be insured. If he fail in either of these particulars, and proper notice of value and nature has been given, he is under the common law liabilities and must refund the extra charge (11 Geo. IV. & 1 Will. IV. c. 68, ss. 2, 3; *Hart v. Baxendale*, *supra*). The Act does not protect a carrier from liability for loss or injury to goods of any kind arising from the felonious acts of his servant (11 Geo. IV. & 1 Will. IV. s. 8; as to what is sufficient evidence of loss by the felony of the carrier's servant, see *Vaughton v. L. & N. W. Rail. Co.*, (1874) L. R. 9 Ex. 93; 43 L. J. Ex. 75; *M'Queen v. G. W. Rail. Co.*, (1875) L. R. 10 Q. B. 569; 44 L. J. Q. B. 130; *H. C. Smith, Ltd. v. Midland Railway*, (1919) 88 L. J. K. B. 868, distinguishing *M'Queen's Case*, *supra*). And the statute applies only to loss or injury, not to delay (*Hearn v. L. & S. W. Rail. Co.*, (1855) 10 Ex. 793; 24 L. J. Ex. 180; 102 R. R. 833).

Where goods are carried partly by land and partly by sea, this section is not available as a defence to the common carrier (*Aston & Co. v. London and North Western Rail. Co.*, (1920) A. C. 84; (1919) 88 L. J. H. L. 1157), unless the carrier can prove that the loss occurred on the land portion of the journey.

By the Railway and Canal Traffic Act, 1854, a railway or canal company is not liable for a horse to the extent of more than 50*l.*, neat cattle per head than 15*l.*, or a sheep or pig than 2*l.*, unless at the time of delivery a higher value be declared, in which case the company may by way of extra rate charge a reasonable percentage on the declared value. A table of rates

must be exhibited as under the Carriers Act. The proof of value lies on the owner (17 & 18 Vict. c. 31, s. 7).

The Land Carriers Act does not restrict the freedom of carriers generally to limit their common law liability by special contract (11 Geo. IV. & 1 Will. IV. c. 68, s. 6); though it provides that no mere general notice shall have that effect (*ibid.*, s. 4). But the Railway and Canal Act provides with respect to railway and canal companies not only that they cannot limit their liability by mere notice, but further that they can only do so by such conditions as the court or judge before whom the question arises shall deem reasonable; and those conditions to be operative must be embodied in a special contract in writing (*Peek v. N. Staff. Rail. Co.*, (1862) 10 H. L. C. 473; 32 L. J. Q. B. 241; 138 R. R. 250; *Doolan v. Mid. Rail. Co.*, (1877) 2 App. Cas. 792) signed by the other party to the contract or the person delivering the goods for carriage (17 & 18 Vict. c. 31, s. 7). As to conditions held reasonable, and generally, see *Peek v. N. Staff. Rail. Co.*, *supra*; *Lewis v. G. W. Rail. Co.* (C. A.) (1877) 3 Q. B. D. 195; 47 L. J. Q. B. 131; *M. S. & L. Rail. Co. v. Brown*, (1883) 8 App. Cas. 703; 53 L. J. Q. B. 124; *Western Electric Co. v. Great Eastern Rail. Co.*, (1914) 3 K. B. 554; 83 L. J. K. B. 1326; and *Gunyon v. South Eastern and Chatham Railway Committee*, (1915) 2 K. B. 370; 84 L. J. K. B. 1212; *H. C. Smith v. Great Western Rail. Co.*, (1921) 2 K. B. 237; 90 L. J. K. B. 644.

A special contract under this Act must be signed, but need not be contained in one writing. It may be signed by a printed signature appearing on the contract (*Charles Wade & Co. v. London and North Western Rail. Co.*, (1921) 90 L. J. K. B. 593).

Such a special contract does not exempt the railway company from liability where the goods are intentionally diverted from the named route, and sent to a wrong destination (*Neilson v. L. & N. Western Rail. Co.*, House of Lords, (1922) 2 A. C. 263; 91 L. J. K. B. 680; see also *Smith (H. & C.) v. Great Western Rail. Co.*, (1922) 1 A. C. 178; 91 L. J. K. B. 423).

The plaintiff in an action against a carrier must prove the contract of carriage, either express or implied from circumstances, as from the delivery of the goods for carriage. He must show also that he is the right person to sue, that is to say, the person on whose account the contract was made, or for the purpose of establishing a wrong independent of contract, that the goods are his property (*Marshall v. York Rail. Co.*, (1851) 11 C. B. 655; 21 L. J. C. P. 34; 87 R. R. 742). In the case of goods sold and despatched to the buyer by carrier, if the property passes to the buyer before or by the delivery, he is in general the person to sue (*Dutton v. Solomonson*, (1803) 3 B. & P. 582, 584; 7 R. R. 883; *Dawes v. Peck*, (1799) 8 T. R. 330; 4 R. R. 675; *Brown v. Hodgson*, (1809) 2 Camp. 36); while if the property remains in the seller he must sue (*Sargent v. Morris*, (1820) 3 B. & Ald. 277; 22 R. R. 382; *Coats v. Chaplin*, (1842) 3 Q. B. 483; 11 L. J. Q. B. 315; 61 R. R. 267; *Coombs v. B. & E. Rail. Co.*, (1858) 3 H. & N. 1, 510; 27 L. J. Ex. 401; 117 R. R. 828). The plaintiff must further prove the breach, by loss, injury or delay, or as the case may be. Where the carrier against instructions delivers goods to the consignee which have not been paid for, the consignor, if he elects to treat the delivery to the consignee as a valid delivery, cannot sue the carrier afterwards for his default (*Verschures Creameries, Ltd. v. Hull and Netherlands Steamship Co.*, (1922) 91 L. J. K. B. 39). As to general lien on goods for freight see *United States*

Steel Products Co. v. Great Western Rail. Co., (1916) A. C. 189; 85 L. J. K. B. 1.

Personal Luggage.—Generally such personal luggage as accompanies a passenger carried by a common carrier is carried at the carrier's risk. In other words he is an insurer of it if he assumes control of it or allows the passenger to place it in a particular place in the train and the passenger is not guilty of negligence leading to its loss. See *Great Western Rail. Co. v. Bunch*, (1888) 13 App. Cas. 31; 57 L. J. Q. B. 361; *Vosper v. Great Western Rail. Co.*, (1928) 1 K. B. 340; 97 L. J. K. B. 51. As to what is personal luggage, see *Macrow v. Great Western Rail. Co.*, (1871) L. R. 6 Q. B. 612; *Phelps v. London & North Western Rail. Co.*, (1865) 19 C. B. (N. S.) 321; *Jenkins v. Southampton, &c., Steam Packet Co., Ltd.*, (1919) 2 K. B. 135; 88 L. J. K. B. 965.

The defendant may disprove any of the matters alleged by the plaintiff or take advantage of the Carriers Act already referred to, if the facts bring him within its protection.

The damages in an action against a carrier are ordinarily limited to such as are the natural and ordinary consequences of his default; exceptional damages arising from special circumstances are not recoverable (*Hadley v. Baxendale*, (1854) 9 Ex. 341; 23 L. J. Ex. 179; 96 R. R. 742; *British Columbia Co. v. Nettleship*, (1868) L. R. 3 C. P. 499; 47 L. J. C. P. 235; *Horne v. Mid. Rail. Co.*, (1873) L. R. 7 C. P. 583; 41 L. J. C. P. 264; 8 C. P. 131; 42 L. J. C. P. 59). Even if the carrier has notice of the special circumstances from which peculiar damage is likely to arise, the better opinion seems to be that that will not increase his liability unless the circumstances show that he undertook to bear the exceptional risk (*British Columbia Co. v. Nettleship*; *Horne v. Mid. Rail. Co.*, *supra*).

Bailment.—Where special condition exempts the bailee from liability for negligence (see *Rutter v. Palmer*, (1922) 91 L. J. K. B. 657; *Pennington v. Reliance Motor Works*, (1923) 1 K. B. 127; 92 L. J. K. B. 202), where lien on bailment is lost by bailee making sub-contract for the work without authority.

Carriage of Passengers.—Carriers of passengers are not insurers. A carrier of passengers is only bound to exercise due care, skill and foresight for the safe carriage of those whom he undertakes to carry; and therefore it follows that in order to recover, a passenger who complains must prove negligence. Thus, if a railway accident happen from a defect in a carriage and a passenger is injured, the company are liable or not according as the defect is or is not one which they might and ought to have detected (*Readhead v. Mid. Rail. Co.*, (1869) L. R. 2 Q. B. 412; 4 Q. B. 379). It is the same thing if the complaint be of the state of a station or the conduct of the company's servants, alleged to have caused an accident, or of delay in the arrival of a train (*Bridges v. North London Rail. Co.*, (1874) L. R. 7 H. L. 213; 43 L. J. Q. B. 151). In case of injury through negligence, a passenger may sue for damages, though his ticket was taken for him by another person, as where a master takes tickets for himself and his servant (see *Longmeid v. Holliday*, (1851) 6 Ex. 761, 767; 20 L. J. Ex. 430; 86 R. R. 459, *per Parke, B.*; and *Marshall v. York Rail. Co.*, *supra*).

The defendant may disprove negligence on his own part, or prove contributory negligence on the part of the plaintiff; that is to say, such negligence that without it the accident would not have occurred, or that he has contracted with plaintiff that he shall not be responsible for negligence. See *Cook v. T. Wilson, Sons & Co., Ltd.*, (1916) 35 L. J. K. B.

388; *Richardson, Spence & Co. v. Rowntree*, (1894) 63 L. J. Q. B. 283; (1894) A. C. 217; *Stephen v. International Sleeping Car Co.*, (1903) 19 T. L. R. 621; *Hood v. Anchor Line, Ltd.*, (1918) 87 L. J. P. C. (H. L.) 156; *Machen v. Lancashire & Yorkshire Rail. Co.*, (1919) 88 L. J. K. B. 371.

Innkeeper.—An innkeeper was, at common law, liable for the loss of any goods of his guest in the inn, unless the loss arose from the act of God or the King's enemies, or was caused by the negligence of the guest himself (*Calye's Case*, (1584) 8 Co. 32; 1 Sm. L. C. (12th edit.), and cases collected in notes thereto); that is to say, by the neglect by his guest of such precautions as a man of ordinary prudence would take, but for which neglect the loss would not have occurred (*Calye's Case*, *supra*; *Oppenheim v. White Lion Hotel Co.*, (1871) L. R. 6 C. P. 515; 40 L. J. C. P. 231).

By 26 & 27 Vict. c. 41, s. 1, an innkeeper is no longer liable for the loss of or injury to his guests' goods, other than horses or other live animals, or gear appertaining thereto, or carriages, to a greater amount than 30*l.*, unless either the goods have been stolen, lost or injured through the wilful act, default or neglect of the innkeeper or his servants, or the goods have been expressly deposited with him for safe custody. He cannot refuse to accept the custody of goods; but he may require them to be deposited in a proper box or receptacle and sealed up. A copy of sect. 1 must be exhibited in a conspicuous part of the hall (sect. 3).

As to liability for the condition of the premises, see *Maclean v. Segar*, (1917) 2 K. B. 325; 86 L. J. K. B. 1113.

The innkeeper has a lien for his charges upon all goods brought by a guest, as such, to the inn (*Calye's Case*, *supra*; *Threfall v. Borwick*, (1875) 10 Q. B. 210; 44 L. J. Q. B. 87).

Landlord and Tenant.—Rent.—In an action for rent the plaintiff must prove the terms of the tenancy and that the rent sued for is in arrear. He must show that he is the person entitled to sue for it, that is to say, under ordinary circumstances, either that he is the original lessor of that he has become the assignee of the reversion. By section 98 of the Law of Property Act, 1925, a mortgagor in possession, or in receipt of the rents of the mortgaged estates, may sue for arrears of rent in his own name (see *Fairclough v. Marshall* (C. A.), (1878) 4 Ex. D. 37; 48 L. J. Ex. 146). The plaintiff must further prove that the defendant is the person liable to be sued for the rent, that is to say, that he is the original tenant or the assignee of the term.

Notice to Quit.—The defendant may also prove that no proper notice to quit, where notice is required, was given him. The notice required depends upon the agreement between the parties. There is no objection in law to a tenancy from year to year in which the provisions as to notice are different on either side (*Gray v. Spyer*, (1922) 91 L. J. Ch. 98). If there is no agreement, and the tenancy is a tenancy from year to year, then a half-year's notice is required to expire at the time the tenancy commenced. A tenant who holds over after the expiration of a lease or holding is generally considered as holding from year to year, but such yearly tenancy does not necessarily begin at the same time of the year as the original term (*Croft v. William F. Blay*, (1919) 2 Ch. 343). A notice to quit a part of a holding is invalid. Two purchasers of parts of a holding each gave notice at different dates to the tenant to quit the part purchased by him. Held, the notices were bad (*Bebbington's Tenancy, In re Bebbington v. Wildman*, (1921) 90 L. J. K. B. 269).

Notice to determine a tenancy must be definite and reasonably certain.

May v Borup, (1915) 1 K. B. 830; 84 L. J. K. B. 823; *Phipps & Co. v. Rogers*, (1924) 93 L. J. K. B. 1009; (1925) 1 K. B. 14, where *May v. Borup* (*supra*) is doubted.

"Month" used in a legal notice to quit in the absence of anything to show the contrary means lunar month (*Phipps & Co. v. Rogers, supra*).

To determine a monthly tenancy reasonable notice must be given. If this is done the notice is not bad because it expires on a day other than the last day of a month calculated from the commencement of the tenancy. Probably the same principle applies to a weekly tenancy (*Simmons v. Crossley*, (1922) 2 K. B. 95; 91 L. J. K. B. 643). But see the case of *Queen's Club Garden Estates, Ltd. v. Bignell*, (1924) 1 K. B. 117; 93 L. J. K. B. 107, where *Simmons v. Crossley* was disapproved of and not followed, and which decided that to determine a weekly tenancy a week's notice must be given to expire on the last day of a week calculated from the day of the commencement of the tenancy.

(*Note*.—Both these decisions were given by divisional courts. At present it is difficult to say which should be regarded as correct.) See also *Precious v. Reedie*, (1924) 2 K. B. 149; 93 L. J. K. B. 800, where Bailhache and Sankey, JJ., followed the decision in *Queen's Club Garden Estates, Ltd. v. Bignell* (*supra*), and see now the latest decision (*Newman v. Slade*, (1926) 2 K. B. 328; 95 L. J. K. B. 894).

If after the expiration of notice to quit the landlord accepts rent, this is a waiver of the notice, and another notice to expire at the proper time must be given. This is so though the landlord accepts the rent tendered not as rent, but as mesne profits (*Hartell v. Blackler*, (1920) 2 K. B. 161; *Gray v. Spyer*, (1922) 91 L. J. K. B. 512); see, however, Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 16 (3), Emergency Legislation, Part VI.

If a tenant who has taken premises for his own occupation is prevented, as by law, from occupying them, this is no defence to an action for the reserved rent, unless personal residence was the foundation of the contract (*London and Northern Estates Co. v. Schlesinger*, (1916) 1 K. B. 22).

If the tenant enters into possession of premises, and his entry and continuance is clearly referable to an unsigned lease, this takes the case out of the Statute of Frauds, although the entry was before the making of the lease (*Biss v. Hygate*, (1918) 87 L. J. K. B. 1101).

Defence.—The defendant may deny the tenancy or dispute its terms, or that the rent is in arrear. He cannot deny his landlord's title to grant the lease under which he has held (*Cooke v. Loxley*, (1792) 5 T. R. 4; *Delaney v. Fox*, (1857) 2 C. B. N. S. 768; 26 L. J. C. P. 248; 107 R. R. 614). And see Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. V. c. 17), s. 5.

Use and Occupation.—If there be no express agreement as to the terms of holding, but the defendant has occupied the premises with the assent of the plaintiff, the latter may recover in respect of the use and occupation of the premises for so long a time as the defendant has actually occupied them.

Mesne Profits.—Should the defendant have been in occupation of the plaintiff's land as a mere wrongdoer, the plaintiff may recover the value of that occupation under the title of mesne profits.

In the case of leases for terms of years, express provisions are almost invariably inserted determining the liability to keep the premises in repair. A covenant by a tenant to keep a house in tenantable repair imposes upon him the duty of first putting it in repair if it be out of it (*Payne v. Haine*, (1847) 16 L. J. Ex. 130); but not if the landlord has

contracted to do this (*Henman v. Berlinger*, (1918) 87 L. J. K. B. 984). But in construing such a covenant, and ascertaining the extent of the obligation which it imposes, the age, character, and locality of the premises must be taken into account (*Proudfoot v. Hart* (C. A.), (1890) 25 Q. B. D. 42; 59 L. J. Q. B. 389; *Morgan v. Hardy*, (1887) 18 Q. B. D. 646; 56 L. J. K. B. 363; *Calthorpe v. McOscar*, (1924) 93 L. J. K. B. 273). The rule laid down in *Proudfoot v. Hart* (*supra*), as to the extent of a lessee's liability to keep in good and tenantable repair, applies also to a life tenant under a settlement (*Evans v. Shotten*, (1918) 87 L. J. Ch. 527). Where there is an express agreement to repair, it is no answer to an action for not repairing that the premises have been destroyed by accidental fire; the tenant is in such a case bound to rebuild (*Bullock v. Dommitt*, (1796) 6 T. R. 650).

Assigning or Under-letting.—A covenant not to assign or under-let the premises without the landlord's consent is broken if the tenant, having let part of the premises with such consent, lets the remainder of the premises without consent (*Chatterton v. Terrell* (1923) A. C. 578; 92 L. J. Ch. 605). See also *Russell v. Beecham*, (1924) 1 K. B. 525; 93 L. J. K. B. 441; *Roberts v. Enlayde, Ltd.*, (1924) 1 K. B. 335; 93 L. J. K. B. 593; *Chaplin v. Smith*, (1926) 95 L. J. K. B. 449. Where there has been a breach of such a covenant the landlord must apparently serve notice of the breach under Sect. 146 (1) of the Law of Property Act, 1925, before enforcing the forfeiture, unless the breach occurred before Jan. 1st, 1926. See Sect. 146 (8) of the Law of Property Act, 1925, and *Abrahams v. Mac Fisheries, Ltd.*, (1925) 2 K. B. 18; 94 L. J. K. B. 562. As to what is an unreasonable refusal, where consent to an assignment is not to be unreasonably refused by the landlord, see *Houlder Bros. v. Gibbs*, (1925) 1 Ch. 198, 94 L. J. Ch. 312.

Repairs.—A tenant from year to year, or for any shorter term, is not, in the absence of special agreement, bound to do substantial repairs. His only obligation is, probably, to keep the demised premises wind and water tight, to abstain from voluntary waste, that is to say, from doing actual injury to the premises, and make good damage done by himself, such as broken windows and the like (*Anworh v. Johnson*, (1832) 5 C. & P. 239; 38 R. R. 821; *Leach v. Thomas*, (1797) 7 C. & P. 327; 48 R. R. 790; *Ferguson v. —*, (1797) 2 Esq. 590; 5 R. R. 757), but if he alters the character of the premises, this is voluntary waste, for which he continues responsible (*Marsden v. Edward Heyes*, (1927) 96 L. J. K. B. 410; 2 K. B. 1).

In the absence of express agreement a landlord is under no obligation to repair the demised premises, whatever the nature of the tenancy be (*Gott v. Gandy*, (1853) 2 E. & B. 845; 23 L. J. Q. B. 1; 95 R. R. 848), but where he lets a part of premises, e.g., an unfurnished flat, but retains control of the roof of the building, he is under an obligation to keep the roof in repair, and is liable to the tenant in damages if the flat is not reasonably habitable by reason of such non-repair (*Hart v. Rogers*, (1916) 85 L. J. K. B. 272). See now, however, *Cockburn v. Smith*, (1924) 2 K. B. 119; 93 L. J. K. B. 764; *Farman v. Perpetual Investment Building Society*, (1922) A. C. 74; 92 L. J. K. B. 50. But unless in the case of a concealed trap not to the wife or family of the tenant who may suffer bodily injury in consequence of the want of repair (*Cavalier v. Pope*, (1906) A. C. 428; *Groves v. Western Mansions, Ltd.*, (1916) 33 T. L. R. 76; *Ryall v. Kidwell & Son*, (1913) 3 K. B. 123; 82 L. J. K. B. 877). If he lets his building to separate tenants and retains the staircase, the common means of access, he owes the tenants a duty to keep it in a reasonably safe condition, not

an absolute duty, but a higher duty than merely protecting the tenants from a concealed trap (*Dunster v. Hollis*, (1919) 88 L. J. K. B. 331). Such damages cannot, however, be set off against a claim for rent (*Hart v. Rogers, supra*).

Where the landlord does enter into an express agreement to repair, he is entitled to notice by the tenant of any want of repair before he can be liable to make it good (*Makin v. Walkinson*, (1870) L. R. 6 Ex. 25; *L. & S. W. Rail. Co. v. Flower*, (1875) 1 C. P. D. 77; 40 L. J. Ex. 33). But this is not so where he demises only a portion of the premises and retains in his own control that portion, the defective condition of which occasions the damage complained of (*Melles & Co. v. Holme*, (1918) 2 K. B. 100; *Suteliffe v. Clients Investment Co.*, (1924) 2 K. B. 746; 94 L. J. K. B. 113), or where the condition of the premises, to wit, an open sea wall, is apparent to the landlord, and the necessity to give notice of the condition thus becomes unnecessary (*Murphy and others v. Hurley*, (1922) 1 A. C. 369; 91 L. J. (H. L.) 116). See also *Morgan v. Liverpool Corporation*, (1927) 96 L. J. K. B. 234.

There is no implied warranty by the landlord on the letting of an unfurnished house that it is fit for habitation (*Hart v. Windsor*, (1843) 12 M. & W. 68; 13 L. J. Ex. 129; 67 R. R. 266; *Stanton v. Southwick*, (1920) 89 L. J. K. B. 1066), unless it is a house or part of a house let for the habitation coming within sect. 1 of the Housing Act, 1925, 15 Geo. V. c. 14; see *Walker v. Hobbs*, (1889) 23 Q. B. D. 458; 59 L. J. Q. B. 93. On a letting of furnished apartments and furnished houses there is an implied warranty that they are fit for residential purposes (*Smith v. Marrable*, (1843) 11 M. & W. 5; 12 L. J. Ex. 223; 63 R. R. 493; *Wilson v. Finch Hatton*, (1877) 2 Ex. D. 336; 46 L. J. Ex. 489; *Manchester Co. v. Carr*, (1880) 5 C. P. D. 507; 49 L. J. C. P. 809; *Collins v. Hopkins*, (1923) 2 K. B. 617; 92 L. J. K. B. 820.

An action of debt for *double value* lies, under 4 Geo. II. c. 28, against a tenant who wilfully holds over after the determination of his term, and after a written demand of possession. The plaintiff must prove the demise or tenancy, the determination of the term, the holding over, the demand and notice in writing, and the value; the defendant may show that the plaintiff has waived the demand and notice. Double value does not lie against a weekly tenant (*Lloyd v. Rosbee*, (1810) 2 Camp. 453; 11 R. R. 764).

Nearly the same remarks apply to debt for *double rent*, under the 11 Geo. II. c. 19, s. 18, under which a tenant who has given notice of his intention to quit and holds over after the expiration of the notice is liable to double rent. There, however, the notice need not be in writing (*Timmings v. Rowlinson*, (1765) 3 Burr. 1603). The statute only applies where the tenant may determine his tenancy by notice, and has properly done so (*Johnstone v. Huddestone*, (1825) 4 B. & C. 922; 4 L. J. K. B. 71; 28 R. R. 505).

Where on expiration of a lease for a term of years the tenant holds over, it is a question of fact in each case whether the tenant holds upon the terms of the original lease (see *Wedd v. Porter*, (1916) 2 K. B. 91, 85 L. J. K. B. 1298).

Though the right to enforce covenants goes with the reversionary estate though severed, this is not so in the case of an expired lease, where by agreement the tenant holds over on an oral agreement as yearly tenant, on the terms of the lease so far as they are applicable to such a holding (*Blane v. Francis*, (1917) 86 L. J. K. B. 364).

Where tenant holds over with landlord's consent, express or implied, a new tenancy is created. Whether a tenant who holds over on the expiration of a term created by a lease, does so on the terms of the

expired lease, is a question of fact (*Wedd v. Porter, supra*). See also notes to sect. 138 of County Courts Act, 1888, *ante*.

Fixtures.—The word “fixtures” means something which is affixed to the premises after the structure of the house is completed. It does not include things which form part of the original structure (*Boswell v. Crucible Steel Co.*, (1925) 1 K. B. 119.).

Wrongful Distress.—If a landlord distrains for rent and sells, *no* rent being in arrear or due, the proper remedy is by action under 2 Wm. & M. sess. 1, c. 5, s. 5, for double the value of the things distrained. If *some* rent is due, and the landlord makes an excessive seizure, an action will lie under the Statute of Marlbridge (52 Hen. III. c. 4), whether a tender has or has not been made by the tenant of the sum really due (*Smith v. Ashforth*, (1860) 29 L. J. Ex. 259; 121 R. R. 889; *Bail v. Mellor*, (1850) 19 L. J. Ex. 279; *Loring v. Warburton*, (1858) E. B. & E. 507; 28 L. J. Q. B. 31; 113 R. R. 750; *Fell v. Whitaker*, (1871) L. R. 7 Q. B. 120; 41 L. J. Q. B. 78); or after tender, he may proceed by action of replevin (*Glynn v. Thomas*, (1856) 11 Ex. 870; 25 L. J. Ex. 125; 105 R. R. 836; *Gulliver v. Cosens*, (1845) 1 C. B. 788; 14 L. J. C. P. 215; 68 R. R. 816), or for trespass or conversion. The taking of an excessive distress is in itself unlawful (*Bail v. Mellor, supra, per Parke, B.*; *Fell v. Whitaker, per Lush, J.*, (1871) L. R. 7 Q. B. 125; 41 L. J. Q. B. 78); and if the tenant pays money to get rid of the excessive distress (having first tendered the amount due) he may recover the excess, together with damages for the excessive seizure (*Johnson v. Upham*, (1859) 2 El. & El. 250; 28 L. J. Q. B. 252; 119 R. R. 706; *Fell v. Whitaker, supra*). The same principles apply where the seizure is not excessive; the tenant may at any time tender the amount due, with costs, and on the landlord's refusal to accept it he becomes a trespasser, and an action of trespass or replevin will lie against him. Formerly the landlord had a right to refuse payment after impounding, and to proceed to a sale, but since 2 Wm. & M. sess. 1, c. 5, s. 2, and 11 Geo. II. c. 19, a sale after tender is illegal (*Johnson v. Upham, supra*).

The mere claim of more rent than is due is not *per se* actionable, and, unless followed by an excessive seizure, no action lies (*Tancred v. Leyland*, (1851) 16 Q. B. 669; 20 L. J. Q. B. 316; 83 R. R. 663; *French v. Phillips*, (1856) 1 H. & N. 564; 26 L. J. Ex. 82); and if the tenant pays the amount claimed, although excessive, before any seizure, or even after a seizure which is not excessive, without making a tender of the amount really due, he cannot recover the excess (*Glynn v. Thomas, supra*).

Illegal Distress.—The distress is illegal if entry is made in an illegal manner, as by breaking open a door or window (see *The Six Carpenters' Case*, (1611) 8 Co. 146a; 1 Sm. L. C. (12th edit.)), and in this case the damages recoverable are the whole value of the goods seized without any allowance in respect of the rent in arrear (*Attack v. Bramwell*, (1863) 3 B. & S. 520; 32 L. J. Q. B. 146; 129 R. R. 440). Breaking open the outer door makes the proceedings a trespass *ab initio* and wholly void, and the landlord may put in a subsequent distress for the same rent (*Grunnell v. Welch*, (1906) 2 K. B. 555; 75 L. J. K. B. 657). So, if privileged goods or things not distrainable be taken, their value is recoverable (*Harvey v. Pocock*, (1843) 11 M. & W. 740; 12 L. J. Ex. 434; 63 R. R. 741; *Keen v. Priest*, (1859) 4 H. & N. 236; 28 L. J. Ex. 157; 118 R. R. 406). An action for illegal distress lies against a bailiff under sect. 2 of the Law of Distress Amendment Act, 1908 (*Lowe v. Dorling*, (1906) 2 K. B. 772; 75 L. J. K. B. 1019, decided under the Lodgers' Goods Protection Act, 1871). All goods and

chattels of a tenant or his family which would be privileged from seizure under an execution from a county court are privileged from distress (51 & 52 Vict. c. 21, s. 4). As to onus of proof, see *Cousky v. Darrell*, (1918) 87 L. J. K. B. 836. Chattels which are the property of the Crown are not distrainable for the rent of a subject (*Secretary for War v. Wynne*, (1905) 2 K. B. 845; 75 L. J. K. B. 25).

By the Law of Distress Amendment Act, 1908 (8 Edw. VII. c. 53), the goods of most undertenants or lodgers, or those of any other person other than the tenant of or beneficially interested in the premises, are, subject to the owner of such goods complying with certain conditions, protected from seizure by the superior landlord (sect. 1). See this Act, Part V.

This Act does not protect the goods comprised in any bill of sale or hire purchase agreement (sect. 4).

Irregular Distress.]—The statutes which regulate the sale by landlords of goods distrained impose certain restrictions upon the right of sale (2 Wm. & M. sess. 1, c. 5, s. 2; 51 & 52 Vict. c. 21), the breach of any one of which is an irregularity, which entitles the tenant to maintain an action if he can prove special damage by reason of the irregularity, but not otherwise (*Rodgers v. Parker*, (1856) 18 C. B. 112; 25 L. J. C. P. 220; 107 R. R. 230; *Lucas v. Tarleton*, (1858) 3 H. & N. 116; 27 L. J. Ex. 246; 117 R. R. 619; and *Jay's Furnishing Co. v. Brand & Co.*, (1915) 1 K. B. 458; 84 L. J. K. B. 867). The landlord upon making the distress must leave a written notice of it, and of the cause of it, upon the premises. He must then wait five days or fifteen if requested (51 & 52 Vict. c. 21, s. 6), to give the tenant time to replevy, if he desire to do so. He must also, if requested, but not otherwise (51 & 52 Vict. c. 21, s. 5), cause the goods to be appraised. He is then at liberty to sell, but only for the best price that can be got, and he must leave the overplus, after satisfying the rent and charges, in the hands of the sheriff, under-sheriff or constable for the owner. If requested, the sale must be at a public auction-room (51 & 52 Vict. c. 21, s. 5).

If a landlord authorises an illegal distress, or actually authorises any other unlawful act of the broker distraining, he is liable to the same extent as if he had acted in person; and having authorised the distress he is responsible for any irregularity on the part of his bailiff in the conduct of it (*Haseler v. Lemoyne*, (1858) 5 C. B. N. S. 530; 28 L. J. C. P. 103; 116 R. R. 753). But he is not liable for wholly unlawful acts of the bailiff, committed without his authority, such as distraining upon the wrong premises or seizing fixtures.

Under the Law of Distress Amendment Acts every bailiff employed to distrain must be specially certificated by the county court judge as required by the Act, and the costs of distress are limited. The Act and the rules made under it will be found in Part V.

Where goods distrained for rent have been impounded on the premises under 11 Geo. II. c. 19, s. 10, it is not requisite that anyone should be left in possession (*Jones v. Biernstein*, (1900) 1 Q. B. 100; 69 L. J. Q. B. 1).

A landlord cannot become the purchaser of goods sold by him under a distress (*Moore, Nettlefold & Co. v. Singer Manufacturing Co.*, (C. A.), (1904) 1 K. B. 820; 73 L. J. K. B. 457).

Recovery of Premises.]—A landlord may sue in the county court for the recovery of his premises when the term has expired or been determined by notice to quit on either side and the rent or value of the premises does not exceed 100*l.* a year (see sect. 138 of County Courts Act, 1888). He may also under sect. 139 recover the premises, if the rent or value thereof

does not exceed 100*l.* a year, when the rent for one half-year is in arrear, and the landlord has a right to re-enter for the non-payment of the same. Indeed, all actions of ejectment when the value or rent of the property does not exceed 100*l.* a year, can be brought in the county court of the district in which the premises are situated, subject to the possibility of such an action being removed into the High Court (sect. 59).

A landlord cannot retake his land by force. This is forbidden, and made an indictable offence under an old statute of Richard II., but no action for damages can be maintained in respect of even a forcible entry (see *Hemmings and Wife v. Stoke Poges Golf Club*, (1920) 1 K. B. 720 ; 89 L. J. K. B. 744). See now Increase of Rent and Mortgage Interest (Restrictions) Act 1923 (Emergency Legislation), s. 4 (6).

Statute of Limitations.—The whole law on the subject of what is a sufficient acknowledgment of a simple contract debt to take it out of the Statute of Limitations is contained in the judgments delivered in the House of Lords in the case of *Spencer v. Hemmerde*, (1922) 2 A. C. 507 ; 91 L. J. K. B. 941.

Injuries to the Person.—Assault.—An action lies for an assault, or any other direct personal injury committed by the defendant on the plaintiff, as false imprisonment or obstruction of his personal liberty (*Bird v. Jones*, (1845) 7 Q. B. 742 ; 15 L. J. Q. B. 82 ; 68 R. R. 564). Further, if a person utters false words to another person, knowing that they are calculated to cause physical injury to such other person, and they do cause physical injury, an action lies (*Janvier v. Sweeney and Barker*, (1919) 2 K. B. 316 ; 88 L. J. K. B. 1231). The plaintiff must prove the commission of the acts complained of by the defendant, and if he claims substantial damages, the damage resulting therefrom. He may recover not only for the damage that has actually occurred, but for such as probably will be the immediate result of the wrongful act (*Hodsoll v. Stallebrass*, (1840) 11 A. & E. 301 ; 9 L. J. Q. B. 132 ; 52 R. R. 350 ; *Nicklin v. Williams*, (1854) 10 Ex. 259 ; 23 L. J. Ex. 335).

The defendant may show that the act complained of was done under process or authority of law. In assault he may prove that the plaintiff assaulted him first, and that he, the defendant, only acted in self-defence, or that he acted in defence of his possession of a house or goods. He may also show that the damage sustained by the plaintiff is not as great as he alleges.

If the defendant relies on self-defence, the plaintiff may show in reply that the violence used was excessive, and more than the occasion would justify.

Negligence.—An action lies also for negligence of the defendant or his servants, by which the plaintiff or his property is injured, as by the negligent driving of a carriage or sailing of a ship ; so, if the plaintiff were a passenger in a public carriage, although the injury in part arose from the unskilful management of the carriage in which he was (*Rigby v. Hewitt*, (1850) 5 Ex. 240 ; 19 L. J. Ex. 291 ; 82 R. R. 652). One of the most common causes of action in the present day is founded upon the neglect of the duty to use reasonable care in the driving and management of motor vehicles. Personal injury, or injury to property occasioned by failure of this duty is actionable, but the onus is upon the plaintiff to prove negligence. The Motor Cars (Use and Construction) Order, 1904, Art. II., r. 6, provides that : " the motor car and all the fittings thereof shall be in such a condition as not to cause or to be likely to cause danger to any person on the motor car or on any highway."

Though a penalty may be imposed for a breach of this regulation, it does not give a cause of action where negligence cannot be shown (*Phillips v. Britannia Hygienic Laundry Co.*, (1923) 2 K. B. 832; (1924) 93 L. J. K. B. 5). If the owner of a vehicle has relinquished the duty of driving it to a friend, but being present in the vehicle has not relinquished his control of it, he may be held responsible for the negligence of the driver (*Pratt v. Patrick*, (1924) 1 K. B. 488). Negligence means the omission to use such care and such precautions as a man of ordinary prudence might be expected to use for the protection of others (*Blyth v. Bham. Waterworks*, (1856) 11 Ex. 781; 25 L. J. Ex. 212; 105 R. R. 791). Whether there has in each case been negligence in this sense must always be a question of fact depending upon the particular circumstances of the case. The plaintiff cannot recover if he has been guilty of contributory negligence without which the injury would not have happened, and which substantially was the cause of the accident. See *Brandon and Another v. Osborne, Garrett & Co.*, (1924) 1 K. B. 548; 93 L. J. K. B. 304.

Though a plaintiff may have been guilty of negligence, and although that negligence may in fact have contributed to the accident which is the subject of the action, yet, if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse him (*Radley v. L. & N. W. Rail. Co.*, (1876) 1 App. Cas. 754; 46 L. J. Ex. 573; *Ellerman Lines, Ltd. v. H. and G. Grayson*, (1919) 2 K. B. 514; 88 L. J. K. B. 904; (1920) A. C. 446). Even though such negligence was prior in time to the contributory negligence of the plaintiffs (*British Columbia Electric Railway v. Loach*, (1916) 85 L. J. P. C. 23).

“Duty.”—Actionable negligence in law arises from the neglect of some duty which is owed to the person injured. See *Indermaur v. Dames*, (1866) L. R. 1 C. P. 274; *Smith v. London and St. Katherine Docks Co.*, (1868) L. R. 3 C. P. 326; *Marney v. Scott*, (1899) 1 Q. B. 986; *Heaven v. Pender*, (1883) 11 Q. B. D. 503; *Caledonian Rail. Co. v. Mulholland*, (1898) A. C. 216; *Earl v. Lubbock*, (1905) 1 K. B. 253; *Elliott v. Roberts & Co., Ltd.*, (1916) 85 L. J. K. B. 1689; *Cole v. De Trafford*, (1918) 1 K. B. 352; 87 L. J. K. B. 1254; *Carpenter v. Finsbury Borough Council*, (1920) 89 L. J. K. B. 554; *Glasgow Corporation v. Taylor*, (1922) 1 A. C. 44, 91 L. J. H. L. 49, where the previous decision of the House in the case of *Cooke v. Midland Great Western Railway of Ireland*, (1909) 78 L. J. P. C. 76, is discussed and explained; *Bromley v. Mercer*, (1922) 91 L. J. K. B. 577; *Gayler v. B. Davies & Son*, (1924) 93 L. J. K. B. 702; *Sutcliffe v. Clients Investment Co.*, (1924) 2 K. B. 746; (1925) 94 L. J. K. B. 113; *Vincent v. Southern Rail. Co.*, (1927) 96 L. J. K. B. 597; *Coleshill v. Manchester Corporation*, (1928) 97 L. J. K. B. 229; *Brooke v. Bool*, (1928) 97 L. J. K. B. 511). Of course a statute may create a duty even where there is no negligence attributable to human agency. See *Great Western Rail. Co. v. Owners of s.s. Mostyn*, (1928), A. C. 57.

Nuisance.—An action will lie for injury by nuisance, even though the nuisance is of a public character, if the plaintiff suffers a special damage therefrom. In such an action it may not be necessary to show that the defendant has been guilty of negligence. See *Tarry v. Ashton*, (1876) 1 Q. B. D. 314; 45 L. J. Q. B. 260; *Latham v. Johnson*, (1912) 1 K. B. 398; 82 L. J. K. B. 258; *Pritchard v. Peto*, (1917) 86 L. J. K. B. 1292; *Mills v. Brooker*, (1919) 88 L. J. K. B. 950; *Noble v. Harrison*, as to tree overhanging the highway, (1926) 2 K. B. 332; 95 L. J. K. B. 813.

Master and Servant.—The plaintiff must prove negligence upon the part

of the defendant, or if the act be committed by a servant, prove the service and negligence on his part. A master is not liable for the wanton or malicious acts of his servant done to carry out the servant's own purposes (*M'Manus v. Crickett*, (1800) 1 East, 106; 5 R. R. 518; *Croft v. Alison*, (1821) 4 B. & A. 590; 23 R. R. 407), nor for unauthorised acts committed by him beyond the scope of his employment (*Joel v. Morison*, (1834) 6 C. & P. 501; 40 R. R. 814; *Beard v. London General Omnibus Co.*, (1900) 2 Q. B. 530; 69 L. J. Q. B. 895; *Engelhart v. Farrant & Co.*, (1897) 1 Q. B. 240; 66 L. J. Q. B. 122; *Ormiston v. Great Western Rail. Co.*, (1917) 1 K. B. 598; but the cases run very fine; see *Ricketts v. Thomas Tilling, Ltd.*, (1915) 1 K. B. 644; 84 L. J. K. B. 342; *Soanes v. London and South Western Rail. Co.*, (1919) 88 L. J. K. B. 524; *Joseph Rand, Ltd. v. Craig*, (1919) 1 Ch. 1; *Jefferson v. Derbyshire Farmers, Ltd.*, (1921) 90 L. J. K. B. 1361; *Dyer v. Munday*, (1895) 1 Q. B. 742; 64 L. J. Q. B. 448; *Poland v. Parr (John) & Sons*, (1927) 1 K. B. 236; 96 L. J. K. B. 152). But for any act of the servant in the course of his employment, and done to effect the purpose for which he is engaged, the master is liable, even sometimes though the act be wilful and malicious and contrary to express orders (*Limpus v. London Omnibus Co.*, (1862) 1 H. & C. 526; 32 L. J. Ex. 34; see as to the Employers' Liability Act, Part IV.) The owner of a vehicle may be liable for the negligence of the person he allows to drive or be in charge of it, though such person is not his servant (*Reichardt v. Shard*, (1915) 31 T. L. R. 24. A servant lent to another for a particular employment must for anything done in that employment be dealt with as the servant of the man to whom he is lent (*Bull v. West African Shipping Co.*, (1927) 96 L. J. P. C. 128.) *Quære*, whether a licensed drover is the servant of the person whose cattle he is driving (see *Milligan v. Wedge*, (1842) 12 A. & E. 737). If he is unlicensed he is for the time being the servant of the person who so employs him (see *Turnbull v. Wieland*, (1917) 33 T. L. R. 143). Injury caused by shock without any objective physical injury may give a cause of action (*Dulieu v. White*, (1901) 2 K. B. 669; 70 L. J. K. B. 839), and it is not necessary that the injury by shock should be the apprehension of personal injury to the person himself or herself suffering the shock (*Hambrook v. Stokes Bros.*, (1925) 1 K. B. 141; 94 L. J. K. B. 435).

Injury by Ferocious Animal.]—The owner of a wild animal, or of a tame one, if he knows of its ferocity or habit of doing injury, is answerable for all damage ensuing by its acts. A horse is not a wild animal which, under the principle established by *Fletcher v. Rylands*, (1866) L. R. 1 Exch. 265; (1868) L. R. 3 H. L. 330, the owner keeps at his peril (*Manton v. Brocklebank*, (1923) 2 K. B. 212; 92 L. J. K. B. 624; *Glanville v. Sutton & Co.*, (1928) 1 K. B. 57; 97 L. J. K. B. 166), neither is a cat (*Buckle v. Holmes*, (1926) 134 L. T. 743), and the owner is not liable without proof of knowledge that the animal is dangerous (*May v. Burdett*, (1846), 9 Q. B. 101; 16 L. J. Q. B. 64; 72 R. R. 189; *Cox v. Burbridge*, (1863) 13 C. B. N. S. 430; 32 L. J. C. P. 89; *Worth v. Gilling*, (1866) L. R. 2 C. P. 1; see *Baker v. Snell*, (1908) 2 K. B. 825; 77 L. J. K. B. 1090; *Haeth's Garage, Ltd. v. Hodges*, (1916) 85 L. J. K. B. 485, and compare with this case *Turner v. Coates*, (1917) 1 K. B. 670; 86 L. J. K. B. 321).

Dogs.]—The owner of a dog which injures cattle or poultry is responsible in damages for such injury without proof of knowledge of the dog's mischievous propensity, or of neglect on the part of the owner. "Cattle" includes horses, mules, asses, sheep, goats and swine. "Poultry" includes

domestic fowls, turkeys, geese, ducks, guinea-fowls and pigeons (Dogs Act, 1906 (6 Edw. VII. c. 32); Dogs (Amendment) Act, 1928 (18 & 19 Geo. V. c. 21)).

Apart from statute, the owner is not liable for damage done by the dog without proof of scienter of a mischievous propensity to do such damage (see judgment of Atkin, L.J., in *Manton v. Brocklebank*, *supra*).

Trespass by Animals.—Owners of animals must keep them from trespassing from their land to the land of adjoining owners at their peril, unless the owner of the adjoining land is bound by covenant or prescription to keep the fences between such lands in repair. The covenant must be one which creates a duty to the adjoining landowner. A covenant with his landlord is not sufficient (*Holgate v. Bleazard*, (1917) 1 K. B. 443; 86 L. J. K. B. 270).

See also, as to what is sufficient possession of growing crops to enable the plaintiff to maintain such an action, *Wellaway v. Courtier*, (1918) 1 K. B. 200. As to a lessee taking the property as he finds it, and being thus in a position where he cannot complain of trespass, see *Erskine v. Adeane*, (1873) L. R. 8 Ch. 756; *Cheater v. Cater*, (1918) 1 K. B. 247. As to trespass by animals *feræ naturæ* brought or encouraged to come on adjacent land, see *Stearn v. Prentice Bros.*, (1919) 1 K. B. 394. As to damages and whether too remote, see *Theyer v. Purnell*, (1919) 88 L. J. K. B. 263.

Action by Executors of Persons Killed.—When a person is killed by the wrongful act, neglect or default of another, an action may be brought in the name of the deceased's executor or administrator for the benefit of the deceased's wife, husband, parent, or child, amongst whom the damages are to be divided as the jury direct (9 & 10 Vict. c. 93, s. 1; see Part IV.). This Act, passed in 1845 and known as the Fatal Accidents Act, or more popularly Lord Campbell's Act, made the first inroad and to a limited extent only, on the common law principle that the death of a human being could not be complained of as an injury in a civil court (see *Commissioners for Executing the Office of Lord High Admiral of the United Kingdom v. Owners of Steamship Amerika*, (1917) A. C. 38; 86 L. J. K. B. 58), a decision of the House of Lords finally establishing the principle laid down in *Baker v. Bolton*, (1808) 1 Camp. 493.

Injuries to Land.—An action of trespass lies when a trespass has been committed by the defendant or his agent, or by his cattle, on land of which the plaintiff can show that he is in immediate possession. The action will lie for any infringement of the plaintiff's exclusive enjoyment of the land, however trifling, whether any pecuniary loss be shown or not. The general owner of land may maintain trespass for injury to the subsoil, though he has let the herbage to another (*Cox v. Glue*, (1848) 5 C. B. 533; 17 L. J. C. P. 162; 75 R. R. 788). The ownership of wastes, rivers, walls, ditches, etc., is proved either by documentary evidence of title or acts of ownership. The plaintiff must prove that the trespass was committed by the defendant or his agent duly authorised, either by previous command or subsequent assent; in the latter case, the agent at the time of the trespass must have assumed to act for defendant (*Wilson v. Tumman*, (1843) 6 M. & G. 236; 6 Scott, N. R. 894; 12 L. J. C. P. 306; 64 R. R. 770). Evidence should be adduced of the extent and amount of damage done.

The defendant may disprove the commission of the trespass, either by denying the fact, or showing that it occurred by plaintiff's fault, as by defect of fences (but only where a duty exists to fence and such duty is owed to the defendant (see *Holgate v. Bleazard*, *supra*)); or may show

that the plaintiff was not possessed of the place in question at the time when the trespass was committed; or he may dispute the plaintiff's title, or set up any title in himself which would limit the plaintiff's (as to the jurisdiction of the court to try the case where such a defence is raised, see sects. 56, 61, 64). He may show leave and licence from the plaintiff, express or implied from previous circumstances. He may also show satisfaction to the plaintiff by payment or otherwise, or a release, or may rely on the Statute of Limitations.

If the plaintiff be not in present possession of the land an injury to which is complained of, but only entitled thereto in reversion, as, for instance, if he be the owner in fee and the land is leased, it is not every wrong or trespass that will entitle him to an action. He must prove that some injury has been done of a permanent character, such as to depreciate the value of the reversion (*Baxter v. Taylor*, (1832) 4 B. & Ad. 72; 2 L. J. K. B. 65; 38 R. R. 227; *Simpson v. Savage*, (1856) 1 C. B. N. S. 347; 26 L. J. C. P. 50; 107 R. R. 688; *Metropolitan Association v. Petch*, (1858) 5 C. B. N. S. 504; 27 L. J. C. P. 330; 116 R. R. 740).

An action lies for injuries and obstructions to incorporeal hereditaments, as disturbance of common or right of way, diversion of watercourses, obstructing the light around plaintiff's house. In all these cases the plaintiff must prove the existence of the right on his part, the obstruction thereof by the defendant, and the amount of damage he has sustained. But damage is not essential to give rise to a right of action for the infringement of an incorporeal right (*Harrop v. Hirst*, (1868) L. R. 4 Ex. 43; 38 L. J. Ex. 1).

The defendant may give in evidence the same defences which have been mentioned under trespass to land.

Injuries to Goods.—Any direct act of interference with the plaintiff's exclusive possession and enjoyment of goods, any act done directly and wrongfully to the goods themselves, though it does not go the length of an actual appropriation of them to another, is a trespass for which an action will lie (*Fouldes v. Willoughby*, (1841) 8 M. & W. 540; 10 L. J. Ex. 364; 58 R. R. 803). And the plaintiff will recover as damages pecuniary compensation for the injury he has sustained.

Negligence.—If an injury to goods be done by the defendant's negligence, an action will also lie; and the principles laid down in the case of injuries to the person apply.

But injury apart from negligence usually gives no right of action; see as good illustration of this, recent case of injury due to "fatigue of metal" (*Britannia Hygienic Laundry Co. v. Thornycroft*, (1926) 95 L. J. K. B. 237). Even where injury is caused by negligence it may be so contracted that it shall give no cause of action (*Fagan v. Green and Edwards*, (1926) 95 L. J. K. B. 363).

A solicitor is supposed to know the public statutes of the realm. If he allows an action to be barred by the Public Authorities Protection Act, 1893, when he was instructed in sufficient time to bring the action, he is liable to his client for his negligence in this respect (*Fletcher & Son v. Jubb, Booth and Helliwell*, (1920) 89 L. J. K. B. 236).

Public Policy.—Though an action will not lie in respect of an act which is contrary to public policy, a contract of assurance against negligence, even of a criminal character, is not void on this ground (*Tinline v. Whitecross Insurance Co.*, (1921) 90 L. J. K. B. 1118).

Conversion of Goods.—If the plaintiff complains that the defendant has deprived him of his goods and appropriated them to his own use or that of some other person, this is more than a mere trespass, and entitles the

plaintiff to recover as damages the whole value of the goods (*France v. Gaudet*, (1871) L. R. 6 Q. B. 199; 40 L. J. Q. B. 121).

A special property, as that of a bailee, is sufficient to support the action (*Nicholls v. Bastard*, (1835) 2 C. M. & R. 659; 5 L. J. Ex. 7), and against a wrong-doer mere possession, as that of a finder, is enough (*Armory v. Delamirie*, (1722) 1 Str. 504; 1 Sm. L. C. 396 (12th edit.); *Bridges v. Hawkesworth*, (1851) 15 Jur. 1079; 21 L. J. Q. B. 75; and see *South Staffordshire Waterworks Co. v. Sharman*, (1896) 2 Q. B. 44; 65 L. J. Q. B. 460).

Dealing with goods in such a way as to show an intention on the part of a person in possession of them to deny the owner's right to them, or to assert a right to them inconsistent with the owner's right, amounts to a wrongful conversion of the goods. There may be no intention on the part of such person to commit a wrong (*Lancashire and Yorkshire Rail. Co., London and North Western Rail. Co. and Graesser v. MacNicol*, (1919) 88 L. J. K. B. 601).

The conversion may be actual, as by a wrongful sale, in which case no demand by the plaintiff need be proved (*Edwards v. Hooper*, (1843) 11 M. & W. 363; 12 L. J. Ex. 304), or by a refusal to deliver them when demanded (*Burroughes v. Bayne*, (1860) 3 H. & N. 296; 29 L. J. Ex. 185); this, however, is not of itself a conversion, but only evidence of such; in the latter case the defendant must have the power to deliver them when they are asked for (*Edwards v. Hooper, supra*); he is not guilty of a conversion because he does not at once restore the chattel, when it is not at the moment in his possession, and under his own control (*Canot v. Hughes*, (1836) 2 Scott, 663; 5 L. J. C. P. 177; *Towne v. Lewis*, (1849) 7 C. B. 608; 78 R. R. 787; *Clayton v. Le Roy*, (1911) 2 K. B. 1031). The plaintiff is entitled to recover as damages the value of the goods, and damages for their detention.

Defence.—Lien.—The defendant may disprove the plaintiff's property in the goods, or the conversion, or may show that he has delivered them up to the true owner (*Cheeseman v. Exall*, (1851) 6 Ex. 341; 20 L. J. Ex. 209; 86 R. R. 321), or he may give in evidence the Statute of Limitations, or show that he has a *lien*, general or particular, for work done upon the goods or by a special agreement with the plaintiff. Bankers, innkeepers, wharfingers, attorneys, factors, dyers, calico printers, packers and insurance brokers, have by usage liens upon goods entrusted to their charge, for their general balance. Carriers have a lien which terminates as soon as the goods are delivered, but whether general or particular is disputed. Generally a person who takes the article of another, with his consent, under control to work upon it for reward, as by repairing it, or doing something to benefit it, *e.g.*, a farrier who has shod a horse, the owner of a stallion which has covered a mare—has a lien upon the article for his reasonable charges (*Scarfe v. Morgan*, (1838) 4 M. & W. 270; 7 L. J. Ex. 324; 51 R. R. 568). Though a person cannot generally so act as to give a lien on goods the property of another, yet in some cases, even where an article sent for repair is not sent by the owner, a lien may arise against the owner. For such a case see *Green v. All Motors, Ltd.*, (1917) 1 K. B. 625; 86 L. J. K. B. 590. See also *Albemarle Supply Co., Hind & Co.* (1927), 97 L. J. K. B. 25; (1928) 1 K. B. 307. But where nothing has been *done on* the chattel there is no lien. Hence a livery stable keeper has no lien on a horse (*Yorke v. Grenaugh*, (1703) Ld. Ray. 866, 868; *Judson v. Etheridge*, (1833) 1 C. & M. 743; 2 L. J. Ex. 300; *Orchard v. Rackstraw*, (1850) 19 L. J. C. P. 303; 82 R. R. 509). But an innkeeper has a lien on a horse brought by a guest, though it is occasionally taken out (*Allen v. Smith*, (1862) 12 C. B. N. S. 638; 31 L. J. C. P. 306; 133

R. R. 458). An unpaid vendor of real property who has conveyed an estate has no lien on the title deeds (*Goode v. Burton*, (1847) 1 Ex. 189; 16 L. J. Ex. 309; 74 R. R. 633), nor a conveyancer on papers left in his possession (*Steadman v. Hookley*, (1846) 15 M. & W. 553; 15 L. J. Ex. 332). A lien cannot generally exist where possession is not continued, as where goods are to be paid for on credit, or where, as in the agistment of milch cows, the owner must by necessary implication have the occasional possession for the purpose of milking (*Jackson v. Cummins*, (1839) 5 M. & W. 342; 8 L. J. Ex. 265; 52 R. R. 737).

Detinue.—Not only may a plaintiff who has been wrongfully deprived of his goods recover their value, but further, an action, known from early times as an action of detinue, lies for the recovery of the goods themselves together with damages for their detention.

The action lies against a person who wrongfully detained the goods, although he has since improperly parted with their possession (*Jones v. Dowle*, (1841) 9 M. & W. 19; 11 L. J. Ex. 52; 60 R. R. 652).

With respect to the evidence, what has been said with respect to the conversion of goods is applicable. The judgment in detinue is, however, materially different from that in other actions; it being not merely for damages for the injury sustained by the conversion, but in the alternative that the chattel shall be restored or the value paid; therefore, where there are separate parcels of goods, evidence should be adduced as to the value of each, and the judgment should declare the same accordingly; since the defendant may elect to give up some in specie, and pay damages for the rest (*Pawly v. Holly*, (1773) 2 W. Bl. 853; *Sandford v. Alcock*, (1842) 10 M. & W. 689; 12 L. J. Ex. 40).

Defamation.—(These actions may be sent for trial to, but cannot be commenced in, a county court.) The plaintiff in an action of libel must prove the publication by the defendant of the matter complained of in print or writing, or by a picture or other fixed mode of representing ideas. Special provisions were formerly made by the 6 & 7 Will. IV. c. 76, to facilitate the proof of publication in the case of libels contained in newspapers. But these are all repealed by the 32 & 33 Vict. c. 24, except sect. 19 of the earlier Act, which is re-enacted by the latter. By that section, a suit will lie to discover the name of the printer, publisher or proprietor of a newspaper, or any matter relative to the printing or publishing of a newspaper, in order to assist an action of libel. And the defendant cannot plead or demur, but must make the discovery asked for; though the evidence so obtained cannot be used against the defendant except in the proceeding for which the discovery is made. In other cases the publication may be proved by showing that the defendant has written the words in question or caused them to be printed, and shown or given or sent them to any person, or that a copy has been sold at his shop, or that he has otherwise given currency to the document by himself or his agent. But a publication to the plaintiff himself only is not actionable (*Phillips v. Jansen*, (1798) 2 Esp. 624). As to letter addressed to one person, and opened by another in mistake see *Powell v. Gelston*, (1916) 85 L. J. K. B. 1783. See also *Weld-Blundell v. Stephens*, (1919) 1 K. B. 520; 88 L. J. K. B. 689.

In an action of slander the plaintiff must prove the speaking of the words complained of by the defendant in the presence of some person other than the plaintiff. He must further prove that the words impute to him a criminal offence, or an infectious disease, or misconduct in a public office, or misconduct, negligence, or want of skill in the way of his profession, trade or business, or else that he has suffered special damage of a pecuniary

or material character, such as the loss of a situation or the diminution of trade, except that words imputing unchastity to women are actionable without special damage (54 & 55 Vict. c. 51). See *Jones v. Jones and Wife*, (1916) 2 A. C. 481; 85 L. J. K. B. 1519.

If words written or spoken be not in their ordinary sense defamatory, the plaintiff must prove any circumstances which make them so. But malice need not in general be proved. The question whether the matter is libellous or not is a question for the jury.

By way of defence, the defendant may disprove the publication by him, or disprove the defamatory sense of the words published, or he may show that the publication was privileged, which is a defence in the absence of actual malice (*Clark v. Molyneux* (C. A.), (1877) 3 Q. B. D. 237; 47 L. J. Q. B. 230; *Tompson v. Dashwood*, (1883) 11 Q. B. D. 43; *Davis v. Shepstone*, (1886) 11 App. Cas. 187; 55 L. J. P. C. 51; *Adam v. Ward*, (1917) 86 L. J. K. B. 849; 33 T. L. R. 277); or he may show that the defamatory matter is true; or he may give evidence of an apology in mitigation of damages (6 & 7 Vict. c. 96, s. 1); or if the libel be in a newspaper he may rely as a defence upon an apology and the payment into court of amends (6 & 7 Vict. c. 96, s. 2; as to notice where a defendant means to rely on any of these special defences, see notes to sect. 82, C. C. Act, 1888).

In the case of communications *prima facie* privileged, the plaintiff may still prove actual malice. And to prove the animus, evidence may be given of other libels and slanders than that sued for, whether earlier than it or later.

Injuries by Legal Proceedings.—An action for false imprisonment lies where any one takes another into custody, or gives him in charge to a constable without lawful justification for doing so (see *Percy v. Corporation of Glasgow*, (1922) 2 A. C. 299). The plaintiff must prove that the defendant gave him in charge. It is not enough to show that he gave information to a constable, if the latter has on his own judgment acted on that information by arresting the plaintiff. A usual mode of proving the giving in charge is by showing that the defendant signed the charge sheet.

It is not a false imprisonment to hold a person to the conditions he has voluntarily accepted, though it may involve an imprisonment: *Herd v. Weardale Steel, Coal, and Coke Co. and Others*, (1915) A. C. 67; 84 L. J. K. B. 121.

The defendant may deny that he gave the plaintiff in charge. If a constable, he may justify the arrest by showing that he had reasonable grounds for believing that a felony (or even in some cases a statutory misdemeanour or offence, see *Trebeck v. Croudace*, (1898) 1 K. B. 158; 87 L. J. K. B. 272) had been committed. See, apprehension by police constable under the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89, s. 28), on reasonable suspicion only (*Isaacs v. Keech*, (1925) 94 L. J. K. B. 676. If he is not a constable, he must go a step further and show that a felony had been *in fact* committed, and that he had reasonable grounds for suspecting the plaintiff to have committed it (*Samuel v. Payne*, (1780) 1 Doug. 359; *Beckwith v. Philby*, (1827) 6 B. & C. 635; 5 L. J. M. C. 132; 30 R. R. 484; *Hadley v. Perks*, (1866) L. R. 1 Q. B. 444; 35 L. J. M. C. 177; *Walters v. W. H. Smith & Son*, (1914) 1 K. B. 595; 83 L. J. K. B. 335). In many other cases people are by statute authorised to arrest or give into custody those found committing offences of different kinds.

Malicious Prosecution.—An action for malicious prosecution will lie although the defendant may not have taken the law into his own hands by

arresting the plaintiff or giving him into custody, but may have simply put the law in motion, as by laying an information upon which a summons or warrant may have issued, or by preferring an indictment. In the first place, the plaintiff must prove the prosecution in the same way as other proceedings of courts are proved (*ante*, p. 948). He must show that the prosecution has terminated in his acquittal (*Arundell v. Tregono*, (1608) Yelv. 116); that the defendant was the prosecutor, and that the proceedings were malicious (*Purcell v. Macnamara*, (1808) 9 East, 361; 9 R. R. 578) and without reasonable and probable cause (*Johnstone v. Sutton*, (1786) 1 T. R. 510, 545). Malice means any indirect motive, any object other than the *bonâ fide* furtherance of justice; and malice or no malice is a question of fact. The absence of reasonable and probable cause may be evidence of malice, but not necessarily so (*Mitchell v. Jenkins*, (1833) 5 B. & Ad. 588; 3 L. J. K. B. 35; 39 R. R. 570). Whether there has been an absence of reasonable and probable cause is a question for the judge (*Panton v. Williams*, (1841) 2 Q. B. 169; 10 L. J. Ex. 545; 57 R. R. 631; *Lister v. Perryman*, (1870) L. R. 4 H. L. 521; 39 L. J. Ex. 177; *Abrath v. N. E. Rail. Co.*, (1886) 11 App. Cas. 247; 52 L. J. Q. B. 620). It is not necessary for the judge to put to the jury the question whether they think the defendant took reasonable care, and honestly believed the case he laid before the magistrates, unless there is evidence of the absence of such belief. A prosecution for which the Attorney-General has given his fiat on a case fairly submitted to him, cannot be said to be prosecuted without reasonable and probable cause (*Bradshaw v. Waterlow & Sons, Ltd.*, (1916) 85 L. J. K. B. 318).

A malicious prosecution under the Public Health Act, 1875, for the abatement of a nuisance, is not of a sufficiently criminal nature to support the action (*Wiffin v. Bailey and Romford Urban Council*, (1915) 1 K. B. 600; 84 L. J. K. B. 688).

The defendant may give evidence in disproof of any of the allegations which the plaintiff has to prove, and in particular may bring forward any facts tending to show the absence of malice or the existence of reasonable and probable cause.

An action for malicious prosecution will lie against a corporation (*Cornford v. Carlton Bank*, (C. A.), (1900) 1 Q. B. 22; 68 L. J. Q. B. 1020; *Edwards v. Midland Rail. Co.*, (1880) 6 Q. B. D. 287; 50 L. J. Q. B. 281).

Seduction.—(This action, though it may be transferred from the High Court to the County Court for trial, cannot be commenced in a county court.) In an action for seduction the plaintiff must prove that the person seduced was in his service at the time. In the case of a daughter, it is sufficient evidence of service to show that she was living with the plaintiff, her father, as a member of his family. It must be proved further, either that the defendant enticed the servant away from the plaintiff's service, or that he debauched the servant; and in the latter case it seems to be necessary to show further that the servant has been made pregnant, or ill, so as to be incapacitated from service (*Evans v. Walton*, (1867) L. R. 2 C. P. 615; 36 L. J. C. P. 307). Evidence of the circumstances of the seduction may be given in aggravation of damages.

The defendant may disprove any of the plaintiff's allegations, or may give evidence of the conduct of the plaintiff or the character of the servant in mitigation of damages.

Breach of Promise of Marriage.—(This action, though it may be transferred from the High Court to the County Court for trial, cannot be commenced in a county court.) In an action for breach of promise of marriage the plaintiff must prove the promise. The promise need not be in writing.

The breach must also be proved. - This may be proved by showing that the plaintiff has tendered marriage to the defendant, has been refused, or that the defendant has married another person. As affecting the damages, the plaintiff may produce evidence of the pecuniary circumstances of the defendant; and the mental suffering inflicted on the plaintiff may be considered in assessing the damages (see *Hamlin v. G. N. Rail. Co.*, (1856) 1 H. & N. 408; 26 L. J. Ex. 20; 108 R. R. 649). The parties themselves are competent witnesses. But the plaintiff cannot recover unless his or her testimony be corroborated by some other material evidence in support of the promise (32 & 33 Vict. c. 68, s. 2; as to the construction of this section, see *Bessela v. Stern*, (1877) 2 C. P. D. 265; 46 L. J. C. P. 467).

The defendant may disprove the promise, or may show that a reasonable time for its performance has not elapsed; or that after the promise the defendant has discovered gross immorality on the part of the plaintiff (*Irving v. Greenwood*, (1824) 1 C. & P. 359); or that the engagement had been broken off by mutual consent, or, *semble*, that the plaintiff is unfit for marriage owing to mental or physical illness becoming known to the defendant since the date of the promise, but it is no defence that the defendant honestly and on reasonable grounds believed that the plaintiff was physically unfit for marriage if such was not the fact (*Jefferson v. Paskell*, (1916) 85 L. J. K. B. 398). *Quære*, whether such an action will ever lie after the death of the promisor, against his executor (*Quirk v. Thomas*, (1916) 1 K. B. 516).

A county court cannot entertain an action for return of engagement ring and other gifts on breach of a promise to marry. Such an action has been held to be in substance an action for damages for breach of promise of marriage (*Parsons v. Burgess*, (1927) 96 L. J. K. B. 787.)



PART II.

COSTS AND COURT FEES.

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Generally speaking, when judgment is given for plaintiff or defendant with costs, the ascertaining of the amounts and items to be allowed falls within the province of the registrar. His duty is to tax them according to the scales of costs (Order LIII. rr. 1, 20).

Costs and Allowances to Witnesses.]—The Order relating to costs and allowances to witnesses is Order LIII. which deals with taxation (Rule 1); allowance of any particular costs under any of the county court rules (Rules 7 to 10); the scale of costs in special actions, where counterclaim raised, and costs to be paid by or to third party (Rules 11 to 19); general directions (Rules 20 to 36); witnesses (Rules 37 to 44); taxations as between solicitor and client (Rule 46); objections to taxation (Rules 47 to 49); increased costs (Rule 50); Order LIII. should be consulted on all questions relating to costs, references to Part II., "Costs and Court Fees," are given where necessary.

Liability for Costs.]—(a) If party under no liability for costs can recover none, a party can only recover costs from the opposite party to the same extent as he himself is liable to his own solicitor; so that where a party is under no liability to pay costs to his own solicitor he cannot recover any

costs from the opposite party (*Gundry v. Sainsbury*, (1910) 1 K. B. 645). Where solicitors have been retained and instructed by a trade union and the solicitors' costs are payable out of the union's funds, to which plaintiff is a contributor as a member, the union is acting as the plaintiff's agent and the plaintiff is entitled to recover his costs from the defendant although he gave no written retainer to the solicitor (*Adams v. London Improved Motor Coach Builders, Ltd.*, C.A., (1921) 1 K. B. 495; 90 L. J. K. B. 685). (b) In representative actions, where an action is brought by one person on behalf of himself and others who are not in fact made parties to it, no order for costs can be made against them even though they have contributed to the costs of the action and their names and addresses have been disclosed to the defendants (*Price v. Rhondda Urban District Council*, (1923) 2 Ch. 232; 93 L. J. Ch. 1).

Costs in actions against Government Departments.—Where an action is brought against an official or a Government Department which is held to be identified with the Crown with the consequence that the action cannot be maintained, the practice is to award no costs, as the ordinary rule is that the Crown neither pays nor receives costs (*Rowland v. The Air Council*, C. A., (1923) 39 T. L. R. 453; 67 Sol. Jo. 385). Where, however, an individual officer is sued or a Department as a statutory body, this rule does not apply and costs are awarded (*Bombay and Persia Steam Navigation Co. v. MacLay*, (1920) 3 K. B. 402).

No action in High Court upon County Court Order for costs.—No action may be brought in the High Court upon an order of the County Court for the payment of costs. (*Furber v. Taylor* (C.A.), (1900) 2 Q. B. 719; 69 L. J. Q. B. 898.)

Second action for same Cause.—Treble Costs.—Section 115 of the Act provides that the party suing in any court for any debt or other cause of action, for which he has already sued the defendant and obtained judgment in any other court, shall not be entitled to recover in such second action and shall be adjudged to pay three times the costs of such second action to the opposite party. The plaintiff brought an action in a county court for damage to his cab occasioned by the negligence of defendant's servant, and having recovered the amount claimed, afterwards brought an action in the High Court against the defendant, claiming damages for personal injury sustained by the plaintiff through the same negligence. Held that the action in the High Court was maintainable, and was not barred by the previous proceedings in the County Court, on the ground that damage to goods and injury to the person, although they have been occasioned by one and the same wrongful act, are infringements of different rights and give rise to distinct causes of action. (*Brusden v. Humphrey*, C. A., (1884) 14 Q. B. D. 141.)

Costs of Parties in Person.—No person, other than a solicitor, is entitled to recover any fee for acting on behalf of any party in any proceeding (sect. 72 of the Act). Consequently, when parties appear in person, or by agent (other than a solicitor or barrister), if allowed to appear for them, the costs recoverable by the successful party include only court fees, and costs of witnesses and their travelling expenses. The plaintiff is not entitled to any allowance for himself in addition to his travelling expenses unless he is a domestic servant, or a labourer, etc., or a person engaged in manual labour, or unless the judge in any particular case otherwise orders (Order LIII. r. 38).

Practitioners may be reminded that the view hitherto taken in some courts that a limited company could only act through a solicitor, has been

held to be unfounded, and that such company can initiate, and by leave of the judge conduct, county court proceedings through an agent who is not a solicitor (*Charles P. Kinnell & Co., Limited v. Harding, Wace & Co., C. A., (1918) 1 K. B. 405; 87 L. J. K. B. 342*).

Solicitors' Costs.—The scales of costs allowable to solicitors are framed under the County Courts Act, 1888, sect. 164. They comprise Part IV. of the Appendix of the County Court Rules, 1914 (No. 3), and consist of a lower scale where the amount recovered exceeds 2*l.*, and does not exceed 10*l.*, and a higher scale, which is sub-divided into three columns according to the value of the subject-matter or the sum recovered:—Column A where this sum exceeds 10*l.*, but does not exceed 20*l.*, column B where it exceeds 20*l.*, but does not exceed 50*l.*, and column C when it exceeds 50*l.* It will have been seen that the lower scale of costs contains no provision for any allowance to solicitor in cases where the amount recovered does not exceed 2*l.*; and except in the special cases to which sect. 119 of the Act and Order LIII. r. 17 apply, no such allowance can be made in such actions (Order LIII. r. 50).

Where costs are awarded to municipal bodies, railway companies and insurance and other companies, who employ permanent salaried solicitors to do their legal work, and any costs recovered would have to be paid over to the client, there is no reason why the costs should not be taxed and recoverable in the ordinary way, and no objection can be taken to their allowance. Further, it makes no difference that the solicitor in question is only a part-time officer.

No liability of Solicitor for Costs.—The judge has no power, such as exists in the High Court, to order a solicitor to pay costs personally. (*Davies v. Coles and Mowlem, (1912) 132 L. T. J. 577*, a County Court Judge's decision.)

Insufficient Particulars of Claim.—Costs of entering Plaintiff by Solicitor not Allowed.]—By Order VI. Rule 9, where plaintiff sues by a solicitor the particulars must be signed by the solicitor in his own name or that of his firm, or by a clerk in his employ, if duly authorised. If in the opinion of the court the particulars are insufficient, the costs of entering the plaintiff by solicitor shall not be allowed unless the court otherwise orders.

Comparison of sect. 113 of the Act with Rules of the Supreme Court.—Sect. 113 of the Act provides that all the costs of any action or matter in the court, not therein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the court shall think just, and in default of any special direction shall abide the event of the action or matter. This section may be compared with Order LXV. r. 1 of the Rules of the Supreme Court, which provides that, subject to the provisions of the Acts and Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or judge. Provided that, where any action, cause, matter or issue is tried with a jury, the costs shall follow the event, unless the judge by whom such action, cause, matter or issue is tried, or the court, shall, for good cause, otherwise order.

Judicial Discretion and Limitations thereon.—Although the wording of sect. 113 would appear to confer on the court absolute power over the costs of any action or matter, this power is no wider than the power given to judges of the High Court by the Judicature Acts and Rules (*Andrew v. Grove, (1902) 1 K. B. 625; 71 L. J. K. B. 439*). There is no substantial difference between the words in the High Court Rules and sect. 113 of the Act (*Elms v. Hedges, (1906) 95 L. T. 145*). This power or discretion, as it is called, is a judicial discretion, and must be exercised judicially in accord.

ance with legal principles and on sufficient grounds. The rule laid down by the Court of Appeal is that where a judge has exercised his discretion upon certain materials which are before him, that exercise of discretion cannot be overruled, but where there are no materials upon which he could exercise a discretion his discretion can be reviewed (*Civil Service Co-operative Society v. General Steam Navigation Company*, C. A., (1903) 2 K. B. 756). This case was referred to in the Lord Chancellor's judgment in *Campbell (Donald) & Co., Ltd., v. Pollak*, (1927) 43 T. L. R. 787; 64 L. J. 134, judgment on preliminary objection (1927) 43 T. L. R. 495; 63 L. J. 474, as illustrating the tendency of the Court of Appeal to review the exercise by trial judges of their discretion. The decision in this case, however, might be supported (he said) on the ground that the judge had not really exercised his discretion. The burden is on the appellant to show that there has been no real exercise of judicial discretion, and that either there were no materials on which the learned judge could come to his conclusion, or that some materials had been introduced which were so irrelevant and extraneous that the order was not really made in the exercise of a judicial discretion (*Société des Hôtels Réunis (Société Anonyme) v. Hawker*, C. A., (1914) 30 T. L. R. 423; 58 Sol. Jo. 515).

The question as to what facts constitute ground for exercising this discretion has been frequently discussed, and the following principles appear to be definitely established :—

A. As to the power of the court to deprive a successful party of costs :

The whole subject of judicial discretion and appeals for costs has been considered and settled by the House of Lords in the case of *Campbell (Donald) & Co., Ltd. v. Pollak (supra)*). In this case the Lord Chancellor held that in a non-jury case a successful party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially, and the judge ought not so to exercise it except for some reason connected with the case. He said, "When a judge, deliberately intending to exercise his discretionary powers, has acted on facts connected with or leading up to the litigation which had been proved before him or which he has himself observed during the progress of the case, a Court of Appeal, although it might deem his reasons insufficient and might disagree with his conclusion, is prohibited by the statute" (see *Judicature Act, 1925*, sect. 50) "from entertaining an appeal from it." The true rule is that a Court of Appeal will not receive an appeal from a discretionary order as to costs, except perhaps where there is also a *bonâ fide* appeal on merits, but when it is alleged that the court below in dealing with costs, has fallen into error on a point of law which governs or affects costs, an appeal on that question will be heard.

(1) As to the costs of a successful plaintiff. Subject to the principles enunciated above the following cases may be usefully considered. There must be something in the conduct of the party which has rendered the litigation more oppressive and burdensome than it need have been (*Hudsons, Ltd. v. De Halpert*, (1913) 108 L. T. 416. There is no material on which a court can exercise its discretion where plaintiff comes to enforce a legal right, and there is no misconduct on his part (*Cooper v. Whittingham*, (1880) 15 Ch. D. 501). The fact that one of the witnesses has been guilty of exaggeration is immaterial (*Lipman v. George Pulman & Sons*,

Ltd., (1904) 91 L. T. 132). So also is the fact that the action is brought without previous notice (*Wittman v. Oppenheim*, (1884) 27 Ch. D. 260; and *Ruskin v. Robinson*, (1885) 2 T. L. R. 18). The following two cases must now be considered of doubtful authority: *Hudsons, Ltd. v. De Halpert* (*supra*), in which it was held that the fact that the judge was dissatisfied with the evidence of a witness called on behalf of a plaintiff was not a ground and *Ritter v. Godfrey*, (1920) 2 K. B. 47, which decided that the fact that the judge was not pleased with the defendant's letters to the plaintiff before action brought was not a ground. The judge is not confined, in considering the question whether there is good cause for depriving a successful party of costs, to the conduct of the parties in the litigation itself, but must consider the whole circumstances of the case and everything which led to the action (*Harnett v. Vise*, (1880) 5 Ex. D. 307. *vide* judgment of A. L. Smith, L.J.). There would be grounds for dealing with a successful plaintiff's costs when his conduct has induced the defendant reasonably to believe that he has a good defence.

The mere fact that the jury have given a plaintiff only nominal, or what are sometimes termed "contemptuous" damages, is not conclusive to show that good cause existed for depriving the plaintiff of costs, but it is an element to be taken into account. (*Moore v. Gill*, C. A. (1888) 4 T. L. R. 738). The Court of Appeal will review the decision of a judge that good cause existed for depriving the plaintiff of costs, but not a decision that no good cause existed (*Moore v. Gill*, *supra*). In deciding whether there is "good cause" for depriving the plaintiff of costs, the judge should take into consideration all the circumstances of the case, both before and after the issue of the writ (*Martin v. Benson*, (1927) 1 K. B. 771; 96 L. J. K. B. 405).

Where an employer, whose case was conducted by or in the interests of an insurance Company, succeeded in obtaining an award terminating his workman's compensation, and the judge awarded him costs, the Court of Appeal held that the judge's discretion had been rightly exercised, *Cornish v. Lynch* (3 B. W. C. C. 343).

The Judge ought not to consider any expression by the jury of their views on the question of costs (*Wootton v. Sievier*, C. A., (1913) 30 T. L. R. 165). See also *Martin v. Benson* (*supra*).

- (2) As to the costs of a successful defendant. The case of *Campbell (Donald) & Co., Ltd. v. Pollak* (*supra*) has settled the law on this subject, and the cases mentioned below must be read subject to that decision. A wholly successful defendant can only be deprived of his costs if he—

(i.) brought about the litigation: by this is meant has so conducted himself as to lead the plaintiff reasonably to believe that he had a good cause of action against the defendant and so induce him to bring the action (*Bostock v. Ramsey Urban Council*, (1900) 2 Q. B. 616; 69 L. J. Q. B. 945), but the propositions laid down in this case should be read subject to the conduct being unreasonable or improper and being conduct other than that which constituted the alleged cause of action; or

(ii.) has done something connected with the institution or the

conduct of the suit calculated to occasion unnecessary litigation and expense. This limitation would include improper conduct in or connected with the litigation calculated to defeat or delay justice; or

(iii.) The case of *F. King & Co. v. Gillard & Co.*, (1905) 2 Ch. 7; 72 L. J. K. B. 733, decided that (generally speaking) when the defendant had done some wrongful act in the course of the transaction of which the plaintiff complains, he could be deprived of his costs, but this case must now be considered of doubtful authority, as must also the case of *Edmund v. Martell* (24 T. L. R. 25), which decided that where the judge deprives a successful party of costs without having really exercised his judicial discretion at all, *e.g.*, where there are no materials before him upon which he can exercise his discretion, an appeal lies to the Court of Appeal without leave (*Campbell (Donald) & Co., Ltd. v. Pollak (supra)*). A defendant cannot be deprived of costs because his defence is based on the Statute of Limitations (*Elms v. Hedges, supra*); or the Gaming Acts (*Granville & Co. v. Firth, C. A.*, (1903) 72 L. J. K. B. 152); or because, having the necessary information to enable a plaintiff to ascertain who was the proper party to be sued, he neglected to give it to the plaintiff (*Westgate v. Crowe*, (1908) 1 K. B. 24).

Where a defendant succeeds upon one particular defence, the judge has a discretion to decline to allow him any costs of additional defences raised, but not tried (*Browne and Whitehead v. Lewis*, (1916) 115 L. T. 911; 33 T. L. R. 130).

B. As to the power of the court to order a successful party to pay the costs of the opposite party:

- (1) In the case of a plaintiff, whilst there is ordinarily no power to order him if successful to pay a defendant's costs (*Evans v. Gwauncae-gurwen Colliery Co., Ltd.*, C. A., (1912) 106 L. T. 613), such orders have been made where he is successful in only a part of his claim (*Gray v. Lord Ashburton*, (1917) A. C. 33), and where he has recovered only a nominal sum (*Harris v. Peltherick, C. A.*, (1879) 4 Q. B. D. 611). Again in *Ellesmere v. Inland Revenue Commissioners*, (1918) 2 K. B. 735, Sankey, J., said: "There is, I think, no authority for the proposition that a plaintiff who is to some extent successful may not be made to pay the costs of the defendant."
- (2) In the case of a defendant he cannot under any circumstances be ordered to pay the plaintiff's costs (*Andrew v. Grove*, (1902) 1 K. B. 625; *Higgins v. L. Higgins & Co.*, (1916), 1 K. B. 640). In this latter case it was held there were no materials on which a judge could exercise his discretion in making an order for costs against employers who had successfully resisted an application for an award under the Workmen's Compensation Act, with the result that merely a declaration of liability had been made.

Application to set aside regular Judgment.—Costs thrown away.—Where an application is made to set aside a regular judgment by default, the Court has discretion to impose such terms as it considers reasonable, including payment of the costs by subsequent bankruptcy proceedings. Where, however, an order is made for payment by the defendant of all costs thrown away, this will include the costs of execution and garnishee summons, but not those of any proceedings in bankruptcy (*Andromeda Handelsaktieselskab v. Holmes*, (1923) 68 Sol. Jo., p. 119).

Power to hold unsuccessful Defendant liable for successful Defendant's Costs.]—When an action has been brought against two defendants, and has failed against one and succeeded against the other, the judge has power to allow the plaintiff to include in his costs against the unsuccessful defendant any sum he has had to pay to the successful defendant for his costs. In *Sanderson v. Blyth Theatre Co.*, (1903) 2 K. B. 533; 72 L. J. K. B. 761, the Court of Appeal held that this power existed where two defendants, principal and agent, were sued in the alternative in an action on contract. And this has since been followed in an action of tort in *Bullock v. London General Omnibus Co.*, (1907) 1 K. B. 264; 76 L. J. K. B. 127, where plaintiff was injured by a collision between two vehicles. In the latter case, the exercise of the judge's discretion was upheld on the ground that there was evidence that the attitude taken up by the unsuccessful defendant made it reasonable for the plaintiff to join the successful one. In the case of *Mulhern v. The National Motor Cab Co., Ltd.*, (1913) 29 T. L. R. 677, where negligent driving was alleged against two vehicles, Mr. Justice Bankes held that a defendant, to escape the obligation to pay the plaintiff's costs against a co-defendant, must do something more than merely deny negligence on his own part, he must go so far as to say that he does not intend to throw any responsibility on the other defendant. But in the recent case of *Besterman v. British Motor Cab Co., Ltd.*, C. A., (1914) 3 K. B. 181; 83 L. J. K. B. 1014, it was held by the Court of Appeal that even this will not avail, the question in all cases is whether the court considers it was a reasonable and proper course for the plaintiff to join both the defendants in the action by reason of the doubtfulness of the facts. No amount of doubt in plaintiff's mind as to the law will justify the order (*Poulton v. Moore*, (1913) W. N. 349). The making of this order, sometimes known as the Bullock Order, is a matter of discretion of the judge. It is not confined to accident cases, or to cases of tort, but may in a proper case be made in an action founded on contract. This practice is followed in Admiralty cases where a claim is brought against the owners of the different ships (*The "Esrom" and the Hopper "Wills No. 66,"* (1914) W. N. 81).

Should, however, the verdict go against both defendants and one appeal successfully, the other who did not join in the appeal cannot be ordered to indemnify the plaintiff against the costs of the appeal (*Riches v. L. G. O. Co. and Others*, (1916) 140 L. T. J. 372; 60 Sol. Jo. 337).

An unsuccessful defendant may not be compelled to pay the costs of an issue, in which he succeeds, to a successful defendant. See *Donovan v. Walters*, (1927) C. A. 135; L. T. 12, referred to on p. 1048 under the general heading "Costs of Separate Issues."

When a plaintiff joins a second defendant from uncertainty as to, or misapprehension of his legal rights and not as to the facts, there is no ground for ordering the unsuccessful defendant to relieve the plaintiff of his liability for costs to a successful one (*Poulton v. Moore*, (1914) 83 L. J. K. B. at p. 880).

Discretion as to Costs in Moneylender's Actions.—In the case of *Temperance Loan Fund v. Erwood*, (1927) 43 T. L. R. 530; W. N. 162, the plaintiffs, who were moneylenders, sued the defendant on a promissory note for 50%. The defendant alleged that the action was harsh and unconscionable, and he prayed that the transaction should be reopened. No money, however, was paid into court, nor was there any counter-claim. The learned county court judge who tried the action held that the transaction was harsh and unconscionable and reopened the transaction, giving

judgment in favour of the plaintiffs for 26*l.* 10*s.* The learned judge further awarded the plaintiffs no costs, stating as his reason that the defendant had succeeding in reopening the transaction. Against this order as to costs the plaintiffs appealed to the divisional court, but without success. The divisional court, in refusing to disturb the discretion exercised by the trial judge in depriving the plaintiffs of their costs, further held that although it was in the power of the trial judge to have done so, he was not exercising his discretion improperly in refusing to make an order apportioning the costs between the parties, giving the general costs of the action to the plaintiffs, and giving the costs incidental to the question whether the transaction should be reopened to the defendant. See article in 71 Sol. Jo., 1927, p. 401. In the case of *Clive Everton, Ltd. v. Hollingsworth*, before Mr. Justice Shearman on July 21st, 1927 (unreported), the plaintiffs, a firm of moneylenders, sued the defendant, a farmer, for the balance due under a promissory note which contained the usual default clause. The defendant pleaded that the action was harsh and unconscionable and this was found as a fact. In the result the court gave the plaintiffs the costs up to and including the proceedings under Order XIV., and, presumably, the defendant the costs of the subsequent proceedings. See 71 Sol. Jo. 1927, p. 609.

No Power to award Lump Sum for Costs.]—Although sect. 113 of the Act provides that the costs of any action shall be apportioned between the parties as the court shall think just, the court has no power to award a party a fixed sum for costs which have not been taxed under sect. 118 of the Act (*Golding v. Smith*, (1910) 1 K. B. 462; 79 L. J. K. B. 375). Darling, J., expressed the opinion in that case that an order that, if the plaintiff's costs when taxed amounted to more than 10*l.*, the defendant should pay to the plaintiff only 10*l.*, would have been perfectly right. Further, under sub-clause 7 of Schedule II. of the Workmen's Compensation Act, 1906, a county court judge is not entitled to award a lump sum for costs before taxation (*Beadle v. Owners of ship Nicholas*, (1909) 101 L. T. 586; W. N. 227).

Proceedings by Poor Persons.]—Under the corresponding section of the older Act, sect. 78 of the County Courts Act, 1846 (corresponding with sect. 164 of the County Courts Act, 1888), it was held in *Chinn v. Bullen*, (1849) 8 C. B. 447; 19 L. J. C. P. 42; 79 R. R. 566, that a county court judge had discretion to allow parties to sue before him *in formâ pauperis*. The point was incidentally considered in *Perry v. London General Omnibus Co.*, (1916) 2 K. B. 335, which decided that an action could be remitted to the county court under sect. 66 of the Act of 1888 where the plaintiff was suing as a poor person, but the order could not make it a condition that the plaintiff was to be at liberty to sue as a "poor person" in the county court. Phillimore, L.J., at p. 346, said: "This argument loses nearly all its force if the plaintiff be admitted to sue as a poor person in the county court as she may be," and Bankes, L.J., at p. 348, said: "A county court judge may have an inherent jurisdiction to permit a person to sue in his court *in formâ pauperis*." The position, therefore, seemed to be that, so far as the county court was concerned, each judge was at liberty to settle his own method of procedure and apply his own personal standard. Such applications were very few in number, and as a rule were discouraged by the county court judges. The question has now, however, been discussed at length by the Court of Appeal in *Cook v. Imperial Tobacco Co., Ltd.*, (1922) 2 K. B. 158; 38 T. L. R. 700, where the opinion was expressed that the jurisdiction of the High Court to allow persons to sue *in formâ pauperis*

is not inherent but statutory, and that there is no similar jurisdiction in the county court.

The Court may award costs against an appellant who appeals under the Poor Person's Rules, if the appeal is entirely frivolous and vexatious and is an abuse of the process of the Court (*Drummond v. Hervey*, (1927) 44 T. L. R. 14; 138 L. T. 200).

Poor Persons Proceedings transferred from High Court to County Court.—When a person has been admitted to take or defend or be a party to any proceedings in the High Court as a poor person, and the proceedings have been transferred to the County Court the rules of the Supreme Court are to apply so far as applicable, but a person proceeding as a poor person shall not be required to give security for costs. The County Court judge has power :

- (1) To order a poor person to pay costs to any other party, or to receive from any other party any profit costs or charges.
- (2) To order in special cases that the costs ordered to be paid to or by a poor person shall include profit costs and charges.
- (3) To order payment to the conducting solicitor out of money received by a poor person, or to grant a charge upon any property recovered by a poor person. (The County Court (Poor Persons) Rules, 1928.)

PROVISIONS AS TO COSTS IN CERTAIN PROCEEDINGS.

Action commenced in the Wrong Court.—Power of Judge to try or Transfer.—

Costs of Transferred Action.—Prior to 1867 the judge had no power to give costs where a cause was struck out for want of jurisdiction (*Lawford v. Partridge*, (1857) 26 L. J. Ex. 147; 1 H. & N. 621; 108 R. R. 749). By sect. 114 of the principal Act, if the judge had no jurisdiction to hear the action and the parties would not consent to his trying it, he was obliged to strike it out. The section, however, gave him power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the court had jurisdiction therein and the plaintiff had not appeared, or had appeared and failed to prove his demand. The judge may award costs even against a defendant (*Watson v. Petts* (No. 2), (1899) 1 Q. B. 430; 68 L. J. Q. B. 249). By sect. 10 of the County Courts Act, 1919, where an action or matter is commenced in the wrong court, the judge may, if he thinks fit, and upon such terms as to costs and otherwise as he thinks fit, instead of striking the case out in accordance with sect. 114 of the principal Act, either transfer the action or matter to the court in which it ought to have been commenced, or proceed to hear and determine the case himself, and by sect. 12 of the same Act, where an action, counter-claim or matter is transferred from one county court to another county court, the costs of the whole proceedings, both before and after the transfer, shall, subject to any order made by the court which ordered the transfer or removal, be in the discretion of the court to which the matter is transferred or removed.

Change of Place of Trial and Costs of Transferred Action.—Actions or matters may be transferred by a judge to another court under sect. 85, on the ground that the action or matter can be more conveniently or fairly tried or heard in such court, or if the judge shall be interested in any action or matter pending in his court, or under Order VIII. Rule 8, where actions are entered in different courts by parties in the same interest, or, under Order XXXIII. Rule 19, where the registrar of the court to which an action

is transferred from the High Court or his partner or clerk has acted as solicitor for any party in such action, matter or proceeding in the High Court, and in the case of such transfer the costs of the whole proceedings both before and after the transfer or removal shall, subject to any order made by the court which ordered the transfer or removal, be in the discretion of the court to which the matter is transferred or removed. See sect. 12 of the County Courts Act, 1919, and Order VIII. Rule 9.

Where Plaintiff does not appear.]—Court may award defendant costs. By sects. 88 and 89 of the Act, if upon the return day the plaintiff shall not appear, the action shall be struck out, and if he shall appear but does not make proof of his claim, the judge may non-suit the plaintiff or give judgment for the defendant, and in either case, where the defendant shall appear and does not admit the claim, the court may award to the defendant, by way of costs of attendance and satisfaction for his trouble and attendance, such sum as the court shall think just, and by Order XXII. Rule 6, the court may in its discretion award costs to the defendant in the same manner and to the same amount as to counsel, solicitor, witnesses and other matters as if the action had been tried, but no hearing fee will be charged.

Discontinuance.—Other Party entitled to Tax his Costs without an Order.] By Order IX. Rule 1 (1) if the plaintiff gives notice of his desire to discontinue any action or matter he must give notice in writing thereto of the registrar and to every party as to whom he so desires to discontinue or withdraw; and after the receipt of such notice any such party may tax his costs incurred before the receipt of the notice. Where the plaintiff discontinues the action, no attendance at court to apply for costs is necessary and no such attendance will be allowed on taxation. (See note to item 76 in Higher Scale of Costs.) A discontinuance or withdrawal is not a defence to a subsequent action; but if a subsequent action is brought for substantially the same cause of action, it may be stayed by the judge until payment of the costs of the discontinued action (Order IX. Rule 1 (2)).

Discovery and Inspection of Documents.—Deposit on application and Costs of.]—By Order XVI. Rule 23 (1) any party seeking discovery by interrogatories or otherwise may be ordered, upon making application for discovery, unless payment into court is dispensed with under Rule 23 (2), to pay into court in the case of interrogatories the sum of 20s., or if the number of folios exceeds five the sum of 2s. for each additional folio, or in the case of discovery otherwise than by interrogatories the sum of 20s., or (in either case) any less sum, or such additional sum as the court shall direct. As a general rule in actions against several defendants, one deposit suffices (*Eder v. Attenborough*, (1889) 23 Q. B. D. 130; 58 L. J. Q. B. 311; *Joyce v. Beall*, (1891) 1 Q. B. 459; 60 L. J. Q. B. 242); but if there are several defendants who appear separately and have independent rights, it seems that a separate deposit should be made for the costs of each one against whom the order for discovery is made (*Liverpool and Manchester Bread Co. v. Firth*, (1891) 1 Ch. 367; 60 L. J. Ch. 153; *Joyce v. Beall*, *supra*). When money is paid in it must remain as security for the general costs of the action, and cannot be withdrawn, even if the order for discovery be abandoned (*Jubb v. Bibbs*, W. N. (1883) 208), but the parties by agreement cannot dispense with the deposit (*Aste v. Stumore*, C. A., (1884) 13 Q. B. D. 326; 53 L. J. Q. B. 82). See also pp. 1066 and 1097.

Inspection of Property by Judge or Jury.—Costs of inspection.] By

Order XXII. Rule 17, the judge may, in his discretion, inspect or order the jury to inspect any property or thing concerning which any question may arise in any action or matter. The expenses of any inspection under this rule shall be paid in the first instance by the party on whose application such inspection is made or ordered, or if inspection is made or ordered without such application, by the plaintiff; but the court shall have power to direct by whom such expenses shall be ultimately borne.

Costs between Third Party and other Parties to the action.]—By Order IX. Rule 5, the judge may decide all questions of costs, as between a third party and other parties to the action, and may order any one or more to pay the costs of any other or others, or give such direction as to costs as the justice of the case may require.

By Order LIII. Rule 18A, where an order for costs to be paid by or to a third party is made, any costs, fees to counsel, and allowances to witnesses reasonably incurred or paid in addition to the costs of the original action by reason of the third party being brought in, in respect of the trial of the question of the liability of the third party, or in preparing for such trial, may be allowed, and such costs are to be taxed as if the third party were a defendant, and the party to or by whom such costs are ordered to be paid were a plaintiff, and as if the third party notice were a summons with particulars annexed.

SECURITY FOR COSTS.

General Principle.—Against Plaintiff.]—The general principle of English law is that no person should be precluded from commencing an action on the ground of insolvency or poverty, and therefore there is no possibility of checking speculative actions by people who are destitute of means, and even by undischarged bankrupts (where the cause of action has not vested in the trustee) through the medium, in some cases, of an application for security for costs (see sec. 94 of the Act and notes thereon (*supra*)).

Exception.]—The sole exception to this rule is sect. 2 of the Act of 1919, which is substituted for sect. 66 of the Act of 1888, which enables a defendant against whom an action of tort has been commenced in the High Court by a plaintiff, who has no visible means of paying the defendant's costs should a verdict be not found for the plaintiff, to apply for an order requiring such plaintiff to give security for costs if he desires to prosecute the action in the High Court, or, in the alternative, to have it transferred to the county court.

For this purpose, in the case of an infant plaintiff, it is sufficient for the defendant in the first instance to show either that the infant or the next friend has no visible means of paying the defendant's costs, leaving the plaintiff to show that the combined means of himself and the next friend are sufficient (*Masling v. Motor Hiring Co. (Manchester), Ltd.*, C. A., (1919) 2 K. B. 538; 89 L. J. K. B. 109).

Against Defendant.]—A defendant cannot be compelled to give security for costs, and generally, any person compelled to litigate or taking proceedings which are merely defensive, cannot be required to give security. This is carried so far that a foreign defendant counterclaiming is not required to give security for costs of his counter-claim so long as it arises out of the same transaction as the claim (*Neck v. Taylor*, (1893) 1 Q. B. 560). It is otherwise if the counter-claim arises out of a different and fresh transaction (*Lake v. Haseltine*, (1885) 55 L. J. K. B. 205).

Where a foreign company obtained leave to intervene as defendants and

contest the plaintiff's claim, as the foreign company were really defending themselves and not attacking, the court refused an application for an order for security for costs against the foreign defendant interveners (*Maatschappij Voor Fondsenbezit and another v. The Shell Transport and Trading Co., Ltd., and others*, (1923) 2 K. B. 166).

Workmen's Compensation Acts and Rules.]—By Rule 13 of the Consolidated Workmen's Compensation Rules, 1926, Order V., rr. 10, 11, and Order XII., r. 9, as to security for costs, shall not apply to proceedings under the Workmen's Compensation Act, 1925, and Rules.

Arbitrations.]—An arbitrator has no power to order the parties to give security for costs unless there is an agreement in the submission to arbitration to that effect, as it is not given him by the Arbitration Act, 1889, sect. 2, First Schedule, from which he derives all the powers he possesses (*Lanza v. Wiener*, (1917) 2 K. B. 558; 86 L. J. K. B. 1236).

Cases in which Security can be Obtained.]—The cases which usually occur in practice in which security for costs can be obtained are as follows:—

(1) Where a plaintiff does not ordinarily reside in England or Wales though he may be temporarily resident there (Order V. r. 11), security is required automatically on the entry of the plaint, and is given either by a deposit of an amount fixed by the registrar, according to the nature of the action and the amount involved, or by an undertaking on the part of the plaintiff's solicitor to be personally responsible for any costs his client may ultimately be ordered to pay to the defendant (Order V. rr. 10, 11). Security will not be required if the plaintiff has substantial property within the jurisdiction of a reasonably fixed and permanent nature available for costs (*Redondo v. Chaytor*, (1879) 4 Q. B. D. 457). Where an action is commenced by an attorney resident in England for a plaintiff resident abroad, security or an undertaking should be required. In an action brought by a plaintiff resident out of the jurisdiction the defendant filed a defence, paying a sum of money into Court with a denial of liability. It was held that in the circumstances the plaintiff should not be ordered to give security for costs (*Hogan v. Hogan* (No. 2), *Dodd, J.*, (1924) 2 I. R. 14). A plaintiff resident in Southern Ireland and suing in this country stands in the position of a foreigner and may be ordered to give security for costs, inasmuch as the Judgments Extension Act, 1868, ceased to operate in Southern Ireland on December 5th, 1922 (*Wakely v. Triumph Cycle Co., C. A.*, (1924), 1 K. B. 214; 93 L. J. K. B. 331).

If the plaintiff's residence is misdescribed or he has no permanent residence or changes it to avoid service, he may be called upon to give security, but the mere fact that a plaintiff is a sailor who is from time to time going on voyages and has no fixed residence within the jurisdiction is no ground for ordering him to give security for costs, nor is the fact that he has misdescribed his residence in the writ if the misdescription is innocent and made without any intention to mislead the court (*Cheliew v. Brown*, *C. A.*, (1923) 2 K. B. 844; 93 L. J. K. B. 1).

There is no general rule of practice that security for costs will be required from plaintiffs who appear to have no permanent residence. If the address indorsed on the writ is not of a permanent character, it may afford grounds for ordering security. The Court of Appeal reversed an order for security on the ground that the plaintiff had been guilty of no default or misdescription or concealment, which ought to debar him from the exercise of his normal rights (*Knight v. Ponsonby*, *C. A.*, (1925) 1 K. B. D. 545; 94 L. J. K. B. 337). Security of costs will not be required from a plaintiff who has no permanent residence, where there is no intention to mislead the

court. The plaintiff's address was given as "The Carnival Hall, Waltham-stow." At that time he was doing business as a travelling showman at this hall, and was living in his caravan close by. In his judgment Eve, J., pointed out it was not a case where the plaintiff had abandoned his permanent residence, but his method of life was that of a mariner or other person of migratory habits (*Brooks v. Wilkins*, (1927) 71 Sol. Jo. 520 ; W. N. 136).

(2) A defendant who neither resides nor carries on business within a distance of twenty miles from the court in which the plaint is entered can also obtain security from a plaintiff by making an application to the registrar for an order directing the plaintiff to deposit in court a sum of money as security for the costs of the defendant. The application must be accompanied by an affidavit stating that the defendant intends to defend the action and has a good defence upon the merits. The application must be filed with the registrar with the notice of defence or the affidavit of defence in the case of a default or special default summons and in any other case not later than seven clear days at least before the return day (Order XII. r. 9). The Registrar in fixing the amount must have regard to all the circumstances of the case. This can only mean the amount a defendant's costs are likely to tax at in view of the scale of costs or column of the scale under which the costs are taxable, the number of witnesses and means of locomotion. Where a registrar, on the application of a defendant, who alleges that he neither resides nor carried on business within twenty miles from the court, makes an order directing the plaintiff to deposit in court a sum of money as security for the costs of the defendant, the county court judge under Order XII. r. 11 (8), has power to vary or rescind the order so made. *Porter v. London and Manchester Insurance Co.*, (1909) 2 K. B. 30, held to be no longer a binding authority (*Warwick v. Butler and Lauritzen*, (1925) 2 K. B. 294). This is a very useful provision to a defendant who is sued for a small sum, and who does not desire to waste a day at a distant county court, and in many cases where the deposit is ordered the result of the application is that no deposit is made, and the action is thus automatically brought to an end. Some registrars keep a printed form of affidavit which on application they send to a defendant, who is thus able to avail himself of the advantages of this rule without the necessity of instructing a solicitor to prepare the affidavit. As there is no official form of affidavit, but only of the application, the following form may be found useful :—

AFIDAVIT IN SUPPORT OF DEFENDANT'S APPLICATION FOR DEPOSIT BY PLAINTIFF.

No. of Plaint, ...

Order XII. Rule 9.

NOTE.—This affidavit to be forwarded to the registrar by registered post not later than seven clear days before the return day of the summons.

In the County Court of, holden at

Between

plaintiff,

and

defendant.

I, . . . of . . . in the county of . . . the above-named defendant (or clerk to the above-named defendant) make oath and say as follows :—

(1) The return day of the summons issued against ^{me.} the defendant in this action is the . . . day of . . . 19 . . .

(2) ^{My} The defendant's residence or place of business is situated at _____ in the county of _____ which is not within a distance of twenty miles from this court.

(3) ^{I have} The said defendant has a good defence to this action upon the merits, and the facts ^{I rely} the said defendant relies upon as disclosing such defence are : [State shortly the facts and grounds of defence.]

(4) In order to prove the said facts it will be necessary for ^{me} the said defendant and _____ witnesses to attend the court on the hearing of this action (and to travel overnight so as to reach the court by twelve o'clock on the day of hearing). [Strike out words in brackets if not the fact.]

(5) The third-class return railway fare from _____ to _____ is £ _____ : _____ s. _____ d.

(6) I am a person in the employ of the said defendant. The facts herein deposed to are within my own knowledge, and I am duly authorised by the said defendant to make this affidavit. [To be added when the defendant does not make the affidavit.]

Sworn at _____ in the county _____
of _____ this _____ day }
of _____ 191 . _____ }

Before me,

A Commissioner for Oaths :
or Clerk to the registrar of the _____ county court, duly
nominated.

This affidavit is filed on behalf of the defendant.

(3) Where a limited company is plaintiff, a judge may require security for costs to be given if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful (Companies (Consolidation) Act, 1908, sect. 278).

(4) Where the plaintiff in any action in the court which the trustee might maintain for the benefit of the creditors becomes bankrupt, his trustee can only continue the action for the benefit of his estate on the terms of giving security for costs (County Courts Act, 1888, sect. 94).

(5) A nominal insolvent plaintiff may be ordered to give security (*Lloyd v. Hathern Station Brick Co.*, C. A., (1901) 85 L. T. 158).

The insolvent trustee of a deed of assignment suing as a nominal plaintiff is within this rule (*Greener v. E. Kahn & Co., Ltd.*, (1906) 2 K. B. 374), but trustees of a separation deed are not nominal plaintiffs and are not liable to give security even if insolvent (*White v. Butt*, (1909) 1 K. B. 50).

(6) A next friend is not obliged to give security for costs (*Fellows v. Barrett*, (1836) 1 Keen, 119); although he may be impecunious and a stranger (*Jones v. Evans*, (1886) 31 Sol. Jo. 11, cf. *Didisheim v. London &c.*, (1900) 2 Ch. 15); but if he appeals and is insolvent he may have to give security.

(7) A married woman, though without separate estate and without any property available for execution, is entitled to sue alone, and cannot be required to give security for costs any more than any other plaintiff (*Re Isaac*, (1885) 30 C. D. 418; *Threlfall v. Wilson*, (1883) 8 P. D. 18; *Severance v. Civil Service Supply Ass.*, (1883) 48 L. T. 485).

(8) Where a party applies for discovery by interrogatories or otherwise, he may be ordered to make a deposit as security for the costs of the party making such discovery (Order XVI. r. 23).

(9) In Admiralty cases where a party applies for an order of transfer of

proceedings for sale of a vessel which has been arrested to the High Court he must give security to the amount of 10*l.* (Order XXXIX. r. 71).

(10) Where a defendant in an action of contract, where a sum exceeding 20*l.* is claimed, or in an action of tort, where a sum exceeding 10*l.* is claimed, desires to have the action tried in the High Court, he is required to give security for the amount claimed, and costs of trial in the High Court, not exceeding 150*l.*, before applying for the judge's certificate, which is a condition of its removal (County Courts Act, 1888, sect. 62, and Order X. r. 6).

(11) On appeal from a county court judgment, the High Court has power to order security for costs (R. S. C., Order LIX. r. 17, and *Swain v. Follows*, (1887) 18 Q. B. D. 585; *Wilcox v. Wallis Crown Cork & Co., Ltd.*, (1914) W. N. 107). As to the circumstances under which an order will be made, see the following notes which are taken from the notes to the above rule in the Annual Practice, 1929, p. 1261. "This rule gives power to the divisional court to order security for costs of appeal from inferior court (*Swain v. Follows*, 18 Q. B. D. 585). As a rule the court will not require security for costs, where leave to appeal has been unconditionally given by the judge of the county court (*Ex parte Society of Apothecaries*, 38 W. R. 478). It has been held that where there is reasonable ground for the appeal, security will not be ordered merely because the appellant has no visible means of paying costs (*Pritchett v. Poole*, (1897) 76 L. T. 472). But it is probable that in view of the decision of the C. A. in *Hall v. Snowdon*, C. A., (1899) 1 Q. B. 593, where A. L. Smith, L.J., at p. 594 said, 'The ordinary rule of this court is that, except in applications for new trials, when the respondent can show that the appellant, if unsuccessful, would be unable through poverty to pay the costs of the appeal, an order for security for costs is made,' the practice is now otherwise, see per Atkin, J., in *Wilcox v. Wallis Crown Cork Co.*, (1914) W. N. 107. Security, however, will be ordered to be given for the costs of an appeal from the county court where the appellant has disposed of his goods for the purpose of avoiding payment of the respondent's costs (*Moore v. Pinnick*, (1901) 70 L. J. K. B. 471). The Divisional Court ordered the applicant for a prohibition to a county court, who was appealing from the refusal of the judge in chambers to grant prohibition, to give security for £10 for costs (*Kirkwood v. Claxton and Tilling*, *Ex parte Tilling*, Div. Court, 24 May, 1911, unreported)."

"The K.B.D. has an inherent jurisdiction to order security for costs in a proper case on an appeal from an official referee (*J. H. Billington, Ltd. v. Billington*, (1907) 2 K. B. 106)."

In this connection, however, it must be remembered that any party to proceedings in a court other than the High Court from which an appeal lies direct to the Court of Appeal, shall be admitted on an appeal to the Court of Appeal as a poor person on obtaining the necessary certificate (R. S. C., Order XVI. r. 31 F.). If the county court has not granted a stay of execution, the only way in which a defendant can obtain one is to deposit or give security to the satisfaction of the county court for "the amount affected by the judgment" (R. S. C., Order LIX. r. 14), which includes the costs in addition to the amount for which judgment has been given (*Grimshaw, Baxter and Elliott, Ltd. v. Parker*, (1910) 2 K. B. 161; 79 L. J. K. B. 780).

Where security for the costs of an appeal has been ordered, it ceases to operate if within the time limited for giving security the appellant obtains leave as a poor person (*Wille v. St. John* (No. 2), C. A., (1910) 1 Ch. 701; 79 L. J. Ch. 409).

(12) Where an action has been remitted to the county court for trial there does not appear to be any power to order security for costs, even in cases where this could have been done had the action been commenced in the county court. In the case of *Hemming v. Davies* (1898) 1 Q. B. 660, it was held that the county court had no power to order a trustee in bankruptcy, joined as a plaintiff, to give security, where the order joining him had been made in the High Court before the action was remitted. By analogy, it would seem that there is no power to order a Scotch or Irish plaintiff in a remitted action to give the security without which he could not have commenced the action in the county court.

Court has a Discretion in making or refusing Order.]—Although the court acts on well-established rules in ordering security for costs, the court has a discretion as to enforcing them, though the clearer the rule the stronger the case that must be made to induce the court to depart from it, *per* Scrutton, L.J., in *Maatschappij Voor Fondsenbezit and another v. The Shell Transport and Trading Co., Ltd. and others*, (1923) 2 K. B. 166; and see also the Irish case of *McLeavy v. Maguire*, (1923) 2 I. R. 43.

Form of Security and Practice as to giving same.]—As to the form of security, see sect. 108 of the Act, and as to the practice to be followed in giving security, see Order XXIX. rr. 1 to 6.

Security for Costs of Appeal.]—Security will be ordered in the case of an appeal by an individual litigant or next friend without means to the Divisional Court (*Wilcox v. Wallis Crown Cork and Syphon Co., Ltd.*, (1914) W. N. 107), following the analogy of *Hall v. Snowdon, Hubbard & Co.*, C. A., (1899) 1 Q. B. 593; 68 L. J. Q. B. 363, where security was required for an appeal by a litigant under similar circumstances to the Court of Appeal under the Workmen's Compensation Act, 1906. The mere fact that there is a point of law which is reasonably fit for argument is not a sufficient ground for dispensing with security for costs (*Everett v. Islington Guardians*, (1923) 1 K. B. 44; 92 L. J. K. B. 250).

SCALE OF COSTS APPLICABLE.

The general rule is that when the costs of a plaintiff are being taxed, the scale to be allowed depends on the amount recovered by him; and the costs of a defendant upon the amount claimed by the plaintiff (Order LIII. r. 18).

It will have been seen from the scales that they are divided into lower and higher scales, and that the higher scale is subdivided into columns A, B and C. The lower scale applies to cases where the amount recovered exceeds 2*l.*, but does not exceed 10*l.* The higher scale applies where the subject-matter or the sum recovered exceeds 10*l.*; column A, where it does not exceed 20*l.*; column B, where it exceeds 20*l.*, but does not exceed 50*l.*; and column C, where it exceeds 50*l.*

The judge has no power under sect. 113 of the County Courts Act, 1888, as read with Order LIII. r. 1, to order payment of costs on a scale lower than that applicable to the amount involved, unless in exercising his discretion whether he shall give a special direction, he does so judicially and on proper grounds (*Bevington v. Perks and the Bell Assurance Society (Third Party)*, (1925) 2 K. B. 229, followed in *Hughes & Son v. Satchell*, (1926) 134 L. T. 93).

Actions and Proceedings in which Scale does not Depend on the Amount Recovered or Claimed.]—There are some actions or matters in which the scale of costs does not depend on the amount recovered or claimed, but on other considerations. The more usual of these actions or matters are:—

(1) In actions for recovery of possession (see Order V., r. 3) under

sect. 138 of the Act, that is recovery of possession of tenements by landlord where term has expired or been determined by notice, and under sect. 139 of the Act, that is recovery of possession of tenements by landlord for non-payment of rent, Order LIII. r. 13 provides the manner in which the costs are to be taxed as follows :—

(a) Where the tenancy was weekly, monthly, quarterly, or for any definite period not exceeding six months, the costs shall be taxed on the scale applicable to the respective sums mentioned in Column 2 of the following table, plus, in the case of the plaintiffs the amount of any rent or mesne profits recovered, and in the case of a defendant, the amount of any rent or mesne profits claimed : Provided that in the case of a defendant his costs shall be taxed upon the tenancy claimed by the plaintiff.

Column 1.	Column 2.
	£ s. d.
1. If the rent of the premises was at a rate not exceeding 7s. 6d. per week	3 0 0
2. If the rent of the premises was at a rate exceeding 7s. 6d. but not exceeding 15s. per week	5 10 0
3. If the rent of the premises was at a rate exceeding 15s. but not exceeding 20s. per week	12 0 0
4. If the rent of the premises was at a rate exceeding 20s. per week	21 0 0

(b) In the case of all other tenancies, whether or not any sum is recovered or claimed for rent and mesne profits or either, the costs shall be taxed under column A, B, or C, as the Judge may order, and in default of any such order shall be taxed under column B.

(2) In interpleader proceedings, the “subject-matter” shall mean :—

(a) In the case of a claimant, the amount of the value of the goods, his claim to which is allowed, plus the amount of the damages (if any) adjudged :

(b) In the case of an execution creditor, the amount of the value of the goods seized, plus the amount of the damages (if any) claimed ; and

(c) In the case of the high bailiff, the amount of the damages claimed (Order LIII. r. 15).

It is the true value of the goods which is the criterion, so that where the judge found the value, as in *Studham v. Stanbridge*, (1895) 1 Q. B. 870 ; 64 L. J. Q. B. 473, the true value is the value so found, and it is submitted that where the goods have been sold, and realised more than the appraised value, the true value is the amount realised at the sale.

See an unreported case commented on under “Interpleader Appeals” in the *County Court Chronicle*, August 2, 1915, Vol. 45, p. 143.

This rule applies even in the case of a remitted interpleader, where the sole function of the county court judge is to decide as to whether the execution creditor or the claimant is entitled to the amount paid into court to avoid a sale. This amount, of course, where the execution is for a small sum, is frequently considerably less than the value of the goods seized, but notwithstanding the fact that the controversy is limited to the amount so paid, the costs are taxable on the value of the goods seized (*Tarry v. Witt, Hor-*

wood, Claimant, (1915) 84 L. J. K. B. 950). Apparently, even when a claim is admitted before the hearing of the interpleader, the judge may still be asked to go behind the high bailiff's valuation and hear evidence as to the actual value of the goods seized, in order to enable the claimant to tax his costs on a higher scale than that to which he would otherwise have been entitled.

By Order XXXIII. r. 17, where any proceeding by way of interpleader is transferred from the High Court to a county court, the judge may order that the sheriff shall have his costs of the interpleader proceeding in the High Court, and may direct by which party the said costs shall be paid.

Where the claimant succeeds and is awarded costs, he is entitled to be allowed, as against the execution creditor, the sheriff's charges subsequent to the issue (*Goodman v. Blake*, (1887) 19 Q. B. D. 77).

- (3) In proceedings under the Companies (Consolidation) Act, 1908: (a) In a winding-up by the court, all costs properly incurred are to be allowed on the lower scale in Appendix N to the Rules of the Supreme Court (Rule 184 of the Companies (Winding-up) Rules, 1909).

(b) The costs of proceedings, other than proceedings relating to the winding-up of companies by the court, are to be allowed according to the scale of costs applicable to similar proceedings in the High Court (Order XLIA. r. 1 (3)).

- (4) In proceedings under the Married Women's Property Act, 1882:

(a) Applications for the appointment of a trustee or new trustee under sect. 11 of the Act shall be made by petition and costs allowed as on any other petition, regard being had to the amount of the subject-matter of the petition (Order XLVI. r. 1).

(b) In applications under sect. 17 of the Act, with reference to any question between husband and wife as to the title to the possession of property, the judge shall direct upon what scale the costs of the proceedings shall be taxed (Order XLVI. r. 2).

(c) Generally where judgment is given, or an order made, for costs against a married woman in an action or proceeding instituted by her, the judgment or order will be according to the form applicable, in the circumstances of the case, to a judgment against a married woman defendant; and, unless the judge otherwise orders, the judgment or order will reserve to the opposite party liberty to apply for payment of the costs out of her property subject to a restraint on anticipation (Order XXIII. r. 3, and see Married Women's Property Act, 1893, s. 2).

A counterclaim is a "proceeding" within sect. 2 of the Married Women's Property Act, 1893 (*Hood-Barrs v. Cathart*, (1895) 1 Q. B. 873; 64 L. J. Q. B. 520); and so is an intervention in a probate action (*Crickitt v. Crickitt*, (1902) P. 177; 71 L. J. P. 65); but an appeal from a judgment is not (*Hood-Barrs v. Heriot*, (1897) A. C. 177; 66 L. J. Q. B. 356).

COLUMN OF HIGHER SCALE OF COSTS ON WHICH IN CERTAIN ACTIONS OR MATTERS COSTS ARE TAXABLE IN DEFAULT OF ORDER OF JUDGE.

In certain actions or matters costs are taxable under the column of the higher scale of costs named in the County Court Rule dealing with the costs in such actions unless the judge otherwise orders. In the absence,

therefore, of any judicial order the costs will be taxed on the named column of the scale, and if it is desired that they shall be taxed on any other column, application must be made to the court at or immediately after the hearing of the particular case, for a special order, should the successful party not be satisfied with the column of the scale under which the costs will be taxed in the absence of such special order.

The $33\frac{1}{3}$ per centum increase of costs is not allowable when costs are allowed on any scale higher than that which would otherwise be applicable unless the judge otherwise orders (Order LIII. r. 50 (2) (b)).

The cases in which an application for such an order can be made which most frequently occur in practice are:—

Special Actions and Matters under the County Court Acts.—In the following actions or matters, the costs will be taxed under column B in default of any order of the judge that they shall be taxed under columns A or C (Order LIII. r. 11).

- (a) Actions in which a perpetual injunction is claimed, whether the same is granted or not. Where the practical claim in the action is for an injunction, whether the injunction was or was not granted, such a claim takes the case out of the rules limiting the plaintiff's right to costs under sect. 116 of the Act of 1888, for which sect. 11 of the Act of 1919 has been substituted (*Keates v. Woodward*, (1902) 1 K. B. 532; *Deverell v. Milne*, (1920) 2 Ch. 52). But where an injunction was claimed, and the plaintiff had an alternative but inconsistent claim, and succeeded on the latter to the extent of 4l. 4s. damages, but failed as to the injunction, it was held that the judge could not order the costs to be taxed on scale B, but that they must be taxed on the lower scale (*Clinton v. Bennett*, (1908) 1 K. B. 109; 77 L. J. K. B. 52).
- (b) Under sect. 59 of the Act of 1888, that is, actions of ejectment, where neither the value of the lands, nor the rent payable in respect thereof, shall exceed the sum of 100l. by the year.
- (c) Under sect. 60 of the Act of 1888, that is, any action in which the title to any corporeal or incorporeal hereditaments shall come in question, where neither the value of the lands in dispute, nor the rent payable in respect thereof, shall exceed the sum of 100l. by the year.
- (d) Under sect. 61 of the Act of 1888, that is, any action in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise shall incidentally come in question, if both parties at the hearing shall consent in writing to give the judge jurisdiction to decide the claim.
- (e) Under sect. 133 of the Act of 1888, that is actions of replevin.

Jurisdiction by Agreement.—Costs in actions under sect. 64 of the Act, that is, jurisdiction by agreement in writing with respect to actions assigned to the King's Bench Division of the High Court, will be taxed under column C, unless the judge otherwise orders (Order LIII. r. 14).

Actions under Statutes other than the County Courts Acts.—In actions or matters under certain statutes giving county courts jurisdiction, other than the County Courts Acts, the costs will also be taxed under column B in default of any order that they shall be taxed under columns A or C. Of these statutes the following are amongst those which most frequently occur in practice:—

- (a) The Agricultural Holdings Act, 1923.

- (1) Costs of proceedings in the county court under the Act, and

- (2) Costs of, and incidental to, an arbitration or award in default of any direction of the arbitrator.

Order of Lord Chancellor, dated November 27th, 1900, still in force under sect. 58 of the Act.

- (b) The Charitable Trusts Acts, 1853 to 1891 (Order XLVIII. r. 24).
- (c) The Inclosure, etc. Expenses Act, 1868. Any action under sect. 4 of the Act (Order L. r. 2).
- (d) The Court of Probate Acts, 1857 and 1858 (Order XLIX. r. 11).
- (e) The Telegraph Acts, 1863 and 1878 (Order L. r. 11 (16)).
- (f) The Representation of the People Act, 1918. Appeals from registration officers under sect. 14 of the Representation of the People Act, 1918, are taxable under column A in default of any order that they shall be taxed under columns B or C.
- (g) The County Courts Admiralty Jurisdiction Acts. In Admiralty actions, where the amount recovered, or in the case of a defendant the amount claimed, does not exceed 20*l.*, the costs shall be allowed under column B, unless the judge otherwise orders (Order XXXIX. r. 112).

Subject to Order XXXIX. rr. 109 to 112, the costs in Admiralty actions shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject-matter of such actions (Order XXXIX. r. 113).

SPECIAL ORDERS OF THE JUDGE OR REGISTRAR AS TO COSTS.]—These are of two kinds: (1) Orders as to the scale on which the costs in certain actions are to be taxed, and (2) Orders as to the allowance of discretionary items of costs or of the costs of certain proceedings in the particular action if the circumstances warrant it.

In either case it is of the utmost importance, when it is desired to make the application to the judge, that the application should be made at or immediately after the trial or hearing, as even though the failure to do so may be due to mistake or inadvertence, judges frequently decline to entertain the applications at a later date on the ground that they have forgotten all about the cases in question.

1. SPECIAL ORDERS AS TO SCALE ON WHICH THE COSTS IN CERTAIN ACTIONS ARE TO BE TAXED.

(1) **Under Sect. 119 of the Act.]**—Apart from the rules, the judge has, in all cases whatsoever, power to award costs to the plaintiff on any higher scale than would otherwise apply, on any amount recovered, however small, or to a defendant who successfully defends an action brought for any amount, however small, provided the judge certifies in writing that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons, or of general or public interest (sect. 119 of the Act). The application must be made at or immediately after the trial or hearing, and if not so made shall not afterwards be entertained unless otherwise ordered by the judge for good cause, or unless he is satisfied that the omission to apply was due to mistake or inadvertence (Order LIII. r. 9 (1)). Where the plaintiff accepts money paid into court in satisfaction of his claim, or gives notice of discontinuance, or the action is struck out on default of appearance by the plaintiff, or the defendant admits the claim or consents to judgment, an application for a certificate under sect. 119 may be made on notice in writing in accordance with the rules as to interlocutory applications; the notice must state the grounds of the application.

Where a judge so certifies, the certificate must be entered at the end of the minutes of the court of the day on which it is given, and must be signed by the judge (Order LIII. r. 9). Mere entry of the order in the minutes will not suffice (*Howard v. Graves*, (1885) 52 L. T. 858). But the entry and signature may be made on a day subsequent to that on which the order for costs is made (*Badcock v. Hunt*, (1889) 38 W. R. 255).

It has been decided that the question whether one of the parties to an action has committed perjury is not one of general or public interest (*R. v. The City of London Court and Dittmar*, (1886) 18 Q. B. D. 105), and that wives do not constitute a class of persons within the meaning of sect. 119, and the question whether a wife was guilty of adultery was of no importance to other wives (*Day v. Day*, (1916) 32 T. L. R. 332; 60 Sol. Jo. 354).

The 33½ per centum increase of costs is not allowable when an order has been made under this section unless the judge otherwise orders (Order LIII. r. 50 (2) (b)).

(2) "In proceedings under the equitable jurisdiction of the Court where the subject-matter does not exceed £20."—The judge may order the costs to be taxed under Column B in all equity proceedings where the subject-matter does not exceed £20, including petition under the Settled Land Act, 1925, and proceedings under the Trustee Relief Acts, which comprise a payment into court by trustees and a subsequent petition for payment out by the beneficiaries interested (Order LIII. r. 12). The court has complete discretion over the costs in these as in other actions. See sect. 113 and *Plumb v. Craker*, (1885) 16 Q. B. D. 40; 55 L. J. Q. B. 116.

(3) Where the Demand is unliquidated.]—Where the demand is unliquidated and the plaintiff recovers less than the amount claimed, the judge may order that his costs be taxed on the scale applicable to the amount claimed, or any intermediate scale, and that the court fees recoverable by the plaintiff shall be calculated on the amount claimed or on any smaller amount (Order LIII. r. 17). This power extends to an action remitted from the High Court and the rule is not *ultra vires* (*Sargeant v. Watts* (1917) 2 K. B. 624; 86 L. J. K. B. 1337).

(4) Special Actions and Matters.]—In certain special actions and matters under the County Courts Acts, and actions under statutes other than the County Courts Acts and in cases under sect. 64 of the Act (all of which are fully set out, *supra*, p. 1033) the judge as above stated has power to direct taxation on some other column of the higher scale than that normally applicable to the particular proceeding.

2. SPECIAL ORDER AS TO ALLOWANCE OF DISCRETIONARY ITEMS OF COSTS OR COSTS OF CERTAIN PROCEEDINGS.

An order or decision of the judge or registrar for the allowance of any of the discretionary items in the scales of costs or for the allowance of any particular costs under any of the County Court Rules shall be a special order or decision made or given upon consideration of the facts of the particular case and not a general order or decision, and the registrar shall have no power to allow any item which has been expressly disallowed by the judge, the decision of the registrar being subject to review by the judge (Order LIII. r. 7). The judge or registrar may, in his discretion in any action or matter, order or decide that any of the following items mentioned in the scale of costs shall be allowed to the party in whose favour the order is made, in addition to or in substitution for, as the case may be the costs to which he would otherwise be entitled, viz., items 31 (where no counsel employed for preparation of minutes of fact or argument), 70 (at

court conducting cause without counsel), 86 (no local bar fee), and 93 (for settling petition, particulars, statement of claim, defence, etc.) (Order LIII. r. 8.) No general rule laid down by the judge is of any validity, and for the judge merely to act in compliance with such a rule is not an exercise of his discretion (*R. v. Marylebone C. C. Judge*, (1890) 34 Sol. Jo. 439; 62 L. T. 814; *The Cashmere*, (1890) 15 P. D. 121; 59 L. J. P. 57).

The judge's or registrar's general order for costs or in default of any special direction the operation of sect. 113 of the Act of 1888 is enough to entitle a party to the allowance on taxation at the discretion of the registrar of nearly all the items in the scale applicable to the particular case. In the following cases, however, special application is still required to be made to the judge or registrar who tries the case:—

(1) **Special Allowances, where the claim does not exceed £10.**—Where the claim does not exceed £10 the costs of preparing for and attending trial may be increased to a sum not exceeding £2, and allowances made of a fee not exceeding £2 4s. 6d. for counsel and solicitor's instructing fees consequent thereon, and for half fees for day's attendance when action adjourned for want of time (Lower Scale, pars. 7, 8 and 9).

(2) **Interlocutory Applications.**—The allowance of the costs of and incident to interlocutory applications shall be in the discretion of the judge or registrar, according as the application is expressly or by reasonable intendment directed to be made to the judge or registrar, and no such costs shall be allowed on taxation without special order (Order XII. r. 11 (4)).

(3) **Costs of Discovery.**—The position appears to be as follows:—

(a) Where the amount recovered, or in the case of a defendant the amount claimed, is not less than £10. The party giving discovery, if successful, is entitled to the costs of such discovery without an order. The party seeking discovery, if successful, is only so entitled where such discovery appears to the judge at the trial, or, if there is no trial, to the registrar on taxation, to have been reasonably asked for (Order XVI. r. 22). The amount paid in as security for costs of discovery shall, after the action or matter has been finally disposed of, unless the court otherwise orders, be paid out to the party by whom it was paid in; but if the judge should think the discovery unnecessary, he may, it is conceived, order the amount to be applied in payment of the costs incurred by the opposite party in obedience to the order for discovery. If the party paying in be ordered to pay the costs of the action or matter, the amount paid in will be subject to a lien for such costs (Order XVI. r. 24). If no taxation of costs is required, the registrar must, by consent or on being satisfied that the party who made the payment is entitled to the amount, pay it out to the party, or to his solicitor on his written authority (Order XVI. r. 24).

(b) Where the amount recovered, or in the case of a defendant the amount claimed, does not exceed 10*l.*, and there are, therefore, no items in the scale of costs applicable. The party giving discovery, if successful, is entitled to have the whole or part of the amount paid in as security for costs of discovery paid into court by the opposite party, but no further costs of discovery, allowed unless the court (presumably the judge at the trial, or, if there is no trial, the registrar on taxation) so directs; or, if he considers the case of sufficient importance, he can apply to the judge to certify under sect. 119 of the Act, or for a special order for the costs of discovery to be allowed on one or other of the higher scales of costs, in either of which cases such costs may be allowed by the judge on the scale specified in the certificate or order (Order XVI. r. 24A);

the party seeking discovery, if successful, is only entitled to any costs of discovery if he obtains such a certificate or an order as last mentioned (Order XVI. r. 24A). The party against whom discovery is applied for in such an action should be careful to see that the full amount of the security payable into court under r. 23 is so paid, as, though it may be easy for him to obtain an order from the judge for payment of the security, it may be difficult to induce the judge to certify under sect. 119 of the Act, or to make a special order for such costs on a higher scale. See also pp. 1055 and 1097.

(4) **Appointment of Receiver by way of Equitable Execution.**—Where a receiver is appointed by way of equitable execution, costs may be allowed as on an interlocutory application in an equitable action or matter (Order XIII. r. 14). And a special order is necessary before any costs can be allowed on taxation (Order XII. r. 11 (4)).

(5) **Two Counsel.**—The scale of costs contemplates the employment in the county court of one counsel only and there is no express power given to the judge by any rule to allow two counsel. Order LIII. r. 8 (3), however, by prescribing that reasonable fees may be allowed to additional counsel where the judge certifies for the allowance of fees to more counsel than one, by implication confers on the judge power, where costs are taxed under column B or column C on consideration of the facts of the case to grant such a certificate.

FULL INDEMNITY AS TO COSTS.

(a) **Limitations of Actions and Costs Act, 1842.**—In the case of *House Property Company of London v. Whiteman*, (1913) 2 K. B. 382, the Divisional Court held that where an action is brought to which the Stat. 5 & 6 Vict. c. 97, which abolished double or treble costs applies and provides by sect. 2 for payment of "full and reasonable indemnity as to costs incurred in and about any action," sect. 118 of the County Courts Act applies as to costs "in the action," which are therefore limited to costs allowed by the county courts scale, but not as to costs incurred "about the action," so that the indemnity covered all the costs reasonably incurred by the plaintiffs as preliminary to the action, including the costs of taking counsel's opinion upon the question whether the action lay.

(b) **Action by one of two joint contractors.**—The ordinary rule that one of two co-contractors desiring to sue must offer an indemnity for costs to the other before joining him as a plaintiff has now been modified to the extent that such offer is no longer necessary where it is alleged that the co-contractor has agreed or conspired with the defendant to commit a breach of the contract. In such a case he can be joined as defendant without any preliminary offer of indemnity (*Johnson v. Stephens and Carter, Ltd., and Golding*, (1923) 2 K. B. 857; 92 L. J. K. B. 1048).

COSTS OF ACTIONS COMMENCED IN THE HIGH COURT WHICH COULD HAVE BEEN COMMENCED IN THE COUNTY COURT (Sect. 11 of the Act of 1919) **AND OF TRANSFERRED ACTIONS FROM THE HIGH COURT TO THE COUNTY COURT** (Sect. 12 of the Act of 1919).

It should be noted that the limitations as to costs imposed by this section, do not apply to all actions brought in the High Court, but only to such of them as "could have been commenced in a county court," therefore, actions which could not have been commenced in the county court are exceptions to the above section, and the costs of the High Court scale follow the event, however small the amount recovered. See Supreme Court of Judicature (Consolidation) Act, 1925, sect. 50, and *Garnett v.*

Bradley, (1878) 3 App. Cas. 944. The following list of actions which cannot be commenced in the County Court is taken from the "Annual Practice," 1928, pp. 2306 to 2308, to which reference should be made for further details:—

Admiralty jurisdiction; Title to Hereditaments—Injunction; Title to toll, fair, etc.; Libel; Slander; Seduction; Breach of promise of marriage; Detinue—Damages; Injunction; Tithe; Copyright—Literary Dramatic, Musical and Artistic; Malicious prosecution; Counterclaim in High Court action; Set-off in High Court action to claim for an amount above the County Court limit.

An action is one which "could have been commenced in a County Court" if it is an action of a kind which a County Court can entertain, although the amount claimed by the plaintiff may exceed the limit of the County Court jurisdiction (*Chatfield v. Sedgwick*, C. A., (1879) 4 C. P. D. 459; *Solomon v. Mulliner*, (1901) 1 K. B. 76).

This section does not apply to a counterclaim. A defendant who pleads a counterclaim does not select the tribunal; therefore, if he succeeds on his counterclaim in a High Court action he is entitled to the costs occasioned by his counterclaim, however small the amount he recovers (*Blake v. Appleyard*, (1878) 3 Ex. D. 195; *Amon v. Bobbett*, C. A., (1889) 22 Q. B. D. 543). Likewise a plaintiff who defeats a counterclaim is entitled to have his costs of defence to the counterclaim taxed on the High Court scale, even though the plaintiff recovers nothing on his claim, and the subject of the defendant's counterclaim could have been brought as a separate action in the county court (*Williams v. Poole*, (1910) 45 L. J. N. C. 471).

In cases within this section where the plaintiff recovers, in the case of an action founded on contract, a sum of 40*l.* or upwards, but less than 100*l.*, he is only entitled to County Court costs, but where judgment was given in the High Court for the plaintiff, for an amount to be ascertained on taking an account between the parties with costs, and the amount was ascertained to be under 100*l.*, the Court of Appeal held that the Judge had jurisdiction under this section to award costs on the High Court scale (*Light v. William West & Sons, Ltd.*, C. A., (1926) 2 K. B. 238).

The right of a successful party to an arbitration by consent to have costs of the reference and award taxed on the High Court scale is not affected by sect. 11 (*Street v. Street*, (1900) 2 Q. B. 57; 82 L. T. 648).

The following case should also be noted. *Duxbury and others v. Barlow & Richardson*, (1901) 2 K. B. 23, decided that where there are several defendants, and the plaintiff recovers less than 100*l.* against one defendant, and on a separate cause of action 100*l.* or upwards against another defendant, he is still only entitled to County Court costs against the first defendant.

The construction to be placed upon the words contained in sect. 11 "if the action had been brought in a County Court" is set out in the following memorandum (taken from the *Annual Practice*, 1929, p. 2308).

"What has actually paid is irrelevant. . . . I have to tax an imaginary bill representing the proceedings which would have been taken if the plaintiff had sued in a County Court, and not those which were taken in fact when he sued in the High Court. If I have to imagine that the plaintiff sued in the County Court, although in fact he sued in the High Court, I must also imagine that he made such payments as he would have made if he had sued in the County Court, although in fact he made different pay-

ments. I am bound to assume that the plaintiff issued a plaint and not a writ, and it would be quite inconsistent with that to assume that he paid for a writ and not for a plaint." (Answer to objections by Master Wilberforce carried in. Taxation supported on summons to review; *Swedish Match Co. v. Harrington*, Lawrence, J., in Chambers, 21 January, 1901, unreported.) In a case of *Teuton v. Kimber*, Bucknill, J., in Chambers, 7 March, 1905, unreported, where precisely the same method of taxation was adopted, and objected to, the judge dismissed the summons to review. That the taxation must proceed as upon a hypothetical County Court action is supported by the judgment in *Haycocks v. Mulholland*, (1904) 1 K. B. 145."

Sects. 1 and 2 of the Act of 1919, which are substituted for sects. 65 and 66 respectively of the Act of 1888, provide for the transfer of actions of contract and tort and for the recovery of land from the High Court to the county court, and for the transfer of actions of tort where the plaintiff is without visible means of paying costs respectively. Sect. 116 of the Act of 1888, which formerly governed the costs in actions brought in the High Court which could have been commenced in the county court has been repealed and sect. 11 of the Act of 1919, as amended by sect. 20 of the Administration of Justice Act, 1925, substituted. The costs in such actions and in actions transferred from one court to another are now governed by the above sects. and sect. 12 of the Act of 1919. The alteration as to costs effected by these sects. may be summarised as follows:—

- (1) The limit below which no costs can be obtained where proceedings are commenced in the High Court has been raised in the case of contract from 20*l.* to 40*l.*; tort remaining as before, 10*l.*
- (2) The limit below which only county court costs can be obtained under similar circumstances has been raised in the case of tort from 20*l.* to 50*l.*; contract remaining as before, 100*l.*

NOTE.—For the exceptions to the above paragraphs (1) and (2) reference should be made to the sections of the Act above mentioned.

- (3) The penalties as to costs automatically imposed on a plaintiff for commencing proceedings in the High Court which could have been commenced in the county court have been limited to the costs of the proceedings in the High Court.
- (4) The costs of the whole proceedings in actions or matters transferred from the High Court, both before and after transfer, are to be in the discretion of the court to which the matter is transferred, subject to the provisions above mentioned as regards so much of the proceedings as take place in the High Court before transfer.

The penalty imposed on the plaintiff who brings an action in the High Court which could have been commenced in the County Court, and who recovers on contract less than £20, or on tort less than £10 extends to the loss of the costs of the proceedings so long as they remain in the High Court, but when once the transfer to the county court has been made, whatever the amount recovered, he is in the same position as regards the costs of proceeding subsequent to the transfer as he would have been had he commenced the proceedings in the county court.

The earlier part of the first paragraph of sect. 12 gives power to the court to which the matter is transferred over the costs both before and after transfer "subject to any order made by the court which ordered the

transfer," while the latter part of this paragraph amplifies this by giving to that court special power to make orders as to the scales or columns on or under which the costs of the several parts of the proceedings are to be taxed, with a proviso that the powers of the court under sect. 11 to make an order allowing the costs on the High Court scale or on any county court scale or column shall, "subject to any order of the court or judge by whom the transfer was ordered," be exercisable by the judge of the county court.

Three points arise here for consideration :—

- (1) What are the powers of the county court under sect. 12 over the costs of the whole proceedings ?
- (2) What order can be made by the High Court ordering the transfer ?
- (3) What are the powers of the High Court under sect. 11 to make orders allowing costs ?

(1) The wide words of the first paragraph of sect. 12 will apparently entitle the court to which the matter is transferred to award costs to a plaintiff or a defendant on a scale other than that applicable to the amount recovered or claimed ; this is a much wider power than the county court judge possessed prior to the passing of the Act in 1919, which was limited, except in respect of certain special actions and in proceedings under a few particular statutes, to the powers conferred by sect. 119 of the Act of 1888, and Order LIII. r. 17.

In the case of remitted actions attention is called to two important points :—

First. The County Court Judge should name the scale under which taxation is to proceed. In the absense of any direction the registrar would be compelled under Order LIII. r. 4 to tax in accordance with the scale applicable to the amount recovered, that is, the aggregate of the amounts recovered in the High Court and the County Court (*Gold Bros. and Nash, Ltd. v. Fuller*, (1925) 134 L. T. 151). The discretion of the judge is limited, when awarding costs on a higher scale than that applicable to the amount recovered, by sect. 119 of the Act of 1888, and a certificate is necessary as required by that section (*Davies v. Davies*, (1928) 1 K. B. 364 ; 96 L. J. K. B. 1066).

Secondly. Where there has been an order in the High Court under Order XIV. for leave to sign judgment for more than 20*l.*, and the defendant has paid into the county court the balance of the plaintiff's claim, though the county court judge has discretion as to the costs of the whole proceedings, that discretion must be exercised judicially, and on reasonable grounds. The county court judge cannot deprive the plaintiffs of High Court costs up to the time of transfer in a case coming within sect. 11, sub-sect. (1), proviso (ii.) of the Act of 1919 as amended on the ground that it ought to have been brought in the county court unless there has been misconduct on the part of the plaintiff (*Jenkins & Co. v. Simon*, (1926) 1 K. B. 111 ; (1926) 134 L. T. 88).

(2) It will be noticed that neither sects. 1, 2 or 3 (the only sections of the Act of 1919 under which such transfers can be made) contains any power to transfer subject to any condition as to costs, and under the Act of 1888 it was held that after a case had been transferred to the county court a High Court judge had no power to certify under sub-sect. 2 of sect. 116 that there was sufficient reason for bringing the action in the High Court (*Harris and Sons v. Judge*, C. A., (1892) 2 Q. B. 565 ; 67 L. T. 19), and that a Master on making an order remitting an action to the county court had no

power to direct that the costs of a previous application under Order XIV. should be costs in the cause (*Dunn v. Appleton*, C. A., (1898) 1 Q. B. 564; 67 L. J. B. 428).

Again, sect. 11, sub-s. 1, proviso (i.), which authorises the allowance of High Court costs by the court or a judge if satisfied that there was sufficient reason for bringing the action in the High Court, evidently contemplates such allowance being made at the trial. It would seem scarcely possible for the court or a judge to make such an order before or at the time of transferring an action. Whilst proviso (ii.) of the same sub-section, for which sect. 20 of the Administration of Justice Act, 1925, has been substituted, gives automatically, unless otherwise ordered, fixed prescribed costs when judgment is obtained under Order XIV. within the specified time.

It appears, therefore, that the only order of the remitting court contemplated in sect. 12 is the order refusing High Court costs which may theoretically be made under proviso (ii.) as amended, but which in practice never is made.

(3) The provisions of proviso (ii.) of sect. 11, sub-sect. (1), as amended, are of course inapplicable to any power exercisable by the county court judge. It is clear, therefore, that the power that is here contemplated is that under proviso (i.) to allow costs on the High Court scale, if satisfied that there was sufficient reason for bringing the action in the High Court.

Where besides the pecuniary claim a substantial claim for relief of another character is sought, *e.g.*, for an injunction or for specific performance, the case is not within the rules limiting the plaintiff's right to costs under sect. 116 of the County Courts Act of 1883, for which sect. 11 of the Act of 1919 has been substituted (*Keates v. Woodward*, (1902) 1 K. B. 532; *Deverell v. Milne*, (1920) 2 Ch. 52).

The attention of practitioners should be directed to the fact that in every case it is now most important that application should be made to the county court judge, at or immediately after the trial or hearing, for a special order as to the costs both of the High Court and county court proceedings.

In *Hawkins v. Miln*, (1921) 3 K. B. 633; 125 L. T. 767, it was decided that "judgment for plaintiff with costs to be taxed column B" in a remitted action where plaintiff recovered less than 40*l.* was an exercise of discretion under the earlier part of sect. 12 of the County Courts Act, 1919, so as to entitle the plaintiff to his costs incurred in the county court subsequently to the transfer from the High Court, but was not a sufficient order under the proviso to that section so as to entitle him to his costs of so much of the proceedings as took place in the High Court, and therefore sect. 11 automatically deprived the plaintiff of his costs in the High Court. The county court judge having once exercised his discretion and awarded costs in an action in which in the absence of such order, the plaintiff under sect. 11 of the Act of 1919 would have been deprived of costs, cannot rescind his own order (*Hawkins v. Miln*, *supra*).

Further, it appears that when once an order is completed there is no jurisdiction to vary it subsequently by including a certificate for High Court costs (*Reigate Corporation v. Wilkinson*, (1920) 122 L. T. 304; 64 Sol. Jo. 116).

Where in the High Court, as a condition of obtaining leave to defend, the defendant pays to the plaintiff the sum admitted to be due or pays such sum into court and subsequently consents to judgment for that amount, or subsequent to the transfer of the action to the county court the defendant has paid into court a sum admitted to be due (*Bennett v. Drake*, (1907) 97 L. T. 132), and the action proceeds and the defendant is

successful, the correct order to make in such a case, in the absence of special circumstances, is one limiting the defendant's costs to those incurred subsequent to the date when the amount was paid into court (*Powell v. Vickers Sons and Maxim, Ltd.*, (1907) 1 K. B. 71); and the scale on which the defendant is entitled to tax his costs is the scale applicable to the full amount claimed in the action (*Aston Tube Works, Ltd. v. Dumbell*, (1904) 1 K. B. 535).

Judgment for Plaintiff or Defendant with Costs or no Order at all made as to Costs.

—It is worth while considering what the legal position is where the county court judge in such actions merely gives judgment for the plaintiff or defendant "with costs," or where he makes no order at all as to costs. Both these cases have happened frequently enough in the past and will, no doubt, do so again in the future.

The following points appear to have been established:—

- (1) The effect of both cases—judgment for the plaintiff with costs, or where the judge makes no order as to costs—is, with the exception dealt with under paragraph (2), the same. If judgment is given for the plaintiff with costs the judge exercises his discretion as to the costs, and where judgment is given for the plaintiff but the judge makes no order as to costs, sect. 113 of the Act of 1888 applies and the costs abide the event of the action.
- (2) Where the plaintiff has succeeded in recovering something in the High Court, or where, after the action is remitted, an amount is paid into court which though not accepted in settlement is ultimately held to be sufficient, the defendant can recover no costs of his successful defence in the absence of an order to that effect, for sect. 113 provides that in such a case costs follow the "event," and by this is meant the general result of the proceedings in both courts (*Wright & Son v. Bull*, (1900) 2 Q. B. 124). This case can be usefully compared with the case of *Aston Tube Works, Ltd. v. Dumbell* (*supra*), in which the "dicta" of the judges in the above-named case were disapproved. In the "Aston" case, however, the county court judge actually made an order for the defendant's costs, and on appeal it was held (1) that he had jurisdiction to make such an order, and (2) that the scale applicable was that applicable to the whole amount originally claimed in the High Court proceedings.
- (3) Sects. 65 and 66 of the Act of 1888 provided that the costs subsequent to transfer should be allowed on the county court scale and the costs of the order and previously thereto on the High Court scale. No similar provision appears in the Act of 1919, the intention of that Act being that the judge would exercise the discretion given to him by directing the scale on which these costs were to be allowed. The question as to what the legal position is, in the absence of such direction, is a matter of some difficulty. Are the costs in such a case governed by sect. 113, which directs that the costs follow the event? Has the county court registrar any authority, in the absence of judicial directions, to tax the costs of that portion of the action which took place in the High Court, and if he has, on what scale can he do it?

The better opinion, and that which it is believed is generally followed in practice, appears to be that the county court registrar

can tax such costs, but is limited, in the absence of judicial direction, and subject to the provisions of sect. 2, sub-sect. (1), proviso (ii) of the Act of 1919 as amended, to the scale of which alone he has cognizance, viz., the county court scale applicable to the amount recovered or claimed as the case may be (see *Jenkins & Co. v. Simon*, *supra*, and *Gold Bros. and Nash, Ltd. v. Fuller* (*supra*). This view is supported by the concluding words of the first paragraph of sect. 12, "and the costs of the whole proceedings shall be taxed in that (*i.e.*, the county) court."

Taxation of High Court Costs on County Court scale.]—Where a plaintiff is entitled to county court costs in respect of proceedings in the High Court, it is the practice to allow him the costs and fees which would have been charged if a default summons (in the case of a liquidated demand) or an ordinary summons (in the case of an unliquidated demand) had been issued instead of a writ and had been served by a solicitor where such service could be made in accordance with the county court rules. Such items, therefore, as "attending court lodging order," or "paid fee on entry of remitted action in the county court" should not be allowed.

The costs of the proceedings in the High Court as well as in the county court are taxable by the county court registrar (sect. 12).

Summary of Position in absence of Judge's Order as to Costs.]—For convenience, the legal position as regards costs as it appears to be established by the Act of 1919, *in the absence of any order by the county court judge*, is summarised below.

The circumstances of actions on contract are somewhat complicated from the fact that it frequently happens that a portion of the amount is recovered in the High Court, but each case will be found to come under one of the following heads:—

Contract, Action on, which could have been commenced in the county court.

1. *Plaintiff recovers 20l. in the High Court and something in the county court.*

(a) High Court proceedings. Costs on prescribed scale if within sect. 11, sub-s. 1, proviso (ii) of the Act of 1919, as amended by sect. 20 of the Administration of Justice Act, 1925 (*Jenkins & Co. v. Simon*, (1926) 1 K. B. 111). For this purpose an amount is said to be recovered in the High Court if paid direct to the plaintiff after appearance (*Pearce v. Bolton*, (1902) 2 K. B. 111, or even if paid before service and without knowledge of the issue of the writ (*Lamb Bros. v. Keeping*, (1914) 111 L. T. R. 527).

(b) County court proceedings. Costs on the scale applicable to the aggregate of the amounts recovered in both courts (*White v. Headlands' Patent Electrical Storage Battery Co., Ltd.*, *supra*, and *Gold Bros. and Nash, Ltd. v. Fuller*, *supra*).

2. *Plaintiff recovers 20l. in the High Court and fails in the county court.*

(a) High Court proceedings. Costs on prescribed scale if within sect. 11, sub-s. 1, proviso (ii) of the Act of 1919 as amended by sect. 20 of the Administration of Justice Act, 1925.

(b) County court proceedings. No costs to plaintiff or defendant (*Wright & Son v. Bull*, *supra*, the judge not having exercised the discretion

which the case of *Aston Tube Works v. Dumbell*, *supra*, decided he possessed, to give the defendant costs. See sect. 113 of the Act of 1888.

3. *Plaintiff recovers less than 20l. or nothing in the High Court and sufficient in the county court to make aggregate amount recovered 40l.*

(a) High Court proceedings. Costs on county court scale applicable to the aggregate of the amounts recovered in both courts. See cases cited, *supra*. The costs of the High Court proceedings are taxed on the county court scale in accordance with the principles set out, *supra*.

(b) County court proceedings. Costs on county court scale applicable to the aggregate of the amounts recovered in both courts. See cases cited, *supra*, and sect. 11, sub-s. 1 of the Act of 1919.

4. *Plaintiff recovers less than 20l. or nothing in the High Court and insufficient in the county court to make aggregate amount recovered 40l.*

(a) High Court proceedings. No costs. See sect. 11, sub-s. 1 of the Act of 1919.

(b) County court proceedings. Costs on scale applicable to the aggregate of the amounts recovered in both courts. See cases cited, *supra*, and sect. 11, sub-s. 2, of the Act of 1919 and sect. 113 of the Act of 1888.

5. *Plaintiff recovers less than 20l. in the High Court and fails in the county court.*

No costs to plaintiff or defendant. See sect. 11, sub-s. 1 of the Act of 1919, and *Wright v. Bull*, *supra*, the judge not having exercised his discretion to give the defendant the costs of the county court proceedings, as in *Aston Tube Works v. Dumbell*, *supra*.

6. *Plaintiff recovers nothing in the High Court and fails in the county court.*

(a) High Court proceedings. Costs to defendant on county court scale applicable to the amount claimed, the judge not having exercised his discretion to give defendant costs on High Court scale. See sect. 12 of the Act of 1919 and sect. 113 of the Act of 1888.

(b) County court proceedings. Costs to defendant on county court scale applicable to the amount claimed. See sect. 113 of the Act of 1888.

Tort, Action on, which could have been commenced in the county court.

7. *Plaintiff recovers 10l. but less than 50l.*

(a) High Court proceedings. Costs on county court scale applicable to the aggregate of the amounts recovered in both courts. See cases cited, *supra*, and sect. 11, sub-s. 1 of the Act of 1919 and sect. 113 of the Act of 1888.

(b) County court proceedings. Costs on county court scale applicable to the aggregate of the amounts recovered in both courts. See cases cited, *supra*, and sect. 11, sub-s. 1 of the Act of 1919 and sect. 113 of the Act of 1888.

8. *Plaintiff recovers less than 10l.*

(a) High Court proceedings. No costs. See sect. 11, sub-s. 1 of the Act of 1919.

(b) County court proceedings. Costs on scale applicable to the aggregate of the amounts recovered in both courts. See cases cited, *supra*, and sect. 11, sub-s. 1 and 2 of the Act of 1919 and sect. 113 of the Act of 1888.

9. *Plaintiff fails.*

- (a) High Court proceedings. Costs to defendant on county court scale applicable to the amount claimed, the judge not having exercised his discretion to give defendant costs on the High Court scale. See sect. 12 of the Act of 1919 and sect. 113 of the Act of 1888.
- (b) County court proceedings. Costs to defendant on county court scale applicable to the amount claimed. See sect. 113 of the Act of 1888.

COUNTERCLAIMS.

Order LIII. r. 16 provides that, unless the judge otherwise orders, where the same party succeeds on claim and counterclaim, the scale upon which his costs are to be taxed is that applicable to claim or counterclaim, whichever be larger; but when the latter is the case, a successful plaintiff, of course, only gets the advantage of the larger scale subsequently to the delivery of the counterclaim. There is this proviso (para. 4), that items of costs referring to work done solely in connection with either the claim or the counterclaim, shall be taxed on the scale applicable to such claim or counterclaim respectively. And a further proviso that if the subject-matter of the counterclaim is entirely unconnected with that of the claim, certain items of costs, fees to counsel, and allowances to witnesses, may be allowed in respect of the counterclaim or claim (as the case may be), in addition to those attributable to the claim or counterclaim, by the judge or at the discretion of the registrar.

The steps to be taken by a defendant when his only answer to a claim consists of a set-off or counterclaim, require the most careful consideration, as otherwise he may be saddled with payment of the plaintiff's costs of proving a claim which there was never any intention to dispute.

If he relies on a set-off, he must consider whether it extends to the whole of the plaintiff's claim or only to a portion, and in the latter case should pay into court the balance with proportionate costs under Order IX. r. 17. If he does this and establishes his set-off he will, like any other successful defendant, be entitled under sect. 107 to the costs of the action from the date of such payment into court.

If, on the other hand, he relies on a counterclaim, he should at the time of filing his counterclaim file also a confession of the claim under sect. 98, or an admission under Order IX. r. 3. The result of the case will then be, in the event of the counterclaim succeeding, that the defendant will be entitled to the costs of the only matter which was really contested, whilst the plaintiff is entitled to judgment on his claim with only such costs as are necessary to enable him to have judgment entered up for an admitted demand.

It frequently happens that for lack of these precautions a defendant who has succeeded on the only matter about which there has ever been any real contest is saddled with a substantial sum for the plaintiff's costs of the claim.

If the counterclaim is less than the claim, the defendant can also pay the balance into court with proportionate costs under Order IX. r. 17, above mentioned. Occasionally the plaintiff takes the money out of court in settlement and admits the counterclaim. If, however, the action proceeds to trial an admission of the claim may perhaps be inferred from such payment, but otherwise the defendant gets no advantage in the matter of costs through having paid the balance of the claim into court under this rule.

The above remarks apply also where, as frequently happens, the defendant has a defence as to a portion of the claim and a counterclaim as against the balance. Even if he is successful in his defence, he is still liable

to pay the plaintiff's costs of obtaining judgment for the balance of the claim against which he sets up the counterclaim. He can only reduce them by filing an admission as indicated above.

This importance is still further emphasised by the case of *Christie v. Platt*, C. A., (1921) 2 K. B. 17; (1920) 124 L. T. 649; 90 L. J. K. B. 553. There in an action for rent a defendant relied upon the plaintiff's breach of contract both as a defence and a counterclaim. As so frequently happens in such cases judgment was given for the plaintiff on his claim, and for the defendant on his counterclaim for a larger sum, but though in fact the plaintiff's action failed the balance of costs was overwhelming in his favour, and must remain so in spite of any apportionment made in consequence of the Court of Appeal's decision. Had the claim been admitted subject to the counterclaim this startling result would have been avoided.

General Principles of Taxation.—The general principles of the taxation of costs on claim and counterclaim are laid down in *Atlas Metal Co. v. Miller*, (1898) 2 Q. B. 500; 67 L. J. Q. B. 815, and in *Christie v. Platt* (*supra*), where *Atlas Metal Co. v. Miller* was discussed at length. The principles are as follows:—

(1) A plaintiff who is to pay or to be paid the costs of his action, is to pay or be paid the whole of such costs, which ought to be taxed as if there were no counterclaim, but this principle is subject to this over-riding condition, that the taxing master must ascertain what are the costs really incurred by a defendant in establishing his claim. Whether both parties fail or whether both succeed, or whether one fails and the other succeeds, can on principle make no difference.

(2) The costs of a counterclaim are the costs actually incurred by reason of the counterclaim; and the costs saved by bringing a counterclaim in lieu of a cross action cannot be treated as costs so incurred.

(3) Plaintiffs' items of costs common to both claim and defence to counterclaim, and defendants' items of costs common to both defence and counterclaim, must be apportioned. These common items of costs are those incurred by the plaintiff partly in support of his claim and partly in opposition to the defendant's counterclaim, and by the defendant partly in opposition to the plaintiff's claim and partly in support of his own counterclaim, and the apportioned parts must be attributed to the costs of the claim and counterclaim respectively.

Common Items to be Apportioned, and Manner in which the Apportionment is to be carried out.—The items in question are in practice limited to those relating to the preparation of the brief and the fee paid to counsel and witness fees. Each common item is to be treated as consisting of two, that is to say, so much of it as relates to the claim or the defence, and their respective issues will belong to the claim or the defence, and so much of it as relates to the defence to counterclaim, or the counterclaim and their respective issues will belong to the defence to counterclaim or the counterclaim, and the taxing officer must apportion such costs as best he can. If there are issues of the claim or counterclaim on which the party, who succeeds generally on such claim or counterclaim, fails, his costs of the action or the counterclaim will be diminished by the costs of those issues on which he has failed.

Judgment for Plaintiff on Claim and for Defendant on Counterclaim.—In the case of *Fox v. Central Silkstone Collieries, Ltd.*, (1912) 2 K. B. 597; 107 L. T. 85; 81 L. J. K. B. 989, the defendants contested the claim and counterclaimed; judgment was given for the plaintiff on the claim,

and for the defendants on the counterclaim. The court held that on taxation of the costs of the counterclaim the brief fee must be apportioned between the defence and the counterclaim, and only that part which was referable to the counterclaim could be allowed. The question of the brief fee to be allowed to the plaintiff in respect of the claim was not before the court, but both judges, Ridley, J., and Bray, J., in the Divisional Court, treated the case of a plaintiff and defendant as alike, and expressed the opinion that where a plaintiff had succeeded on the claim, and failed on the counterclaim, only so much of the brief fee as is apportioned to the claim ought to be allowed on taxation of the costs of the claim. The practical result of this decision is that where claim and counterclaim are both contested, the instructions and fee above mentioned must be taken to have been incurred partly in respect of the original action and partly in respect of the counterclaim, and must be apportioned between those two matters by the taxing officer, notwithstanding the fact that the result is to leave a smaller amount in each case attributable to the original action than would have been payable if the counterclaim had never come into existence.

The taxing officer is not bound to make the same apportionment in each case. In taxing the costs of a successful plaintiff he may consider the common items of costs properly apportionable as to two-thirds to the claim and one-third to the defence to the counterclaim, but it by no means follows that, on taxation of defendant's costs of a successful counterclaim, similar common items of costs in his bill are apportionable in the same manner. There is no reason why the taxing officer in taxing the defendant's bill should not apportion the common items of costs as to one-third to the defence and two-thirds to the counterclaim, even though in the result the aggregate amount allowed to the plaintiff and the defendant in respect of such common items of costs exceeds the maximum allowance for such items under the scale of costs applicable (*Fox v. Central Silkstone Collieries, Ltd., supra*).

The principle laid down in *Fox v. Central Silkstone Collieries, Ltd.*, was further elucidated in *Christie v. Platt (supra)*, though in that case *Fox v. Central Silkstone Collieries, Ltd.*, does not appear to have been cited. In the latter case the Court of Appeal laid it down that where there is one fee paid to counsel for conducting claim and counterclaim the fact that the whole would have been properly allowed in support of the claim had there been no counterclaim is no reason for not apportioning it. The master must award how much in the plaintiff's bill of costs was incurred by the plaintiff in supporting her claim, and how much of the defendant's bill of costs was incurred in supporting her counterclaim. This ruling necessitates the apportionment of all the common items. The court referred to the case of counsel's brief at the trial. There is one brief and one fee, but the brief is to support the claim and to resist the counterclaim, and the fee is for both services. It cannot be said that the plaintiff has incurred the whole fee on account of the claim; that would mean that she pays her counsel no fee for defending her against the counterclaim. The master must say how much of the fee is properly attributable to the claim and how much to the counterclaim.

Both Claim and Counterclaim for Damages unsuccessful.—The Divisional Court in the case of *Wilson v. Walters*, (1926) 1 K. B. 511, considered the principles of taxation involved in the somewhat common case of a claim for damages resulting from alleged negligent driving of a motor car. The judge, holding that both plaintiff and defendant were to blame, gave judgment for the defendant on the claim and for the plaintiff on the counterclaim. The registrar taxed the costs on the following principle: He first

took the claim and allowed the defendant the costs of resisting the claim. He then proceeded with the counterclaim, and gave the plaintiff such costs as he had incurred in defeating the counterclaim. In the latter case, when there was an item which had been already considered in the claim, he did not give the plaintiff anything on the counterclaim. The county court judge, on appeal, following *Christie v. Platt* (*supra*), held that items common to claim and counterclaim must be apportioned, but the Divisional Court held that in such cases the rule laid down in *Sauer v. Bilton*, (1879) 11 Ch. D. 416, should be followed. That rule was that in such cases the plaintiff should pay the general costs of the action, while the defendant who was to pay the costs of the counterclaim should pay the costs so far as they had been increased by the counterclaim. Accordingly the Divisional Court held that the registrar was right.

In the case of *Continental Contractors v. Medway Oil and Storage Co.*, C. A., (1928) 1 K. B. 238; (1927) 96 L. J. K. B. 967, the Court of Appeal, approving and following *Christie v. Platt* (*supra*), and dissenting from *Wilson v. Walters* (*supra*), so far as there are any passages in the judgments which appear to conflict with the former case, it was decided that when there are both a claim and a counterclaim arising out of the same contract and, except with regard to the amount of the respective damages, all the substantial contentions on either side are common to both claim and counterclaim, and judgment is given for the defendant, with costs, on the claim, and for the plaintiff, with costs, on the counterclaim, the costs of the litigation must be apportioned between the parties, and it is for the taxing master in his discretion to say what is a fair apportionment as between the plaintiff and defendant.

COSTS OF SEPARATE ISSUES.

As above stated, sect. 113 of the Act provides that in default of any special direction by the judge, costs shall abide in the event of the action or matter. The very similar words in Order LXV. r. 1 of the Rules of the Supreme Court, relating to actions tried by juries, "the costs shall follow the event," have been the subject of many judicial decisions.

Unsuccessful Party entitled to Costs of Issues on which he Succeeds.—The case of *Myers v. Defries*, (1880) 5 Ex. Div. 180; 49 L. J. Ex. 266, decided that the word "event" is to be read distributively, and that under this rule the unsuccessful party to an action is entitled to the costs of any issue on which he succeeds. The case of *Bush v. Rogers*, (1915) 1 K. B. 707; 84 L. J. K. B. 686, decided that the obligation is thrown upon the judge of directing whether there is any separate issue on which the unsuccessful party is entitled to costs. Bankes, L.J., said, "The judge at the trial is the proper person to say whether there is any separate issue upon which the unsuccessful party is entitled to his costs." This decision has been approved by the Court of Appeal, which laid it down that it is the duty of the trial judge if he intends that the costs of an action shall be borne distributively, to give express directions at the trial that the plaintiff or defendant shall be allowed the costs of those issues on which he has succeeded (*Harnett v. Fisher*, C. A., (1927) 1 K. B. 402).

Where, however, a defendant succeeds on an issue that goes to the whole cause of action, and it therefore becomes unnecessary to decide any other issue, it is open to the judge to exercise his discretion by directing that neither side have the costs of any issue not decided (*Browne and Whitehead v. Lewis*, (1916) 33 T. L. R. 130).

The case of *Donovan v. Walters*, (1927) (C. A.) 135 L. T. 12, is an illustra-

*CONTINENTAL CONTRACTORS, LTD. v. MEDWAY
OIL & STORAGE CO., LTD.*

On appeal to the House of Lords the Court of Appeal decision was reversed, and the matter settled in the following manner:—

Where a claim and counterclaim arising out of same contracts are both dismissed with costs, the rule to be applied in the taxation of the costs is that the claim should be treated as if it stood by itself and the counterclaim should bear only the amount by which the costs of proceedings have been increased by it. In the absence of special directions by the Court there should be no apportionment. The same principle applies where both the claim and the counterclaim have succeeded (45 T. L. R. 20).

tion of the complicated "issues" which may arise as a result of an accident due to modern congested road traffic. A. brought an action against W. M. & G. to recover damages for an injury caused by the negligence of W., or his servant M., in driving W.'s car, or alternatively, by the negligence of G. in driving a lorry. W. admitted the negligence of M., but denied that M. was his servant or agent. The jury exonerated G., and found that the accident was caused by the negligence of M., and that M. was the servant or agent of W. W. was therefore liable in damages. Held that the costs which W. was liable to pay did not include the costs of the issue of negligence.

What are Separate Issues.]—In an action for balance due under a contract, the question of the performance of the contract and the statute of limitations were held to be separate issues (*Slatford v. Erlebach*, C. A., (1912) 3 K. B. 155; 81 L. J. K. B. 372). Every separate cause of action is an issue (*Myers v. Defries*, *supra*; *Hoyes v. Tate*, (1907) 1 K. B. 656; 76 L. J. K. B. 408).

In the case of *Howell v. Dering and others*, (1915) 1 K. B. 54; 84 L. J. K. B. 198, the plaintiff alleged:—

1. Material representations in a prospectus.
2. That they were fraudulently made by the defendants.
3. That he was thereby induced to take shares.

The jury found in favour of the plaintiff on the 1st and 3rd allegations, and in favour of the defendants on the 2nd, and the judgment was drawn up treating each question and answer as an issue, and giving the plaintiff the costs of numbers 1 and 3. It was held on appeal that these questions and answers were not separate issues, but merely links in the chain of facts which, if they were proved, would entitle the plaintiff to relief. The question is exhaustively discussed in the judgments in this case. Buckley, L.J., (at p. 62) said:—

"It is impossible to say that every question of fact which is in dispute between a plaintiff and a defendant is an 'issue.' The word can be used in more than one sense. It may be said that every disputed question of fact is in issue. It is in a sense, that is to say, it is in dispute. But every question of fact which is 'in issue' and which a jury has to determine, is not necessarily 'an issue' within the meaning of the rule. I should define 'issue' for the purposes of this rule in some such words as these: 'An issue is that which, if decided in favour of the plaintiff, will in itself give a right of relief, or would, but for some other consideration, in itself give a right to relief; and if decided in favour of the defendant will in itself be a defence.'" The two questions which the jury answered in plaintiff's favour were only two links in the chain of facts which it was necessary for him to establish in order to obtain the relief which he sought.

In an action to recover damages for injuries arising from defendants' negligence, they denied negligence, pleading contributory negligence, and paid a sum of money into court with denial of liability. The action went to trial and resulted in a verdict for a less amount than had been paid in by the defendants. Held on appeal that the questions raised by the pleadings whether the defendants had been guilty of negligence, and if so, whether the money paid into court was sufficient were distinct issues, and that while the defendant was entitled to the general costs of the action, the plaintiffs were entitled to their costs on the issue of negligence on which they had succeeded, and also on the issue of contributory negligence, which was found in favour of the plaintiff (*Wagstaffe v. Bentley*, (1902) 1 K. B. 124; 71 L. J. K. B. 55).

It is immaterial that the issue on which the plaintiff succeeds is not an issue going to the whole cause of action (*Hubback v. British North Borneo Co.*, (1904) 2 K. B. 473 ; 73 L. J. K. B. 654), but plaintiff, though perhaps he may not recover the costs of issues on which he succeeds, ought not to be made to pay the defendant's costs of such issues (*Davies v. Edinburgh Life Assurance Co.*, (1916) 85 L. J. K. B. 1662). Under similar circumstances, the plaintiff having been nonsuited, a new trial was ordered, the costs of the first trial to abide the event. At the second trial the plaintiff obtained a verdict for the sum paid into court, and it was held that the defendants were entitled to the general costs of the action, but that the county court judge had a discretion as to giving the plaintiff the costs of the issue of negligence, on which he had succeeded (*Dunn v. South Eastern Rail. Co.*, (1903) 1 K. B. 358 ; 72 L. J. K. B. 127). It is not now unusual to give an unsuccessful defendant the costs of an issue or issues on which he succeeded. As to costs where only one of two defendants pays money into court, see *Penny v. Wimbledon U.D.C.*, (1899) 2 Q. B. 72.

In the more recent case of *Jackson v. Anglo-American Oil Co.*, (1923) 2 K. B. 601 ; 92 L. J. K. B. 1000, where a collision having taken place between the plaintiff's motor car and the defendants' motor lorry, the plaintiff brought an action in the county court against the defendants, alleging that the collision had been caused by the negligence of the defendants, who pleaded that there had been no negligence on their part and alternatively that there had been contributory negligence on the part of the plaintiff, and at the trial it was found that in fact both sides were to blame for the collision. The county court judge gave judgment for the defendants, but directed there should be no costs. It was held on appeal that this direction was wrong, and that the defendants were entitled to their costs, inasmuch as they had been wholly successful on the claim that the questions of negligence and contributory negligence were not separate issues in the action, and that there was only one issue in the case, namely, was there negligence on the part of the defendants, which caused the plaintiff's injury, upon which issue the defendants succeeded. The court referred with approval to the definition of "an issue" stated in *Quirk v. Thomas*, (1916) 1 K. B. 516, at page 535, that "an 'issue' in this connection meant an allegation of fact which, unless displaced, would establish a liability."

It has been decided by the House of Lords, reversing both the Court of Appeal and the judge of first instance, that in an action to recover the price of a quantity of goats' hair, the questions as to whether the hair was in accordance with sample, and as to whether there was an overcharge on the bags containing it were separate issues (*Reid, Hewitt & Co. v. Joseph*, (1918) A. C. 717 ; 88 L. J. K. B. 1. See also *Yorke v. Yorkshire Insurance Co., Limited*, (1918) 1 K. B. 662 ; 87 L. J. K. B. 881, where all the cases are discussed).

In *Williams v. Stanley Jones & Co., Ltd.*, (1926) 1 K. B. 255 and 2 K. B. 37, a firm's traveller claimed commission on various orders from various firms. The case was tried, by consent, by an official referee who decided in favour of the defendants with regard to eight items out of the twenty-four. The official referee treated the action as one on a general account and the Divisional Court supported this view. The Court of Appeal, however, approving *Bush v. Rogers (supra)* and following *Reid Hewitt & Co. v. Wright (supra)*, held that the plea that an order on which commission was claimed had not been obtained by the plaintiff, raised a several issue and that the defendants were entitled to the costs, if any, of that issue.

Form of Judgment.]—Where, therefore, the party who is unsuccessful in

an action claims to have succeeded on some substantial portion of the case worthy to be dignified by the title of an issue, he must take care to make application to the judge to so define it, or to make a special order under section 113, awarding him the particular costs to which he claims to be entitled. The former course may be adopted where the case has been tried by a jury, who have decided in favour of the losing party some definite question left to them by the judge; the latter in all other cases. It cannot be too clearly understood that unless the judgment, as recorded in the minute book, is drawn so as to deal specifically with the costs of these separate issues, the registrar has no power to deal with such costs on taxation. He cannot be asked to inspect the documents relating to the case and come to the conclusion that there are certain issues on which the generally unsuccessful party succeeded, and to tax the costs accordingly. This is established by the cases of *Bush v. Rogers*, *supra*, and *Ingram and Royle, Ltd. v. Services Maritimes du Tréport*, No. 2, (1914) 3 K. B. 28; 83 L. J. K. B. 1128. In the latter case the plaintiffs succeeded on issues both of fact and law, and judgment was entered for them without mention of any issue. The defendants appealed on the question of law and succeeded in the Court of Appeal, where judgment was entered for the defendants with costs. The plaintiffs attempted to tax their costs of the issue of fact at the original trial. On appeal it was held that they were not entitled to do so since the judgment did not show them to have succeeded on any issue, and that the taxing master had no jurisdiction to go behind the order and divide the costs of separate issues, where no direction as to the costs of such issues had been given by order of the court. The previous judgment of the same court to the opposite effect in *Slatford v. Erlebach*, C.A., (1912) 3 K. B. 155; 81 L. J. K. B. 372, was distinguished on the ground that the decision in that case must be considered to have applied to a special set of circumstances, and amounted to an amendment of the judgment of the court below, in order to give effect to the referee's findings. If, therefore, on taxation it turns out that the record in the minute book is defective in this respect, the proper course is to apply for an adjournment of the taxation pending an application to the judge to amend the record.

Principles of Taxation of Costs of Issues.]—Where the successful party is ordered to pay the costs of certain issues on which the generally unsuccessful party succeeded, the successful party is entitled to the general costs of the action, and the other party is not entitled to any general costs, but only the costs strictly relevant to the issue which has been decided in his favour. From this it follows that the brief, counsel's fees and witnesses' fees may have to be apportioned between the two issues. One important item, sometimes overlooked, is the costs of taxation; under item 84 the unsuccessful party succeeding on a separate issue will only be entitled to 2s., 4s., or 6s. as the case may be, which includes not only the taxation of costs, but the drawing the bill, copies, notice, and service. See *Sparrow v. Hill and Another*, (1881) 8 Q. B. D. 479; 44 L. T. 917, as to apportionment of costs under special order.

PAYMENT INTO COURT.

Proportionate Costs must also be paid in.—Acceptance and Non-acceptance by Plaintiff.]—By sect. 107 of the principal Act and Order IX. r. 12 (1), if a defendant pays money into court he must in addition pay into court, in respect of the court fees and solicitor's costs (if any) entered on the summons, a sum proportionate to the amount paid in in respect of the claim, unless the payment into court is made under a defence of tender, in which case he may make such payment without costs. The payment ought to be made at least five clear days (ten clear days in cases under

the Act of 1903) before the return day (see *R. v. Leeds C. C. Registrar*, (1885) 16 Q. B. D. 691; *Stevens v. Hounslow*, (1889) 38 W. R. 235; 61 L. T. 839). Section 107 gives the plaintiff "the costs incurred" by the plaintiff up to the time of payment in, and by Order LX. r. 13 (3) the court may in its discretion order the defendant to pay such fees and costs, beyond the fees and costs (if any) paid into court by the defendant, as the plaintiff may have properly incurred for work done before the receipt of notice of payment into court, and in attending the court to obtain the order for the same, but no hearing fee will be charged.

By the same section, if the plaintiff shall elect to proceed and recovers no further sum in the action or matter than shall have been so paid into court, he shall pay to the defendant the costs incurred by him after such payment and such costs shall be settled by the court, and an order made by the court for the payment of them by the plaintiff.

If the plaintiff elects to accept in satisfaction of his claim the money paid into court by the defendant, he must give the notice provided for in Order IX. r. 13 (1) and (4) and thereupon by r. 13 (2) the action shall abate except as provided by r. 13 (3) (*supra*), and the plaintiff shall not be liable to any costs incurred by the defendant after receiving such notice.

Tender.—Costs not Payable on Payment into Court.]—If the money is paid into court under the defence of tender no court fees or costs need be paid in, as by Order IX. r. 12 (1) the defendant may make such payment without costs. By r. 18 the plaintiff may accept the money so paid in under defence of tender in satisfaction of his claim, but he shall not be entitled to take it out of court, or to any costs, without the order of the court, and the court may make such order as may be just as to the costs of either party, and may order any costs awarded to the defendant to be deducted from the amount paid into court and paid to the defendant.

Costs after Payment into Court.]—By sect. 107 of the Act, if the plaintiff recovers no more than the amount paid in, the defendant is entitled to his costs after the date of payment in. It has been held that the defendant's costs prior to the date of payment in are costs not otherwise provided for under sect. 113, and an order made awarding the defendant such costs, even when incurred in the High Court, has been upheld (*Bennett v. Drake*, (1907) 97 L. T. R. 132).

Payment into Court with denial of liability, amount sufficient, Costs of separate Issues.]—Where payment is made into court with a denial of liability, and the plaintiff obtains a verdict for no larger sum, the rule laid down in *Wagstaff v. Bentley*, (1902) 1 K. B. 124, is that the defendant is entitled to the general costs of the action, but the issues of negligence and damage are regarded as separate ones, and the plaintiff is entitled to his costs on the former issue.

In *Critchell v. L. & S. W. Ry.*, (1907) 1 K. B. 860, an attempt was made to avoid payment of the plaintiff's costs of this issue by delivering a defence denying liability, accompanied by a letter admitting it, but this was held to be an abuse of the process of the court and the defence was struck out. Another effort to accomplish the same result, in *J. R. Munday, Ltd. v. London County Council*, (1916) 2 K. B. 331, was more successful. In that case where payment was made into court accompanied by notice in the following terms:—"Take notice that the defendants admit that the accident was caused through their negligence, but that they deny the alleged damage and, whilst in this manner denying liability, they bring into court the sum of _____ and say that this sum is sufficient to satisfy the plaintiff's claim," it was held that this notice was not embarrassing, but a

valid and proper notice, as, although it admitted negligence, it put in issue the damage and that the horse damaged was the property of the plaintiffs. See also *Davies v. Scott Lewis*, (1918) W. N. 166, where the court made an order, the defendant admitting negligence, but denying liability for damage, liberty to the defendant to pay money into court with a notice denying liability, such notice to have the same effect as a defence denying liability. It is therefore now possible to admit negligence, but denying liability for damage, to deny liability. A notice to this effect apparently has the effect of preventing the plaintiff recovering any costs subsequent to the payment into court in proving the issue of liability, whilst, at the same time, preventing him from taking out the money paid into court, except in satisfaction of his claim.

In *Davies v. Edinburgh Life Assurance Company*, (1916) 2 K. B. 852, it was held that under no circumstances could the plaintiff be ordered to pay the defendant's costs of an issue on which the plaintiff had succeeded, and that the defendant cannot claim to be entitled to more than the costs of the action from the date of payment into court other than the costs attributable to the issue of liability.

Form of Judgment.—If the money paid into court by defendant with proportionate costs five clear days (or ten clear days in actions under the extended jurisdiction or remitted actions) before the hearing *with* denial of liability is sufficient, or more than sufficient, to meet the claim established by the plaintiff, judgment will be entered for the defendant, with the general costs of the action, from the time of payment into court, that £ (the amount recovered by the plaintiff) be paid out of court to the plaintiff after setting off, if the court so orders (Order IX. r. 19), the costs awarded to the defendants less the costs awarded to the plaintiff, and £ (the balance in court) to the defendant, unless the court otherwise orders (Order IX. r. 19); the plaintiff to have costs on the amount recovered up to the time of payment into court and the costs of the issues (*e.g.*, of liability) found in his favour.

COSTS SUBSEQUENT TO JUDGMENT.

No costs are allowed for searches for payment into court, nor for attending to issue execution.

Costs of Execution recoverable only out of Proceeds.—By Order XXV., r. 19, except as otherwise provided by the rules, the costs of warrants, whether executed or unexecuted or unproductive, shall be allowed against the execution debtor, unless the judge otherwise directs, but by Order XXV. r. 56 costs not recovered under an execution against goods shall not be included in the amount due under a judgment or order for the purposes of a judgment summons, or of any application for a fresh order for payment under Order XXIII. r. 14, nor shall money paid into court otherwise than under execution against the goods, be attributed to payment of such costs. The general rule of law is that the costs and fees of issuing execution are a first charge on the amount recovered under such execution, and are recoverable only out of the proceeds of such execution. The judgment debtor incurs no personal liability for the payment of such costs. For this reason such costs are directed by Order XXV. r. 56, not to be included in the amount due for the purpose of a judgment summons or fresh order. The intention of Order XXV. r. 19, which provides for the "allowance" of such costs against the execution debtor, read in connection with the other rule above mentioned, is apparently to make such costs recoverable by means of a subsequent execution.

Costs of Judgment Summons.]—As regards the costs of judgment summonses, none are allowed for attending to issue such summonses, but under Order XXV. r. 53, a solicitor's fee for attendance on the hearing is allowable in two classes of case: (1) Where the party for whom he appears resides out of the district; and (2) Where the summons is on a judgment of a court other than a county court.

The scale of fees is as follows:—

Where amount for which judgment summons is issued does not exceed 2 <i>l</i> .	Nothing.
Where amount for which judgment summons is issued exceeds 2 <i>l</i> . and does not exceed 10 <i>l</i> .	5 <i>s</i> .
Where amount for which judgment summons is issued exceeds 10 <i>l</i> . and does not exceed 20 <i>l</i> .	5 <i>s</i> . to 10 <i>s</i> .
Where amount for which judgment summons is issued exceeds 20 <i>l</i> . and does not exceed 50 <i>l</i> .	6 <i>s</i> . 8 <i>d</i> . to 13 <i>s</i> . 4 <i>d</i> .
Where amount for which judgment summons is issued exceeds 50 <i>l</i> .	10 <i>s</i> . to 21 <i>s</i> .

Application for such allowance must be made to the judge at the time.

In practice, where a fresh order is made on a judgment of a county court, the judgment creditor has to pay the fees, and the power to allow solicitor's costs is usually exercised, where a plaintiff resides out of the district, only where a commitment order is made. On the other hand, where a fresh order is made on a judgment of a court other than a county court, most judges allow a solicitor's fee. This is reasonable, as the issue of a judgment summons is the only process by which a fresh order can be obtained on a judgment of a court other than a county court, the ordinary provisions (Order XXIII. r. 14), by which such an order is issued automatically at the request of the plaintiff, applying only to county court judgments.

It should be remembered that where on the hearing of a judgment summons issued on a judgment of a court other than a county court a fresh order has been made, any judgment summons issued for default in compliance with such fresh order is not issued "on an order of a court other than a county court."

The costs of witnesses and witness summonses are also allowable against a judgment debtor in all cases where a commitment order is made (Order XXV. rr. 35, 54). But where a fresh order is made on the hearing of a judgment summons on a judgment or order of a county court in lieu of a commitment order, such costs and fees are allowable only if the judge is satisfied that the debtor has had the means to pay since the date of the original judgment, and an entry to that effect is made in the minute book (Order XXV. r. 54).

Travelling Expenses.]—Where the registrar fixes the amount to cover the travelling expenses of the debtor to attend the court on the hearing of a judgment summons under Order XXV. r. 26, the judgment debtor is entitled under the rule to be tendered the railway fare both to and from the county court (*Ward v. Nield*, (1917) 2 K. B. 832; 87 L. J. K. B. 54).

Costs of appointment of Receiver by way of Equitable Execution.]—By Order XIII. r. 14, these costs are allowed as on an interlocutory application in an equitable action or matter, subject to the following limits:—

Where amount of debt and costs due to the applicant exceeds 50*l*. and does not exceed 100*l*.—

Costs (including obtaining appointment of receiver, completing security, passing accounts, and obtaining discharge) and fees are each limited to 2½ per cent. of such amount.

Where amount of debt and costs exceeds 20*l.* and does not exceed 50*l.*—

Costs and fees are each limited to 25*s.*

Where amount of debt and costs exceeds 5*l.* and does not exceed 20*l.*—

Costs and fees are each limited to 1*l.*, but shall not be less than 7*s.* 6*d.* as the judge may direct.

In determining for the purpose of taxation "the amount of debt and costs" in the above rule, the costs incurred in obtaining an interim injunction are not to be included (*Carrington v. Deane*, (1917) 1 K. B. 717). The words are limited to the amount of debt and costs in respect of which the receiver was appointed, and do not include sums by way of costs incurred by subsequent interlocutory proceedings, although ordered to be added to the judgment debt.

Costs of Examination in Aid of Execution.—The costs of any application to examine a debtor as to his means under Order XXV. r. 71, and of any proceedings arising from or incidental thereto, are in the discretion of the court (Order XXV. r. 72). The order for the examination should make provision for the costs. It is a convenient course for the order to provide that the costs of the examination shall be in the discretion of the registrar (or of the examining officer). The court would therefore have discretion to allow such costs although, before the examination took place, the debtor paid the amount of the judgment debt and costs into court, and no examination was therefore held. In most cases the registrar exercises his discretion by allowing the costs wherever he is of opinion that the judgment creditor had reasonable grounds for thinking that the examination would elicit some useful information.

Where allowed, these costs are taxed on the scale above set out for solicitor's attendance on a judgment summons.

Costs of obtaining Garnishee Order.—The costs of any application for attachment of debts and of any proceedings arising from or incidental thereto are in the discretion of the court. Costs allowed to the judgment creditor, and not ordered to be paid by the garnishee personally, are (unless otherwise directed) to be taxed by the registrar and retained by the judgment creditor out of the money recovered by him on the garnishee proceedings, in priority to the amount due under the judgment or order obtained by him against the debtor (Order XXVI. r. 12).

The Inferior Courts Judgments Extension Act, 1882.—**Costs of obtaining Certificate of Judgment.**—This Act (see p. 2067, *infra*) enables a judgment creditor who has obtained judgment in an inferior court, *e.g.*, a county court, to have it registered in any other inferior court, either in England, Ireland or Scotland, and then to have it enforced by the court in which it has been registered. For procedure, see Order XLV., p. 623 (*supra*). By rule 6 of that order there shall be allowed to a solicitor for the costs of obtaining the certificate 5*s.*, and where an affidavit is required, in proof that the judgment has not been satisfied and of the amount remaining unsatisfied to the satisfaction of the registrar, 7*s.* The fee for grant or registration of the certificate of a judgment pursuant to the Act is 5*s.*, and for sealing and issuing duplicate of such certificate 1*s.* (County Court Fees Order, 1925. Fee No. 82). It should be noted that it has been decided that a certificate of judgment will not be issued under the Judgment Extension Act, 1868, for registration in the Irish Free State (*Banfield v. Chester*, (1925) 41 T. L. R. 563; 94 L. J. K. B. 805).

Separate Executions for Money Recovered and for Costs.]—By Order XXV. r. 9, where judgment is given or an order made for the recovery or payment of a sum exceeding 20*l.* and costs, and directions given for payment, if default is made in payment of the sum of money before the costs have been taxed, separate warrants may issue for the recovery of such sum on default in payment thereof, and for recovery of the costs after taxation and default in payment thereof; but a second warrant shall only be for costs and shall not be issued before the expiration of eight days from the issue of the first warrant.

HIGH BAILIFF'S COSTS.

(1) **Under Execution.]—**The fees to which the High Bailiff is entitled under a warrant of execution are prescribed by the County Court Fees Order, 1925, dated December 1st, 1925, and are as follows:—

Fee 57.—For keeping possession of goods under a warrant of execution. 6*d.* per day for every £ of the value of the goods seized, the value to be fixed by appraisement in case of dispute.

Maximum fee per day 10*s.* In addition thereto where there are animals to be fed, the reasonable expenses of feeding them.

These fees are not payable for more than seven days; Provided that—

(a) Where possession is kept after the seventh day at the request in writing of both the execution creditor and the execution debtor, these fees are payable for a reasonable further time; and

(b) Where notice of claim by a third party to or in respect of the goods has been given to the bailiff, the number of days for which possession fees may be charged shall be determined by the judge.

Fee 58.—For advertising a sale by auction pursuant to section 145 of the Bankruptcy Act, 1883.

The reasonable expenses thereof.

Fee 59.—For the appraisement of goods.

For every £ of the appraised value, 6*d.* in addition to the stamp duty.

Fee 60.—For the sale of goods (including advertisements, catalogues, sale and commission and delivery of goods).

1*s.* 6*d.* in the £ on the amount realised by the sale.

Fee 61.—When no sale takes place by reason of an execution being withdrawn, satisfied or stopped.

The expenses reasonably incurred with a view to the sale, not exceeding (a) 1*s.* in the £ on the value of the goods seized, the value to be found by appraise-

ment in case of dispute, and in addition.

(b) any reasonable expense paid under Fee No. 58.

Fees 72 to 75.—In Admiralty actions *in rem.* See the particular Fees.

(2) In Interpleader Proceedings.]—In *Goodman v. Blake, Lambeth*, claimant, (1887) L. R. 19 Q. B. D. 77, the judgment of Field, J., in *Searle v. Matthews* (W. N. (1883), p. 176) was approved as correctly laying down the law. The judgment of Field, J., is as follows: Where an order is made on the application of a sheriff, he is entitled to his costs from the period at which he has been called into interpleading action, that is to say, he is entitled, as against an unsuccessful claimant, to costs and possession money from the time of the notice of claim or from the time of sale, whichever would be first; and where a sheriff is ordered to withdraw, he is entitled to costs as against the execution creditor from the time at which the latter authorised the carrying on of the interpleader proceedings, that is generally from the return of the interpleader summons. (a) Where the claimant fails the usual order is for the High Bailiff to take his costs out of the money paid into court by the claimant under sect. 156 of the County Courts Act, 1888, and if this is insufficient, for the balance against the execution creditor, with a claim over by the execution creditor against the claimant. If no money has been paid into court the strict form of order on which the High Bailiff can insist is for the High Bailiff's costs to be paid by the successful execution creditor with the claim over by the execution creditor against the claimant, though it is a common form of order simply to direct the claimant to pay them (*Smith v. Darlow*, (1884) 26 Ch. D. 605; *Stern v. Tegner*, (1898) 1 Q. B. 43). (b) Where the claimant succeeds, then the High Bailiff is entitled to his costs against the execution creditor.

The fees to which the High Bailiff is entitled in interpleader proceedings are prescribed by the above Fees Order, 1925.

Fee 80.—(I.) For keeping possession of goods. The same fees as would be payable if the goods were seized under an execution, see *supra*.

(II.) For the sale of goods (otherwise than under execution).

The costs are in the direction of the judge "and the judge shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings, as he shall think fit." See Sect. 157 of the Act, and Order XXXIII. r. 15. Under this rule it has been held that it is the real value of the goods of the claimant that are seized that determines the value of the subject-matter and not the amount deposited in court by the claimant (*Studham v. Stanbridge*, (1895) 1 Q. B. 870; 64 L. J. Q. B. 473). See p. 1031, *supra*.

Costs of summons and applications under Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, Rent and Mortgage Interest Restrictions Act, 1923, and the County Court Rules made by the Lord Chancellor under these Acts.]—In applications under the above-mentioned Acts the court has an absolute discretion over costs, which may be either fixed or allowed on the scale applicable to an interlocutory application under column A or column B of the Scale of Costs, the latter applying to all cases above 20*l.* to the exclusion of Column C. The scale is regulated as follows:—

<i>Subject.</i>	<i>Amount regulating scale.</i>
Question as to increase of rent	Four weeks' standard rent.
Application to apportion rent or rateable value	Half of the annual rent or rateable value apportioned.
Application to enforce mortgage	Amount of principal sum secured.
In the case of any other application	The court to fix the amount of the costs.

When the amount regulating the scale does not exceed 10*l.*:— *s.* *d.*

Exceeding 2*l.*, but not exceeding 5*l.* 6 8

Exceeding 5*l.* 10 0

The costs of any original application under the 1923 Act whether the same could or could not have been made under the principal Act are in the absolute discretion of the court and the court in every such case is to fix the amount of such costs.

In all cases of costs under the above Acts it will be found convenient to fix these costs at the time the application is heard, and thus avoid the necessity of a separate taxation. The amounts generally fixed are as follows:—

	<i>s.</i>	<i>d.</i>
Column A	10	0
Column B	15	0

in addition to the fees.

Note.—Order LIII. Rule 50, providing for the increase of costs after 31st December, 1919, is usually held to apply to these costs. Hence the increase to 15*s.* instead of 11*s.* 2*d.*, the amount previously allowed.

ADJUSTMENT OF COSTS.

As between Two Unsuccessful Defendants.]—Where there is more than one defendant, and judgment is given against each separately with costs, Order LIII. r. 24 directs that the costs must be divided in proportion to the amount of each judgment unless the judge otherwise orders. Where the whole matter is disposed of at the same sitting of the court this course is practicable, one bill of costs is allowed, and the total amount apportioned between the various defendants in equal shares. The only person damnified in such a case is the plaintiff, as, in the event of one of such defendants proving unable to pay, he loses the proportion of his costs attributable to such defendant.

As between Two Defendants raising Separate Defences.]—Although the provisions of Order III. r. 2, undoubtedly intend that the liability of a particular defendant (say in an action of tort) for damages and costs, should be only that with which the jury fix him individually, the old rule of law which prescribed that in respect of a joint tort there should be no separate apportionment, was re-affirmed in 1913 by the Court of Appeal in the case of *Greenlands, Ltd. v. Wilmshurst and the London Association for Protection of Trade*, (1913) 3 K. B. 507; 83 L. J. K. B. 1. Not-

NOTE.—By the new Rent (Restrictions) Rules 1928, issued too late for notice on p. 1058, paragraphs 2, 3, 4 and 5 of Rule 16 of the Rules of 1920 are annulled, and the following paragraph is substituted for paragraph 2:—

- (2) The court may either fix the amount of such costs or direct the scale upon which they are to be taxed. In the event of no such direction being given they shall be taxed upon Column A of the Higher Scale.

[*To facc p. 1058.*

withstanding this, however, in *Hobson v. Sir W. C. Leng & Co. (Ltd.) and Another*, (1914) 3 K. B. 1245; 83 L. J. K. B. 1624, it has been decided that in a libel action where one defendant pleads justification and the other does not, the party who has not raised this issue is entitled to have any costs incurred by the plaintiff relating to this issue excluded from the costs which he is liable to pay. In this case the judgment was simply entered for the plaintiff against the defendants for 750*l.* and costs, and the Court of Appeal held that it was the duty of the taxing master to determine what costs, having regard to the issues in the action, were taxable in favour of the plaintiff against any particular defendant.

In the Irish case of *M'Gucken v. Kennedy*, C. A., (1928) N. I. 54. *M'G* sued *K*, and also *H* and *M* for negligence in driving a motor car in which *H* was driving, and *M* the owner, was also travelling. *K* was driving in another motor car. The two cars collided. The jury found for *M'G* as against *H* and *M*, and also that *H* was the servant of *M*, and awarded £25 damages. It was ordered that the costs paid by *M'G* to the successful defendant *K* should be included in the costs recoverable by *M'G* against *H* and *M*. On appeal this order was affirmed.

As between Two Defendants jointly represented, Judgment against one and in favour of the other.]—When two defendants are jointly represented by the same solicitor, and judgment with costs is given in favour of one and against the other, the registrar has apparently to inquire what was the position of the successful defendant with regard to his liability for costs to the solicitor employed, since a party can only recover costs from the other side to the same extent as he himself is liable to his own solicitor.

This liability varies according to circumstances. If there has been a joint contract between the solicitor and his clients, each client is liable for the whole costs, and, if there are separate contracts, each is liable for his own portion of them, and the fact that after separate retainers the defence is conducted jointly does not make the liability joint.

The actual costs may be divided into three parts. First, there are the costs incurred jointly for A. and B. (the defendants): secondly, the costs incurred exclusively for A.; thirdly, the costs incurred exclusively for B.

In the absence of any agreement between the two defendants as to how the costs are to be apportioned, each defendant is liable to any costs incurred exclusively for him and for one half of the joint costs.

In such a case if A. is successful and B. unsuccessful:—

- (1) Plaintiff should pay A. the whole of the costs exclusively incurred on his behalf and one half of the joint costs, and
- (2) Plaintiff should receive from B. the whole of the costs incurred by himself except such as related exclusively to his case against A.

If, however, the registrar finds that the unsuccessful defendant was the person liable to the solicitor for all the costs of the defence, the successful defendant will be entitled to recover only the additional costs incurred through his having been joined (*Beaumont v. Senior and Bull*, (1903) 1 K. B. 282; 72 L. J. K. B. 141; *In re Colquhoun*, (1854) 5 D. M. & G. 35; 23 L. J. Ch. 515; 43 E. R. 781; 104 R. R. 15; *Gundry v. Sainsbury*, (1910) 1 K. B. 99 and 645; *Ellingsen and Others v. Det Skandinaviske Co. and Harsen & Co., Ltd.*, (1919) 2 K. B. 567). The above doctrine can be avoided and an agreement drawn under which, while the client will be relieved from liability for costs to his solicitor, the solicitor shall retain, in the event of success, the right to costs to be recovered from the other side (*McLean v. Carlisle*, (1917) 61 Sol. Jo. 399).

As between Two Plaintiffs jointly represented, Judgment given in favour of one only, Order for Defendant to have any costs caused by the addition of the second Plaintiff.]—Where an action has been brought by two plaintiffs and judgment given in favour of one plaintiff only, the defendant having any costs caused by the addition of the extra plaintiff, it is submitted that the principle of the above cases, namely, that a party can only recover costs from the other side to the same extent as he himself is liable to his own solicitor applies, so that where both plaintiffs are interested in common in the result of the action and each of them is only liable to their solicitor by agreement (express or implied) for a moiety of the costs, that is all either of them can recover from the defendant.

In the case of *Keen and Others v. Towler* (1924) 41 T. L. R. 86, five plaintiffs sued in respect of the same motor accident. The defendant admitted liability and paid money into Court, but disputed the amount claimed. Four of the plaintiffs refused to accept the amount paid in. Three of the plaintiffs were awarded less, and one plaintiff more than the amount paid in. Held that the successful plaintiff was entitled to only one-fourth of the common costs from the defendant.

In another case the plaintiffs (husband and wife) were in a motor car owned by the husband and driven by his son, when the defendant's motor car collided with them. The husband and wife, acting by the same solicitor, brought an action. Judgment was entered for the wife against the defendant and for the defendant with costs against the husband. Held on appeal that the wife's claim to costs depended on her liability, if any, to her solicitor and that must depend on the nature of the retainer. The case was referred back to the taxing master to report what retainer or retainers the plaintiff's solicitor had and in what capacity they were given. Held further that the defendant was entitled to his costs of defence against the unsuccessful plaintiffs' claim and not only the extra costs occasioned by joining the husband as plaintiff (*Terry v. Gould*, (C. A., (1924) 69 Sol. Jo. 212).

But where the second plaintiff has not common interest in the result of the action, and is brought in to guard against the possibility of a technical defence, there can be no presumption of law or otherwise that the added plaintiff contracts with the solicitor of the original plaintiff to relieve him of one half of his liability for costs. There is only one cause of action and one person interested in it, namely the original plaintiff, who is therefore entitled to his full costs.

As between Plaintiff and Defendant, Set-off.]—The registrar has power under Order LIII. r. 34, on taxation to set off any costs payable by the successful party against any costs recoverable by him in connection with the same matter, and to issue his allocatur for the balance. In this manner, costs of counterclaim, costs of issues, and costs improperly incurred (*e.g.*, unnecessary discovery, etc.) are adjusted between the parties. This provision, which is similar to that in force in the High Court (Order LXV. r. 27 (21)), is confined to cases in which the judgments for costs sought to be set off against each other are in the same action or proceeding, and does not extend to cases in which the judgments for costs are in distinct and independent litigations (*David v. Rees and Others*, (1904) 2 K. B. 435; 73 L. J. K. B. 729). The decision in *Edwards v. Hope*, (1885) 14 Q. B. D. 922; 54 L. J. Q. B. 379, however, recognises the equitable jurisdiction of the court, and enables it to approach the question as one of discretion "for the purpose of preventing absurdity or injustice." In the case of *Reid v. Cupper*, (1915) 2 K. B. 147; 84 L. J. K. B. 573, where plaintiff brought an action

against the defendant and his wife, and another action against the defendant alone, he failed in the first, but succeeded in the second action. The judge at the trial of the second action made an order setting off the plaintiff's costs in the second action against the defendants' costs in the first action. It was held that the set-off was rightly ordered in the exercise of the judge's discretion. In the case of *Knight v. Knight*, C. A., (1925) 69 Sol. Jo. 459, where the court was asked to make an order that the costs of the appeal should be included in the set-off, the court held that the costs of the appeal in such a case stood upon a different footing to the costs of the action. The court declined to assent to the view that there was a general right of set-off in such cases, though such an order was frequently made; it was a matter of discretion for the court.

Special Provisions as to Equitable Proceedings.—If a party suing or sued in a fiduciary or representative character incurs costs not allowed under any scale, the registrar must apply to the judge, who may allow a sum out of any funds in court applicable to the purpose (Order LIII. r. 29).

Costs occasioned by an unsuccessful claim or unsuccessful resistance to a claim to any property are not to be paid out of the estate, unless the judge otherwise orders (Rule 30). Costs of inquiries to ascertain the persons entitled to any legacy, money, or share, or otherwise incurred in relation thereto, are to be paid out of the legacy, money, or share, unless otherwise directed by the judge (Rule 31). Distribution may be made to those persons whose title has been ascertained to a distributive share of a fund, without reserving any part of their shares to answer the subsequent costs of ascertaining the persons entitled to the other shares (Rule 32).

Where a bill of costs is payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, and on taxation the amount of professional charges and disbursements contained in the bill is reduced by a sixth, no costs of drawing or copying it, nor of attending the taxation will be allowed to the solicitor leaving it for taxation (Rule 35). The 33½ per centum increase of costs shall not affect the question whether a bill of costs when taxed is or is not less by one-sixth part than the bill delivered, sent, or left (Order LIII. r. 50 (3)).

Where a bill of costs is ordered to be taxed for the purpose of being paid or raised out of a fund or property, the court may require the solicitor to deliver free of charge to all or any of his clients a copy of the bill or any part of it previously to completion of the taxation, and the taxation may be suspended for a reasonable time (Rule 36).

COSTS OF SOLICITOR TO A TRUSTEE UNDER THE DEEDS OF ARRANGEMENT ACT, 1914.

The Board of Trade has power under section 15 (1) of the Act at the request of the creditors to cause the accounts of a trustee under a deed of arrangement to be audited, and on the audit to require production of a certificate for the taxed costs of any solicitor whose costs have been paid or charged by the trustee, and to disallow the whole or any part of any costs in respect of which no certificate is produced. The Deeds of Arrangement Act, however, makes no provision for the taxation of the solicitor's costs of a trustee under a deed of arrangement.

It was not apparently intended to require trustees under deeds to have their solicitor's costs taxed in every case, nor to empower a special tribunal to conduct the taxation, but to provide, in effect, that if the costs in question are not taxed, and an audit of the trustee's accounts is instituted by the Board of Trade under the provisions of the Act, such costs as may appear

to be unreasonable will be subject to disallowance. The Bankruptcy Registrars of the High Court have held that sect. 23 of the Act empowers them to make orders for the ascertaining by taxation in the bankruptcy office of the proper amount of costs payable out of the estate to any solicitor employed by the trustee. There seems, therefore, no reason why the registrar of a county court, which has jurisdiction in the matter, should not make a similar order and proceed to the taxation of the costs himself. Most registrars are prepared to do so, and the Board of Trade have intimated that in such a case they would not, on their own initiative, question the amount at which the costs had been allowed or call for a further taxation. Under Rule 16 of the Deeds of Arrangement Rules such applications are deemed to be proceedings in bankruptcy, so that the same fee is payable as on an *allocatur* in respect of costs in bankruptcy proceedings.

EXECUTORS AND ADMINISTRATORS.

Where an executor or administrator is an unsuccessful plaintiff, he is personally liable for costs unless the court otherwise orders (Order XXX. r. 1).

Where an executor or administrator is an unsuccessful defendant, he is personally liable for costs in the following cases:—

Where he has wasted assets (Order XXX. r. 4).

Where he does not appear (Order XXX. r. 2).

Where he admits his representative character, and does not deny assets, whether he admits plaintiff's demand or not (Order XXX. rr. 4A, 5).

Where he alleges total administration of assets and fails to prove it (Order XXX. rr. 7, 9).

Where such a defendant denies the plaintiff's demand, and proves a total administration of assets, he is liable to pay the plaintiff's costs of proving his demand, but is entitled to be paid his costs of proving administration of assets unless the court otherwise orders (Order XXX. r. 6).

Where such a defendant admits his representative character and the debt, and proves administration of assets, he is not liable to any costs, but is entitled to his costs of proving administration of assets unless the judge otherwise orders (Order XXX. r. 8).

The liability of an executor *de son tort* is no greater than that of an executor.

In an administration action the administrator is entitled to be allowed his general costs, even where the greater part of his claim for expenses of realisation has been disallowed, if the claim was not improper, dishonest or monstrous (*In re Jones, Christmas v. Jones*, (1897) 2 Ch. 190; 66 L. J. Ch. 439). Where, however, an estate is insolvent, the administrator's right to costs should be confined to such costs as are really necessary for the protection of the estate (*Pain and Another v. Bowden*, (1896) 2 Q. B. 301; 65 L. J. Q. B. 530, where a registrar's disallowance of certain items usually allowed was supported on the ground that he was entitled to have regard to the financial condition of the estate).

PAYMENT OF MONEY INTO COURT UNDER TRUSTEE RELIEF ACTS OR TRUSTEE ACT, 1925.

A trustee paying money into court under the provisions of the Trustees Relief Acts, or sect. 63 of the Trustee Act, 1925, is entitled to retain his costs incurred in the payment into court, and in any matter connected with the trust prior thereto, subject to taxation by the registrar (Order XXXVIII. r. 11). The practice is for the solicitor to the trustee to bring in his bill of costs and have it taxed by the registrar (Precedent X., *post*). The amount allowed on taxation is deducted from the fund and

the balance paid into the Post Office Savings Bank in the names of the registrars, and the person paying in the money proceeds in accordance with Order XXXVIII. If, however, he has availed himself of these statutory provisions without sufficient reason, he may be ordered not only to bear his own costs, but to pay the costs incurred by any other person or any part thereof (*e.g.*, in obtaining payment out of the funds) (Order XXXVIII. r. 25). If such a trustee appears on the petition of a beneficiary for payment out, where the petitioner relies only on the facts stated in the affidavit of the trustee, he will only be entitled to his costs of doing so if the judge certifies that his appearance was right and necessary (Order XXXVIII r. 28).

COSTS IN ADMIRALTY PROCEEDINGS.

The authorised scales of costs and the rules relating to costs apply to proceedings instituted as Admiralty proceedings in any county court having Admiralty jurisdiction (Order XXXIX. r. 113).

Special Provisions.—Attention, however, is called to Order XXXIX. rr. 109—112 (inclusive), which make special provisions for costs in Admiralty actions not provided for in the scales and for certain increases. See also p. 1073.

NEW TRIALS AND APPEALS.—COSTS OF.

Application for new trial is regulated by Order XXXI. and appeals by Order XXXII. The judge has the same power over the costs of the new trial as over the first trial. If a new trial is granted on payment of costs which are afterwards paid, the party accepting them is precluded from objecting to the order (*Sparrow v. Reed*, (1848) 5 D. & L. 633; 17 L. J. Q. B. 183). Although the court refuses to hear an appeal on the ground that the appeal will not lie, it frequently does entertain it so far as to dismiss it with costs (*Carr v. Stringer*, (1858) E. B. & E. 123; 113 R. R. 570), but as its power depends on jurisdiction it is difficult to see how it can do so (*Lawford v. Partridge*, (1857) 1 H. & N. 621; 26 L. J. Ex. 147; 108 R. R. 749; *Brown v. Shaw*, (1876) 1 Ex. D. 425; *Clarke v. Roche* (2), (1877) 36 L. T. 78; see, however, *Ex parte Pringle*, C. A., (1889) 60 L. T. 796). It seems that the court cannot make a conditional order that the costs of the appeal shall abide the event of the new trial (*Gibbon v. Gibbon*, (1853) 13 C. B. 205; 22 L. J. C. P. 131, *in notis*). The costs of appeal, as a general rule, follow the event; and unless there are special circumstances to take a case out of the rule, the appellant, if successful, is now allowed his costs of appeal (*Mountney v. Collier*, (1852) 1 E. & B. 630; 93 R. R. 317; *Schroeder v. Ward*, (1863) 13 C. B. N. S. 410; 32 L. J. C. P. 150; *Richardson v. N.E. Rail. Co.*, (1872) L. R. 7 C. P. 75; 41 L. J. C. P. 60).

Where the judge of a county court ruled a point of law against a plaintiff, with leave to move to set aside the verdict, and the plaintiff, instead of so moving, appealed to a superior court, which decided the point in his favour, it was held that he ought to have his costs of appeal, since he was not bound to try the experiment of going a second time before the same judge, who had once expressed an opinion against him (*Outhwaite v. Hudson*, (1851) 7 Ex. 380; 21 L. J. Ex. 151).

Costs of appeal will not be allowed unless the application for them is made at the time the case is disposed of (*Taylor v. G.N. Rail. Co.*, (1866) L. R. 1 C. P. 430; 35 L. J. C. P. 210).

The order of the court in favour of the appellant will, it is conceived, discharge his sureties, if any, providing that he has not been ordered to pay the costs of the appeal, a very improbable contingency. If money has been

paid into court as security for the costs of the appeal, the court, in granting costs to the appellant, will order the money paid into court to be paid out to him (*Kelly v. Webster*, (1852) 16 Jur. 838).

The costs of the proceedings in the court below must be dealt with as accessory to the judgment; therefore the reversal of the judgment below, and order for a new trial, reverses an order for costs in the court below (*Gage v. Collins*, (1867) L. R. 2 C. P. 381; 36 L. J. C. P. 144; *Ashby v. Sedgwick*, (1873) L. R. 15 Eq. 245; 42 L. J. Ch. 355).

On appeal from a county court judgment the High Court has power to order security for costs. (See p. 1059 (11) (*supra*).)

TAXATION OF COSTS BY REGISTRAR.

Sect. 118 provides for the taxation of all costs by the registrar of the court in which they were incurred; and by Order LIII. r. 1, the registrar must tax all costs according to the scales of costs. From this it would seem that the section requires taxation in every case of a judgment for costs. The imposition of a general taxation fee, under the new Fees Order, raises the question whether and in what circumstances two parties can agree a lump sum of costs, and, if so desired, have judgment for that amount entered without any taxation or consideration of the amount by the registrar.

The position in an action under the ordinary county court jurisdiction would appear to be this:—

(1) A judge can give judgment for the amount found to be due and £ (naming the amount) agreed costs; judgment would be entered accordingly, but no taxation is necessary and no taxing fee would be payable.

(2) After judgment the parties can agree the amount of the costs, and if these are paid without further process there would be no taxation, and no taxing fee would be payable.

(3) If after judgment, including costs, the parties agree the costs either before or after bringing in the bill of costs for taxation, and ask the registrar to sign an allocatur, and fill in the amount of agreed costs in the judgment upon which execution can be issued, this is equivalent to a taxation on which the taxing fee would be payable, as it would be the registrar's duty to see that the amount agreed upon for costs was fair and reasonable before signing the allocatur.

Registrar who is a Successful Defendant must Tax his own Bill.—It follows that where the registrar is a successful defendant in an action in his own court he must of necessity tax his own costs (*H. Tolputt & Co., Ltd. v. Mole* (C. A.), (1911) 1 K. B. 836; 80 L. J. K. B. 686).

Practice as to Delivery of Bill and obtaining Appointment.—Order LIII. r. 2 (1) provides where practicable the costs of an action or matter shall be taxed on the day on which the action or matter is tried or heard; and where the costs have not been so taxed the bill of costs should be lodged for taxation within four days after the day of trial or hearing unless the court otherwise directs. One day's notice of taxation must be given to the opposite party or his solicitor. It is usual to serve a copy of the bill with such notice but this is obligatory only if the registrar so directs. Rule 2 (2) provides: “(2) Any solicitor who shall fail to leave his bill of costs (with the necessary papers and vouchers) within the time or extended time fixed by the registrar for that purpose, or who shall in any way delay or impede the taxation, shall, unless the registrar otherwise directs, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.”

The bills, except those on the lower scale, must be made out in columns showing professional charges and disbursements separately as in the High Court.

Most registrars only require the delivery of a bill and allow the costs of taxation where the bill contains items other than those recorded in the court books, *i.e.*, solicitor's fees on entry of plaint, service of default summons, and for conducting a case in court. Wherever witnesses' expenses or any other items are claimed the bill should be brought in for taxation on the day of hearing or the following day.

Solicitor Plaintiff or Defendant appearing in Person.]—A solicitor appearing in person as plaintiff or defendant is entitled on taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary (*e.g.*, attendances to take instructions, etc.) (Order LIII. r. 25).

Solicitor's Costs, Counsel employed but not allowed.]—Where counsel is employed but the costs of employing him are not allowed, the solicitor's costs may be allowed on the scale applicable to a solicitor appearing for his client without counsel (Order LIII. r. 26).

Discretion allowed to Registrar.]—The discretion allowed to a registrar on taxation has in the last few years been very largely extended and it is now no longer necessary (with some half dozen exceptions set out on pp. 1036 and 1037, *supra*) to make special application to the judge for the allowance of what are known as the discretionary items in the scale of costs. These are dealt with on taxation.

Very strict rules as to its exercise of this discretion are laid down in Order LIII. rr. 7, 21, 22, 23, which prescribe that such discretion must be exercised with care, and in accordance with the directions in the scales and rules, taking into consideration other fees and allowances to solicitors and counsel, if any, in respect of the work to which an allowance applies, the nature and importance of the action or matter, the amount involved, the interest of the parties, the fund or persons to bear the cost, the general conduct and costs of the proceedings, and all other circumstances, *e.g.*, the insolvency of an estate in an administration action (*Pain v. Bowden*, (1896) 2 Q. B. 301; 65 L. J. Q. B. 530).

Increased Allowances where Costs are taxed under Column B or Column C.]—Order LIII. r. 8 (2) and (3) provides:—

(2) Where costs are taxed under column B or column C the amounts allowable under any item in the scales (including the items relating to plans, charts or models, and the allowances to expert and scientific witnesses) may, regard being had to the length, difficulty or importance of the case, be increased by a reasonable amount at the discretion of the registrar (to be exercised in accordance with Rule 23 of this Order) subject to review by the judge, or by special order of the judge.

(3) Where costs are taxed under column B or column C reasonable fees may, where more counsel than one are retained, and the judge on consideration of the facts of the case certifies for the allowance of fees to more counsel than one, be allowed to such additional counsel, and for consultations, and to solicitors for additional briefs and attendances on counsel with the same, and for appointing and attending consultations, at the discretion of the registrar, subject to review by the judge, or by special order of the judge. It will thus be seen that the discretion of the registrar has been very largely increased. So long as the discretion is exercised in accordance with r. 23 of Order LIII. and the increased amount is a reasonable one, regard being had to the length, difficulty or importance of the case, the discretion is practically unlimited and applies to every item in the scale, including

fees to counsel, items relating to plans, charts and models, and allowances to expert and scientific witnesses. The registrar should, no doubt, continue to take the items in the scale as a guide, but his discretion to increase the scale items in column B and column C is no longer limited to certain items, so that where costs are taxed under column B or column C no item on the scale is for a fixed amount which cannot under any circumstance be increased.

No General Increase on Increased Items.]—Where any items of costs are increased under the above rule the general increase of $33\frac{1}{3}$ per centum granted by Order LIII. r. 50 is not to be also allowed in respect of such increased items unless the judge so orders (Order LIII. r. 50 (2) (b)).

Proceedings for which no Provision made where Costs taxed under Columns B or C.]—In any action or matter in which costs are taxed under column B or column C, where proceedings are taken for which no provision is made by the rules or scales of costs, reasonable costs may be allowed in respect of such proceedings by the registrar, subject to review by the judge, or by special order of the judge, not exceeding those which may under the scales or the rules be allowed in respect of proceedings of a like nature (Order LIII. r. 8 (4)).

Costs of View by Counsel.]—The question occasionally arises as to whether there is any power to allow a fee paid to counsel for viewing the *locus in quo*. Such views take place under the following circumstances:—

- (1) The judge, under Order XXII. r. 17, decides to inspect, or orders the jury to inspect, the *locus in quo*, and invites counsel to accompany him.
- (2) The instructing solicitor requests the view as a necessary preliminary to counsel's comprehension of the circumstances, and with a view to the efficient conduct of the case by him.

The expenses mentioned in Order XXII. r. 17 no doubt cover merely the costs of locomotion, and it is clear that if a fee is payable for either class of view, it can only be under Order LIII. r. 8 (4) above quoted, a rule which, applying originally only to actions under the Rivers Pollution Prevention Act, has now been made of general application. The two points to be considered are, therefore:—

- (1) Is such a view the "taking of a proceeding" ?

- (2) Are there any fees in respect of proceedings of a "like nature" on which an allowance can be based ?

A "proceeding" is a definite step in the conduct of an action, effected either by means of an application to the court or by notice to the opposite party, but such a term is not applicable to the preliminary work done by a party for the purpose of preparing his case for trial. Bearing in mind this consideration, it would appear that there is no power to make any allowance in respect of the preliminary view made by counsel for the purpose of assisting him to conduct the case.

On the other hand, his attendance at a view of judge or jury stands on rather a different footing. Such a view is distinctly a "proceeding," and his fee can be allowed if there are fees for proceedings of a "like nature" on which the allowance can be based.

Fees allowable to counsel under the scale comprise, *inter alia*, refresher fees and additional fees for locomotion, and it would appear that either of these fees are sufficiently analogous to form the basis of an allowance for such a view.

No Unnecessary Costs to be allowed.]—No costs are to be allowed which do not appear to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to have been

incurred through over-caution, negligence, or mistake, or merely at the desire of the party (Order LIII. r. 22). The test is, as laid down in *Bartlett v. Higgins*, (1901) 2 K. B. 230; 70 L. J. K. B. 621, whether such costs were necessary or proper for the attainment of justice at the time when they were incurred, irrespective of the eventual state of circumstances at the trial.

Solicitor's Costs of Locomotion.—In particular, where a solicitor is employed who does not reside or carry on business in or near the district of the court, no costs for his locomotion or maintenance will be allowed, unless the court is satisfied that there was reasonable cause for employing him (Order LIII. r. 22). For these allowances, see items 74 and 75 of the Higher Scale of Costs, which limits the allowance to the case of a solicitor who does not reside or carry on business within two miles of the town in which the trial takes place.

Costs of Discovery.—Costs of discovery by interrogatories or otherwise are within the registrar's discretion only where there is no trial, and he is directed to allow them only if he thinks they have been reasonably asked for (Order XVI. r. 22); and if in the opinion of the registrar such interrogatories have been exhibited unreasonably, vexatiously or at improper length, the costs of them and the answers must be paid in any event by the party in fault (Order XVI. r. 5). (See also pp. 1024 and 103; *supra*.)

Costs of any Affidavit, etc., containing Improper or Unnecessary Matter to be disallowed.—The costs of any affidavit, evidence, notice, or other proceeding which is improper, vexatious or unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, may be disallowed by the judge, or by the registrar on the direction of the judge. If the question has not been raised before the judge, it is the registrar's duty to look into the same, and thereupon the same consequences are to ensue as if he had been specially directed to do so (Order LIII. r. 33).

Allowances to Witnesses.—A witness can recover from the person on whose behalf he is summoned, or from any other person by agreement, and allowance for loss of time according to the scale of allowances to witnesses on taxing costs (*Chamberlain v. Stoneham*, (1890) 24 Q. B. D. 613; 59 L. J. Q. B. 95). The scales of allowances to ordinary witnesses No. (3) in Part IV. of the Appendix to the rules are as follows:—

	£	s.	d.		£	s.	d.
Gentlemen, merchants, bankers and professional men, <i>per diem</i>	0	15	0	to	1	1	0
Tradesmen, auctioneers, accountants, clerks and yeomen, <i>per diem</i>	0	7	6	„	0	15	0
Artisans and journeymen, <i>per diem</i>	0	4	0	„	0	7	6
Labourers, and the like, <i>per diem</i>	0	3	0	„	0	4	0
Females, according to station in life, <i>per diem</i>	0	2	6	„	0	10	6

By Order LIII. r. 37 (A), allowances may be made to accountants being members of any recognised society of accountants on the scale applicable to merchants and professional men, instead of on that applicable to tradesmen.

By Order LIII. r. 37, subject to the special provisions of these rules, allowances may be made to witnesses for their attendance at court according to the scales in Part IV. of the Appendix; but such allowances may be increased at the discretion of the registrar, subject to review by the judge

or by special order of the judge, to such amounts as will reasonably compensate such witnesses for their loss of time.

The registrar may allow the costs of witnesses though they have not been summoned, and whether they have been examined or not (Order LIII. r. 41).

A plaintiff is not entitled as a rule to an allowance except for travelling expenses, unless he is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour, but the judge may otherwise order in any case (Order LIII. r. 38), and this is so although he was also the successful defendant to a counterclaim, unless the loss of time and expenses he was put to as such witness were increased by reason of the counterclaim. (See note to item 24 Higher Scale of Costs.)

A witness called in lieu of a plaintiff to give formal proof of debt in an undefended action is not usually allowed.

Public and Railway Service.]—A witness in the employ of and called on behalf of a railway company, although travelling with a free pass, is entitled to third-class railway fare in addition to his personal expenses, together with an allowance according to the scale for loss of time on basis of witness' salary by way of recoupment to his employer for loss of the servant's services.

Railway companies are not required to carry or keep their own witnesses for nothing, nor to make special arrangements with other companies to do so. The same rule applies in the case of a witness in the public service or employed by a local authority. This practice follows that laid down in The Supreme Court Masters Practice Notes (138) Witness, see the Annual Practice, 1927, p. 1799.

Seamen.]—Seamen necessarily detained on shore for the purpose of an action or matter will be allowed such remuneration as the judge may order, or, in the absence of an order, as the registrar may think reasonable compensation for their loss of time (Order LIII. r. 42). As to the principles which should govern the allowances to witnesses of the seafaring class, see *The Ibis VI.*, C.A., (1921) P. 255; 90 L. J. P. 289; and on further appeal after reconsideration by the taxing officer, C.A., (1922) P. 4; 91 L. J. P. 44.

Witness out of Work.]—A witness who is out of work or on strike, and therefore does not lose wages in attending the court, is nevertheless entitled to an allowance according to the scale. This allowance is not intended to reimburse the witness for his loss of wages only.

Travelling and Hotel Expenses.]—There may be also allowed to all witnesses, including plaintiffs and defendants, if personally attending the court, for travelling expenses the sum actually and reasonably paid by them (Order LIII. r. 39).

Witnesses attending in more than one Action.]—If witnesses attend in more than one action or matter their allowance must not exceed one allowance, and it must be apportioned between the actions or matters (Order LIII. r. 40).

Expert or Scientific Witnesses.]—By Order LIII. r. 43 (1) of the County Court (No. 1) Rules, 1923, in any action or matter in which a party is entitled as of right, or by order of the judge, to tax his costs under column B or column C, the judge or the registrar on taxation, subject to review by the judge, may allow for qualifying to give evidence by and for the attendance in court of any expert or scientific witnesses or any member of the medical profession, such sums, not exceeding the maximum allowances mentioned in the scale as he may think fit, in addition to travelling expenses.

As to scale of allowances to expert and scientific witnesses, see p. 1101 (*infra*) and notes thereon.

There is no ground whatever for saying that a qualifying fee cannot be allowed because the examination was made before the litigation began (*Jones v. D. Davies & Sons, Ltd.*, C. A., (1914) 3 K. B. 549; 83 L. J. K. B. 153).

There is no rule of practice in the High Court that only two expert witnesses are allowed on each side. An expert who is called and listened to by the court ought to have his costs allowed in the absence of any special reason to the contrary (*Maxim v. Godson*, (1916) 1 Ch. 21). In the recent case of *Graigola Merthyr Co., Ltd. v. The Swansea Corporation*, (1927) 71 Sol. Jo. 142, which was an action to restrain the corporation by injunction from filling a reservoir they had constructed, with water on the ground that the water would inevitably penetrate into the workings of the mine and flood the mine, Tomlin, J., said: "I propose to lay down a rule which I propose to follow in this and similar cases until corrected. It is that in cases involving expert evidence only two experts shall be heard, unless the judge is satisfied that, by reason of special circumstances, justice could not be done without having further expert evidence. This rule does not mean that they (the defendants) are excluded from calling any one to speak to facts he has seen, even though an expert, but in such a case the examination should be confined to matters of fact, and he should not be treated as an expert witness."

Interpreter.—The question not infrequently arises as to what is the proper fee to allow to an interpreter who by arrangement acts for both sides, and is engaged the whole day. It is submitted that the fee of 1*l.* 1*s.* would be an appropriate fee, under which ever scale the costs are being taxed, unless the interpreter's ordinary occupation is such that a smaller fee would be appropriate. In a proper case this fee might be increased under column B and C, and an allowance made to the interpreter as an expert witness. Even under column A a discretion is given to the registrar under Order LIII. r. 43 (2). No fee would of course be allowed for qualifying to give evidence.

Preparation of Plans, Charts, etc.—The preparation of plans, drawings, charts or models for the purpose of illustration, and of all tracings and copies thereof for use of the judge at the trial, if allowed by the judge or registrar, are allowable at the sum reasonably paid for the same not exceeding: under column A, 1*l.* 1*s.*, under column B, 2*l.* 2*s.*, and under column C 3*l.* 3*s.* (Order LIII. r. 44 of the County Court (No. 1) Rules, 1923, and item 95 of the Scale of Costs). Where costs are taxed under column B or column C the items relating to plans, charts or models may be increased at the discretion of the registrar subject to review by the judge, or by special order of the judge (Order LIII. r. 8 (2) of the County Court Rules, 1920).

Persons who are called at the trial to prove the correctness of the plans, drawings, charts and models prepared by them shall not be entitled to allowances as expert and scientific witnesses, but shall be allowed for their attendance upon the scale applicable to ordinary witnesses (Order LIII. r. 44 of the County Court (No. 1) Rules, 1923).

Where a plan prepared for the purpose of illustration, *e.g.*, of the scene of an accident, is allowed by the judge or registrar, the costs of a subpoena, and the attendance at the trial of the person who prepared it are also properly allowed. Such a plan does not come within the provision of Order XVIII. r. 6 "that no costs of proving any document shall be allowed unless

notice to admit has been given," because it is not a document which a party desires to give in evidence, but is merely prepared for the purpose of illustration as opposed to evidence (*Hayes v. Brown*, (1920) 1 K. B. 250).

A solicitor who orders photographs for the purpose of litigation, in which he was acting for a client to the knowledge of the photographer, is not personally liable for the price of the photographs (*Wakefield v. Duckworth*, (1915) 1 K. B. 218; 84 L. J. K. B. 335).

Allocatur to be Signed on Production of Witness' Receipts.—It is, of course, an obvious advantage to solicitors to defer settling with witnesses until after the amount to be allowed for their attendance has been ascertained on taxation. In important cases, therefore, it is usual to follow the practice of the High Court, under which the amounts to be allowed to witnesses and experts are assessed from their accounts produced on taxation, and the allocatur signed on production of the receipts from the witnesses, or, in special cases, on the solicitor's written undertaking to produce such receipts when required. The case of *Harbin v. Gordon and Another*, C. A., (1914) 2 K. B. 577; 83 L. J. K. B. 322, clearly defines the practice of the taxing masters with regard to payments to and receipts to be given by parties to an action in respect of allowances to them for expenses and loss of time in travelling to give evidence. The Court of Appeal laid it down that the "special concession," which the master had made of offering to accept the plaintiff's letter to the effect that he was aware of the allowance to him as a witness and its amount, should be made the general rule in all similar cases where the solicitor taxing the bill was not in a position to produce a voucher for the sum allowed.

Counsel's Fees.—As regards counsel's fees, the scale item is expressed to be the maximum, and the registrar is directed, by the official note in the higher scale of costs, in assessing the amount of the fee, to consider the length of the brief, the documents to be perused and considered, the number of witnesses, and the difficulties of fact or law involved. In practice, however, the maximum is usually allowed.

The wide discretion given to the registrar by Order LIII. r. 8 (2) of the County Court Rules, 1920, to increase any item in the scales where costs are taxed under column B or column C applies to counsel's fees. These fees may therefore be increased to any reasonable amount, regard being had to the length, difficulty or importance of the case, at the discretion of the registrar, to be exercised in accordance with Rule 23 of that Order subject to review by the judge, or by special order of the judge.

Order LIII. r. 8 (3) of the County Court Rules, 1920, also provides,—Where costs are taxed under column B or column C, reasonable fees may, where more counsel than one are retained, and the judge on consideration of the facts of the case certifies for the allowance of fees to more counsel than one, be allowed to such additional counsel, and for consultations, and to solicitors for additional briefs and attendances on counsel with the same, and for appointing and attending consultations, at the discretion of the registrar, subject to review by the judge, or by special order of the judge.

Conference Fee.—Similarly, a conference fee (item 87 of the higher scale of costs) is allowable under columns B and C of the scale, if marked on the brief and the registrar considers it necessary.

Advice on Evidence.—The fee for advising on evidence is only allowable if the advice is given in writing, and allowed by the judge, item 94 of the higher scale of costs having been amended in the former respect by the Rules of July 26th, 1912. The fact that the judge has certified for this fee does not preclude the registrars from inquiring, on taxation, whether the work covered by it was actually performed.

Payment to be Vouched by Counsel's Signature.]—No fees are to be allowed on taxation unless the payment be vouched by the signature of counsel (see official note in the Higher Scale of Costs, Fees to Counsel).

REVIEW OF TAXATION, PROCEDURE BEFORE THE REGISTRAR.

Order LIII. r. 47 provides that any party dissatisfied with the allowance or disallowance by the registrar on taxation, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, or at such earlier time as may in any case be fixed by the registrar, delivery to the other party interested therein, and carry in before the registrar objections in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form the items, or parts thereof, objected to, and the grounds and reasons for such objections, and may thereupon apply to the registrar to review the taxation in respect of the same.

In practice, the registrar signs the bill of costs after taxation, and it then serves as a certificate or allocatur. A party dissatisfied should, therefore, at once indicate the items objected to, and request the registrar not to sign the bill of costs until he has had time to consider the propriety of the allowances or disallowances; and it is believed that the registrar could not, by refusing, prevent the party from exercising his right to review.

After delivering objections, the applicant will be entitled to an appointment to review. The registrar will then reconsider and review his taxation upon such objections, and he may, if he think fit, receive further evidence in respect thereof, and, if so required by either party, he must state either in his certificate of taxation or allocatur, or by reference to such objections, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto (Order LIII. r. 48). In practice the registrar states his reasons for his decision either on the objections or in a separate document, and this should be shown to the parties (*Dashwood v. Maguire*, (1892) W. N. 52). These rules are in effect similar to the corresponding rules in the High Court (Order LXV. r. 27 (39), (40)).

It is submitted that the registrar has power to allow such costs for attendance of the successful party on objections to taxation as would be allowable on an interlocutory application before judgment.

REVIEW BY THE JUDGE ON APPEAL FROM THE REGISTRAR.

The right of appeal to the judge is expressly conferred by sect. 118 of the Act, and the procedure is now settled by the County Court Rules, 1918, dated May 13th, 1918, Order LIII. r. 49, which provides that notice in writing specifying the objections to the taxation shall be given in accordance with the rules as to interlocutory applications, which prescribe that the notice shall be served on the opposite party two days at least before the hearing of the application unless leave be given for a shorter notice. The application must be made within four days from the date of the completion of the taxation, but the judge or registrar has power to extend the time. Where objections have been carried in before the registrar, the application is to be heard and determined on the evidence brought in before him unless the judge directs further evidence. The rule expressly provides that application may be made to the judge, whether objections have been carried in before the registrar or not. Where this has not been done, however, the judge is entitled, in dealing with the costs of the application, to have regard to that fact. A notice of application to review does not operate as a stay of execution. In that event it would be desirable to apply

to the judge, at his next sitting at any court on the circuit, for a stay of execution, pending the hearing of the application. Section 23 of the County Courts Act, 1919, gives the judge very wide powers to suspend or stay any judgment, order, or execution given, made, or issued in an action or matter, upon the application of any party to such action or matter, if he is satisfied that the party is unable from any cause to pay and discharge any debt, damages, costs or other sum recovered against him, or any instalment thereof.

APPEAL FROM JUDGE TO THE HIGH COURT, WHEN ALLOWABLE.

Where the judge makes a mistake of law in reviewing or refusing to review a taxation of costs, there is a right of appeal from the judge to the High Court in actions where the amount claimed is over 20*l.*, but there is no appeal if the matter complained of is the wrongful exercise of his discretion, nor can the High Court, by order in the nature of a mandamus, compel the judge to review, if he hears the application and refuses to review (*Clifton v. Furley*, (1861) 31 L. J. Ex. 170).

There is no appeal without leave from a County Court Judge's refusal to review a taxation of a solicitor's bill of costs where the amount claimed is less than £20 (*Hives v. Dawson*, (1927) 44 T. L. R. 37; 138 L. T. 238; W. N. 265).

Right of Appeal to the Court of Appeal and the House of Lords.—The rule with regard to the right of appeal to the House of Lords on a question of costs is that, while the House will not review an exercise of discretion as to costs, it will not refuse to entertain an argument that an order as to costs is founded on an error of law. In that House, as in the Court of Appeal, an appeal from a discretionary order as to costs would not be allowed. The House allowed an appeal to proceed in which the exercise of the trial judge of his statutory discretion as to costs had been set aside by the Court of Appeal on legal grounds (*Campbell (Donald) & Co. v. Pollak* (supra)).

TAXATION OF COSTS AS BETWEEN SOLICITOR AND CLIENT.

Procedure.—Under the provisions of sect. 118 of the Act, all costs and charges between solicitor and client may also, on the application either of the solicitor or client, but not otherwise, be taxed by the registrar of the court in which they were incurred, subject to the right of either party to review before the judge. They are taxable on the same scales as party and party costs. No charges not sanctioned by the scale may be allowed, unless the registrar is satisfied that the client has agreed in writing to pay them. The application is made in writing to the registrar, and must state on whose behalf it is made; the registrar sends to the parties by post three clear days' notice at least of the day fixed for the taxation. Rules 5 and 6 of Order LIII. as to objection to, and review of, taxation apply. The costs of the taxation are dealt with by the registrar in accordance with the Solicitors Act, 1843, and are added to or deducted from the amount certified to be due (Order LIII. r. 46).

A solicitor retained to bring or defend an action cannot recover any costs incurred after retainer which are not allowed by the scales (*In re Dod, Longstaffe & Co., Ex parte Lamond*, (1888) 21 Q. B. D. 242; 57 L. J. Q. B. 503); but this is not the case if the client is plaintiff and he represents to the solicitor that a debt of a certain amount is due to him and a less sum is recovered. The registrar may then, in his discretion, tax on the scale applicable to the claim (*In re Langlois and Biden, Solicitors*, (1891) 1 Q. B. 349; 60 L. J. Q. B. 123).

Although in party and party taxations omitted items are constantly inserted by the taxing officer, leaving the non-consenting party to review, this cannot be done in solicitor and client taxations, because the demand made by the delivery of the bill can only be increased by leave of the court on motion or summons, or by consent (*Re Grant v. Bulcraig & Co.*, (1906) 1 Ch. 124).

Courses open to Solicitor to obtain Payment.]—The concluding words of sect. 118—"and no solicitor shall have a right to recover from his client any such costs or charges unless they shall have been allowed on taxation" have been considerably modified by judicial decisions. The case of *Cubison v. Mayo*, (C. A.) (1896) 1 Q. B. 246; 65 L. J. Q. B. 267, decided that the words in question do not constitute such taxation a condition precedent to the solicitor's right to sue where twelve months from the delivery of the bill of costs (the period in which the client is entitled to require it to be taxed) had expired, and no taxation had been applied for, whilst it appears from the case of *Bell v. Girdlestone*, (1913) 2 K. B. 225; 82 L. J. K. B. 696, that even where the twelve months have not expired, the words of the section apply only in the event of a taxation having been applied for.

The position, therefore, appears to be this:—

The solicitor may either apply for taxation under this section, or issue a summons for the amount of his untaxed bill. Inasmuch as the taxing officer's certificate involves no obligation on the client to pay, but merely confers on the solicitor a right to recover by action, which he apparently possesses without it, he will naturally adopt the latter course. If he does, the usual practice, where the period within which the bill is taxable has not expired, is to follow the High Court procedure by referring the bill to the registrar for taxation, and direct judgment to be entered for the amount certified by him to be due.

The above, of course, relates merely to proceedings by solicitors to recover against their clients costs incurred in the county court, but it frequently happens that actions are brought in the county court to recover costs not incurred in connection with county court proceedings. In such cases there is no power to adopt the course pursued in *Smith v. Edwardes*, (1888) 22 Q. B. D. 10, followed and applied in *Smith v. Howes*, (1922) 1 K. B. 590, of referring the bill to the master for taxation under the Solicitors Act, 1843, and thus retaining the client's rights under sect. 37 of that Act, because taxation under that Act can only take place in the High Court. On the other hand it is, of course, open to the judge to follow the procedure adopted by the High Court in *Lumsden v. Shipcote Land Property Co.*, (1906) 2 K. B. 433, and refer the bill to the registrar to ascertain the proper amount to be paid, just as in the case of any other action for work and labour done.

In such a taxation the costs of drawing the bill sued on are not usually allowed, as they would be if the taxation took place under the Solicitors Act.

ADMIRALTY.

Hill, J., found the *Rhesus* alone to blame for a collision, the Court of Appeal found the *Canton* alone to blame, the House of Lords found both ships to blame. Held that it was the settled rule of practice that where both vessels were to blame there should be no costs in any Court. (Owners of the motor ship *Canton* appellants, owners of the s.s. *Rhesus* respondents, (1928) W. N. 215.)

CHAPTER II.

SCALES OF COSTS AND ALLOWANCES TO WITNESSES.

COMPRISING PART IV. OF THE APPENDIX TO THE COUNTY COURT RULES.

LOWER SCALE, 1074.

Where the Amount Recovered exceeds 2l. and does not exceed 10l.

HIGHER SCALE, 1077.

Where the Subject Matter on the Sum Recovered exceeds 10l.

Plaints, Particulars, Summonses and Notices. Items 1 to 6, inclusive.

Notices. Items 7 to 13, inclusive.

Service. Items 14 to 19A, inclusive.

Instructions. Items 20 to 31, inclusive.

Drawing. Items 32 to 42, inclusive.

Copies. Items 43 and 44.

Perusals. Items 45 to 53, inclusive.

Attendances. Items 54 to 84, inclusive.

Fees to Counsel. Items 85 to 94, inclusive.

Plans, Models, etc. Item 95.

Letters, etc. Items 96 to 101, inclusive.

SCALES OF ALLOWANCES TO WITNESSES, 1100.

Ordinary Witnesses.

Expert and Scientific Witnesses.

Scale of Allowances for Traveling and Hotel Expenses.

TOTAL OF ITEMS OF COSTS TO BE ENTERED ON SUMMONSES FOR AMOUNTS EXCEEDING 10l. WHERE THE PARTICULARS AND COPIES ARE SIGNED BY THE SOLICITOR, 1103.

Amount to be entered on an Ordinary Summons.

Amount to be entered on a Default Summons.

Effect of Order 53, rule 50.

(1.)

LOWER SCALE.

COSTS TO BE PAID TO SOLICITORS IN ACTIONS AND MATTERS, AS WELL BETWEEN PARTY AND PARTY AS BETWEEN SOLICITOR AND CLIENT, WHERE THE AMOUNT RECOVERED EXCEEDS 2l., AND DOES NOT EXCEED 10l.

NOTE.—Costs not sanctioned by the scale are not to be allowed, except in cases provided for by the County Court Rules; see Order LIII. Rule 20.

1. Where the particulars and copies are signed pursuant to Order VI. Rule 9, and the amount claimed exceeds 2l., and does not exceed 5l., there may be entered upon an ordinary summons, and upon a default summons, four shillings, unless the latter is to be served by a solicitor, when seven shillings may be entered.

2. Where the particulars and copies are signed by a solicitor, and the amount claimed exceeds 5l. and does not exceed 10l., there may be entered upon an ordinary summons, and upon a

default summons, **eight shillings**, unless the latter is to be served by a solicitor, when **thirteen shillings** may be entered.

3. Where the amount recovered exceeds 2*l.* and does not exceed 5*l.*, a solicitor for a plaintiff may be allowed for preparing for and attending trial, or upon an application for a new trial, **seven shillings**, and, where the sum recovered exceeds 5*l.* and does not exceed 10*l.*, **ten shillings**.

3a. Where service of an ordinary summons or a successive ordinary summons is to be effected by a solicitor, the costs which may be entered upon a default summons for the like amount to be served by a solicitor may be entered on the summons.

Service of an ordinary summons (other than an ordinary summons under the Act of 1903) can only be effected by a solicitor in two cases:

(1) Where the plaintiff cannot give the present place of residence or business of the defendant, Order V. Rule 13 (10), and

(2) In the case of a defendant out of England and Wales, Order VII. Rules 41 to 49.

Any successive summons can, by leave of the court, be served by a solicitor, Order VII. Rule 29a.

4. Where the action is withdrawn, or the amount claimed is paid into court less than five clear days before the return day, there may, if the judge or registrar so orders, be allowed to the solicitor, upon his application, **five shillings**, or such portion of the fees for preparing for and attending trial as the judge or registrar may under the circumstances direct.

See note to item 76 of the Higher Scale.

5. Where the amount claimed exceeds 2*l.* and does not exceed 10*l.*, there may be allowed to a solicitor for entering up judgment on a default summons, or under Order IX. Rule 2, or under Order IX. Rule 5, **three shillings and fourpence**.

Where the confession or admission is delivered or filed less than five clear days before the return day, the full fee under paragraph 3 is allowable.

5a. Where the amount claimed on a default summons exceeds 2*l.* but does not exceed 5*l.*, there may be allowed to a solicitor for attending at court to enter up judgment, where a day is fixed for the action to be disposed of, **five shillings**, or where the amount exceeds 5*l.*, but does not exceed 10*l.*, **seven shillings**.

This is the only fee allowable where a case has been fixed for disposal, there being in that case no return day so as to make paragraph 4 applicable.

6. Where the amount claimed exceeds 2*l.* and does not exceed 5*l.*, the solicitor may be allowed for instructions, preparing defence, and attending trial, **ten shillings**, and where the sum claimed exceeds 5*l.* and does not exceed 10*l.*, **fifteen shillings**, or upon an application for a new trial, **seven or ten shillings**, according to the amount claimed.

*7. Where the action is tried by the judge with or without a jury or by the registrar, the costs of preparing for and attending trial may be increased to a sum not exceeding **two pounds**, on a

*An order of the judge or the registrar is required for the allowance of these items.

special order of the judge or registrar in such action to be entered in the minute book.

*8. The judge or registrar may in like actions, by special order to be entered in the minute book, allow a fee not exceeding 2*l.* 4*s.* 6*d.* for the employment of counsel, and where such fee is allowed there may be allowed to the solicitor instructing such counsel for—

Instructions for brief	3 <i>s.</i> 4 <i>d.</i>
Drawing brief, per folio	1 <i>s.</i> 0 <i>d.</i>
	Not exceeding 5 <i>s.</i>
Attendance on counsel with brief	3 <i>s.</i> 4 <i>d.</i>
Attendance at court with counsel	3 <i>s.</i> 4 <i>d.</i>

8a. On an interlocutory application in an action or matter in which costs are allowed on the lower scale, costs may be allowed as follows, viz. :—

- (a) On an application to the registrar, costs not exceeding those which may be allowed under column A. of the higher scale on a similar application may be allowed by him : and
- (b) On an application to the judge, costs not exceeding those which may be allowed under the same column on a similar application, or, if the judge certifies for counsel, the costs mentioned in paragraph 8 may be allowed by the judge, by special order to be entered in the minute book.
- (c) This paragraph shall not apply to an application for a new trial, unless the judge certifies for counsel on such application, in which case the solicitor instructing counsel may be allowed the costs mentioned in paragraph 8 in lieu of those mentioned in paragraphs 3 and 6.

The costs of the application which may be allowed under column A on a similar application are :—

Item.	s.	d.
11. Notice of application and copies	2	0
33. Attendance obtaining appointment	2	0
19. Service	1	0
66. Attendance, registrar's order made	2	0
64. Attendance, judge's order made	5	0 to 10 <i>s.</i>
44. Copy order, per folio 2 <i>d.</i>		
19. Service	1	0

Presumably the intention is to allow the above costs, and not merely the solicitor's fee for attending such an application. If the application is allowed with costs the items allowable for carrying out the order will, subject to the Rules of Court, also be allowed on taxation.

*9. Where a trial is adjourned by the court for want of time, one half of the fees mentioned in clauses three and six may be allowed in respect of that day's attendance if the judge or registrar shall so direct.

It is usual to allow this item where a trial has been commenced, but is not concluded on the first day, but not where the hearing is completed and judgment reserved, in which latter case a fee is allowable only for the first day.

* An order of the judge or the registrar is required for the allowance of these items.

10. In the case of a plaintiff where the amount recovered, or in the case of a defendant where the amount claimed, exceeds 2*l.* and does not exceed 5*l.*, the solicitor may be allowed for attending court when the action is referred, **three shillings**, for attending before the arbitrator, **ten shillings**, and for attending court entering judgment upon the award, **three shillings**, and where the amount claimed or recovered exceeds 5*l.* and does not exceed 10*l.*, the sums of **six shillings, fifteen shillings, and six shillings** respectively may be allowed.

11. For the purposes of this scale a counterclaim shall be deemed to be a claim, and the defendant and the plaintiff shall in relation thereto be deemed to be plaintiff and defendant respectively: and in an interpleader proceeding the claimant and the execution creditor shall be deemed to be plaintiff and defendant respectively.

N.B.—No other costs are to be allowed than the above where the amount claimed does not exceed 10*l.*, unless the judge certifies under sect. 119 of the County Courts Act, 1888, or otherwise orders pursuant to Order LIII.

(2.)

HIGHER SCALE.

COSTS TO BE PAID TO SOLICITORS IN ACTIONS AND MATTERS, AS WELL BETWEEN PARTY AND PARTY AS BETWEEN SOLICITOR AND CLIENT, WHERE THE SUBJECT MATTER OR THE SUM RECOVERED EXCEEDS 10*l.*

NOTES.—(1) Section 118 of the Act provides that all costs and charges between party and party and between solicitor and client on the application either of the solicitor or client shall be taxed by the registrar of the court in which such costs and charges were incurred, and no costs and charges shall be allowed on such taxation which are not sanctioned by the scale in force, unless in the case of taxation of solicitor and client costs the registrar shall be satisfied that the client has agreed in writing to pay them, in which case they may be allowed. See Order LIII. rr. 20, 21, 22.

(2) By Order LIII. Rule 8 (2), where costs are taxed under column B or column C, the amounts allowable under any item in the scales (including the items relating to plans, charts or models, and the allowances to expert and scientific witnesses) may, regard being had to the length, difficulty or importance of the case, be increased by a reasonable amount at the discretion of the registrar (to be exercised in accordance with Rule 23 of this Order) subject to review by the judge, or by special order of the judge.

The effect of this new rule is to give the registrar a discretion, subject as therein mentioned, to increase any item in the scale to any amount he thinks reasonable, so that it is no longer necessary (with some half-dozen exceptions set out on pp. 1036 and 1037) to make special application to the judge, and the whole scale is now at large on taxations under column B and column C, though no doubt the registrar is still bound to take the items in the scale as a guide.

(3) By Order LIII. Rule 50 the total of any items of costs (as distinct from payments) in respect of business done after the 31st Dec., 1919, shall where costs are payable under col. B or col. C be increased by 33½ per centum.

(4) By Order LIII. Rule 50 (b) where any items of costs are increased under Rule 8 of that Order, or costs are allowed on any scale higher than

that which would otherwise be applicable, the increases authorised by these Rules shall not be allowed in respect of such items or in respect of costs allowed on such higher scale, unless the judge otherwise orders.

	Where the Subject Matter or the Sum recovered exceeds:					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed			20		
	20	0	0	50	0	0
	A.		B.		C.	
<i>Plaint, Particulars, Summonses, and Notices.</i>	£	s.	d.	£	s.	d.
1. Preparing particulars of claim, or counterclaim, where the claim is a liquidated demand including necessary copies; provided that such particulars and copies are signed pursuant to Order VI. Rule 9.	0	4	0	0	7	0
2. The like in all other claims, or for preparing statement of claim or defence or preliminary act in Admiralty action.	0	6	0	0	12	0
3. Drawing petition or reply in Admiralty action, per folio Not exceeding, unless allowed by the judge or registrar.	0	1	0	0	1	0
4. Preparing further particulars, when same required by defendant under Order VI. Rule 7, or by plaintiff under Order X. Rule 11, including copy to file.	0	10	0	1	5	0
Or, per folio	0	0	8	0	0	8
Copy for Service. —The copy required to be delivered to the opposite party is not included in this item and may therefore be charged for under item 44.						
5. Summons or subpoena to witness, including attending, obtaining leave to serve, or leave to issue in blank and serve, issuing, and sealing.	0	2	0	0	3	0
Or per folio beyond four						0
6. Summons in chambers, including sealing, copy to file, and one copy for service.	0	2	0	0	3	0

The only summons in chambers in the county court is the summons to proceed with accounts and inquiries in an equitable action under Order XXIV. Rule 2. All other interlocutory applications, which are not *ex parte*, are made by notice under Order XII. Rule 11, and are allowable under item 11.

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.		B.		C.	
Notices.	£	s.	d.	£	s.	d.
7. Preparing notice to produce or admit, or to admit facts, and one copy	0	3	0	0	4	0
8. If special or necessarily long, such allowance as the registrar shall think proper, not exceeding per folio	—			0	0	8

"Special or Necessarily Long."—If the notice to produce or admit is not more than five folios in length, or, if over five folios, is not "special or necessarily long," item 7 applies. If the notice is over five folios in length and is "special or necessarily long," item 8 applies.

Copy for Service.]—There is no allowance for a copy for service of notice to produce or admit under item 7, but only under item 8.

9. For preparing notice of motion to the court, including copies to file and serve	0	4	0	0	5	0
10. If necessarily exceeding five folios, at per folio, including copies to file and serve				0	1	0
11. For preparing notice of any application to judge or registrar when required, not being <i>ex parte</i> , including copies to file and serve	0	2	0	0	3	0

Notice of application for directions, discovery, inspection, etc., are chargeable under this item.

12. For preparing any other necessary or proper notice, or demand, not otherwise provided for, including copies to file and serve	0	1	6	0	2	0
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"Not otherwise provided for."—Among the notices which are not otherwise provided for and, therefore, come within this item are : notices of filing affidavits ; of setting down the action on further consideration ; of order made (where necessary) ; of intention to read evidence ; of appointments before judge or registrar in chambers ; of settling or passing an order before the registrar ; to inspect or to produce for inspection, under Order XVI. Rule 13, documents referred to in particulars, notices, or affidavits ; of judgment or order under Order III. Rule 27 ; and of demand for a jury.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds								
	£	s.	d.	£	s.	d.	£	s.	d.
	10	0	0	20	0	0	50	0	0
	and does not exceed								
	20	0	0	50	0	0			
	A.			B.			C.		
<i>Notices—continued.</i>	£	s.	d.	£	s.	d.	£	s.	d.
13. Or if special, and necessarily exceeding three folios, there may be allowed in the registrar's discretion for each folio beyond three, including copy to file	0	0	8	0	1	0	0	1	0

Copy for Service.]—No separate fee is allowed for copy to serve unless the notice is special and necessarily exceeds three folios.

Service.

NOTE.—One fee only for service may be entered on the summons; but where two or more parties are separately served, the fees for service on each of such parties may be subsequently allowed; but where any two or more summonses, orders, interrogatories, notices or demands to be served on the same party, have been or could have been served together, one fee only for service is to be allowed; and where two or more parties have been or could have been served together, one fee only for service is to be allowed.

- | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 14. Service of a summons (not being a judgment summons), order, notice, or document required by statute or rule or by order to be served personally, including copy | 0 | 5 | 0 | 0 | 5 | 0 | 0 | 5 | 0 |
| 15. If served at a distance of more than two miles from the nearest place of business of the solicitor serving the same, for each mile beyond such two miles therefrom, but not to exceed ten miles | 0 | 0 | 6 | 0 | 0 | 6 | 0 | 1 | 0 |

"Distance."]—In *Lake v. Butler*, (1855) 5 E. & B. 92; 24 L. J. Q. B. 273; 103 R. R. 383, it was held that the distance between two dwellings is to be

HIGHER SCALE—*continued.*

Where the Subject Matter or the Sum recovered exceeds					
£	s.	d.	£	s.	d.
10	0	0	20	0	0
and does not exceed					
20	0	0	50	0	0
A.		B.		C.	

Service—continued.

£	s.	d.	£	s.	d.	£	s.	d.
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measured in a straight line from one to the other along the horizontal plane. See also Interpretation Act, 1889, s. 34, which provides that distance is to be measured in the same way "for the purposes of any Act passed after the commencement of this Act."

Service effected through Agent.]—Where service is effected through an agent, the distance must be reckoned from the office of the solicitor serving, *i.e.*, the agent, and not from that of the plaintiff's solicitor.

Service on Limited Company.]—Where a solicitor serves a summons on a limited company, under sect. 116 of the Companies (Consolidation) Act, 1908, by posting it to the company at its registered office, it would appear that he is entitled to this fee, where such registered office is more than two miles from his place of business.

16. Where in consequence of the distance of the party to be served, it is proper to effect service through an agent, for correspondence in addition . . .	0	4	0	0	7	0	0	7	0
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"Correspondence."]—This item covers agency correspondence for both solicitors, that is, 3s. 6d. for each.

"An Agent" means another solicitor; a process server is merely a person employed by the solicitor.

17. When substituted service ordered, or order made giving liberty to proceed as if personal service had been effected, in addition, to include all costs of attendances, making appointment to serve, drawing, engrossing, and attending to swear and file all affidavits, and to obtain order, and the fees paid for oaths, but not to include the registrar's fee for the order, not exceeding . . .	0	10	0	1	0	0	1	5	0
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18. Service of any summons, subpoena, interrogatories, order, notice, or demand not required to be served personally, including copy and mileage, if not authorised to be served by post . . .	0	1	6	0	2	6	0	2	6
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19. If authorised to be served by post . . .	0	1	0	0	1	6	0	1	6
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HIGHER SCALE—*continued.*

			Where the Subject Matter or the Sum recovered exceeds		
£	s.	d.	£	s.	d.
10	0	0	20	0	0
and does not exceed			50	0	0
20	0	0	50	0	0
A.			B.		
			C.		

Service—continued.

£	s.	d.	£	s.	d.	£	s.	d.
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Service by Post.]—It should be observed that the distinction between this item and item 18 is whether or not the particular document, which must not be required to be served personally, is authorised to be served by post, and not whether in fact it is so served. By Order LIV. Rule 2, any document to be served on any party as to which no mode of service is prescribed by the rules is authorised to be served by post.

The only documents not required to be served personally, as to which special modes of service are provided, appear to be summonses to witnesses to attend court or an examination in chambers, and notice of application for a new trial where the opposite party does not act by a solicitor.

19a. For service of a summons or notice of a summons out of England and Wales, under Order VII. Rules 41 to 48, to include all costs of attendances, drawing, engrossing, attending to swear and to file all affidavits, and the fees paid for oaths and obtaining order, such sum as the registrar shall think reasonable in the circumstances of the case.

Instructions.

Documents and Proceedings for which no Fees for Instructions are Allowed.]—There is no provision in the scale of costs for instructions in respect of the following proceedings or documents accounts, advertisements, pedigree, certificate of result of sale, particulars of sale, conditions of sale, abstract of title, to initiate or defend any interlocutory proceedings, to counsel to settle documents drawn by the solicitor who is allowed the fee for drawing, brief on further consideration.

Settlement.]—No fee is allowable for instructions to settle, but charges are allowed for the necessary work in and about effecting a settlement, if successful (see note to item 63).

20. To sue or defend, or to prefer or oppose claim in interpleader proceedings, or for a petition, or for a garnishee summons, or for payment into court by garnishee	0	3	4	0	6	8	0	13	4
21. For counterclaim or to oppose counterclaim	0	3	4	0	6	8	0	13	4

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.		B.		C.	
<i>Instructions—continued.</i>	£	s.	d.	£	s.	d.
22. For interrogatories or for statement of claim, defence, reply, or preliminary act in Admiralty action	0	3	4	0	6	8
23. For affidavits in answer to interrogatories or other special affidavits	0	3	4	0	6	8
NOTE.—The charge for special affidavits is not to be allowed, if in the opinion of the registrar the facts upon which the affidavits are founded had already become known to the solicitor or his clerk in course of the business.						
Affidavit sworn by Solicitor or Solicitor's Clerk.]—No fee is allowable for instructions for an affidavit made by the solicitor to the party whose costs are being taxed or by his clerk.						
Attendance on Deponent to settle or read over.]—There is no separate allowance for this attendance.						
“Special Affidavits.”]—An affidavit which consists merely of a printed form with the blanks filled in is not a “special” affidavit, e.g., an affidavit of debt or of service (affidavits for substituted service are allowable under item 17). An affidavit of documents is a special affidavit, and is so treated in the wording of item 37.						
24. For confession of debt or claim by defendant, and attesting signature thereto	0	3	4	0	6	8
This item combines the service usually covered by “Instructions” and also the attendance on the client on his executing the document and attesting his signature, which is the outcome of the instructions. Sections 98 and 99 of the Act of 1888 have been repealed, and the provisions as to confessions of debt and agreement as to amount of debt and terms of payment are now covered by section 5 of the Act of 1919, and Order IX., Rules 2 to 7.						
25. For application to add parties	0	2	0	0	3	4
26. For counsel to advise on evidence if given in writing	0	3	4	0	6	8
Indorsed Back Sheet.]—The instructions must be in writing. It is submitted that the usual indorsed back sheet would not comply with the requirements of the item. The advice of counsel must also be given in writing, and must be allowed by the judge or registrar, see item 94.						
27. For brief on interlocutory motion or application, where counsel allowed	0	3	4	0	6	8
					to	0 10 0

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds								
	£	s.	d.	£	s.	d.	£	s.	d.
	10	0	0	20	0	0	50	0	0
	and does not exceed								
	20	0	0	50	0	0			
	A.			B.			C.		
<i>Instructions—continued.</i>	£	s.	d.	£	s.	d.	£	s.	d.
28. For brief on trial of action or matter, where counsel employed, such fee as the registrar may think fit, having regard to all the circumstances of the case	0	6	8	0	10	6	1	1	0
	to			to			to		
	0	10	0	1	11	6	3	3	0
NOTE.—Great care must be exercised in assessing this item; see Order LIII. Rule 23.									
This item does not appear to necessitate the actual preparation of any brief, if the work prior to the actual drawing of the brief has been done.									
Journes and Payments necessarily taken and made by the solicitor in getting up the case should be set out in the item, showing shortly the nature of the work done and the payments made, so as to justify the allowance of a larger fee than might otherwise be allowed.									
Brief not Delivered.]—Where an action is settled before the delivery of the brief, the costs of all work reasonably and properly, and not prematurely done, are allowable, and the registrar, having regard to the circumstances of each case, must decide whether the work was reasonable and proper and the time for doing it had arrived (<i>Harrison v. Leutner</i> , (1881) 16 Ch. D. 559).									
29. Examining and taking minutes of evidence where no counsel employed, for each witness afterwards allowed on taxation or properly examined for preparation of preliminary act	0	2	0	0	3	4	0	6	8
Allowance for taking Plaintiff's Evidence.]—This item is confined to "each witness afterwards allowed on taxation." A difference of opinion exists amongst registrars as to the meaning of these words. Some registrars hold that the item can only be chargeable in respect of the plaintiff's evidence where he can make out a claim, however small, for travelling expenses, or if he is a domestic or menial servant, etc.; or if the Judge has specially allowed a fee for his attendance, see Order LIII. Rule 38. Other registrars take the view that the item is allowable in respect of the plaintiff's evidence if the registrar on taxation considers him to have been a proper and necessary witness in the case. The former view would seem to be more in strict accordance with the wording of the rule.									
30. If exceeding six folios, for each additional folio	0	0	6	0	1	0	0	1	0
31. Where no counsel employed, if allowed by the judge or registrar, in addition to items 29 or 30, for preparation of minutes of fact or argument	0	15	0	1	1	0	2	2	0

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.			B.		
	C.					

Drawing.

£ s. d. £ s. d. £ s. d.

NOTE.—The matter of all documents should be necessary and relevant, and expressed without prolixity, and the costs of all unnecessary, irrelevant, and prolix matter must be disallowed.

32. Notice and particulars of defence or admission of facts, or any application under Order XL. Rules 2, 5, or 7, including necessary copies

0 3 0 0 5 0 0 6 8

Or per folio beyond three

0 1 0 0 1 0

33. Draft of order under Order XII.

Rule 8, including copy to file

0 2 0 0 3 0 0 5 0

Or per folio

0 0 6 0 0 8 0 0 8

This is the only order prepared by the parties. All others are prepared by the registrar, and in the case of special ones item 53 is applicable.

34. Brief on trial of action or matter where counsel employed, including necessary and proper observations, per folio

$\left. \begin{matrix} 0 & 1 & 0 \\ \text{not} \\ \text{exceed-} \\ \text{ing} \\ 0 & 1 & 0 \end{matrix} \right\} 0 \quad 1 \quad 0 \quad 0 \quad 1 \quad 0$

Copies of Documents set out in Brief.]—The fee for drawing must not be allowed in respect of documents or extracts from documents, including letters, which are copied from existing documents and set out *verbatim* in brief.

35. Brief on any motion, application, or upon further consideration, when counsel allowed

$\left. \begin{matrix} 0 & 5 & 0 \\ 0 & 6 & 8 \end{matrix} \right\} \begin{matrix} 0 & 6 & 8 \\ \text{to} \\ 0 & 13 & 4 \end{matrix}$

36. Interrogatories or answers thereto, including copy to file

0 2 6 0 5 0 0 6 8

Or per folio

0 0 6 0 1 0 0 1 0

It is the practice to file at the registrar's office, and deliver to the opposite party a copy of the proposed interrogatories, with the notice of application for leave to deliver. The copy proposed interrogatories so delivered can be charged for under item 44, as can also the copy delivered to the opposite party after the order is made. The copy answers delivered to the opposite party under Order XVI. Rule 8, can also be charged under item 44.

37. Affidavit of documents, or any other special affidavit, including engrossing

0 2 6 0 5 0 0 5 0

Or per folio

0 0 6 0 1 0 0 1 0

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds								
	£	s.	d.	£	s.	d.	£	s.	d.
	10	0	0	20	0	0	50	0	0
	and does not exceed								
	20	0	0	50	0	0			
	A.			B.			C.		
<i>Drawing—continued.</i>	£	s.	d.	£	s.	d.	£	s.	d.

The copy affidavit delivered to the opposite party under Order XVI. Rule 11, is allowable under item 44.

- | | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|
| 38. Affidavit of debt under Order VII. Rule 29b, para. 2, or Order XXVI., including engrossing, attending deponent to be sworn, oath, and filing | 0 | 4 | 0 | 0 | 6 | 8 | 0 | 6 | 8 |
| 39. Affidavit, when required, of personal service of a summons, notice, or document, including engrossing, attending to be sworn, oath, and filing | 0 | 3 | 4 | 0 | 5 | 0 | 0 | 6 | 8 |

Affidavit of Service.]—This affidavit is always required in the case of a default or ordinary summons where service has been effected otherwise than by a bailiff. In other cases it is allowed only where the opposite party fails to comply with the requirements of the document served, or where such document forms the basis of proceedings for attachment under Order XXV, Rule 57.

- | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 40. Affidavit, when required, of service of summons to witness, subpœna, or of any notice under Order XVIII. Rule 7, or of signature to admission under Order IX. Rule 9, including engrossing, attending to be sworn, oath, and filing | 0 | 2 | 0 | 0 | 2 | 0 | 0 | 3 | 4 |
|---|---|---|---|---|---|---|---|---|---|

The words "or of signature to admission under Order IX. Rule 9" still remain in this item; the principal admission made in pursuance of Order IX. was under Rule 5. This rule has, however, been amended by Order IX. Rule 5a of the County Court Rules of 1920, dispensing with the necessity for verifying the signature of defendant by affidavit.

- | | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|
| 41. Accounts, statements, and other documents for use in chambers when required, or in court when required by judge, including fair copy to leave, per folio | 0 | 0 | 8 | 0 | 0 | 8 | 0 | 0 | 8 |
|--|---|---|---|---|---|---|---|---|---|

"Accounts."]—Receiver's and executors' accounts, if for use in chambers, are allowable under this item.

- | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 42. Bill of costs for taxation, including copy for registrar, per folio | 0 | 0 | 4 | 0 | 0 | 8 | 0 | 0 | 8 |
|---|---|---|---|---|---|---|---|---|---|

Where a copy of the bill is delivered to the opposite party, it is usual to allow for it under item 44, even although the registrar has not directed it to be delivered under Order LIII. Rule 2.

HIGHER SCALE—continued.

			Where the Subject Matter or the Sum recovered exceeds		
£	s.	d.	£	s.	d.
10	0	0	20	0	0
and does not exceed			50	0	0
20	0	0	50	0	0
A.			B.		
			C.		

Copies.

£ s. d. £ s. d. £ s. d.

NOTE.—No copies are to be allowed for unless the registrar is satisfied that they were necessary, and that copies previously prepared were not available.

Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service; see Order LIV. Rule 5.

43. Of necessary documents to accompany brief, or for the use of judge or arbitrator, or on an inquiry or Admiralty reference before the registrar, per folio

0 0 2 0 0 4 0 0 4

“Copies for use of the Judge.”—In every case which turns on the construction of documents, the costs of copies supplied for the use of the judge ought to be allowed (*Re Houstoun's Settlement, Sparkes v. Hutchell*, (1903) 89 L. T. 469).

Typewritten Copies.]—Copies of documents which have been made simultaneously by means of a carbon typewriter ought not to be charged for, and will not be allowed at the rate of 4d. per folio for each copy (*In re Morse, Ex parte Latimer, Clark & Co.*, (1891) 7 T. L. R. 591). The present practice is to allow 4d. per folio for the first copy, and 2d. per folio for carbon copies, if legible.

Affidavit of Documents.]—Copies for counsel are not usually allowed, except where the notices to admit and produce refer to the affidavit without setting out the documents.

44. Where no provision is made herein that the fee for preparing, drawing, or serving any document is to include copies thereof, for each copy the registrar may consider necessary, per folio

0 0 2 0 0 4 0 0 4

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.		B.		C.	
<i>Copies—continued.</i>	£	s.	d.	£	s.	d.

Under this item copies of the following documents delivered to the opposite party may be charged :—

Draft interrogatories on application for leave to deliver.

Interrogatories with order.

Answers to interrogatories.

Affidavit of documents.

Bill of costs of action, but not of interlocutory proceedings.

The cases where the fee includes the copies are as follows :—

- | | |
|---------------|--|
| Items 1 and 2 | Particulars of claim and counterclaim. |
| „ 6 | Summonses in chambers. |
| „ 7 | Notice to produce and admit. |
| „ 9 | Notice of motion. |
| „ 11 | Notice of application to judge or registrar. |
| „ 12 and 13 | Any other notice or document. |
| „ 14 | Summonses or documents required to be served personally. |
| „ 18 and 19 | Documents not so required. |
| „ 32 | Special defence or admission of facts. |
| „ 41 | Accounts, etc. |
| „ 84 | Taxation of costs of interlocutory proceedings. |

Perusals.

NOTE.—Charges for perusals are not to be allowed (except under item 53) where the same solicitor is acting for both parties, or where the solicitor has been previously allowed for such perusal.

45. Of particulars of claim or counterclaim, further particulars delivered under Order VI. Rule 7, or defence, by the solicitor of the party to whom the same are delivered	0	2	0	0	3	4	0	6	8
Or per folio	0	0	2	0	0	4	0	0	4
46. Of any petition	0	2	0	0	3	4	0	6	8
Or per folio	0	0	2	0	0	4	0	0	4
47. Of interrogatories, by the solicitor of the party by whom the same are to be answered	0	4	0	0	6	8	0	6	8
Or per folio							0	0	4
48. Of notice to produce or admit or to admit facts, by the solicitor of the party served	0	2	0	0	5	0	0	6	8

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.		B.		C.	

Perusals—continued.

£ s. d. £ s. d. £ s. d.

The terms of the item allow notices to produce or admit on interlocutory proceedings. In the High Court the corresponding fee, No. 134, includes notices to admit on interlocutory proceedings, but not notices to produce; also, in the High Court, perusal of notice to admit or produce is only allowed by the masters on trial or hearing of a witness action, but there seems to be no reason why the item should be so limited in the county court.

49. Of notice of defendant's claim against any person not a party to the action, under Order XI.	0	2	0	0	3	4	0	6	8
50. Of any claim, defence or counter-claim, when served on a person not originally a party to the action, by the solicitor of the party served therewith	0	2	0	0	3	4	0	6	8
Or per folio	0	0	2	0	0	4	0	0	4
51. Of affidavit in answer to interrogatories by the solicitor of the party interrogating, or of statement of claim, defence, reply, or preliminary act in Admiralty action, by the solicitor to the adverse party, per folio	0	0	4	0	0	4	0	0	4
52. Of other special affidavits, by the solicitor of the party against whom the same can be read, per folio	0	0	4	0	0	4	0	0	4

Affidavit of Documents.—Under this item perusal of an affidavit of documents can be allowed, as it is clear from item 37 that it comes within the class of special affidavits, and it can be read against the party requiring same.

53. Draft of order or judgment, when prepared by registrar	0	2	0	0	3	4	0	6	8
Or per folio	0	0	2	0	0	4	0	0	4

Attendances.

NOTE.—More than one attendance at the office of the registrar in an action or matter shall not be allowed, unless the registrar on taxation is satisfied that each separate attendance was necessary.

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.		B.		C.	
Attendances—continued.	£	s.	d.	£	s.	d.
54. To enter plaint, or file petition, including filling up præcipe, obtaining any necessary leave from the registrar, or giving any proper undertaking prior to such entry or filing	0	3	4	0	6	8
This item covers the leave required under sect. 74 of the County Courts Act, 1888, and sect. 8 of the County Courts Act, 1919, and the undertaking for costs under Order V. Rule 10, where the plaintiff is not ordinarily resident in England or Wales.						
55. To deliver or file any counter-claim, defence, further particulars, answers to interrogatories, admission of facts, affidavit of documents, or particulars of claim in interpleader proceedings, or statement of claim, defence, or reply in Admiralty action, or to file or inspect preliminary act	0	2	0	0	3	4
To file Defence.]—The omission of the word "special" before "defence" in this item (Rule 8 of the County Court (No. 1.) Rules, 1921) is apparently intended to make it applicable to the case of the particulars of defence required by a plaintiff under Order X., Rule 9A. The preparation of such particulars would be chargeable under item 32, and perusal of them under item 45.						
To file Affidavits.]—It should be observed that the only affidavits for the filing of which an attendance fee is allowable under this item are the affidavit of documents and answers to interrogatories. Where separate attendances are necessary to file any other affidavits they are allowable under item 83.						
56. To lodge order, etc., when action or matter remitted or transferred to county court, including preparing all necessary documents	—	0	13	4	0	13
57. To inspect, or produce for inspection, documents pursuant to a notice to admit, or pursuant to any order or a notice under any rule	0	3	4	0	6	8
Or per hour	—	0	6	8	0	6

HIGHER SCALE—continued.

			Where the Subject Matter or the Sum recovered exceeds		
£	s.	d.	£	s.	d.
10	0	0	20	0	0
and does not exceed			50	0	0
20	0	0	50	0	0
A.			B.		
			C.		

Attendances—continued.

£ s. d. £ s. d. £ s. d.

NOTE.—This item is not to be allowed, unless it is shown to the satisfaction of the registrar that there were good and sufficient reasons for giving the notice and making the inspection.

Inspection under Bankers' Books Evidence Act.]—By sect. 8 of the Bankers' Books Evidence Act, 1879, these costs are in the discretion of the court.

58. Where solicitor inspecting does not reside or carry on business within two miles of place of inspection, in addition sum paid for locomotion not exceeding	0	10	0	1	0	0	1	0	0
59. To obtain or give any necessary or proper consent or admission	0	2	0	0	3	4	0	6	8

Trustee's consent to Act. Solicitor's Certificate.]—This item covers both the attendance of the solicitor obtaining the trustee's consent and the solicitor's certificate attesting the signature of the trustee under Order XIX. Rule 13. Only one fee of 3s. 4d. or 6s. 8d., as the case may be, is allowable for one attendance and certificate.

59a. Attending witness, arranging attendance without subpoena	0	2	6	0	3	4	0	5	0
60. On examination of witnesses under Order XVI. Rule 9, Order XVIII. Rules 18 and 20, or Order XXV. Rule 71, per hour	0	3	4	0	6	8	0	10	0

This item is allowable where any responsible representative of the solicitor sent from his office attends, the practice being to allow him to be heard, following the analogy of proceedings before a High Court judge in chambers (*Vimbos, Ltd. v. Meadowcroft*, (1901) 46 Sol. Jo. 2).

61. On deponents being sworn, or by a solicitor or his clerk to be sworn to an affidavit in answer to interrogatories or other special affidavit	0	2	0	0	3	4	0	6	8
--	---	---	---	---	---	---	---	---	---

Where more than one deponent to the same affidavit is sworn at the same time, only one fee of 3s. 4d. or 6s. 8d., as the case may be, is allowable.

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.			B.		
	C.					
Attendances—continued.	£	s.	d.	£	s.	d.
62. To enter up judgment by default or under Order IX. Rule 2, or under Order IX. Rule 5, or to pay money into court on behalf of garnishee	0	3	4	0	6	8
Where a defendant signs a confession or admission which is filed with the registrar five clear days before the return day, the plaintiff will be entitled to tax his costs for work done before the service of the notice of such admission; with reference to costs incurred after the service of such notice the plaintiff will not be allowed any costs unless the judge otherwise orders. Order IX., Rule 5.	0	10	0	0	15	0
62a. At court to enter up judgment on a special default summons where a day is fixed for the action to be disposed of	0	10	0	0	15	0
This is the only fee allowable where an action has been fixed for disposal. Item 76 only applies where an action has been fixed for trial.	0	3	4	0	6	8
63. Where in consequence of anything done by the opposite party during the progress of an action or matter, it becomes necessary to advise or receive instructions from a client, for each attendance the registrar may deem absolutely necessary.	0	3	4	0	6	8
Settlement.]—Under this item attendances on a client in consequence of an offer of settlement, and, under item 83, the necessary consequent attendances on the other side, may be allowed. It is usual, however, to follow the High Court practice, and allow no charges in connection with an attempt at settlement which proves abortive.	0	5	0	0	6	8
64. To make or oppose any interlocutory application or motion before the judge in court, or in chambers, without counsel	0	10	0	0	13	4
	0	10	0	0	13	4
The attendance on an application for a new trial is allowable under this item.	0	3	4	0	6	8
65. The like with counsel	0	3	4	0	6	8
66. On any interlocutory application to the registrar	0	2	0	0	3	4
67. On counsel with brief	0	3	4	0	3	4

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.			B.		C.

Attendances—continued.

£ s. d. £ s. d. £ s. d.

No fee is allowable for attendance on counsel with papers to settle the various matters mentioned in item 93.

68. To appoint conference and attending thereon 0 6 8 0 13 4

This item is only allowable if the fee was marked on the brief when delivered, and in the opinion of the registrar was necessary (see item 87).

69. At court, conducting cause without counsel } 0 15 0 1 1 0 { 1 1 0
to 2 2 0

NOTE.—The minimum must not be exceeded if the action is undefended or there is no real contest.

70. Or there may be allowed by judge or registrar instead of last item 1 1 0 2 2 0 3 3 0

71. At court on trial with counsel 0 10 0 { 0 15 0 1 1 0
to 1 1 0 to 2 2 0

NOTE.—The minimum must not be exceeded if the case is undefended, or there is no real contest, nor if the solicitor does not attend in person.

72. Where trial is commenced but not concluded on the day on which it is first heard, for each day or part of a day on which it is afterwards heard, with or without counsel { 0 15 0 1 1 0
0 10 0 to to 1 1 0 2 2 0

Further Consideration.]—This item appears to be applicable to the solicitor's attendance on the further consideration of an equitable matter, inasmuch as such further consideration is the subsequent hearing of a cause, the trial of which has not been concluded on the day on which it is first heard.

73. Where the trial is adjourned for want of time, or upon payment of the costs of the day, in lieu of items 69 and 71 there may be allowed with or without counsel 0 10 0 { 0 15 0 1 1 0
to to 1 1 0 2 2 0

NOTE.—The minimum must not be exceeded, under items 72 and 73, if the solicitor does not attend in person.

HIGHER SCALE—*continued.*

Where the Subject Matter or the Sum recovered exceeds					
£	s.	d.	£	s.	d.
10	0	0	20	0	0
and does not exceed					
20	0	0	50	0	0
A.		B.		C.	

Attendances—continued.

£	s.	d.	£	s.	d.	£	s.	d.
---	----	----	---	----	----	---	----	----

This item is allowable, it is submitted, to the solicitor attending at court, with or without counsel, for each day, in the case of successive adjournments, on which he attends, and the case is not reached but adjourned for want of time.

- | | | | | | | | | | |
|---|---|----|---|---|---|---|---|---|---|
| 74. When solicitor does not reside or carry on business within two miles of the town in which the trial takes place, in addition the sum paid for locomotion to attend the trial, not exceeding | 0 | 10 | 6 | 1 | 1 | 0 | 1 | 1 | 0 |
|---|---|----|---|---|---|---|---|---|---|

- | | | | | | | | | | |
|--|---|----|---|---|---|---|---|---|---|
| 75. When, in the opinion of the registrar, the solicitor cannot travel to and from the court the same day, in addition | 0 | 10 | 6 | 1 | 1 | 0 | 1 | 1 | 0 |
|--|---|----|---|---|---|---|---|---|---|

[Items 73, 74, and 75 are not to be allowed in full if the solicitor is engaged in any other case or cases on the same day, but such portion only as the registrar shall think just and reasonable, having regard to all the circumstances.]

Solicitor's Clerk.—Items 74 and 75 are allowable, it is submitted, not only in the case of the advocate who conducts the case, but also in that of the solicitor's managing clerk who instructs counsel, but in both instances are subject to the provisions of Order LIII., Rule 22.

- | | | | | | | | | | |
|---|---|---|---|---|----|---|---|----|---|
| 76. At court where the amount claimed is paid into court or the action is withdrawn or discontinued less than five clear days before return day | 0 | 5 | 0 | 0 | 10 | 0 | 0 | 10 | 0 |
|---|---|---|---|---|----|---|---|----|---|

This item is intended to cover two different services: (a) that of preparing for trial when the amount is paid into court less than five clear days before the return day, and (b) that of attending the court to obtain the necessary order.

It is, therefore, allowable in the following cases:—

1. When payment into court has been made less than five clear days before the return day.

2. When the debt has been paid five clear days before the return day, but the costs have not been paid, or not been paid in full (*e.g.*, omitting a fee for substituted service).

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.			B.		C.
Attendances—continued.	£	s.	d.	£	s.	d.

In the first of such cases it is necessary to prepare for trial; in the second, though no such preparation is required, it is necessary to make the application to obtain the costs, or so much of them as have not been paid.

When, however, the debt is paid into court more than five clear days before the return day, and the costs have been paid in full less than five clear days, no order for extra costs can be made under this item, as there is no necessity either to prepare for trial or to attend to obtain an order.

Where the plaintiff discontinues the action, no attendance at court to apply for costs is necessary (Order IX. Rule 1), and no such attendance should be allowed on taxation.

77. Where in ordinary course of post or delivery, notice of payment, withdrawal, or discontinuance does not reach the opposite party or his solicitor in time to prevent attendance of the latter at court, such sum as the registrar shall think reasonable, not exceeding the minimum fee in items 69 or 71, as the case may be.						
78. To hear a deferred judgment . . .	0	5	0	0	6	8
78a. Attending court when the action is referred . . .	0	10	0	0	15	0
78b. The like with counsel . . .	0	6	8			
79. Before an arbitrator, or on an inquiry or Admiralty reference before the registrar, for each sitting	0	15	0	1	1	0
80. The like with counsel if judge or registrar allows counsel . .	0	10	0	0	15	0
81. Where sitting exceeds three hours, for every additional hour	0	5	0	0	6	8
81a. See Order LIII. Rule 10.						

This rule in effect provides that where under item 92 the judge or registrar allows counsel, items 27, 35, 43, 65 and 67 may be allowed to the solicitor instructing such counsel in addition to items 80 and 81.

81b. Attending court to enter judgment on the award . . .	0	10	0	0	15	0
---	---	----	---	---	----	---

HIGHER SCALE—continued.

	Where the Subject Matter or the Sum recovered exceeds					
	£	s.	d.	£	s.	d.
	10	0	0	20	0	0
	and does not exceed					
	20	0	0	50	0	0
	A.			B.		C.

Fees to Counsel.

NOTE.—Fees to counsel are not to be allowed unless the payment of them is vouched by the signature of counsel.

85. With brief, sum paid, not to exceed

£	s.	d.	£	s.	d.	£	s.	d.
2	4	6	3	5	6	5	10	0

NOTE.—The maximum is not to be allowed as of course, but in assessing the fee to be allowed, the length of the brief, the documents (if any) to be perused and considered, the number of the witnesses and the difficulties of fact or law involved must be considered.

NOTE.—Where costs are taxed under column B or column C, the items in the scales relating to counsel's fees may be increased by a reasonable amount at the discretion of the registrar, subject to review by the judge or by special order of the judge under the general allowance of additional costs contained in Order LIII. Rule 8 (2) of the County Court Rules, 1920. By Rule 8 (3) of this Order, where costs are taxed under column B or column C, reasonable fees may, where more counsel than one are retained, and the judge on consideration of the facts of the case certifies for the allowance of fees to more counsel than one, be allowed to such additional counsel, and for consultations, and to solicitors for additional briefs and attendances on counsel with the same, and for appointing and attending consultations, at the discretion of the registrar, subject to review by the judge, or by special order of the judge.

Where a claim is paid into court within five clear days of the return day, and the only order asked for on the hearing is an order for costs, the registrar has power to allow counsel's brief fee, if he considers the costs of instructing counsel were reasonably incurred before the date of payment into court, notwithstanding that counsel does not attend to make the application for costs.

86. Where there is no local bar in the court town or within twenty miles thereof, a further fee may be allowed by the judge or registrar if in his opinion the maximum fee allowable on the brief is insufficient, not exceeding

£	s.	d.	£	s.	d.	£	s.	d.
1	3	6	2	4	6	2	4	6

HIGHER SCALE—continued.

			Where the Subject Matter or the Sum recovered exceeds		
£	s.	d.	£	s.	d.
10	0	0	20	0	0
and does not exceed			50	0	0
20	0	0	50	0	0
A.			B.		
			C.		

Fees to Counsel—continued.

NOTE.—This item is not to be allowed in any court within twenty-five miles of Charing Cross.

£	s.	d.	£	s.	d.	£	s.	d.

The case of *Atkinson v. Mayor, etc., of Carlisle*, (1896) 1 Q. B. 393, decided that this item can only be allowed once in the same case, although the counsel engaged may have been present in court on more than one occasion. In the rules of 1903 which came into force on 1st January, 1904, the item was altered and the words "once only" were inserted, for the purpose apparently of giving further effect to *Atkinson's* case, so that the item read "a further fee may be allowed once only by order of the judge." By the County Court (No. 2) Rules, 1922, which came into force on the 1st October, 1922, the words "once only" were omitted, but in striking out these words the Rule Committee made no further alteration, so that the words "a further fee," which was the ground on which *Atkinson's* case was decided, remained, and it is submitted that case is still good law.

87. On conference, if the fee was marked on the brief when delivered, and in the opinion of the registrar was necessary.	—	1 6 0	1 6 0
88. Where the trial is commenced but not concluded on the day on which it is first heard, or is adjourned for want of time, for each day or part of a day on which it is afterwards heard, a refresher may be allowed (a).	1 3 6	{ 1 3 6 to 2 4 6	{ 2 4 6 to 3 5 6
89. Where the trial is adjourned upon payment of the costs of the day, there may be allowed as part of such costs	1 3 6	{ 1 3 6 to 2 4 6	{ 2 4 6 to 3 5 6
90. With brief on further consideration or argument, or to enter up judgment on an award, or to hear a deferred judgment	1 3 6	{ 1 3 6 to 2 4 6	{ 2 4 6 to 3 5 6
91. With brief on any interlocutory motion or application if the judge or registrar allows counsel	1 3 6	1 3 6	2 4 6

(a) The fee may be allowed where the judge has a list, and the action reappears from day to day until it is reached (*Heap v. Peart*, (1891) 1 Q. B. 110; 39 W. R. 95).

HIGHER SCALE—continued.

			Where the Subject Matter or the Sum recovered exceeds		
£	s.	d.	£	s.	d.
10	0	0	20	0	0
and does not exceed					
20	0	0	50	0	0
A.			B.		
			C.		

Fees to Counsel—continued.

92. With brief before an arbitrator, or on an inquiry or Admiralty reference before the registrar, or on an examination of witnesses under Order XVI. Rule 9, Order XVIII. Rules 18 and 20, or Order XXV. Rule 71, if the judge or registrar allows counsel, not exceeding (b) . . .

£	s.	d.	£	s.	d.	£	s.	d.
1	3	6	2	4	6	3	5	6

NOTE.—This fee is not to be allowed if the reference or inquiry was directed at the trial, and counsel was then instructed. A refresher may be allowed instead, pursuant to item 88.

93. For settling petition, particulars, statement of claim, defence or reply, interrogatories, preliminary act, or other matters required in the course of the action or matter, if allowed by the judge or registrar . . .

—	1	3	6	(1	3	6
				to		
				2	4	6

94. Advising on evidence, if advice given in writing and allowed by the judge or registrar . . .

—	1	3	6	(1	3	6
				to		
				2	4	6

Plans, Models, etc.

95. Plans, drawings, charts, or models for use of the judge at the trial, if allowed by the judge or registrar, not exceeding in the whole . . .

1	1	0	2	2	0	3	3	0
---	---	---	---	---	---	---	---	---

Where costs are taxed under column B or column C the items in the scales relating to plans, charts or models, may be increased by a reasonable amount at the discretion of the registrar, subject to review by the judge, or by special order of the judge (Order LIII. Rule 8 (2)).

Letters, etc.

96. Letter before action
97. Letters in lieu of attendances which could be properly allowed under item 63 or item 83

0	3	6	0	3	6	0	3	6
0	2	0	0	3	6	0	3	6

(b) See Order LIII. Rule 10, and item 81a and note thereto as to costs allowed solicitors in such cases.

HIGHER SCALE—*continued.*

	Where the Subject Matter or the Sum recovered exceeds								
	£	s.	d.	£	s.	d.	£	s.	d.
	10	0	0	20	0	0	50	0	0
	and does not exceed								
	20	0	0	50	0	0			
	A.			B.			C.		

<i>Letters, etc.—continued.</i>	£	s.	d.	£	s.	d.	£	s.	d.
98. Circular letters	—			0	1	0	0	1	0
99. Costs for searches for certificates of births, marriages, and deaths, and payments therefor, and other disbursements in relation to procuring office copies or other documentary evidence, not otherwise provided for, which the registrar may upon taxation think necessary and proper, such sum as the registrar shall think reasonable.									
100. Oaths, sums paid, unless otherwise provided for.									

“Otherwise provided for.”]—The cases where oaths are otherwise provided for are :—

- Item 17 . . . Affidavit for substituted service.
 „ 38 . . . Affidavit of debt.
 „ 39 and 40 . . Affidavit of service.

All other oaths are chargeable.

The commissioner's charge for marking the exhibit can be allowed under this item, unless the oath is otherwise provided for.

101. In addition to the above, an allowance may be made for the necessary expenses of postages, carriage and transmission of documents not exceeding	0	2	6	0	5	0	0	10	0
--	---	---	---	---	---	---	---	----	---

(3.)

SCALES OF ALLOWANCES TO WITNESSES.

Ordinary Witnesses.

	£	s.	d.	£	s.	d.		
Gentlemen, merchants, bankers and professional men, <i>per diem</i> . . .	from	0	15	0	to	1	1	0
Tradesmen, auctioneers, accountants, clerks and yeomen, <i>per diem</i> . . .	from	0	7	6	to	0	15	0
Artisans and journeymen, <i>per diem</i> . . .	from	0	4	0	to	0	7	6
Labourers and the like, <i>per diem</i> . . .	from	0	3	0	to	0	4	0
Females according to station in life . . .	from	0	2	6	to	0	10	6

By Order LIII. Rule 37 (a) of the County Court Rules, 1917, allowances may be made to accountants being members of any recognised society of accountants on the scale applicable to merchants and professional men, instead of on that applicable to tradesmen.

Order LIII. Rule 37 of the County Court Rules, 1920, annuls the old Rule 37 and the following rule is to stand in lieu thereof, namely:—

Subject to the special provisions of these rules, allowances may be made to witnesses for their attendance at court according to the scales in Part IV. of the Appendix; but such allowances may be increased at the discretion of the registrar, subject to review by the judge, or by special order of the judge, to such amounts as will reasonably compensate such witnesses for their loss of time.

Expert and Scientific Witnesses.

	If Costs taxed on Column B of Scale.	If Costs taxed on Column C of Scale.
	£ s. d.	£ s. d.
For qualifying to give evidence	{ 1 1 0 to	{ 1 1 0 to
	{ 3 3 0	{ 5 5 0
Attending court on trial, <i>per diem</i>	{ 1 1 0 to	{ 1 1 0 to
	{ 2 2 0	{ 3 3 0

The allowances to expert and scientific witnesses may be increased by a reasonable amount at the discretion of the registrar, subject to review by the judge, or by special order of the judge (Order LIII. Rule 8 (2)).

Where costs are taxed under column B or column C the judge or the registrar, on taxation, subject to review by the judge, may allow for qualifying to give evidence by and for the attendance in court of any expert or scientific witnesses, or any member of the medical profession, such sums, not exceeding the above maximum allowances, as he may think fit, in addition to travelling expenses (Order LIII. Rule 43 (1)).

It may at first sight appear that the above two rules are not consistent, but it is submitted that they must be read together, and that when Order LIII. Rule 43 (1) speaks of "the above maximum allowances" it means the allowances in the scale, as they may be increased in accordance with the provisions of Order LIII. Rule 8 (2). This construction gets over any difficulty, as it could hardly be seriously argued that the general discretion given by Order LIII. Rule 8 (2) was taken away (so far as Order LIII. Rule 43 (1) was concerned) by the new Rule of July, 1923.

Where costs are taxed under column A, the judge or the registrar, on taxation, subject to review by the judge, may allow for qualifying to give evidence and for attendance in court as where taxed under Column B. (Order LIII. r. 43 (2). There is no power to increase the items in the scale of allowances under Order LIII. r. 8 (2) where costs are taxed under Column A.

Scale of Allowances for Travelling and Hotel Expenses.—See Order LIII. Rule 39, which provides that there may be also allowed to all witnesses, and to plaintiffs and defendants, if personally attending the court, for travelling and hotel expenses, the sum actually and reasonably paid by them.

Admiralty Practice.—There is no practice by which on taxation of costs in the Admiralty Registry, the expenses of a substitute for a witness are allowed as a matter of course. *The Massilia*, (1926) P. 180, 95 L.J.P. 109.

(4.)

TOTAL OF ITEMS OF COSTS TO BE ENTERED ON SUMMONSES FOR AMOUNTS EXCEEDING 10*l.*, WHERE THE PARTICULARS AND COPIES ARE SIGNED BY THE SOLICITOR.

The total amount to be entered on an ORDINARY SUMMONS shall be the following and no more, viz. :—

		Totals.	
		s. d.	£ s. d.
Where the amount sought to be recovered exceeds 10 <i>l.</i> and does not exceed 20 <i>l.</i> , and the claim is a debt or liquidated demand	Item 1 ..	4 0	0 14 2
	„ 20 ..	3 4	
	„ 54 ..	3 4	
	„ 96 ..	3 6	
In other claims	Item 2 ..	6 0	0 16 2
	„ 20 ..	3 4	
	„ 54 ..	3 4	
	„ 96 ..	3 6	
Where the amount sought to be recovered exceeds 20 <i>l.</i> and does not exceed 50 <i>l.</i> , and the claim is a debt or liquidated demand	Item 1 ..	7 0	1 3 10
	„ 20 ..	6 8	
	„ 54 ..	6 8	
	„ 96 ..	3 6	
In other claims	Item 2 ..	12 0	1 8 10
	„ 20 ..	6 8	
	„ 54 ..	6 8	
	„ 96 ..	3 6	
Where the amount sought to be recovered exceeds 50 <i>l.</i> , and the claim is a debt or liquidated demand	Item 1 ..	10 0	1 13 6
	„ 20 ..	13 4	
	„ 54 ..	6 8	
	„ 96 ..	3 6	
In other claims	Item 2 ..	21 0	2 4 6
	„ 20 ..	13 4	
	„ 54 ..	6 8	
	„ 96 ..	3 6	

Where service of an ordinary summons or a successive ordinary summons is to be effected by a solicitor, items 14 and 39 may be entered on the summons in addition to the items mentioned above; and items 15 and 17 may be added where the services for which those items are given are performed.

The total amount to be entered on a DEFAULT SUMMONS shall be the following and no more, viz. :—

		Totals.	
		s. d.	£ s. d.
Where the amount sought to be recovered exceeds 10 <i>l.</i> and does not exceed 20 <i>l.</i> and service is to be made by a bailiff	Item 1 ..	4 0	0 18 2
	„ 20 ..	3 4	
	„ 38 ..	4 0	
	„ 54 ..	3 4	
Where service is to be made by a solicitor	„ 96 ..	3 6	1 6 6
	Item 1 ..	4 0	
	„ 14 ..	5 0	
	„ 20 ..	3 4	
	„ 38 ..	4 0	
	„ 39 ..	3 4	
	„ 54 ..	3 4	
	„ 96 ..	3 6	

TOTAL OF ITEMS OF COSTS TO BE ENTERED ON SUMMONSES. 1103

		Totals.	
		£	s. d.
<i>Default Summons—continued.</i>			
Where the amount sought to be recovered exceeds 20 <i>l.</i> and does not exceed 50 <i>l.</i> and service is to be made by a bailiff	Item 1	7	0
	" 20	6	8
	" 38	6	8
	" 54	6	8
	" 96	3	6
Where service is to be made by a solicitor	Item 1	7	0
	" 14	5	0
	" 20	6	8
	" 38	6	8
	" 39	5	0
Where the amount sought to be recovered exceeds 50 <i>l.</i> and service is to be made by a bailiff	" 54	6	8
	" 96	3	6
	Item 1	10	0
	" 20	13	4
	" 38	6	8
Where service is to be effected by a solicitor	" 54	6	8
	" 96	3	6
	Item 1	10	0
	" 14	5	0
	" 20	13	4
	" 38	6	8
	" 39	6	8
	" 54	6	8
	" 96	3	6

And items 15 and 17 may be allowed where the services for which those items are given are performed.

Although there is no express provision in Order LIII. Rule 50, for the increase of the amount of costs indorsed on a summons, such costs clearly come within the rule. The practice, approved by the Association of County Court Registrars, has been to add on to each summons to which the rule applies below the item of solicitors' costs, a further item of 33½ per cent., and to calculate the additional amount to be added according to the following scale:—

Ordinary Summons—

	£	s.	d.		£	s.	d.
on	1	3	10	..	0	7	11
"	1	8	10	..	0	9	7
"	1	13	6	..	0	11	2
"	2	4	6	..	0	14	10

Default Summons—

on	1	10	6	..	0	10	2
"	2	0	6	..	0	13	6
"	2	0	2	..	0	13	4
"	2	11	10	..	0	17	3

Garnishee Summons—

For over 20 <i>l.</i> and not exceeding 50 <i>l.</i> , costs entered			
1 <i>l.</i> , additional costs			0 6 8
And if served by a solicitor, costs entered, 1 <i>l.</i> 13 <i>s.</i> 6 <i>d.</i> ,			
additional costs			0 11 2

Garnishee Summons—continued.

	£	s.	d.
For over 50 <i>l.</i> , costs entered 1 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> , additional costs	0	8	11
And if served by a solicitor, costs entered 2 <i>l.</i> 3 <i>s.</i> 2 <i>d.</i> , additional costs	0	14	4

Substituted Service—

On a summons for over 20 <i>l.</i> and not exceeding 50 <i>l.</i> , costs entered 1 <i>l.</i> , additional costs	0	6	8
On a summons for over 50 <i>l.</i> , costs entered 1 <i>l.</i> 5 <i>s.</i> , additional costs	0	8	4

Mileage.

The costs of 6*d.* and 1*s.* for each mile beyond two miles will be increased by 2*d.* and 3*d.* respectively.

The above note applies to cases where no notice of defence to a default summons or an affidavit of defence to a special default summons has been delivered, but not to cases where an admission of the whole claim has been made and the case is set down for disposal. Where notice of defence or affidavit of defence has been delivered and the case set down for hearing, but the case is not contested on the day of hearing, the amounts usually allowed to the plaintiff's solicitor for his attendance in court are as follows :

Where claim paid prior to the return day but within five clear days :—

Item 76.

Where on an ordinary summons formal confession filed five clear days at least before the return day :—Item 62.

Where the case is set down for disposal on admission of the debt by the defendant :—Item 62*a.*

In all other cases :—Item 69.

Where a default summons or special default summons has been exchanged for an ordinary summons under Order VII. Rule 38, the amounts for costs and fees entered on the exchanged summons will be those applicable to an ordinary summons.

Where a bailiff experiences difficulty in effecting service of default summons or special default summons and plaintiff's solicitor afterwards obtains leave to serve, there should be added to the solicitor's fee for costs the appropriate solicitor's fee for service together with mileage where over two miles from the office of the solicitor serving.

CHAPTER III.

COURT FEES AND TABLE OF FEES.

COURT FEES, 1105.

TABLE OF FEES, 1105.

FEE DEMANDED, BUT IN OPINION OF PRACTITIONER NOT PAYABLE, 1105.

PENALTY FOR TAKING FEES BESIDES THOSE ALLOWED, 1106.

THE COUNTY COURT FEES ORDER, 1925, DATED DECEMBER 1ST, 1925, 1106.

TABLE OF FEES, 1107.

Fees Payable:—

Section I. On Proceedings commenced in a County Court, 1107.

Section II. On Proceedings transferred to a County Court, 1115.

Section III. On Proceedings under the Workmen's Compensation Act, 1906, 1116.

Section IV. On Proceedings under the several Acts specified in this Section, 1118.

Section V. On the taxation of Costs and Expenses, 1121.

Section VI. On the enforcement of Judgments, 1121.

Section VII. Miscellaneous Fees, 1126. The County Court Fees (Amendment) Order, 1926, dated December 30th, 1926, 1130. The County Court Fees (Amendment) Order, 1927, dated April 20th, 1927, 1130. The County Court Fees (Amendment) Order, 1928, dated August 21st, 1928, 1132.

QUERIES AND ANSWERS ON TABLE OF FEES, 1133.

TABLE OF FEES PAYABLE ON ENTRY AND HEARING OF SUMMONSES AND ENFORCING OF JUDGMENTS FOR AMOUNTS UP TO AND EXCEEDING £100, 1142.

Court Fees.]—By sect. 165 of the Act as amended by sect. 9 of the County Courts Act, 1924, the Lord Chancellor from time to time with the concurrence of the Treasury, may make orders as to the fees to be paid on any proceedings which were then or should thereafter be authorised to be taken in the courts.

By sect. 166 of the Act, a table of all fees must be posted in some conspicuous place in every court house and registrar's office.

By sect. 166 of the Act the costs which a successful plaintiff incurs necessarily include court fees, which are always in the first instance payable by the party on whose behalf any proceeding is taken, except in interpleaders, or where fees are payable in respect of keeping possession, appraising, or selling goods seized. In all cases in which costs abide the event (*i.e.* in default of an order by the judge), or where the judge makes an order for costs generally, a successful plaintiff will be entitled to recover from the defendant, as part of his costs, the court fees which he has paid, subject, however, to this proviso, that if the plaintiff or defendant recovers less than the amount of his claim or counterclaim, so as to reduce the amount of court fees recoverable by him, he will have to pay the difference himself (Order LIII. r. 19).

Table of Fees.]—A table of fees showing fees payable on entry of plaint and trial or hearing of and entering judgment by consent or on admission or in default on ordinary, default and special default summonses for amounts from 1*l.* up to 100*l.*, and exceeding 100*l.*, also on issue of warrant of execution

against goods, and on issuing and executing order of commitment on judgment summonses, and on the issue and the hearing of judgment summonses from 1*l.* up to 30*l.* (maximum fee payable) appears at the end of the table of fees, pages 1142 and 1143. The fees payable are shown at a glance under the several headings, without the necessity of making any calculation.

Fee Demanded, but in Opinion of Practitioner not Payable.]—Where any fee is demanded by a registrar or high bailiff which, in the opinion of the practitioner concerned, is not payable under the circumstances, the proper course is for the registrar to report the matter to the Lord Chancellor and obtain his directions thereon (see para. 2 of the County Court Fees Order, 1925), or if time does not permit of this being done the practitioner should pay the fee and report the facts to the Superintendent of County Court, County Courts Branch, Lord Chancellor's Department, House of Lords, S.W. 1, and obtain his directions thereon.

Penalty for taking Fees besides those allowed.]—Sect. 51 of the Act provides a summary method of dealing with registrars and high bailiffs who "wilfully and corruptly" take any fees except those allowed.

THE COUNTY COURT FEES ORDER, 1925, DATED DECEMBER 1st, 1925 (as amended).

The Lord Chancellor and the Treasury, in pursuance of the powers and authorities vested in him and them respectively by section 165 of the County Courts Act, 1888, (a) as amended by the County Courts Act, 1924, (b) section 2 of the Public Offices Fees Act, 1879, (c) and sections 237 and 238 of the Companies (Consolidation) Act, 1908, (d) do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require him and them, make, concur in, and sanction the following Order:—

1. The fees set out in the table contained in the Schedule to this Order shall be taken in county courts in respect of the proceedings described in the second column thereof, in accordance with and subject to the directions contained therein whether prefixed to or included within any section of the said table.

1A. Where a party is proceeding in a county court under the Rules relating to proceedings by and against poor persons, the fees which, but for the provisions of this paragraph, would have been payable by him in the first instance in pursuance of this Order shall not be payable:

Provided that where the poor person gives a notice of demand for a jury, nothing in this paragraph shall excuse him from any obligation to pay or deposit any sum required for the jurors' fees (Amendment Order, 1928).

2. If any question arise with regard to the payment of any fee, the Registrar may report the matter to the Lord Chancellor and obtain his directions thereon.

3. The fees prescribed by this Order shall be taken in cash.

3A. The Interpretation Act, 1889, shall apply to this Order in like manner, as it applies to an Act of Parliament (Amendment Order, 1927).

4.—(1) This Order may be cited as the County Court Fees Order, 1925.

(2) The County Court Fees Order, 1924, the County Court Fees (Amendment) Order, 1924, and the County Court Fees (Amendment) Order, 1925, shall be annulled.

(3) This Order shall come into operation on the 1st day of January, 1926.

Dated the 1st day of December, 1925.

CAVE, C.	} <i>Lords Commissioners of</i>
CURZON,	
F. C. THOMSON,	
	} <i>His Majesty's Treasury.</i>

SCHEDULE.

As amended by The County Court Fees (Amendment) Orders, 1926, 1927 and 1928.

TABLE OF FEES.

Payable on all Proceedings in the County Courts except Proceedings under the Bankruptcy Act, 1914.

FEES PAYABLE—		PAGE
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SECTION I.

FEES PAYABLE ON PROCEEDINGS COMMENCED IN A COUNTY COURT BY

- (a) ENTERING OF A PLAINT.
- (b) FILING A PETITION.
- (c) MAKING AN APPLICATION.

1. The fees prescribed in this Section are payable on all proceedings commenced in a County Court by entering a plaint, or by filing a petition or by making an application in accordance with the rules relating to

- | | |
|--------------------------|----------------------------|
| (a) 51 & 52 Vict. c. 43. | (b) 14 & 15 Geo. 5, c. 17. |
| (c) 42 & 43 Vict. c. 58. | (d) 8 Edw. 7, c. 69. |

interlocutory applications, whether brought under the County Courts Acts, 1888 to 1924, or under any other Act, excepting only proceedings commenced under the Bankruptcy Act, 1914, and applications as to the fee on which special provision is made in another Section.

2. The fee payable on entering a plaint includes :—

- (a) the entry of the plaint ;
- (b) the examination, allowance and filing of any affidavit required to be filed on the entry of the plaint or before the issue or service of the summons ;
- (c) the issue of the summons, whether ordinary, default, or special default ; and
- (d) where the bailiff is required to serve the summons, the service of the summons by the bailiff, whether in the home or a foreign district. But if there be more than one defendant to be served by the bailiff, a further fee of 1s. is payable in respect of each additional defendant to be served by him : and if the summons be amended after delivery thereof to the bailiff for service, a further fee of 1s. is payable in respect of each defendant on whom the bailiff is required to serve the amended summons.

3. The fee payable on filing a petition includes :—

- (a) the filing of the petition ;
- (b) the examination, allowance and filing of any affidavit required to be filed with the petition or before the service thereof ;
- (c) the service of the petition and notice of day of hearing by the bailiff whether in the home or a foreign district. But if there be more than one party to be served by the bailiff, a further fee of 1s. is payable in respect of each additional party to be served by him ; and if the petition be amended after delivery thereof to the bailiff for service, a further fee of 1s. is payable in respect of each party on whom the bailiff is required to serve the amended petition.

4. The fee payable on the trial or hearing of an action includes the drawing, entering, sealing, and issue of the judgment or order given or made on the trial or hearing of the action.

If before the opening of the case part of the claim be abandoned, this fee is to be calculated on the remedy or relief claimed after abandonment.

If before the trial or hearing the party against whom the claim is made pays part of the claim into court admitting liability for the amount so paid or to the party making the claim, the amount so paid is to be deducted from the amount claimed for the purpose of calculating this fee.

5. The fee payable on hearing a petition includes the drawing, entering, sealing and issue of the judgment or order given or made thereon.

6. Where a claim, counterclaim, petition or application is amended and the fees paid before amendment are less than those which would have been payable if the claim, counterclaim, petition or application as amended had been made in the first instance, the party amending the same shall pay the difference.

7. Except where it is otherwise provided, the fee payable on an application for an order or judgment includes—

(a) the examination, allowance and filing of any affidavit in support of or in opposition to the application; and

(b) the drawing, entering, sealing and issue of the order or judgment made thereon; and the service of such order or judgment by post.

8. In this section an order or rule referred to by number means the order or rule so numbered in the County Court Rules.

No. of Fee.	Description of Proceeding.	Amount of Fee.
1	On entering a plaint—	
	(i) for the recovery of a sum of money	
	not exceeding 10s. 0d.	1s.
	exceeding 10s. 0d., „ £1	1s. 6d.
	„ £1 „ „ £2	3s.
	„ £2 „ „ £3	4s. 6d.
	„ £3 „ „ £4	6s.
	„ £4 „ „ £5	7s. 6d.
	„ £5 „ „ £6	9s.
	„ £6 „ „ £7	10s.
	„ £7 „ „ £8	11s.
	„ £8 „ „ £9	12s.
	„ £9 „ „ £10	13s.
	„ £10 „ „ £11	14s.
	„ £11 „ „ £12	15s.
	„ £12 „ „ £13	16s.
	„ £13 „ „ £14	17s.
	„ £14 „ „ £15	18s.
	„ £15 „ „ £16	19s.
	„ £16 „ „ £17	20s.
	„ £17 „ „ £18	21s.
	„ £18 „ „ £19	22s.
	„ £19 „ „ £20	23s.
	„ £20 „ „ £21	24s.
	„ £21 „ „ £22	25s.
	„ £22 „ „ £23	26s.
	„ £23 „ „ £24	27s.
	„ £24 „ „ £25	28s.
	„ £25 „ „ £26	29s.
	„ £26 „ „ £27	30s.
	„ £27 „ „ £28	31s.
	„ £28 „ „ £29	32s.
	„ £29 „ „ £30	33s.
	„ £30 „ „ £35	34s.
	„ £35 „ „ £40	36s.
	„ £40 „ „ £45	38s.
	„ £45 „ „ £50	40s.
	„ £50 „ „ £60	42s.
	„ £60 „ „ £70	44s.
	„ £70 „ „ £80	46s.
	„ £80 „ „ £100	48s.
	„ £100	50s.

SECTION I—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
1	On entering a <i>plaint</i> — <i>cont.</i>	
	(ii) for some remedy or relief other than the recovery of a sum of money—	
	(a) <i>ejectment</i> under the County Courts Act, 1888, section 59..	An amount equal to the weekly value of the premises, a fraction of a shilling being reckoned as an entire shilling. Maximum fee £2.
	<i>It shall be the duty of the plaintiff to estimate the weekly value of the premises. The amount so estimated by him, and, where the rent last paid for the premises is known, the amount of such rent, shall be stated in the præcipe.</i>	
	<i>If the weekly value appears subsequently to the Court to have been underestimated, the plaintiff shall pay the difference between the amount paid by him on entering the <i>plaint</i> and the fee which would have been paid if the estimate had been correct.</i>	
	(b) possession of land or tenements under the County Courts Act, 1888, section 138 or section 139:	
	(i) if let on a weekly tenancy	An amount equal to the weekly rent as stated in the <i>præcipe</i> , a fraction of a shilling being reckoned as an entire shilling. Maximum fee £2.
	(ii) if let on any other tenancy	
	<i>If the rent stated in the præcipe be less than the rent which was in fact payable, the plaintiff shall pay the difference between the fee paid by him on entering the <i>plaint</i> and the fee which would have been payable if the rent had been stated correctly in the præcipe.</i>	An amount equal to the proportion of the rent as stated in the <i>præcipe</i> which would be payable for a week, a monthly tenancy being reckoned as a tenancy for 4 weeks and a quarterly tenancy as a tenancy for 13 weeks, and a fraction of a shilling as an entire shilling. Maximum fee £2.
	(c) delivery of goods	
	<i>It shall be the duty of the plaintiff to estimate the value of the goods, and the amount so estimated shall be stated in the præcipe. If the value appears subsequently to the Court to have</i>	Fee No. 1 (i) calculated on the value of the goods.

SECTION I—continued.

No. of Fee.	Description of Proceeding.	Amount of Fee.
1	On entering a plaint—<i>cont.</i> (ii) for some remedy or relief other than the recovery of a sum of money—<i>cont.</i> (c) delivery of goods—<i>cont.</i> <i>been underestimated, the plaintiff shall pay the difference between the amount paid by him on entering the plaint and the fee which would have been paid if the estimate had been correct.</i> (d) replevin <i>For the fees payable before the commencement of an action of replevin see fee No. 78.</i> (e) in every other case (iii) for the recovery of a sum of money as an alternative to some other remedy or relief.. (iv) for the recovery of a sum of money and also for some other remedy or relief— (a) where the other remedy or relief is delivery of goods .. (b) in every other case	Fee No. 1 (i) calculated on the value of the goods replevied. £2. Such of the Fees No. 1 (ii) (a), (b), (c), (d), or (e) as may be applicable, or else Fee No. 1 (i), whichever be the greater. Fee 1 (i), and in addition Fee No. 1 (ii) (c). Maximum fee, 50s. Such of the Fees No. 1 (ii) (a), (b), or (c) as may be applicable: and in addition thereto for every £ or fraction thereof claimed —6d., but the amount payable in respect of this 6d. poundage is not to exceed 25s.
2	On filing a petition— (i) for payment of a sum of money <i>This fee is not payable in addition to Fee No. 2 (iv).</i> (ii) for the appointment or removal of a trustee or for an order under the Guardianship of Infants Acts, 1886 and 1925, or an adoption order or a legitimacy declaration ..	Fee No. 1 (i). 10s.

SECTION I—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
	(iii) for winding up a company ..	£1 10s.
	(iv) under Order 38, Rule 23, for an order relating to the capital of a fund in court	Fee No. 1 (i) calculated on the value of the fund.
	(v) in every other case	£2.
3	On an application commencing proceedings <i>This fee is not payable where special provision as to the fee is made in another section.</i>	5s.
4	On an application for the extension of time for service of a default or special default summons	2s. 6d.
5	(i) On a request to a high bailiff to take steps to enable the plaintiff to apply for— (a) an order for substituted service ; or (b) leave to proceed as if personal service had been effected ..	An amount equal to one-half of the fee paid on the entry of the plaint. Maximum fee, 5s.
6	(ii) On the application	Fee No. 5 (i).
7	On an application for leave to serve out of England and Wales ..	10s.
8	On an application to postpone or adjourn the trial of an action (except actions for the recovery of a sum of money not exceeding £2), whether made before or on the day of trial, if made before the opening of the case	2s. 6d.
9	On every other application for an interlocutory order made before judgment	5s.
10	On an application to the Judge to vary or rescind the decision of the Registrar on an interlocutory application	5s.
10	On giving notice of demand for a jury <i>The party giving the notice must also deposit the sum of 8s. for the jurors' fees ; if the jury be countermanded or the jury be discharged before being sworn, this deposit is to be returned.</i>	10s.

SECTION I—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
11	On filing notice of a counterclaim ..	The amount (if any) whereby the fee which would be payable on entering a plaint for the sum of money or other remedy or relief counterclaimed by the defendant exceeds the plaint fee paid by the plaintiff.
12	On filing notice of a claim for contribution or indemnity against a co-defendant or a third party ..	5s.
13	On the trial or hearing of an action or matter .. <i>This fee is payable where an action is referred under the County Courts Act, 1888, section 104, and on the hearing of a garnishee summons, but subject to the provisions of Order 20, Rule 1, and Order 26, Rule 6. This fee is not payable where the defendant does not appear and Fee No. 16 is payable.</i>	An amount equal to the fee which would be payable on entering a plaint for the remedy or relief claimed by the plaintiff at the trial or hearing.
14	On the trial or hearing of a counterclaim ..	The same fee as would be payable on the trial or hearing of an action for the remedy or relief counterclaimed after deducting therefrom the hearing fee (No. 13) or the judgment fee (No. 16) paid by the plaintiff.
15	On the trial or hearing of a claim for contribution or indemnity against a co-defendant or a third party ..	An amount equal to the fee which would be payable on entering a plaint for the remedy or relief claimed.
16	On entering judgment— (i) by consent or on admission ; or (ii) where the party against whom judgment is to be entered does not appear ; or (iii) in default of notice of defence, where a default summons has been issued ; or (iv) in default of affidavit of defence, where a special default summons has been issued ; or	

SECTION I—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
	(v) in admiralty actions, in default of entry of appearance or of pleading	An amount equal to one half of the fee which would be payable on entering a plaint for the sum of money or other remedy or relief for which judgment is to be entered.
17	On entering a fresh order pursuant to Order 23, Rule 14— (i) where the amount remaining due under the judgment or order does not exceed £2 .. (ii) in every other case	1s. 2s. 6d.
	<i>This fee is payable by the applicant, and is not recoverable from the judgment debtor except by order of the Court.</i>	
18	On an application for a new trial by a party who appeared at the first trial— (i) where the Registrar tried the action (ii) in every other case	2s. 6d. 5s.
19	For a new trial <i>This fee is payable by the party obtaining the order for the new trial, and must be paid before the order for the new trial is drawn up.</i>	Such of the fees Nos. 13, 14, 15 and 16 as may be applicable.
20	On hearing a petition— (i) for payment of a sum of money <i>This fee is not payable in addition to Fee No. 20 (iv).</i> (ii) for the appointment or removal of a trustee or for an order under the Guardianship of Infants Acts, 1886 and 1925, or an adoption order or a legitimacy declaration (iii) for winding up a company ..	Fee No. 13, or where the petition is unopposed, one-half of that amount. 10s. £1 10s.

SECTION I—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
	(iv) under Order 38, Rule 23, for an order relating to the capit of a fund in court	Fee No. 2 (iv) or where the petition is unopposed, one-half of that amount.
	(v) in every other case	£2, or where the petition is unopposed £1.
21	On taking an account or making an inquiry pursuant to an order of the Judge (including the certificate of the result of such account or inquiry) <i>This fee is not payable where the account is taken or the enquiry made by the Registrar under sections 92 or 104 of the Act of 1888 or section 6 of the Act of 1919.</i>	For every hour or part of an hour occupied, 10s.
	On a reference to the Registrar to assess damages	
	On taking the examination of a witness (including the examination of a judgment debtor)	
22	For auditing the account of a receiver	For every £10 of the monies received, 6d.
23	On sealing an order for the transfer of the proceedings to the High Court	10s.
<i>In Admiralty actions.</i>		
24	For a warrant of arrest of a ship or goods (including the execution thereof)	£2.
25	For an order of release	10s.
26	On a bail bond	10s.
27	On an appraisement (Order 39, Rule 47)	For every £ of the appraised value, 3d.
28	On an application for the attendance of assessors	5s.

SECTION II.

FEES PAYABLE ON PROCEEDINGS TRANSFERRED TO A COUNTY COURT.

29	On lodging with the Registrar an order of the Liverpool Court of Passage for the trial of an action in a County Court	An amount equal to the fee which would be payable on entering a plaint for the sum of money claimed.
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SECTION II—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
30	On lodging with the Registrar an order of the High Court transferring an action, counterclaim, or matter from that Court to a County Court or directing the trial of an issue in a County Court ..	£1.
31	(i) On filing notice of a counterclaim.	The amount (if any) whereby the fee which would be payable on entering a plaint for the remedy or relief counterclaimed by the defendant exceeds the fee paid under Fee No. 29 or Fee No. 30.
	(ii) On the trial or hearing of any action, counterclaim, matter or issue transferred from any Court other than a County Court to a County Court and on any application or other proceeding therein ..	The same fees as are payable in respect of similar proceedings in an action commenced in a County Court by entering a plaint.

SECTION III.

FEES PAYABLE ON PROCEEDINGS UNDER THE WORKMEN'S COMPENSATION ACTS.

The fees prescribed in this Section are payable in respect of proceedings under the Workmen's Compensation Acts, 1897 and 1900, or under the Workmen's Compensation Act, 1906, or any Act amending or repealing that Act.

Provided that no fee is payable by a workman.

32	(i) On filing a notice by an employer claiming contribution or indemnity against a third party	5s.
	(ii) On the hearing of such claim ..	£2.
33	On an application by a party other than a workman—	
	(i) for an interlocutory order ; or (ii) to record a memorandum or rectify the Register under Rule 50 of the Workmen's Compensation Rules ..	5s.
34	On an application—	
	(i) to remove a record from the register ; or	

SECTION III—continued.

No. of Fee.	Description of Proceeding.	Amount of Fee.
	(ii) to suspend the rights of a workman refusing to submit to a medical examination ..	5s.
35	On an order or award declaring liability without directing payment of future compensation ..	£1.
	<i>This fee is payable by the employer when the order or award is made.</i>	
36	On an award—	
	(i) if for a lump sum	For every £ awarded, 3d. Maximum fee £2 10s.
	(ii) if for a weekly payment with or without a lump sum in respect of arrears	An amount equal to the weekly payment, a fraction of a shilling being reckoned as an entire shilling.
	<i>This fee is payable by the employer when the award is made.</i>	
	NOTE.—No fee is payable when an award is made in favour of a respondent employer. (See answer to query No. 38, p. 1138 (<i>infra</i>).)	
37	On payment into Court—	
	(i) for the benefit of	
	(a) the dependants of a deceased workman, or	
	(b) a person under legal disability	For every £ so paid into Court, 6d. Maximum fee, £5.
	(ii) in every other case	For every £ so paid into Court, 3d. Maximum fee, £2 10s.
	<i>This fee is payable by the party making the payment into Court.</i>	
38	For examining a memorandum of agreement presented for registration, or a præcipe for payment into Court under Rule 61 or Rule 62—	
	(i) Where such agreement is for the payment of a lump sum, and on every præcipe ..	For every £, 3d. Minimum fee, 10s. Maximum fee, £2 10s.
	(ii) in every other case	10s.
	<i>This fee is payable by the employer and includes the sending of notices to the parties, the making of enquiries, and in the case of a memorandum the recording, if it is recorded.</i>	

SECTION III—continued.

No. of Fee.	Description of Proceeding.	Amount of Fee.
	<i>If the memorandum or præcipe is presented by the employer, the fee is payable on presentation.</i> <i>If the memorandum is presented by a workman, the fee is payable within ten days of the dispatch of the notice to the employer, unless he disputes the genuineness of the agreement or objects to its being recorded, in which cases the fee is not payable unless and until the Judge directs the memorandum to be recorded, or the employer consents in writing to its being recorded.</i>	
39	For keeping possession of a ship .. <i>When a ship is in the custody of the High Bailiff, the reasonable expenses of a shipkeeper per day are payable in addition to the above fee.</i>	For every day, 10s.

SECTION IV.

FEES PAYABLE ON PROCEEDINGS UNDER THE SEVERAL ACTS SPECIFIED IN THIS SECTION.

1. On any proceedings under the several Acts specified in this Section for which no fee is prescribed in this Section, the fees prescribed in the other Sections of this table are payable so far as applicable.

2. No fee is to be taken in respect of proceedings under the Charitable Trusts Acts, 1853 to 1891.

3. The fee payable on an application for an order or certificate includes—

(a) the examination, allowance and filing of any affidavit in support of or in opposition to the application; and

(b) the drawing, entering, sealing and issue of the order or certificate made thereon; and the service of such order or certificate by post.

The Agricultural Holdings Act, 1923.

40 (i) On an application for the appointment of a guardian of an infant or of a person of unsound mind not so found by inquisition or for the revocation of any such appointment and the appointment of another guardian

£1

SECTION IV—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
	(ii) On an application for an order directing an arbitrator to state a special case	£2
	(iii) On filing a special case stated by an arbitrator (including the hearing of the case and the order made thereon)	£3
	(iv) On an application for an order for the recovery of money awarded to be paid for compensation, costs or otherwise	6d. in the £ on amount so awarded. Minimum fee, 10s. Maximum fee, £3.
<i>The Allotments Act, 1922.</i>		
41	On an application for an order for the recovery of money awarded to be paid for compensation, costs or otherwise	Fee No. 40 (iv).
<i>The Ballot Act, 1872.</i>		
42	On an application for on order— (i) to inspect ballot papers .. (ii) to open the sealed packet of counterfoils	£3
<i>The Bankruptcy Act, 1883 (section 122).</i>		
43	For an order of administration ..	For every £ of the total amount of the debts scheduled (including in such total any debts added after the order is made), 2s.
<i>The Brine Pumping (Compensation for Subsidence) Act, 1891.</i>		
44	(i) On entering an appeal under section 27 of the Act (ii) On hearing the appeal (including the order made thereon)	£2 £2
<i>The Companies (Consolidation) Act, 1908.</i>		
45	(i) On an application to sanction a compromise or arrangement .. <i>This fee includes the petition and the hearing.</i> (ii) On every other application. .. (iii) On the hearing of an application by the judge ...	£5 5s. £1.
<i>Ecclesiastical Dilapidations Measure, 1923.</i>		
45A	(i) On entering an appeal (ii) On an application for an interlocutory Order (iii) On the hearing of an appeal ..	£1. 5s. £1.

SECTION IV—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
<i>The Landlord and Tenant Act, 1927.</i>		
45B	(i) On the consideration of the referee's report in an action	Fee No. 13.
	(ii) On filing a summons under Order 50B, Rule 16	10s.
	(iii) On the hearing by the judge of a summons under Order 50B, Rule 16	£1.
	<i>Where the summons is referred, this fee is payable on the consideration of the referee's report.</i>	
<i>The Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924.</i>		
46	(i) On an application for leave to distrain	For every 10s. or fraction thereof of the amount to be distrained for, 6d. Maximum fee, 5s.
	(ii) On an application for apportionment	10s.
	(iii) On every other application ..	5s.
	<i>This fee is not payable on an application for suspension or extension of, or for stay or suspension or extension of execution on, a judgment or order of possession.</i>	
	(iv) On a request for arbitration ..	£1 10s.
<i>The Representation of the People Act, 1918.</i>		
47	On entering an appeal	10s.
<i>The Stannaries Courts (Abolition) Act, 1896.</i>		
48	(i) (a) For filing a copy of a lease, grant, licence, assignment, or contract for sale of a lease, grant or licence under section 20 ..	5s.
	(b) For every inspection of any such copy	2s.
	(ii) On an application under the Companies (Consolidation) Act, 1908:—	
	(a) For rectification of a register under section 32 (2)	£2
	(b) For inspection under section 101 (2)	5s.

SECTION IV—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
	(iii) On any other proceedings in a County Court exercising the Stannaries jurisdiction, whether brought under the Companies (Consolidation) Act, 1908, or otherwise ..	The fees prescribed in this Table in so far as the same are applicable.
<i>The Tenants Compensation Act, 1890.</i>		
49	On an application for an order for the recovery of money awarded to be paid for compensation, costs, or otherwise	Fee No. 40 (iv).
<i>The Tithe Act, 1891.</i>		
50	(i) For the notice of application to the Court under section 2 ..	For every £5 or fraction thereof of the sum claimed, 1s. Maximum fee, 10s.
	(ii) For making an order under section 2, ...	For every £5 or fraction thereof of the sum claimed, 1s. 6d. Maximum fee, 15s.

SECTION V.

FEES PAYABLE ON THE TAXATION OF COSTS AND EXPENSES.

51	On the taxation of costs, charges and expenses	For every £ or fraction of a £ allowed, 6d. Minimum fee, 2s.
	<i>This fee is not payable where the costs are assessed by the Registrar without a bill and no notice of taxation is given to the party ordered to pay the costs.</i>	
	<i>The Registrar may, in any case, before taxation require a deposit of the amount of fees which would be payable if the bill or the expenses were allowed by him at the full amount thereof.</i>	
52	On an application to the Judge to review a taxation	5s.

NOTE.—An order against a workman to pay the employer's costs covers the taxation fee already paid by the employers (*Elwell v. Crane Foundry Co., Ltd.*, (1928) W. N. 206).

SECTION VI.

FEES PAYABLE ON THE ENFORCEMENT OF JUDGMENTS.

1. The fees prescribed in this Section are payable on the enforcement of—

- (a) any judgment or order of a County Court ;
- (b) any order, rule, decree, certificate, award, memorandum, writ, or precept, which is enforceable as a County Court judgment ;
- (c) any judgment or order enforceable by means of a judgment summons in a County Court.

2. In this Section an order or rule referred to by number means the order or rule so numbered in the County Court Rules.

3. For the purpose of calculating poundage in this section, a fraction of a pound shall be treated as an entire pound.

No. of Fee.	Description of Proceeding.	Amount of Fee.
53	On an application for an order for the attendance of a judgment debtor or any other person under Order 25, Rules 5 or 71	5s.
54	On an application under Order 25, Rules 10, 10A, 11 or 14, for leave to issue execution	
		For every £ of the amount remaining due on the judgment or order, 1s. Maximum fee, 5s.
55	On the issue of a warrant of execution against goods except a warrant to enforce an order for the payment of a fine <i>On the issue of concurrent warrants of execution against goods, this fee is payable on each warrant.</i>	For every £ of the amount for which the warrant issues, 1s. Maximum fee, £1 10s.
56	On stamping or sealing a writ or precept issued by a Court of Record under the Borough and Local Courts of Record Act, 1872	For every £ of the amount for which the writ or precept issues, 1s. Maximum fee, £1 10s.
57	For keeping possession of goods under a warrant of execution .. <i>These fees are not payable for more than seven days :— Provided that :— (a) Where possession is kept after the seventh day at the request in writing of both the execution creditor and the execution debtor, these fees are payable for a reasonable further time ; and</i>	6d. per day for every £ of the value of the goods seized, the value to be fixed by appraisement in case of dispute. Maximum fee per day, 10s. In addition thereto, where there are animals to be fed, the reasonable expenses of feeding them.

SECTION VI—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
	For keeping possession of goods on a warrant—<i>continued.</i> (b) <i>Where notice of claim by a third party to or in respect of the goods has been given to the bailiff, the number of days for which possession fees may be charged shall be determined by the Judge.</i> NOTE.—There is a right of appeal to the Divisional Court from an order of a county court judge upon an application by the High Bailiff under Order XXVII. r. 1 (2) for his possession fees, as the proceeding is a “matter” and the High Bailiff is a Party to that “matter.” A High Bailiff may be entitled to his fees “for keeping possession” although he never has had possession in the strict legal sense, but if he maintains only “walking possession” he commits a breach of his statutory duty and has no right to possession fees (<i>A. W., Ltd. v. Cooper and Hall, Ltd.</i>, (1925) 94 L. J. K. B. 831).	
58	For advertising a sale by auction pursuant to section 145 of the Bankruptcy Act, 1883	The reasonable expenses thereof.
59	For the appraisement of goods ..	For every £ of the appraised value, 6 <i>d.</i> in addition to the stamp duty.
60	For the sale of goods (including advertisements, catalogues, sale and commission and delivery of goods)	1 <i>s.</i> 6 <i>d.</i> in the £ on the amount realised by the sale.
61	When no sale takes place by reason of an execution being withdrawn, satisfied or stopped	The expenses reasonably incurred with a view to the sale, not exceeding— (a) 1<i>s.</i> in the £ on the value of the goods seized, the value to be found by appraisement in case of dispute, and in addition (b) any reasonable expenses paid under fee No. 58.

SECTION VI—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
62	On an application for the appointment of Receiver by way of equitable execution	For every £ of the amount of debt and costs due to the applicant, 6 <i>d.</i> Maximum fee, £2 10 <i>s.</i>
63	On an application for a charging order under section 23 of the Partnership Act, 1890, or on an application by a partner to redeem or purchase	For every £ of the amount due to the judgment creditor, 6 <i>d.</i> Maximum fee, £2 10 <i>s.</i>
64	On the issue of a warrant of possession— (i) on a judgment for ejection in an action under section 59 of the County Courts Act, 1888 (ii) on a judgment for possession in an action under section 138 or section 139 of that Act .. (iii) on a judgment for possession in any other action.. (iv) where the warrant is for the recovery of a sum of money in addition to possession ..	Fee No. 1 (ii) (a). Maximum fee, £1 10 <i>s.</i> Fee No. 1 (ii) (b). Maximum fee, £1 10 <i>s.</i> £1. Fee No. 1 (ii) (a) or No. 1 (ii) (b) or No. 64 (ii), whichever is applicable, and in addition thereto for every £ of the amount for which the warrant issues, 1 <i>s.</i> , but the total fee is not to exceed £1 10 <i>s.</i>
65	On the issue of a warrant of delivery— (i) Where the warrant is not for the recovery of damages or cost	For every £ of the value of the goods to be delivered, 1 <i>s.</i> Maximum fee, £1 10 <i>s.</i> The value taken is to be the value (if any) stated in the judgment, or, if none is so stated, the value on which the plaintiff fee (Fee No. 1 (ii) (c)) was calculated.

SECTION VI—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
	(ii) Where the warrant is for the recovery of a sum of money in respect of damages or costs, or both, in addition to delivery	Fee No. 65 (i) and in addition thereto for every £ of the sum of money for which the warrant issues, 1s., but the total fee is not to exceed £1 10s.
66	On an application for and the issue of a warrant of attachment ..	£1
67	On an application for discharge from custody under a warrant of attachment	10s.
68	On the issue of a judgment summons	For every £2 or fraction thereof calculated on the amount for which the summons issues, 6d. Maximum fee, 7s. 6d.
69	On the hearing of a judgment summons	For every £ of the amount for which the summons issues, 6d. Maximum fee, 15s.
70	For issuing and executing an order of commitment made on a judgment summons	For every £ of the amount for which the order issues, 1s. Maximum fee, £1 10s.
71	On an application for the renewal of a warrant of execution or the extension of an order of commitment	For every £ of the amount remaining due on the warrant or order at the date of the application, 6d. Maximum fee, 5s.
<i>In Admiralty actions in rem.</i>		
72	For a warrant of execution against a ship or goods (including the execution thereof) <i>This fee is not payable where the ship or goods are under arrest, and fee No. 24 has been paid.</i>	£2
73	On an appraisement of a ship or goods	For every £ of the appraised value, 3d.
74	On the sale of a ship or goods .. <i>In addition to this fee the reasonable expenses of the sale are also payable.</i>	For every £ of the price, 3d.

SECTION VI—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
75	For keeping possession of a ship or goods, where the High Bailiff employs— (i) a possession man or (ii) a shipkeeper <i>This fee is not payable where the High Bailiff does not employ a possession man or a shipkeeper.</i>	For every day, 10s. The reasonable expenses of employing the shipkeeper.

SECTION VII.

MISCELLANEOUS FEES.

Subpœna.

76	On the issue of a subpœna or summons to witness— (i) To be served by a bailiff .. (ii) To be served otherwise than by a bailiff	2s. 1s.
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Service of Judgment or Order.

77	For personal service of a judgment or order by the bailiff <i>No fee is payable for the service of a judgment or order by post.</i>	1s.
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Replevin.

78	(i) For a warrant to replevy .. (ii) For a replevin bond or deposit .. (iii) For a notice to distrainor .. (iv) On the delivery of goods on the completion of a replevin bond ..	2s. 6d. 10s. 2s. 6d. £1
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Interpleader.

79	On the hearing of an interpleader summons <i>This fee is payable in the first instance by the claimant. The fee is not payable where an interpleader summons is issued under Order 27, Rule 15, and is heard with the action. No fee is payable on an application for an interpleader summons (whether made by a defendant or by a bailiff) or on the issue or for the service of such a summons.</i>	Fee 1 (i) calculated on the sum of money or the value of the goods the subject-matter of the interpleader summons.
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SECTION VII—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
<i>Possession and Sale of Goods by the Bailiff.</i>		
80	(i) For keeping possession of goods, (ii) For the sale of goods, (otherwise than under an execution)	The same fees as would be payable if the goods were seized or sold under an execution.
<i>Copies of Documents.</i>		
81	(i) For an office copy (ii) For examining a copy supplied by a party and marking it as an office copy	For each folio of 72 words, 6d. For each folio of 72 words, 3d.
<i>Registration of Judgments.</i>		
82	(i) For grant or registration of the certificate of a judgment pursuant to the Inferior Courts Judgments (Extension) Act, 1882 (ii) For sealing and issuing duplicate of such certificate	5s. 1s.
<i>Certificate of Judgments.</i>		
83	For a certified copy of a judgment or order given pursuant to section 28 of the County Courts Act, 1888 ..	1s.
<i>Duplicates.</i>		
84	For issuing a duplicate plaint note, administration order, instalment order or summons	1s.
<i>Bills of Sale.</i>		
85	(i) On searching the Index (ii) On inspecting an abstract or notice of satisfaction	1s. 1s.
<i>The Deeds of Arrangement Act, 1914.</i>		
86	(i) For taking security and giving certificate— (a) where the estimated assets available for distribution amongst the unsecured creditors as shown by the affidavit filed on registration are less than £100 (b) in all other cases (ii) On an application to the Court under the Deeds of Arrangement Act or Rules	10s. £1 7s. 6d.

SECTION VII—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
	(iii) On searching the register (for every name inspected) and on inspecting the filed copy, including the limited extract to be taken pursuant to the Act and Rules	2s. 6d.
	(iv) On setting down a motion for hearing before the Judge ..	£1
<i>The Law of Distress Amendment Acts, 1888 and 1895.</i>		
87	(i) On an application for a general certificate	5s.
	(ii) On an application for a special certificate	2s. 6d.
	(iii) On an application for the renewal of a general certificate ..	2s. 6d.
	(iv) For approving of security by bond	10s.
	(v) For receiving deposit in lieu of bond	5s.
<i>The Fines and Recoveries Act.</i>		
88	On taking the acknowledgment of a married woman	£1
<i>Searches at the Registry of County Court Judgments.</i>		
89	(i) For every name searched at the Registry for a judgment ..	1s.
	(ii) For forty names searched for within two months	£1 10s.
	<i>This fee is to be paid in advance.</i>	
	(iii) For every certificate of search ..	2s.
	<i>These may be obtained by letter addressed to <u>The Registrar of County Court Judgments, House of Lords, and postage stamps may be enclosed for payment.</u></i>	
	(iv) For having the record of any judgment removed from the Register	1s.
	<i>This fee is to be paid to the Registrar of the Court in which the judgment was obtained.</i>	

SECTION VII—continued.

No. of Fee.	Description of Proceeding.	Amount of Fee.
<i>Officers attending on subpoena.</i>		
90	On an application with or without subpoena for any officer to attend as a witness or to produce records or documents to be given in evidence <i>In addition to this fee the reasonable expenses of the officer are also payable.</i> <i>The Registrar may require a deposit on account of any further fees or on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application. He may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.</i>	For each day or part of a day he shall necessarily be absent from his office, £1.
<i>Registrars and High Bailiffs attending away from the Court House or Office.</i>		
91	Where the Registrar or High Bailiff is required to perform any of his duties away from the Court House or office	The reasonable travelling expenses, and, where necessary, subsistence allowance.
<i>Money or damages in Court.</i>		
92	On transfer of money or damages into Court for administration for the benefit of an infant or a person of unsound mind or a widow under Order XXXV. <i>This fee is to be deducted from the money received from the High Court. Where the money is for the benefit of more than one person and is apportioned amongst them, the fee is to be deducted rateably from the portions.</i>	For every £, 3d. Maximum fee in respect of each action, £2 10s.

The Amendment Orders (below) are printed for purposes of reference.

THE COUNTY COURT FEES (AMENDMENT) ORDER, 1926.

DATED DECEMBER 30TH, 1926.

1. In Fee No. 2 and also in Fee No. 20 in the Table of Fees contained in the Schedule to the County Court Fees Order, 1925, the following expression shall be omitted :—

“(ii.) under the Guardianship of Infants Act, 1886”;

and the following expression shall be substituted therefor :—

“(ii.) under the Guardianship of Infants Acts, 1886 and 1925, or the Adoption of Children Act, 1926.”

2. In the note to paragraph (iii.) of Fee No. 46 in the said Table of Fees, before the words “of execution,” the words “or extension” shall be inserted.

3. After Fee No. 45 in the said Table of Fees there shall be added the following new Fee which shall stand as Fee No. 45A :—

“*Ecclesiastical Dilapidations Measure, 1923.*”

		£	s.	d.
45A.	(i.) On entering an appeal	1	0	0
	(ii.) On an application for an interlocutory Order	0	5	0
	(iii.) On the hearing of an appeal	1	0	0

4. In Fee No. 71 of the said Table of Fees, paragraph (ii.) shall be omitted and the Fee of 5s. set opposite to that paragraph shall be annulled and paragraph (i.) shall cease to be numbered (i.).

5. This Order may be cited as the County Court Fees (Amendment) Order, 1926, and shall come into operation on the 1st day of January, 1927, and the County Court Fees Order, 1925, shall have effect as amended by this Order.

THE COUNTY COURT FEES (AMENDMENT) ORDER, 1927.

DATED APRIL 20TH, 1927.

1. The following paragraph shall be inserted in the County Court Fees Order, 1925, after paragraph 3 and shall stand as paragraph 3A :—

“3A. The Interpretation Act, 1889, shall apply to this Order in like manner as it applies to an Act of Parliament.”

2. Fees No. 2, No. 3 and No. 20 in the Table of Fees contained in the Schedule to the County Court Fees Order, 1925, shall be annulled, and the following Fees shall be substituted therefor :—

No. of Fee.	Description of Proceeding.	Amount of Fee.
2.	On filing a petition— (i) for payment of a sum of money. <i>This fee is not payable in addition to Fee No. 2 (iv).</i> (ii) for the appointment or removal of a trustee or for an order under the Guardianship	Fee No. 1 (i).

SECTION II—*continued.*

No. of Fee.	Description of Proceeding.	Amount of Fee.
3	of Infants Acts, 1886 and 1925, or an adoption order or a legitimacy declaration ...	10s.
	(iii) for winding up a company ...	£1 10s.
	(iv) under Order 38, Rule 23, for an order relating to the capital of a fund in court ...	Fee No. 1 (i) calculated on the value of the fund.
20	(v) in every other case ...	£2.
	On an application commencing proceedings ...	5s.
20	<i>This fee is not payable where special provision as to the fee is made in another section.</i>	
	On hearing a petition—	
20	(i) for payment of a sum of money	Fee No. 13, or where the petition is unopposed, one half of that amount.
	<i>This fee is not payable in addition to Fee No. 20 (iv).</i>	
20	(ii) for the appointment or removal of a trustee or for an order under the Guardianship of Infants Acts, 1886 and 1925, or an adoption order or a legitimacy declaration ...	10s.
	(iii) for winding up a company ...	£1 10s.
	(iv) under Order 38, Rule 23, for an order relating to the capital of a fund in court ...	Fee No. 2 (iv) or where the petition is unopposed, one half of that amount.
20	(v) in every other case ...	£2, or where the petition is unopposed £1."

3. This Order may be cited as the County Court Fees (Amendment) Order, 1927, and shall come into operation on the 20th day of April, 1927, and the County Court Fees Order, 1925, as amended by the County Court Fees (Amendment) Order, 1926, shall have effect as further amended by this Order.

THE COUNTY COURT FEES (AMENDMENT) ORDER, 1928. DATED
AUGUST 21ST, 1928.

1. After paragraph 1 of the County Court Fees Order, 1925 (hereinafter called the principal Order), the following paragraph shall be inserted, and shall stand as paragraph 1A :—

- 1A. Where a party is proceeding in a County Court under the Rules relating to proceedings by and against poor persons, the fees which, but for the provisions of this paragraph, would have been payable by him in the first instance in pursuance of this Order shall not be payable :

Provided that where the poor person gives a notice of demand for a jury, nothing in this paragraph shall excuse him from any obligation to pay or deposit any sum required for the jurors' fees.

2. After Fee No. 45 (ii) in the Schedule to the principal Order, the following fee shall be inserted and shall stand as Fee No. 45 (iii) :—

Description of Proceeding.	Amount of Fee.
(iii) On the hearing of an application by the judge	£1.

3. After Fee No. 45A in the Schedule to the principal Order the following cross-heading shall be inserted :—

" The Landlord and Tenant Act, 1927."

and the following fees shall be inserted and shall stand as Fee No. 45B :—

No. of Fee.	Description of Proceeding.	Amount of Fee.
45B	(i) On the consideration of the referee's report in an action	Fee No. 13.
	(ii) On filing a summons under Order 50B, Rule 16	10s.
	(iii) On the hearing by the judge of a summons under Order 50B, Rule 16	£1.
	<i>Where the summons is referred, this fee is payable on the consideration of the referee's report.</i>	

4.—(1) This Order may be cited as the County Court Fees (Amendment) Order, 1928.

(2) The principal Order as amended by the County Court Fees (Amendment) Order, 1926, and the County Court Fees (Amendment) Order, 1927, shall have effect as further amended by this Order.

(3) This Order shall come into operation on the 10th day of September, 1928.

QUERIES AND ANSWERS ON TABLE OF FEES.

COUNTY COURT FEES ORDER, 1925, DATED DECEMBER 1ST, 1925.

The following is a list of queries received from officers of the Courts, and suitors, together with the answers made by direction of the Lord Chancellor, and is printed with the approval of the Department.

Fees on Fractions of a £ or otherwise.

1. In calculating fees 22, 36, 37, 38, 40, 43, are fractions of a £, or otherwise, to be ignored?—Yes; fractions of a £, or otherwise, are to be ignored throughout the Scale unless the contrary is expressly stated.

Definition of the term "Workman."

(Direction at head of Section III.)

2. Does the term "workman" include dependants of a workman?—Yes.

Fees in matters under the Companies Act.

(Compulsory winding-up.)

3. No fees are provided for filing Affidavits, Oaths, Exhibits, Application for Shorthand Writer, Orders in Chambers or in Court after petition, Proofs of debt, Certifying proofs. It is assumed that all these fees are covered by the increased (total) fees on Petition and Order (£3).—Yes; but fees on taxation of costs and any other fees under the Order which can be applied in these matters are to be so applied.

The fees order has been amended by the insertion of a new fee "No. 45 (ii) On every other application [under the Companies (Consolidation) Act, 1908] 5s."

(Voluntary liquidations.)

4. What, if any, fees can be charged on applications to the Court in these matters, *e.g.*, appeals against the rejection of proofs, and orders for the examination of directors?—There is at present no fee on an application by originating summons in the County Court (except under Order 50, Rule 35, which does not apply). These proceedings, therefore, can at present be commenced without fee. But fees 21 and 51 and any other fees under the Order which can be applied in these matters are to be so applied.

The fees order has been amended by the insertion of a new fee "No. 45 (ii) On every other application [under the Companies (Consolidation) Act, 1908] 5s."

Enforcing payment of fees.

5. Difficulty may arise in regard to enforcing payment of certain of the fees, *e.g.*, fees payable by an employer on proceedings taken by a workman. Are any directions to be given as to action to be taken in such circumstances?—It is considered that Section 166 of the County Courts Act, 1888, applies in the case of an employer

in default and action should be taken under the Section in any case when necessary, application being made to the Judge for an order to issue execution for the amount of the unpaid fee.

Additional defendants.

6. In actions where there are several defendants, are fees numbers 13 and 16 to be calculated on the fees added to the plaintiff fee in respect of the additional defendants?—No; the fee in such a case is to equal the fee (or half the fee, as the case may be) on entering a plaintiff for the remedy, &c., against a single defendant.

Fees on application.

7. Is a fee expressed as payable “on an application” to be charged when the notice of application is filed, or on the hearing?—When an application is made on notice the fee is payable on filing the notice.

Fee No. 1.

8. Where under authority of the recent decision in the case of *Russoff v. Lipovitch* an action is brought for ejectment from, or to recover possession of, premises subject to the Rent Restrictions Acts, the annual rent or value of which exceeds £100, is the plaintiff fee (Item 1 (ii) (a) or (b)) to be subject to any limit?—Pending amendment of the Fees Order, the maximum fee under Item 1 (ii) (a) or Item 1 (ii) (b) in such a case is to be £2. *The Fees Order has been amended by the insertion of the Maximum Fee £2.*

9. Is the claim in a common law action for an account, and judgment for the sum found due, a claim for a sum of money and some other remedy or relief within the meaning of Fee 1 (iv)?—For fee purposes such an action will be treated as a simple claim for the recovery of a sum of money, and Fee 1 (i) charged on the amount, if any, to which the claim is limited in the particulars or, if not so limited, on £100.

10. In an action for possession or rent under Section 139 of the County Courts Act, 1888, will Fee No. 1 (iii) (as amended by the Order of 26th November, 1924) apply?—Yes; for fee purposes the claims are regarded as alternative.

11. Is there a limit to the total amount of the plaintiff fee when there are two or more claims, other than a money claim?—Under Item 1 (ii) (e) £2 should be charged altogether in respect of a claim for two or more kinds of remedy or relief other than the recovery of money—where in addition there is a money claim, it follows that the total plaintiff fee will in no case exceed £3 5s.

Fee No. 2.

12. Is a petition for payment out of a Fund invested in accordance with Section 70 of the County Courts Act, 1888, chargeable with Fee 2 (i) or 2 (iv)?—Such a petition is a petition for payment of a sum of money and Fee 2 (i) is applicable.

13. Does this fee apply to a payment by a Trustee to attend the order of the Court, under Section 70 of the County Courts Act, 1888?—No. There is now no fee chargeable on such a proceeding other than incidental fees for taxation of costs, office copies, &c.

Fee No. 5.

14. Is Order 7, Rule 33B (2) annulled as regards the "expenses" of the High Bailiff?—Yes; Fee 5 (i) is in lieu of these "expenses" formerly allowed by the Rule.

15. In the case of a summons sent to a foreign Court for service, is Fee 5 (i) payable in the home or foreign Court?—Fee 5 (i) is payable to the High Bailiff who is required to serve the summons, and Fee 5 (ii) to the Registrar to whom the application for order for substituted service, or for leave to proceed, &c., is required to be made.

Fee No. 7.

16. Is this fee applicable to the adjournment of (a) a petition; (b) an application under the Tithe Act?—No.

17. Where more than one adjournment is applied for, is this fee to be charged on each application?—Yes; on every such adjournment before opening. Upon opening the hearing fee is chargeable.

18. Default cases for "disposal" and ordinary summons cases where the claim is admitted: if in such instances adjournment is necessary, is this fee chargeable?—No; the fee is chargeable only on the postponement or adjournment of the "trial" of an action.

19. When application for adjournment is joined with an application for discovery, &c., is this fee to be taken in addition to Fee No. 8?—No.

20. Is this fee to be charged when application to postpone or adjourn as against one or more defendants is necessary in order that other defendants in the action may be served with the summons?—No.

21. Is this fee chargeable on an application by a defendant in an action set down for hearing at a Registrar's Court to have the hearing adjourned for trial at a Court held before the Judge?—No. The application is not, strictly, an application for adjournment.

Fee No. 8.

22. Is every application to a Registrar before Judgment to be deemed an interlocutory application to which this fee applies, e.g., for amendments under Order 7, Rule 30A, or Order 14, Rule 8?—No; applications of this nature are not chargeable with this fee.

23. In view of the decision that an order made on an application by a Defendant under Order 12, Rule 9 (for deposit of security by the Plaintiff), is not an "interlocutory order" within the meaning of Order 12, Rule 11 (8), is this fee chargeable on such an application?—Yes. Such an application is an application for an interlocutory order within the meaning of the item.

Fee No. 11.

24. The fees in Section I are payable in proceedings "commenced in a County Court." Having regard to the second paragraph of Section 4 (1) of the County Courts Act, 1919, is this fee to be charged on the filing of a counterclaim in a remitted action?—Pending an amendment of the Order the fee cannot be charged on the filing in the County Court of a counterclaim in a remitted action.

The Fees Order has been amended by the insertion of a new fee

"No. 31 (i) On filing notice of a counterclaim [in a proceeding transferred to a County Court]. The amount (if any) whereby the fee which would be payable on entering a plaint for the remedy or relief counterclaimed by the defendant exceeds the fee paid under Fee No. 29 or Fee No. 30."

Fee No. 13.

25. On an application for leave to distrain, the amount claimed for arrears of rent being disputed, and the rent alleged to be excessive, the matter was referred to the Judge under Rule 7 (a) of the Increase of Rent, &c., Rules, 1920. Can an ordinary hearing fee be charged upon what was, in effect, the hearing of an action for the rent by the Judge?—It is considered that the term "matter" in Fee 13 cannot be given such a wide meaning as to include the hearing of a disputed application for leave to distrain. A hearing fee therefore cannot be charged.

Fee No. 16.

26. In an action for possession, with rent and/or mesne profits, although the indorsement on the summons indicates to the defendant that an admission of both claims is necessary to effect a reduction of the hearing fee, it was the practice in applying the old Scale A when one claim only was admitted to charge a half-fee in respect of that claim. Is this practice to be continued and, if so, will the half-fee in the case of the money claim be 3d. in the £ (under Fee 1 (iv) (b)) ?—If both claims are defended the hearing fee will be an amount equal to the fee paid on the entry of the plaint. If both claims are admitted, or if there is no appearance by or on behalf of the defendant, the fee on entering judgment will be an amount equal to half the fee paid on the entry of the plaint. If the plaintiff applies for judgment on both possession and money claims and one of the claims is defended, an admitting of the remaining claim will not operate to reduce the hearing fee, which will be an amount equal to the fee paid on the entry of the plaint. If judgment on one claim only is applied for, the hearing fee chargeable will be:—(a) in the case of the possession claim: an amount equal to the fee paid in respect of that claim on the entry of the plaint; (b) in the case of the money claim: an amount equal to Fee (i) on that claim, as if the claim had been the subject of a separate action. If in such a case the judgment is entered by consent, on admission, or in default of appearance, half the fees under (a) or (b) will be chargeable. [The fees indicated are in each instance subject to any proper increase or reduction on amendment of claim or rental value after action brought.]

27. A defendant does not appear to an ordinary summons, and the action is heard in his absence, under Section 91. It would seem that the fee to charge on the hearing is No. 13, as Fee 16 (ii) is payable "on entering judgment" and in the circumstances stated a "hearing" takes place (the claim having to be proved) and not merely an "entry of judgment"?—It is intended that Fee 16 (ii) should be charged under these circumstances, and not Fee 13.

28. In a common law action for an account and judgment for the sum found due will an admission by the defendant that he is an accounting party, and his consent to the taking of an account, operate to reduce the amount of the hearing fee?—No; such a

consent or admission is not one upon which an entry of judgment within the meaning of Fee 16 can be made, and Fee 13 will therefore be payable when the Court orders an account to be taken. No additional fee is payable on the further consideration or on the final judgment. (See under Fee 21.)

29. Upon entering judgment by default (in the office) where the defendant has paid part of the claim since action brought, is this fee to be charged on the amount sued for or on the balance of the debt? The wording of paragraph 4 of the directions at head of Section 1 has reference only to cases of "trial or hearing." The fee is payable on the amount "for which judgment is to be entered" and judgment will be entered for the balance of the debt only, in accordance with Order 9, Rule 13 (7).

Fee No. 19.

30. It is presumed that Fee No. 13 must always be taken in the first instance?—Yes; the balance will be returnable if Fee 16 turns out to be applicable instead of Fee 13.

31. A defendant who has obtained an order setting aside a judgment given against him and directing a new trial claims that he is unable to pay the fee for the new trial. Can the fee be remitted?—The Registrar will be required to account for the fee if the new trial takes place. If the fee is not forthcoming from the defendant the plaintiff will have to elect to pay the fee or to let matters remain as they are, unless he can obtain an Order from the Judge restoring the original judgment.

Fee No. 21.

32. Is this fee chargeable on taking the account in a common law action for an account and payment of the sum found due?—No; the account in such an action is taken under the second paragraph of Section 92 of the County Courts Act, 1888.

33. Is this fee chargeable on the examination of a Director, Secretary, &c., of a Company being wound up by the Court?—The fee is not payable on the public examination of a Director or other officer of a Company under Section 175 of the Companies (Consolidation) Act, 1908, but is payable on the examination of a witness in companies' winding-up proceedings.

Fee No. 33 (i).

34. Is an application by an employer for extension of time for filing an appeal against a certificate of a certifying surgeon under Section 8 of the 1906 Act chargeable with this fee?—No.

35. Is this fee chargeable on an application by an employer for a Medical Reference under Schedule 1 (15) or Section 8 (1) (f) of the 1906 Act?—No. An application for a Medical Reference is not an application for "an interlocutory order."

Fee No. 35.

36. An award is made in favour of a workman for weekly payments in arrear (the workman having returned to work at full wages prior to the arbitration) and declaring liability. Should Fee 35 or Fee 36 be charged?—Fee 35 applies to the award in question as "an award declaring liability without directing payment of future compensation."

37. Is this fee chargeable on an award terminating a weekly payment but declaring liability for future compensation?—Yes.

Fee No. 36.

38. Is this fee chargeable on an award *terminating or reducing* a weekly payment?—No; but see answer to last Question.

39. Is this fee chargeable on an award *increasing* the amount of a weekly payment?—Yes. The fee in such a case will be the amount of the increased weekly payment less the fee paid on the previous award.

40. A workman is disabled for two weeks and then resumes work. In a subsequent arbitration the Judge awards £3 in respect of the two weeks' disablement (at 30s. a week). Is this an award for a lump sum or for a weekly payment, for the purpose of charging Fee 36?—An award of this nature (*i.e.*, for weekly payments in arrear without directing payment of future compensation) is an award for a lump sum, and Fee 36 (i) applies.

41. Is this fee chargeable on an award that an employer be entitled to redeem a weekly payment for a lump sum?—Yes; the fee is chargeable as on an award for the lump sum, in lieu of the fee which would be incurred on an agreement had such an agreement been reached.

42. Is this fee chargeable on the costs of an award?—No.

43. Is this fee chargeable on an award made by the Judge in pursuance of Rule 19 (6) (b) (i) after acceptance of a sum of compensation paid into Court by a respondent?—Yes.

Fee No. 37.

44. Will this fee apply to payments into Court of costs after arbitration?—Yes. (Fee 37 (ii)).

45. Will this fee apply to payments into Court in satisfaction, in arbitration proceedings?—Yes.

46. Will this fee apply to a weekly payment required to be made into Court in the case of a person under legal disability?—Yes. (*Note*: If the weekly payment is less than £1 the fee will be nil.)

47. Is this fee chargeable on amounts paid into Court under Rules 66 (15) and 67 (4) (Workmen ceasing to reside in United Kingdom)?—Yes.

48. Upon payment into Court of a sum as security for compensation and costs awarded, pending an appeal to the Court of Appeal against the award, does Fee 37 apply?—Yes. If the appeal is successful and the security is returned to the appellant, the fee is also returnable.

49. An agreement in a case of death is for payment of £300 in respect of the widow, and a further sum in respect of a child, upon proof of birth abroad. If the £300 for the widow is paid into Court, and Fee 37 charged thereon, will a further fee be chargeable when the compensation in respect of the child is subsequently paid into Court?—The maximum fee chargeable on the payment into Court of the £300 for the widow will cover the subsequent payment into Court, under the same agreement, in respect of the child.

Fee No. 38.

50. If the recording of an Agreement for payment of a lump sum is refused on the ground of inadequacy and a new Agreement for an increased amount, which is considered adequate, is subsequently presented, is a fresh fee payable on presentation of the second Agreement?—If the second Agreement is presented within

a reasonable time and the circumstances do not require the Registrar to make a fresh enquiry, the fee on the second Agreement will be the full fee less the amount of the fee paid on the first Agreement.

51. When compensation is paid into Court on a *præcipe* is this fee chargeable in addition to Fee 37 ?—It is a general principle that two fees are chargeable in every matter of payment of compensation into Court, viz. : No. 36 or 38 on the award, memorandum, or *præcipe* under which the payment is made, and No. 37 on the payment. In a matter of payment into Court on a *præcipe* Fee 38 is chargeable on the filing of the *præcipe* if the payment is made under Rule 61 or 62, but if the payment is made under Rule 60 the fee is not chargeable on the *præcipe* for the reason that a fee has been incurred on the memorandum of agreement or award in pursuance of which the payment into Court is made.

52. When an agreement presented is for payment of a lump sum not in redemption of a weekly payment, is this fee to be charged on any sum expressed as having been already paid on account (*e.g.*, for funeral expenses in a case of death) or on the sum to be paid when the agreement is recorded ?—The fee is to be charged on the total amount of compensation which the Registrar will take into consideration when enquiring as to adequacy.

53. Is this fee chargeable upon the amount of Solicitor's costs required by Section 12 of the 1923 Act to be disclosed in an agreement presented for registration ?—No.

54. When an agreement with dependents is presented for registration in a case of death, is the compensation to be paid a "lump sum" within the meaning of Fee 38 (i) or should Fee 38 (ii) be charged ?—The term "lump sum" in Fee 38 (i) is intended to apply to a sum of compensation payable in a case of death.

55. An agreement is presented by a workman for registration, and notice of objection is given by his approved society but not by the employer. Does the society stand in the same position as the employer in regard to the note to Fee 38, that is to say, is the fee not payable unless and until the judge directs the agreement to be recorded or the society consents to its being recorded ?—The approved society does not, in such a case, stand in the same position as the employer so as to affect the charging of this fee. The employer must be called upon to pay the fee unless he also gives notice of objection to the recording of the agreement.

56. Is this fee chargeable on a *præcipe* for payment of the maximum sum recoverable in a matter under the Workmen's Compensation Acts ?—Yes.

57. Is this fee chargeable upon amounts sometimes expressed in agreements as being in respect of "funeral expenses," "medical fees" or "medical expenses" ?—Yes.

Fee No. 43.

58. Should this fee be charged on Plaintiff's costs allowed in full ?—Yes. The Plaintiff's costs are part of his judgment debt referred to in the Debtor's Request, and are not to be distinguished from the remainder of the "total amount of the debts" referred to in sub-section (8) of Section 122.

59. How is this fee to be collected ?—Section 122 and the Treasury Regulations are still in force and the fee will continue to be deducted from the Debtor's payments.

Fee No. 46.

60. 46 (iii) Is this fee payable on an application under Section 2 of the Prevention of Eviction Act, 1924? (This Act is to be "construed as one with the Rent, &c. (Restrictions) Acts, 1920 and 1923," *vide* Section 3)?—No. This fee is not intended to apply to applications made to the Court in possession or ejectment actions affected by the Rent Restrictions Acts.

Fee No. 51.

61. There is a practice among some Registrars of entering up costs in ordinary actions as agreed between the parties without taxing. These agreements are in some cases arrived at after delivery of a bill and in others without a bill. Is this fee to be avoided by such agreements?—No; it is the statutory duty of the Registrar to tax all costs between party and party in ordinary actions and agreed costs allowed by the Registrar must be presumed to have been taxed. Costs of arbitrations and proceedings connected therewith under the Workmen's Compensation Act are taxable only in the absence of an agreement between the parties and if there was such an agreement a taxing fee is not payable.

62. Is this fee chargeable on the taxation of a workman's bill of costs against an employer in Workmen's Compensation Act proceedings, or if not, can the fee be added to the bill and accounted for when recovered from the employer?—A workman cannot be charged the fee on his bill against an employer, nor can the employer be called upon to pay the fee on the workmen's bill. There is no power to allow the fee against the employer when it has not, in fact, been paid by the workman.

Fee No. 54.

63. Is it intended that this fee should be recoverable as a matter of course from the person against whom the judgment or order is sought to be enforced, or is it a question for the Court's discretion?—The question by whom the fee is ultimately to be borne is a matter for the discretion of the Court in each case.

Fee No. 55.

64. Is this fee chargeable on issuing execution by order of the Judge (under Section 166 of the County Courts Act, 1888), for the amount of an unpaid fee?—No.

Fee No. 64.

65. Can this fee be charged on the issue of a warrant of possession in an equity action for specific performance?—No. Pending an amendment of the Fees Order, no fee can be charged on the issue of such a warrant. *The Fees Order has been amended by the insertion of new fee "No. 64 (iii) On a judgment for possession in any other action, £1."*

Fee No. 69.

66. When a judgment summons is, at the Plaintiff's request, taken out of the list before the return day and the hearing postponed, is a hearing fee now to be charged?—A Registrar has no power to postpone or adjourn the hearing of a judgment summons except in the circumstances mentioned in Section 10 of the County Courts Act, 1888. If the Judge adjourns the hearing, Fee 69

will be chargeable when the adjournment is ordered after the hearing is opened.

Fee No. 71 (i) and (ii).

67. Are these fees payable on the application, although the renewed or extended warrant or order may never actually issue? —Yes.

68. These fees are chargeable on the *application* for the renewal of the warrant or extension of the order, but the fee is to be calculated upon the amount for which the warrant or order *issues*. It may be that : (1) The application is refused ; (2) the application is for a further renewal, and payment on account has been made since the last renewal ; (3) the order is extended but never actually issued ; (4) payment on account is made after extension but before issue of the order. Upon what principle are fees 71 (i) or 71 (ii) to be calculated in such cases?—Fees 71 (i) and 71 (ii) are to be calculated on the amount for which the *renewed* warrant or *extended* order would issue if issued at the date of the application for renewal or extension, that is to say, on the amount remaining due under the warrant or order at that date. The Fees Order will be amended to make this clear. (*Note*.—Fee 71 (ii) is chargeable independently of Fee 70 when the order has not issued at the date of the application for extension.) *The Fees Order has been amended, making it clear that the fee is payable for every £ of the amount remaining due on the warrant or order at the date of the application.*

Fee No. 71 (iii).

69. Can this fee be charged when a warrant has not been issued and the application is to extend the order?—No.

Fee No. 79.

70. Does Fee No. 16 apply when entering judgment by consent in an interpleader proceeding?—No.

Fee No. 81.

71. Can a workman be charged for a copy of the Judge's notes required for the purpose of appeal?—No.

Fee No. 89 (iv).

72. Is this fee, formerly remitted to the Registry of County Court Judgments, now to be retained and accounted for by the Registrar of the Court?—No. The Registrar of County Court Judgments is required to account for this fee and it should be remitted to him by the Registrar of the Court as heretofore.

Fee No. 90.

73. Can payment of this fee be insisted upon when an officer of a Court is summoned in his official capacity as a witness, or to produce records, before a Court of Criminal jurisdiction in a public prosecution?—No. In such a case payment of the expenses of the witness in accordance with the scale applicable to the particular tribunal must be accepted. (Any sum so received must, without deduction, be brought to account as a payment of Fee 90. The witness will be paid his expenses, in accordance with the Departmental scale, by the Registrar, who will claim the amount as a disbursement.)

TABLE

PAYABLE ON THE ENTRY OF A PLAINT FOR THE ISSUE OF AN ORDINARY, DEFAULT OR SPECIAL DEFAULT SUMMONS, ON THE TRIAL OR HEARING OF AN ACTION, AND ON ENTERING JUDGMENT BY CONSENT OR ON ADMISSION OR NON-APPEARANCE OF DEFENDANT, OR IN DEFAULT OF NOTICE OR AFFIDAVIT OF DEFENCE.

Reference to Table of Fees.	ORDINARY SUMMONS.			DEFAULT AND SPECIAL DEFAULT SUMMONS.		
	Entry of plaintiff, one defendant, including service by bailiff.	Trial or hearing. Full fee.	Entering judgment. By consent or on admission, or on non-appearance of defendant.	Entry of plaintiff, one defendant, including service by bailiff.	Trial or hearing. Full fee.	Entering judgment. By consent or on admission, or in default of notice or affidavit of defence.
	Section 1. Fee No. 1 (1).	Section 1. Fee No. 13.	Section 1. Fee No. 16.	Section 1. Fee No. 1 (1).	Section 1. Fee No. 13.	Section 1. Fee No. 16.
Sum of money not exceeding	Fees.					
10s.	1s.	1s.	6d.	—	—	—
£1	1s. 6d.	1s. 6d.	9d.	—	—	—
£2	3s.	3s.	1s. 6d.	—	—	—
£3	4s. 6d.	4s. 6d.	2s. 3d.	4s. 6d.	4s. 6d.	2s. 3d.
£4	6s.	6s.	3s.	6s.	6s.	3s.
£5	7s. 6d.	7s. 6d.	3s. 9d.	7s. 6d.	7s. 6d.	3s. 9d.
£6	9s.	9s.	4s. 6d.	9s.	9s.	4s. 6d.
£7	10s.	10s.	5s.	10s.	10s.	5s.
£8	11s.	11s.	5s. 6d.	11s.	11s.	5s. 6d.
£9	12s.	12s.	6s.	12s.	12s.	6s.
£10	13s.	13s.	6s. 6d.	13s.	13s.	6s. 6d.
£11	14s.	14s.	7s.	14s.	14s.	7s.
£12	15s.	15s.	7s. 6d.	15s.	15s.	7s. 6d.
£13	16s.	16s.	8s.	16s.	16s.	8s.
£14	17s.	17s.	8s. 6d.	17s.	17s.	8s. 6d.
£15	18s.	18s.	9s.	18s.	18s.	9s.
£16	19s.	19s.	9s. 6d.	19s.	19s.	9s. 6d.
£17	20s.	20s.	10s.	20s.	20s.	10s.
£18	21s.	21s.	10s. 6d.	21s.	21s.	10s. 6d.
£19	22s.	22s.	11s.	22s.	22s.	11s.
£20	23s.	23s.	11s. 6d.	23s.	23s.	11s. 6d.
£21	24s.	24s.	12s.	24s.	24s.	12s.
£22	25s.	25s.	12s. 6d.	25s.	25s.	12s. 6d.
£23	26s.	26s.	13s.	26s.	26s.	13s.
£24	27s.	27s.	13s. 6d.	27s.	27s.	13s. 6d.
£25	28s.	28s.	14s.	28s.	28s.	14s.
£26	29s.	29s.	14s. 6d.	29s.	29s.	14s. 6d.
£27	30s.	30s.	15s.	30s.	30s.	15s.
£28	31s.	31s.	15s. 6d.	31s.	31s.	15s. 6d.
£29	32s.	32s.	16s.	32s.	32s.	16s.
£30	33s.	33s.	16s. 6d.	33s.	33s.	16s. 6d.
£35	34s.	34s.	17s.	34s.	34s.	17s.
£40	36s.	36s.	18s.	36s.	36s.	18s.
£45	38s.	38s.	19s.	38s.	38s.	19s.
£50	40s.	40s.	20s.	40s.	40s.	20s.
£60	42s.	42s.	21s.	42s.	42s.	21s.
£70	44s.	44s.	22s.	44s.	44s.	22s.
£80	46s.	46s.	23s.	46s.	46s.	23s.
£100	48s.	48s.	24s.	48s.	48s.	24s.
Exceeding £100	50s.	50s.	25s.	50s.	50s.	25s.

OF FEES.

PAYABLE ON ISSUE OF WARRANT OF EXECUTION AGAINST GOODS, AND ON ISSUING AND EXECUTING ORDER OF COMMITMENT ON JUDGMENT SUMMONS, AND ON THE ISSUE AND HEARING OF JUDGMENT SUMMONS.

EXECUTION AND COMMITMENT.		JUDGMENT SUMMONS.			
Issue of warrant of execution against goods, and issuing and executing order of commitment on judgment summons.		On the issue.		On the hearing.	
Reference to Table of Fees.	Section VI. Fees Nos. 55 and 70.	Section VI. Fee No. 68.		Section VI. Fee No. 69.	
Amount for which warrant or order issues.	Fee.	Amount for which summons issues.	Fee.	Amount for which summons issues.	Fee.
£1	1s.	£2 or fraction thereof.	6d.	£1	6d.
£2	2s.			£2	1s.
£3	3s.	Up to £4	1s.	£3	1s. 6d.
£4	4s.			£4	2s.
£5	5s.	„ £6	1s. 6d.	£5	2s. 6d.
£6	6s.			£6	3s.
£7	7s.	„ £8	2s.	£7	3s. 6d.
£8	8s.			£8	4s.
£9	9s.	„ £10	2s. 6d.	£9	4s. 6d.
£10	10s.			£10	5s.
£11	11s.	„ £12	3s.	£11	5s. 6d.
£12	12s.			£12	6s.
£13	13s.	„ £14	3s. 6d.	£13	6s. 6d.
£14	14s.			£14	7s.
£15	15s.	„ £16	4s.	£15	7s. 6d.
£16	16s.			£16	8s.
£17	17s.	„ £18	4s. 6d.	£17	8s. 6d.
£18	18s.			£18	9s.
£19	19s.	„ £20	5s.	£19	9s. 5d.
£20	20s.			£20	10s.
£21	21s.	„ £22	5s. 6d.	£21	10s. 6d.
£22	22s.			£22	11s.
£23	23s.	„ £24	6s.	£23	11s. 6d.
£24	24s.			£24	12s.
£25	25s.	„ £26	6s. 6d.	£25	12s. 6d.
£26	26s.			£26	13s.
£27	27s.	„ £28	7s.	£27	13s. 6d.
£28	28s.			£28	14s.
£29	29s.	„ £30	7s. 6d.	£29	14s. 6d.
£30	30s.			£30	15s.
	maximum fee.		maximum fee.		maximum fee.

CHAPTER IV.

PRECEDENTS OF COSTS.

THE following precedents of costs are added as a guide to practitioners with reference to the items that can reasonably be inserted in a bill. When the amount of the item is discretionary, the maximum has, as a rule, been specified. At the same time, it should be pointed out that the practice of registrars as to the allowance of particular items varies very considerably. Although no general rule can be made in a particular court as to the allowance or disallowance of any special item under particular circumstances (*R. v. Marylebone C. C. Judge*, (1890) 34 Sol. Jo. 459; 50 L. T. 97), experience shows that the same result is frequently attained on consideration of the facts of each particular case. The fees payable on the various proceedings detailed are also set out with references to the numbers of the fees in the Table of Fees under which they become chargeable.

It is, perhaps, worth while to again remind practitioners that under Order LIII. r. 8 (2) and (3), where costs are taxed under column B or column C, the registrar has a discretion to increase any of the items in the scales under these columns by a reasonable amount, though he will, no doubt, continue to take the items in the scales as a guide and only apply the rule in exceptional circumstances.

LIST OF PRECEDENTS.

- | | |
|--|--|
| 1. Special default summons, liquidated demand | Plaintiff's costs, 1145. |
| 2. Claim, liquidated or unliquidated | Defendant's costs, 1151. |
| 3. Counter-claim, when plaintiff succeeds on claim | Defendant's costs, 1152. |
| 4. Transferred action under sect. 2 of the Act of 1919 | Defendant's costs, 1153. |
| 5. Remitted interpleader issue | Execution creditor's costs, 1153. |
| 6. Interpleader | Claimant's costs, 1154. |
| 7. Interpleader | Execution creditor's costs, 1154. |
| 8. Increase of Rent, etc., Act, 1920 | Plaintiff's or applicant's costs of summons, 1155. |
| 9. Administration action | Plaintiff's costs, 1156. |
| 10. Trustee Act | Costs of payment into court, 1158. |
| 11. Trustee Act | Costs of payment out of court, 1158. |
| 12. Admiralty | Plaintiff's costs of action and reference <i>in rem</i> and <i>in personam</i> , 1160. |
| 13. Admiralty | Defendant's costs of action and reference <i>in rem</i> and <i>in personam</i> , 1169. |
| 14. Companies winding-up | Petitioning creditors' costs, 1171. |
| 15. Companies winding-up | Costs of creditors supporting, 1173. |
| 16. Workmen's compensation | Applicant's costs of arbitration, 1174. |
| 17. Workmen's compensation | Respondent's costs of arbitration, 1174. |

1. PLAINTIFF'S COSTS.

SPECIAL DEFAULT SUMMONS. (*Liquidated Demand.*)

No. in Scale.		A.	B.	C.
		£ s. d.	£ s. d.	£ s. d.
96	Letter before action	0 3 6	0 3 6	0 3 6
20	Instructions to sue	0 3 4	0 6 8	0 13 4
1	Preparing particulars of claim	0 4 0	0 7 0	0 10 0
38	Drawing affidavit of debt, engrossing, attending to be sworn, oath and filing	0 4 0	0 6 8	0 6 8
54	Attending to enter plaint	0 3 4	0 6 8	0 6 8
I. 1	Paid plaint fee			
14	Where served by solicitor	0 5 0	0 5 0	0 5 0
15	Mileage per mile beyond two and not exceeding ten	0 0 6	0 0 6	0 1 0
16	Correspondence with agent, if applicable	0 4 0	0 7 0	0 7 0
39	Affidavit of service	0 3 4	0 5 0	0 6 8
17	Obtaining order for substituted service	0 10 0	1 0 0	1 5 0
I. 5	Paid fee	0 5 0	0 5 0	0 5 0
I. 5	Substituted service by bailiff maximum	0 5 0	0 5 0	0 5 0
45	Perusing affidavit of defence or special defence	0 2 0	0 3 4	0 6 8
45	Or per folio	0 0 2	0 0 4	0 0 4
63	Attending plaintiff thereon	0 3 4	0 6 8	0 6 8
4	Preparing further particulars of claim demanded under Order VI. r. 7	0 2 0	0 3 0	0 5 0
4	Or per folio	0 0 8	0 0 8	0 1 0
55	Attending to file	0 2 0	0 3 4	0 3 4
44	Copy of same for service, per folio	0 0 2	0 0 4	0 0 4
55	Attending to deliver	0 2 0	0 3 4	0 3 4
11	Notice of application for directions and copies.	0 2 0	0 3 0	0 5 0
83	Attending registrar obtaining appointment.	0 2 0	0 3 4	0 6 8
19	Service of notice	0 1 0	0 1 6	0 1 6
66	Attending on registrar when order made	0 2 0	0 3 4	0 6 8
I. 8	Paid fee	0 5 0	0 5 0	0 5 0
44	Copy order, per folio	0 0 2	0 0 4	0 0 4
19	Service of copy order	0 1 0	0 1 6	0 1 6
22	Instructions for interrogatories	0 3 4	0 6 8	0 6 8
36	Drawing same and copy to file	0 2 6	0 5 0	0 6 8
36	Or per folio	0 0 6	0 1 0	0 1 0
93	Fee to counsel to settle, if applicable and allowed	—	1 3 6	1 3 6
				to
				2 4 6

Directions.

Interrogatories.

PLAINTIFF'S COSTS—DEFAULT AND SPECIAL DEFAULT SUMMONS—*contd.*

	No. in Scale.	—	A.	B.	C.
			£ s. d.	£ s. d.	£ s. d.
Defendant's interroga- tories.	11	Notice of application for leave to deliver interrogatories, including copy to file and serve . . .	0 2 0	0 3 0	0 5 0
	19	Service	0 1 0	0 1 6	0 1 6
	66	Attending registrar when order made	0 2 0	0 3 4	0 6 8
	I. 8	Paid fee	0 5 0	0 5 0	0 5 0
	44	Copy order and receipt, per folio	0 0 2	0 0 4	0 0 4
	44	Copy interrogatories for defendant, per folio	0 0 2	0 0 4	0 0 4
	19	Service of same and copy order and receipt	0 1 0	0 1 6	0 1 6
	51	Perusing defendant's answers, per folio	0 0 4	0 0 4	0 0 4
	66	Attending defendant's application when order made	0 2 0	0 3 4	0 6 8
	47	Perusing defendant's interrogatories	0 4 0	0 6 8	0 6 8
	47	Or per folio	—	—	0 0 4
	83	Attending defendant's solicitor, applying for extension of time for answering when he declined to consent.	0 2 0	0 3 4 to 0 6 8	0 6 8
	11	Notice of application to registrar	0 2 0	0 3 0	0 5 0
Discovery of documents.	19	Service	0 1 0	0 1 6	0 1 6
	66	Attending registrar when order made	0 2 0	0 3 4	0 6 8
	I. 8	Paid fee	0 5 0	0 5 0	0 5 0
	23	Instructions for affidavit in answer	0 3 4	0 6 8	0 6 8
	36	Drawing and copy answers to file	0 2 6	0 5 0	0 6 8
	36	Or per folio	0 0 6	0 1 0	0 1 0
	61	Attending plaintiff to be sworn	0 2 0	0 3 4	0 6 8
	100	Paid oath	0 2 0	0 2 0	0 2 0
	55	Attending to file	0 2 0	0 3 4	0 3 4
	44	Copy for defendant, per folio	0 0 2	0 0 4	0 0 4
	55	Attending to deliver	0 2 0	0 3 4	0 3 4
	66	Attending registrar on application for order for discovery of documents when order made and to pay deposit	0 2 0	0 3 4	0 6 8
	I. 8	Paid fee	0 5 0	0 5 0	0 5 0
	44	Copy order and receipt for deposit, per folio	0 0 2	0 0 4	0 0 4
	19	Service	0 1 0	0 1 6	0 1 6
	52	Perusing defendant's affidavit of documents, per folio	0 0 4	0 0 4	0 0 4
	44	Defendant having disobeyed order, further copy order and receipt for deposit, per folio	0 0 2	0 0 4	0 0 4
	83	Attending registrar obtaining signature to notice to be endorsed on order.	0 2 0	0 3 4 to 0 6 8	0 6 8
	14	Service	0 5 0	0 5 0	0 5 0
	39	Affidavit of service where necessary.	0 3 4	0 5 0	0 6 8
	23	Instructions for affidavit of documents	0 3 4	0 6 8	0 6 8
	37	Drawing same and engrossing.	0 2 6	0 5 0	0 5 0

PLAINTIFF'S COSTS—SPECIAL DEFAULT SUMMONS—*contd.*

No. in Scale.		A.	B.	C.
		£ s. d.	£ s. d.	£ s. d.
37	Or per folio	0 0 6	0 1 0	0 1 0
61	Attending deponent	0 2 0	0 3 4	0 6 8
100	Paid oath	0 2 0	0 2 0	0 2 0
55	Attending to file	0 2 0	0 3 4	0 3 4
44	Copy for defendant, per folio	0 0 2	0 0 4	0 0 4
55	Attending to deliver	0 2 0	0 3 4	0 3 4
7	Drawing notice to produce and one copy.	0 3 0	0 4 0	0 5 0
8	Or not exceeding, per folio	—	0 0 8	0 0 8
44	Copy to serve under item 8 only, per folio	—	0 0 4	0 0 4
19	Service	0 1 0	0 1 6	0 1 6
40	Affidavit of service where necessary, oath and filing	0 2 0	0 2 0	0 3 4
44	Copy notice (exhibit), per folio	0 0 2	0 0 4	0 0 4
48	Perusing defendant's notice to produce.	0 2 0	0 5 0	0 6 8
7	Drawing notice to admit and inspect and one copy	0 3 0	0 4 0	0 5 0
8	Or not exceeding, per folio	—	0 0 8	0 0 8
44	Copy to serve under item 8 only, per folio	—	0 0 4	0 0 4
19	Service	0 1 0	0 1 6	0 1 6
	(One service where notices to produce and admit served together or on same date.)			
12	Drawing notice to produce for inspection, including copies	0 1 6	0 2 0	0 2 6
19	Service	0 1 0	0 1 6	0 1 6
57	Attending to produce for inspection Or per hour	0 3 4	0 6 8	0 6 8
59	Attending defendant's solicitor on his signing admission	0 2 0	0 3 4	0 6 8
48	Perusing defendant's notice to admit and inspect	0 2 0	0 5 0	0 6 8
57	Attending to inspect	0 3 4	0 6 8	0 6 8
	Or per hour	—	0 6 8	0 6 8
58	Sum paid for locomotion (if applicable) not exceeding	0 10 0	1 0 0	1 0 0
59	Attending signing admission	0 2 0	0 3 4	0 6 8
40	Defendant having disregarded notice to inspect and admit, affidavit of service	0 2 0	0 2 0	0 3 4
44	Copy notice (exhibit), per folio	0 0 2	0 0 4	0 0 4
7	Drawing notice to admit facts and copy.	0 3 0	0 4 0	0 5 0
8	Or not exceeding, per folio	—	0 0 8	0 0 8
19	Service	0 1 0	0 1 6	0 1 6
63	Having received defendant's admissions, attending plaintiff thereon	0 3 4	0 6 8	0 6 8
40	Defendant not having made the required admissions, drawing affidavit of service of notice, including engrossing, attending to be sworn, oath and filing	0 2 0	0 2 0	0 3 4

Notices.

PLAINTIFF'S COSTS—SPECIAL DEFAULT SUMMONS—*contd.*

	No. in Scale.		A.	B.	C.
			£ s. d.	£ s. d.	£ s. d.
Advice on evidence.	48	Perusing defendant's notice to admit facts.	0 2 0	0 5 0	0 6 8
	63	Attending plaintiff thereon	0 3 4	0 6 8	0 6 8
	32	Drawing admission of facts and copy	0 3 0	0 5 0	0 6 8
		Or per folio above 3	—	0 1 0	0 1 0
	55	Attending to deliver	0 2 0	0 3 4	0 3 4
	26	Instructions to counsel to advise on evidence	—	0 3 4	0 6 8
Jury.	94	Fee to counsel and clerk (if advice given in writing and allowed by judge or registrar).	—	1 3 6	1 3 6 to 2 4 6
	12	Drawing notice of demand for jury, including all copies	0 1 6	0 2 0	0 2 6
	83	Attending lodging same	0 2 0	0 3 4	0 6 8
				to 0 6 8	
Evidence by affidavit.	I. 10	Paid fee	0 10 0	0 10 0	0 10 0
	I. 10	Paid deposit for jury fees	0 8 0	0 8 0	0 8 0
	97	Notice under Order XXII. r. 5 (3), that action settled or withdrawn, and that jury not required	0 2 0	0 3 6	0 3 6
	23	Instructions for affidavit under Order XVIII. r. 11	0 3 4	0 6 8	0 6 8
	37	Drawing same and engrossing.	0 2 6	0 5 0	0 5 0
		Or per folio	0 0 6	0 1 0	0 1 0
Examination of witness before trial.	61	Attending deponent to be sworn	0 2 0	0 3 4	0 6 8
	100	Paid oath	0 2 0	0 2 0	0 2 0
	12	Drawing notice to use affidavit at trial	0 1 6	0 2 0	0 2 6
	44	Copy affidavit to annex, per folio	0 0 2	0 0 4	0 0 4
	19	Service	0 1 0	0 1 6	0 1 6
	11	Notice of application for examination of witness under Order XVIII. r. 18	0 2 0	0 3 0	0 5 0
	19	Service	0 1 0	0 1 6	0 1 6
	23	Instruction for affidavit	0 3 4	0 6 8	0 6 8
	37	Drawing affidavit in support	0 2 6	0 5 0	0 5 0
		Or per folio	0 0 6	0 1 0	0 1 0
	44	Copy for other side	0 0 2	0 0 4	0 0 4
	61	Attending plaintiff to be sworn	0 2 0	0 3 4	0 6 8
	66	Attending registrar when order made	0 2 0	0 3 4	0 6 8
	12	Notice (where necessary) to witness, including copy to serve	0 1 6	0 2 0	0 2 6
	44	Order and copies, per folio	0 0 2	0 0 4	0 0 4
	19	Service	0 1 0	0 1 6	0 1 6
	I. 8	Paid fee	0 5 0	0 5 0	0 5 0
	83	Attending Registrar obtaining appointment to examine	0 2 0	0 3 4	0 6 8
				to 0 6 8	
	27	Instructions for brief where counsel allowed	0 3 4	0 6 8	0 6 8 to 0 10 0
	35	Drawing brief when counsel allowed	0 5 0	0 6 8	0 6 8 to 0 13 4
					to 0 13 4

PLAINTIFF'S COSTS—SPECIAL DEFAULT SUMMONS—*contd.*

No. in Scale.		A.		C.
		£ s. d.	£ s. d.	£ s. d.
92	Fee to counsel and clerk if allowed by judge or registrar, not exceeding	1 3 6	2 4 6	3 5 6
67	Attending counsel with brief	0 3 4	0 3 4	0 6 8
60	Attending examination per hour	0 3 4	0 6 8	0 10 0
I. 21	Paid fee, per hour	0 10 0	0 10 0	0 10 0
VII. 91	If registrar required to attend elsewhere than at court house or office, reasonable travelling expenses and subsistence allowance.			
5	Subpœna to witness and attending to issue.	0 2 0	0 3 0	0 5 0
	If served by bailiff.			
VII. 76	Paid	0 2 0	0 2 0	0 2 0
	If served by solicitor.			
VII. 76	Paid	0 1 0	0 1 0	0 1 0
18	Service	0 1 6	0 2 6	0 2 6
40	Affidavit of service	0 2 0	0 2 0	0 2 0
59A	Attending witness, arranging attendance without subpœna	0 2 6	0 3 4	0 5 0
98	Circular letters to witnesses with notice of day and hour of trial, each	—	0 1 0	0 1 0
	Where counsel is not retained.			
29	Examining and taking minutes of evidence for each witness afterwards allowed on taxation	0 2 0	0 3 4	0 6 8
30	If exceeding 6 folios, for each additional folio	0 0 6	0 1 0	0 1 0
31	Preparation of minutes of fact or argument if ordered by judge	0 15 0	1 1 0	2 2 0
69	Attending court conducting case	0 15 0	1 1 0	1 1 0
				to
				2 2 0
70	Or if allowed by the judge or registrar	1 1 0	2 2 0	3 3 0
78A	If action is referred. Attending court when action referred	0 10 0	0 15 0	1 1 0
72	Attending court on adjourned hearing.	0 10 0	0 15 0	1 1 0
			to	to
			1 1 0	3 3 0
73	Attending court, trial adjourned for want of time.	0 10 0	0 15 0	1 1 0
			to	to
			1 1 0	3 3 0
74	Paid for locomotion, not exceeding	0 10 6	1 1 0	1 1 0
75	In addition if solicitor cannot travel to and from court same day	0 10 6	1 1 0	1 1 0
	Where counsel is retained.			
28	Instructions for brief	0 6 8	0 10 6	1 1 0
		to	to	to
		0 10 0	1 11 6	3 3 0
34	Drawing brief and observations, per folio	0 1 0	0 1 0	0 1 0
		not exceeding		
		0 10 0		

PLAINTIFF'S COSTS—SPECIAL DEFAULT SUMMONS—*contd.*

	No. in Scale.	—	A.	B.	C.
			£ s. d.	£ s. d.	£ s. d.
	44	Fair copy, per folio	0 0 2	0 0 4	0 0 4
	43	Copies of necessary documents to accompany brief, per folio	0 0 2	0 0 4	0 0 4
	85	Fee to counsel not exceeding	2 4 6	3 5 6	5 10 0
	86	Further fee to counsel where there is no local bar in the court town or within 20 miles if allowed by judge or registrar	1 3 6	2 4 6	2 4 6
	67	Attending counsel with brief	0 3 4	0 3 4	0 6 8
	87	Conference fee (if registrar considers same necessary, and if marked on brief when delivered)	—	1 6 0	1 6 0
	68	Attending to appoint conference and attending thereon	—	0 6 8	0 13 4
Trial with counsel.	71	Attending court on trial with counsel, trial concluded.	0 10 0	0 15 0 to 1 1 0	1 1 0 to 3 3 0
	72	The like on adjourned hearing	0 10 0	0 15 0 to 1 1 0	1 1 0 to 2 2 0
	73	The like, trial adjourned for want of time.	0 10 0	0 15 0 to 1 1 0	1 1 0 to 2 2 0
	74	Paid for locomotion, not exceeding	0 10 6	1 1 0	1 1 0
	75	When unable to go and return same day	0 10 6	1 1 0	1 1 0
	78B	If action is referred. Attending court with counsel when action referred.	0 6 8	0 10 0 to 0 15 0	0 15 0 to 1 1 0
	I. 13	Paid hearing fee			
		If the Hearing be adjourned.			
	41	Drawing accounts, statements and other documents required by the judge and fair copy, per folio	0 0 8	0 0 8	0 0 8
Subsequent hearing.	88	Refresher to counsel	1 3 6	1 3 6 to 2 4 6	2 4 6 to 3 5 6
	81B	Attending court to enter judgment on award	0 10 0	0 15 0	1 1 0
	81C	Attending court with counsel to enter judgment on award.	0 6 8	0 10 0 to 0 15 0	0 15 0 to 1 1 0
	90	Fee to counsel with brief on argument or to enter judgment on award.	1 3 6	1 3 6 to 2 4 6	2 4 6 to 3 5 6
	78	Attending to hear deferred judgment	0 5 0	0 6 8	0 6 8 to 0 10 0
	90	Fee to counsel with brief to hear deferred judgment.	1 3 6	1 3 6 to 2 4 6	2 4 6 to 3 5 6
	42	Drawing bill of costs and copy, per folio	0 0 4	0 0 8	0 0 8
	44	Copy for defendant	0 0 2	0 0 4	0 0 4

PLAINTIFF'S COSTS—SPECIAL DEFAULT SUMMONS—*contd.*

No. in Scale.	—	A.	B.	C.
83	Attending for appointment to tax .	£ s. d. 0 2 0	£ s. d. 0 3 4 to 0 6 8	£ s. d. 0 6 8 Taxation.
12	Notice of taxation.	0 1 6	0 2 0	0 2 6
19	Service	0 1 0	0 1 6	0 1 6
82	Attending taxation after trial .	0 3 4	0 6 8	0 6 8 to 0 13 4
101	Postages, etc.	0 2 6	0 5 0	0 10 0
	Paid for plans, charts, or models for use of judge at trial, if allowed by judge or registrar, not exceeding in the whole	1 1 0	2 2 0	3 3 0
	Paid witnesses			
V. 51	Paid fee on taxation (6d. per £ allowed, minimum 2s.)			

2. DEFENDANT'S COSTS.

Whether Claim Liquidated or Unliquidated.

No. of Scale.	—	A.	B.	C.
20	Instructions to defend	£ s. d. 0 3 4	£ s. d. 0 6 8	£ s. d. 0 13 4
45	Perusing particulars of claim . . .	0 2 0	0 3 4	0 6 8
	Or per folio	0 0 2	0 0 4	0 0 4
23	Instructions for affidavit of defence	0 3 4	0 6 8	0 6 8
37	Drawing same and engrossing . . .	0 2 6	0 5 0	0 5 0
	Or per folio	0 0 6	0 1 0	0 1 0
61	Attending defendant to be sworn . .	0 2 0	0 3 4	0 6 8
55	Attending to file	0 2 0	0 3 4	0 3 4
44	Copy for plaintiff, per folio	0 0 2	0 0 4	0 0 4
12	Drawing notice for further particulars of claim	0 1 6	0 2 0	0 2 6
19	Service	0 1 0	0 1 6	0 1 6
45	Perusing further particulars	0 2 0	0 3 4	0 6 8
	Or per folio	0 0 2	0 0 4	0 0 4
32	Drawing special defence.	0 3 0	0 5 0	0 6 8
	Or per folio beyond 3	—	0 1 0	0 1 0
44	Copy for other side	0 0 2	0 0 4	0 0 4
55	Attending to deliver	0 2 0	0 3 4	0 3 4
	Discovery of documents.			
	Interrogatories			
	Application for directions			
	Notice to produce			
	Notice to admit			
	Notice to admit facts			
	Summons or subpoena to witness . .			
	Attending witness, arranging attendance without subpoena			
	Advice on evidence			
	Demand for jury			
	Examination of witness before trial			

See last precedent.

DEFENDANT'S COSTS, WHETHER CLAIM LIQUIDATED OR UNLIQUIDATED
—continued.

	No. in Scale.	—	A.	B.	C.
			£ s. d.	£ s. d.	£ s. d.
Third party notice.	12	Notice of claim for contribution or indemnity under Order IX., and all copies	0 1 6	0 2 0	0 2 6
	83	Attending to file	0 2 0	0 3 4	0 6 8
				to	
				0 6 8	
I. 12		Paid fee on filing	0 5 0	0 5 6	0 5 0
14		Service (Add items 15 and 16 if applicable.)	0 5 0	0 5 0	0 5 0
39		Affidavit of service, oath and filing	0 3 4	0 5 0	0 6 8
		Preparation for trial	} See last precedent.		
		(a) where counsel not retained			
		(b) where counsel retained			
		Conducting trial			
		(a) without counsel			
		(b) with counsel			
		Completing judgment			
		Drawing and taxing costs			
I. 15		Paid hearing fee			

3. DEFENDANT'S COSTS ON COUNTERCLAIM WHERE BOTH CLAIM AND COUNTERCLAIM ARE CONTESTED AND PLAINTIFF SUCCEEDS ON CLAIM.

			£ s. d.	£ s. d.	£ s. d.
	21	Instructions for counterclaim	0 3 4	0 6 8	0 13 0
	1	Preparing particulars	0 4 0	0 7 0	0 10 0
	2	If unliquidated	0 6 0	0 12 0	1 1 0
	55	Attending to file	0 3 0	0 3 4	0 3 4
I. 11		Paid fee (only when counterclaim exceeds claim)			
	28	Instructions for brief	} The scale fee applicable to each of these items must be apportioned between claim and counterclaim.		
	34	Drawing same			
	44	Fair copy			
	43	Copy correspondence to accompany			
	85	Paid counsel's fee			
	43	Copy counterclaim per folio	0 0 2	0 0 4	0 0 4
	68	Attending to appoint conference and attending thereon	} Chargeable only if relating to counterclaim.		
	87	Paid conference fee			
	71	Attending court with counsel	} To be apportioned as above.		
I. 14		Paid hearing fee (only when counterclaim exceeds claim)			
Taxation.	42	Drawing bill of costs and copy, per folio	0 0 4	0 0 8	0 0 8
	44	Copy for plaintiff, per folio	0 0 2	0 0 4	0 0 4
	83	Attending for appointment to tax	0 2 0	0 3 4	0 6 8
	12	Notice of taxation	0 1 6	0 2 0	0 2 6
	19	Service	0 1 0	0 1 6	0 1 6
	82	Attending taxing	0 3 4	0 6 8	0 6 8
				to	
					0 13 4
V. 51		Paid fee on taxation (6d. per £ allowed, minimum 2s.)			

4. DEFENDANT'S COSTS IN ACTION TRANSFERRED TO COUNTY COURT UNDER SECT. 2 OF THE ACT OF 1919.

		Payments.		Charges.	
		£	s. d.	£	s. d.
No. in Scale.	<i>In High Court.</i>				
	Instructions to defend	—	—	0	6 8
	Attending, entering appearance	—	—	0	6 8
	Paid.	0	2 0	—	—
	Notice of appearance, copy and service	—	—	0	4 0
	Attending summons for directions when order made	—	—	0	6 8
	Perusing statement of claim	—	—	0	6 8
	Attending defendant going through statement of claim and receiving instructions	—	—	0	6 8
	Preparing notice of application for further directions, viz., to remit action to county court failing security for costs. Copy and service	—	—	0	5 0
	Instructions for affidavit in support of application	—	—	0	6 8
	Drawing same (fols. 6)	—	—	0	6 0
	Engrossing	—	—	0	2 0
	Attending defendant on being sworn	—	—	0	6 8
	Paid commissioner's fee	0	2 0	—	—
	Paid filing	0	2 6	—	—
	Copy for the other side	—	—	0	2 0
	Attending hearing of application when order made to remit to county court	—	—	0	6 8
	Order copy and service	—	—	0	3 6
	Paid.	0	5 0	—	—
	Sittings fee	—	—	0	15 0
	<i>In County Court.</i>				
	Interlocutory applications	} See first precedent.			
	Preparation for trial				
	Conducting trial				
	Completing judgment				
	Drawing and taxing costs				
V. 51	Paid fee on taxation (6d. per £ allowed, minimum 2s).				

5. EXECUTION CREDITOR'S COSTS AFTER TRIAL, INTERPLEADER ISSUE REMITTED UNDER SECT. 17, JUDICATURE ACT, 1884.

		Payments.		Charges.	
		£	s. d.	£	s. d.
	<i>In High Court.</i>				
	On receipt of notice of claim from sheriff to goods seized instructions to oppose same	—	—	0	6 8
	Notice to sheriff to interplead. Copy and service	—	—	0	4 0
	Perusing claimant's affidavit (fols. 8)	—	—	0	2 8
	Close copy	—	—	0	2 8
	Agent attending interpleader summons when order made directing an issue and remitting same for trial to the county court	—	—	0	6 8
	Agent attending settling order	—	—	0	6 8
	Close copy order	—	—	0	1 0
	Term fee	—	—	1	1 0
	<i>In County Court.</i>				
	Interpleader summons	} See first precedent.			
	Interpleader summons				

5. EXECUTION CREDITOR'S COSTS, ETC.—*continued.*

	No. in Scale.	—	Payments.	Charges.
			B. . .	C.
		<i>In County Court.</i>	£ s. d.	£ s. d.
Particulars.	45	Perusing copy of claimant's particulars	0 3 4	0 6 8
	63	Attending execution creditor conferring and advising thereon	0 6 8	0 6 8
		Interlocutory applications	} See first precedent.	
		Preparation for trial		
		Conducting trial		
		Completing judgment		
		Drawing and taxing costs		
	V. 51	Paid fee on taxation (6d. per £ allowed, minimum 2s.)		

6. INTERPLEADER.

CLAIMANT'S COSTS.

	No. in Scale.	—	A.	B.	C.
			£ s. d.	£ s. d.	£ s. d.
Instructions.	20	Instructions to prefer claim to goods taken in execution	0 3 4	0 6 8	0 13 4
Notice.	12	Notice of claim to high bailiff	0 1 6	0 2 0	0 2 6
	19	Service	0 1 0	0 1 6	0 1 6
Deposit.	63	On receipt of notice from high bailiff attending client for amount of deposit	0 3 4	0 6 8	0 6 8
	83	Attending at high bailiff's office, depositing same	0 2 0	0 3 4	0 6 8
	2	Preparing particulars of claim	0 6 0	0 12 0	1 1 0
	55	Attending to deliver (Add charges for preparing for trial and trial.)	0 2 0	0 3 4	0 3 4
	VII. 79	Paid hearing fee			
	83	Attending court on return of deposit (Add charges for taxation.)	0 2 0	0 3 4	0 6 8

7. INTERPLEADER.

EXECUTION CREDITOR'S COSTS.

	No. in Scale.	—	A.	B.	C.
			£ s. d.	£ s. d.	£ s. d.
Instructions.	45	Perusing notice of claim.	0 2 0	0 3 4	0 6 8
	20	Instructions to oppose	0 3 4	0 6 8	0 13 4
	12	*Notice to high bailiff to interplead	0 1 6	0 2 0	0 2 6

* This notice is, of course, not necessary as the high bailiff interpleads when notice of admission is not sent within four days under Order XXVII. r. 2. If not a "necessary" it is at least a "proper" notice, and frequently results in a saving of possession fees.

EXECUTION CREDITOR'S COSTS—*continued.*

No. in Scale.	—	A.	B.	C.
		£ s. d.	£ s. d.	£ s. d.
19	Service	0 1 0	0 1 6	0 1 6
45	Perusing claimant's particulars of claim	0 2 0	0 3 4	0 6 8
7	Preparing notice to produce bill of sale for inspection	0 3 0	0 4 0	0 5 0
	Or per folio	0 0 2	0 0 4	0 0 4
19	Service	0 1 0	0 1 6	0 1 6
57	Attending to inspect	0 3 4	0 6 8	0 6 8
11	Preparing notice of application for sale and copies	0 2 0	0 3 0	0 5 0
19	Service	0 1 0	0 1 6	0 1 6
27	Instructions for brief on application where counsel allowed	0 3 4	0 6 8	0 6 8
35	Drawing	0 5 0	0 6 8	0 13 4
44	Copy, per folio	0 0 2	0 0 4	0 0 4
67	Attending counsel	0 3 4	0 3 4	0 6 8
91	Paid his fee	1 3 6	1 3 6	2 4 6
65	Attending court, order made	0 3 4	0 6 8	0 10 0
64	The like if counsel not employed	0 10 0	0 13 4	1 1 0
	(Add charges for preparing for trial and trial.)			
	(Add charges for taxation.)			

Order for sale.

8. PLAINTIFF'S OR APPLICANT'S COSTS OF SUMMONS UNDER INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

No. in Scale.	—	A.	B.*
11	Preparing notice of application and copies	0 2 0	0 3 0
23	Attending registrar, obtaining appointment	0 2 0	0 3 4
	Paid fee on same		
19	Service of notice on defendant	0 1 0	0 1 6
66	Attending registrar on hearing of application	0 2 0	0 3 4
Rule 25	Paid fee on order if drawn up	0 2 6	0 2 6
84	Drawing costs, copy, notice, service and taxation	0 2 0	0 4 0

Although the above items are strictly all that can be claimed under Column A, the practice is now to allow the sum of 10s. in addition to the payments, since by Rule 28 of the Consolidated County Courts (Emergency Powers) Rules, 1918, that sum was fixed where the amount exceeds £5 but does not exceed £10. Since the 33½ per cent. increase came into force the practice is to allow 15s. instead of 11s. 2d. under column B, exclusive of fees, and drawing and taxation of costs.

* NOTE.—By Rule 16 (c) of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, column B of the scale is to apply to all cases above £20 to the exclusion of column C.

9 PLAINTIFF'S COSTS IN ADMINISTRATION ACTION.

	No. in Scale.		B.	C.
			£ s. d.	£ s. d.
Instructions.	96	Letter before action	0 3 6	0 3 6
	20	Instructions to sue	0 6 8	0 13 4
	2	Preparing particulars of claim and copies	0 12 0	1 1 0
	93	Paid fee to counsel to settle, if allowed by judge or registrar	1 3 6	2 4 6
Plaint.	54	Attending to enter plaint	0 6 8	0 6 8
	I.1 (ii) (e)	Paid plaint fee	2 0 0	2 0 0
	23	Instructions for affidavit of plaintiff in support of claim	0 6 8	0 6 8
Evidence by affidavit.	37	Drawing and engrossing same (fols. 5)	0 5 0	0 5 0
	61	Attending deponent to be sworn	0 3 4	0 6 8
	100	Paid oath	0 2 0	0 2 0
	83	Attending to file	0 3 4	0 6 8
	12	Notice of intention to read same at hearing	0 2 0	0 2 6
	44	Copy affidavit to annex (fols. 5)	0 1 8	0 1 8
	19	Service on defendant's solicitor	0 1 6	0 1 6
Notice.	52	Perusing affidavit of defendant (fols. 7)	0 2 4	0 2 4
	7	Preparing notice to produce and copy	0 4 0	0 5 0
Brief	7	The like notice to admit	0 4 0	0 5 0
	19	Service of both notices	0 1 6	0 1 6
Note:—	48	Perusing defendant's notice to produce	0 5 0	0 6 8
Where	48	The like notice to admit	0 5 0	0 6 8
counsel is	28	Instructions for brief	1 11 6	3 3 0
not retained	34	Drawing same (fols. 30)	1 10 0	1 10 0
substitute	44	Fair copy	0 10 0	0 10 0
the appro-	43	Copy will of testator to accompany (fols. 40)	0 13 4	0 13 4
priate items	43	Copy affidavit of plaintiff (fols. 5)	0 1 8	0 1 8
from p. 1149.	43	Copy affidavit of defendant (fols. 7)	0 2 4	0 2 4
	43	Copy particulars of claim (fols. 10)	0 3 4	0 3 4
	67	Attending counsel with brief	0 3 4	0 6 8
	85	Paid his fee	3 5 6	5 10 0
	68	Attending to appoint conference and attending thereon	0 6 8	0 13 4
	87	Paid conference fee	1 6 0	1 6 0
Trial.	71	Attending court on hearing when order made for accounts and inquiries	1 1 0	2 2 0
	I. 13	Paid hearing fee (Order prepared by registrar.)	2 0 0	2 0 0
Decree.	83	Attending registrar for appointment to settle order	0 3 4	0 6 8
	53	Perusing order	0 3 4	0 6 8
	44	Copy order for defendant (fols. 8)	0 2 8	0 2 8
	12	Notice of appointment to settle	0 2 0	0 2 6
	18	Service	0 1 6	0 1 6
	83	Attending registrar settling	0 6 8	0 6 8
	VII. 77	Paid fee for service of order	0 1 0	0 1 0
Accounts, etc.	6	Summons to proceed with accounts and inquiries and copy	0 3 0	0 3 0
Advertise- ments.	83	Attending summons when order made for advertisements for claims and summons adjourned	0 6 8	0 6 8

PLAINTIFF'S COSTS IN ADMINISTRATION ACTION—*continued.*

No. in Scale.		B.	C.
		£ s. d.	£ s. d.
I. 21	Paid fee per hour	0 10 0	0 10 0
	(Advertisement drawn by registrar.)		
83	Attending registrar settling advertisement .	0 6 8	0 6 8
Treasury Regulation 22	Paid fee for insertion in <i>London Gazette</i> .	0 10 0	0 10 0
44	Copy advertisement for local paper . . .	0 1 0	0 1 0
	Paid insertion	1 5 0	1 5 0
44	Paid for copy affidavit of defendant's answers to inquiries (fols. 10)	0 3 4	0 3 4
52	Perusing same (fols. 10)	0 3 4	0 3 4
	Paid for account exhibited thereto . . .	0 1 8	0 1 8
52	Perusing same	0 1 8	0 1 8
83	Attending adjourned summons when accounts taken and inquiries completed . . .	0 6 8	0 6 8
I. 21	Paid fee per hour	0 10 0	0 10 0
83	Attending inspecting certificate and bespeaking copy	0 6 8	0 6 8
VII. 81	Paid for office copy (per folio)	0 0 6	0 0 6
27	Instructions for brief when counsel allowed .	0 6 8	0 10 0
35	Drawing brief on further consideration when counsel allowed	0 6 8	0 13 4
44	Fair copy (fols. 10)	0 3 4	0 3 4
43	Copy certificate to accompany (fols. 15) .	0 5 0	0 5 0
67	Attending counsel therewith	0 3 4	0 6 8
90	Paid his fee	2 4 6	3 5 6
72	Attending court on further consideration, order made	1 1 0	2 2 0
	(Order prepared by registrar.)		
53	Perusing draft order	0 3 4	0 6 8
83	Attending registrar for appointment to settle.	0 3 4	0 6 8
44	Copy order for defendant (fols. 4)	0 1 4	0 1 4
12	Notice of appointment to settle	0 2 0	0 2 6
19	Service	0 1 6	0 1 6
83	Attending registrar settling order. . . .	0 6 8	0 6 8
42	Drawing bill of costs and copy (fols. 20) .	0 13 4	0 13 4
44	Copy for defendant (fols. 20)	0 6 8	0 6 8
83	Attending for appointment to tax	0 3 4	0 6 8
12	Notice of taxation	0 2 0	0 2 6
19	Service	0 1 6	0 1 6
82	Attending taxation	0 6 8	0 13 4
V. 51	Paid fee on taxation (6d. per £ allowed, minimum 2s.)		
101	Postages, etc.	0 5 0	0 10 0

Further consideration.

Final order.

Taxation.

10. TRUSTEE'S COSTS OF PAYMENT OF FUND INTO COURT UNDER SECT. 70.

	No. in Scale.		B.	C.
			£ s. d.	£ s. d.
Trustee's affidavit.	22	Instructions for affidavit by trustee	0 6 8	0 6 8
	37	Drawing and engrossing (fols. 9)	0 9 0	0 9 0
	61	Attending deponent to be sworn	0 6 8	0 6 8
	100	Paid oath	0 2 0	0 2 0
Registrar's certificate.	83	Attending registrar filing affidavit and leaving probate for inspection	0 3 4	0 6 8
	83	Subsequently attending him for probate, and obtaining certificate of filing affidavit. (Certificate prepared by registrar)	0 6 8	0 6 8
		Attending paying money into Post Office Savings Bank and obtaining receipt (no charge allowed). (Acknowledgment of receipt prepared by registrar.)		
	83	Attending registrar filing receipt and obtaining acknowledgment signed	0 3 4	0 6 8
Taxation.	42	Drawing bill of costs and copy (fols. 4). . . .	0 2 8	0 2 8
	83	Attending obtaining appointment to tax	0 3 4	0 6 8
	82	Attending taxing	0 6 8	0 6 8
	V. 51	Paid fee on taxation (6d. per £ allowed, minimum 2s.)		
	101	Postages, etc.	0 5 0	0 10 0

11. PETITIONER'S COSTS OF OBTAINING ORDER FOR PAYMENT OUT OF MONEY PAID IN BY TRUSTEES UNDER SECT. 70.

			£ s. d.	£ s. d.
Petition.	20	Instructions for petition for payment out of amount in court	0 6 8	0 13 4
	3	Drawing petition (fols. 20)	1 0 0	1 0 0
	93	Fee to counsel to settle, if allowed by judge or registrar	1 3 6	2 4 6
	44	Copy to file	0 6 8	0 6 8
Affidavit in support.	44	Copy for service	0 6 8	0 6 8
	54	Attending court filing petition	0 6 8	0 6 8
	I. 2 (i)	Paid plaint fee		
	23	Instructions for affidavit in support of petition	0 6 8	0 6 8
Brief.	37	Drawing same and engrossing (fols. 5)	0 5 0	0 5 0
	61	Attending on deponent being sworn	0 3 4	0 6 8
	100	Paid oath	0 2 0	0 2 0
	12	Notice of filing	0 2 0	0 2 6
	19	Service	0 1 6	0 1 6
	28	Instructions for brief	1 11 6	3 3 0
	34	Drawing same (fols. 10)	0 10 0	0 10 0
	44	Fair copy	0 3 4	0 3 4
	43	Copy petition to accompany (fols. 20)	0 6 8	0 6 8
	43	The like affidavit in support (fols. 5)	0 1 8	0 1 8
	67	Attending counsel with brief	0 3 4	0 6 8
	85	Paid his fee	3 5 6	5 10 0

PETITIONER'S COSTS OF OBTAINING ORDER FOR PAYMENT OUT, ETC.—*contd.*

No. in Scale.		B.			C.		
		£	s.	d.	£	s.	d.
68	Attending to appoint conference and attending thereon	0	6	8	0	13	0
87	Paid conference fee	1	6	0	1	6	0
98	Notice to petitioner to attend hearing	0	1	0	0	1	0
71	Attending court with counsel. Order made for payment out	1	1	0	2	2	0
I. 13	Paid hearing fee.						
83	Attending registrar for draft order	0	3	4	0	6	8
53	Perusing same	0	3	4	0	6	8
12	Notice to respondent of appointment to settle	0	2	0	0	2	6
19	Service	0	1	6	0	1	6
83	Attending settling	0	6	8	0	6	8
83	For attending obtaining appointment to take fund out of court	0	3	4	0	6	8
83	Attending with petitioner receiving fund out of court	0	3	4	0	6	8
42	Drawing bill of costs and copy (fols. 5).	0	3	4	0	3	4
44	Copy for respondent (fols. 5)	0	1	8	0	1	8
83	Attending for appointment to tax	0	3	4	0	6	8
12	Notice of taxation	0	2	0	0	2	6
19	Service	0	1	6	0	1	6
82	Attending taxation	0	6	8	0	13	4
V. 51	Paid fee on taxation (6d. per £ allowed, minimum 2s.)						
101	Letters, messengers, postages, etc.	0	5	0	0	10	0

Order.

Taxation.

12. ADMIRALTY JURISDICTION.

PLAINTIFF'S COSTS OF ACTION AND REFERENCE.

In Rem and in Personam.

	No. in Scale.		B.	C.
			£ s. d.	£ s. d.
	96	Letter before action	0 3 6	0 3 6
	20	Instructions to sue	0 6 8	0 13 4
	2	Particulars of claim and copies, including præcipe	0 12 0	1 1 0
	93	Fee to counsel to settle, if allowed by judge or registrar.	1 3 6	1 3 6
				to
	54	Attending to issue	0 6 8	2 4 6
	I. 1 (ii)	Paid plaint fee	2 0 0	0 6 8
	(e)			2 0 0
	O. LIII.	Drawing undertaking for costs (where plaintiffs are foreigners)	0 3 4	0 3 4
Service.	r. 8, 4	Service of summons	0 5 0	0 5 0
	14	Substituted service	1 0 0	1 5 0
	17			
	83	Attending defendant's solicitors with summons, and obtaining acceptance of service and undertaking to appear and put in bail	0 6 8	0 6 8
	83	Attending filing original summons	0 3 4	0 3 4
Arrest.	23	Instructions for affidavit to lead to warrant for arrest	0 6 8	0 6 8
	37	Drawing and engrossing	0 5 0	0 5 0
		Or per folio	0 1 0	0 1 0
	61	Attending deponent on his being sworn	0 3 4	0 6 8
	100	Paid oath	0 2 0	0 2 0
	83	Attending extracting warrant for arrest	0 6 8	0 6 8
	83	Attending high bailiff with warrant and instructing him	0 6 8	0 6 8
	I. 24	Paid fee	2 0 0	2 0 0
Further particulars.	59	Attending defendant's solicitors giving consent to release	0 3 4	0 6 8
Bail bond.		See Precedent No. 1.		
	83	Attending defendant's solicitors on their requiring bail to be completed in the sum of £. in respect of their counter-claim	0 6 8	0 6 8
	63	Attending plaintiffs for names of sureties to submit to other side	0 6 8	0 6 8
	O.	Writing defendant's solicitors submitting names of Mr. and Mr. as sureties	0 3 6	0 3 6
XXXIX	r. 109			
	63	Attending making inquiries as to defendant's sureties	0 6 8	0 6 8
	O.	Writing defendant's solicitors accepting their sureties for bail	0 3 6	0 3 6
XXXIX	r. 109			
	O.	Instructions for bail bond	0 6 8	0 6 8
XXXIX	r. 48A			

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.		B.	C.
		£ s. d.	£ s. d.
O.	Drawing and engrossing	0 6 8	0 6 8
XXXIX			
r. 48A			
37	Preparing affidavit of justification of first surety	0 5 0	0 5 0
37	The like second surety	0 5 0	0 5 0
61	Attending with sureties before commissioner on completion	0 6 8	0 6 8
100	Paid commissioner's fee	1 8 0	1 8 0
12, 18	Notice of bail copy and service	0 4 6	0 5 0
37	Drawing and engrossing affidavit of notice of bail	0 5 0	0 5 0
100	Paid oath	0 2 0	0 2 0
83	Attending filing bail papers	0 3 4	0 3 4
I. 26	Paid fee on bond	0 10 0	0 10 0
12, 19	Notice of filing copy and service	0 3 6	0 4 0
O.	Paid bail fees (being 1 per cent. on the amount in which bail is given divided between the sureties).		
XXXIX			
r. 49			
22	Instructions for preliminary act	0 6 8	0 6 8 Preliminary
2	Preparing and fair copies	0 12 0	1 1 0 act.
93	Fee to counsel to settle, if allowed by the judge or registrar.	1 3 6	1 3 6
			to
			2 4 6
59	Attending defendant's solicitors giving consent to further time for preliminary act	0 3 4	0 6 8
55	Attending filing preliminary act	0 3 4	0 3 4
12, 19	Notice, copy and service	0 3 6	0 4 0
83	Attending at court searching and finding defendant's preliminary act not filed	0 6 8	0 6 8
O.	Writing defendant's solicitors for same to be filed at once	0 3 6	0 3 6
XXXIX			
r. 109			
11	Notice of application to registrar for preliminary act or for directions and copy	0 3 0	0 5 0 Directions.
83	Attending filing	0 3 4	0 3 4
19	Service on defendant's solicitors	0 1 6	0 1 6
66	Attending application when order made	0 3 4	0 6 8
I. 8	Paid fee	0 5 0	0 5 0
27	Instructions for brief on application	0 6 8	0 6 8
			to
			0 10 0
35	Drawing brief	0 6 8	0 6 8
			to
			0 13 4
91	Fee to counsel, if judge or registrar allows counsel	1 3 6	2 4 6
67	Attending him	0 3 4	0 6 8
44	Copy preliminary act for defendant's solicitors, per folio	0 0 4	0 0 4

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—continued.

	No. in Scale.		B.		C.	
			£	s. d.	£	s. d.
Statement of claim.		Attending defendant's solicitors exchanging copies	0	3 4	0	3 4
	51	Perusing defendant's preliminary act, per folio	0	0 4	0	0 4
	59	When no further pleadings: Attending defendant's solicitors obtaining consent to preliminary acts being opened	0	6 8	0	6 8
	83	Attending at court, filing consent, and opening and collating preliminary acts	0	6 8	0	6 8
	VII., 81	Paid for office copy defendant's preliminary act (per folio)	0	0 6	0	0 6
	22	Instructions for statement of claim	0	6 8	0	6 8
		Preparing same	0	12 0	1	1 0
	93	Fee to counsel to settle, if allowed by judge or registrar.	1	3 6	1	3 6
					to	2 4 6
	55	Attending filing statement of claim	0	3 4	0	3 4
Defence and counterclaim.	55	Attending to deliver statement of claim	0	3 4	0	3 4
	45	Perusing defence and counterclaim, per folio	0	0 4	0	0 4
	63	Attending plaintiffs advising thereon	0	6 8	0	6 8
	45	Perusing particulars of counterclaim, further particulars or special defence	0	3 4	0	6 8
	11	Notice for further and better particulars	0	3 0	0	5 0
Reply.	19	Service	0	1 6	0	1 6
	45	Perusing further particulars	0	3 4	0	6 8
	22	Instructions for reply and defence to counterclaim	0	6 8	0	6 8
	3	Drawing same, per folio	0	1 0	0	1 0
	93	Fee to counsel to settle, if allowed by judge or registrar.	1	3 6	1	3 6
Discovery.					to	2 4 6
	44	Engrossing reply, per folio	0	0 4	0	0 4
	44	Copy to deliver	0	0 4	0	0 4
	55	Attending to file	0	3 4	0	3 4
	55	Attending to deliver	0	3 4	0	3 4
		See Precedent No. 1.				
	83	On letter from plaintiffs as to movements of witnesses, attending defendant's solicitors as to fixing a day for the trial, when they stated that they could not agree as some of their witnesses were at sea	0	6 8	0	6 8
	97	On receipt of admission of liability, writing registrar to withdraw case from list	0	3 6	0	3 6
	63	Attending plaintiffs on defendant's solicitors asking for consent to refer this matter to arbitration and taking instructions to agree	0	6 8	0	6 8
		Writing defendant's solicitors accordingly	0	3 6	0	3 6
Adjournment. Affidavit of documents. Inspection.	O.					
	XXXIX r. 109 14	See Precedent No. 1.				

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.		B.	C.
		£ s. d.	£ s. d.
	In salvage actions :—		
52	Perusing affidavit of values, per folio	0 0 4	0 0 4
63	Attending plaintiffs thereon taking instructions	0 6 8	0 6 8
11	Notice for order for appraisement	0 3 0	0 5 0
55	Attending serving	0 1 6	0 1 6
66	Attending application before registrar	0 3 4	0 6 8
64	Or attending before judge	0 6 8	0 10 0
		to	to
		0 13 4	1 1 0
I. 8	Paid fee	0 5 0	0 5 0
44, 18	Copy and service of order	0 3 6	0 3 6
	See Precedent No. 1.		
11	Notice of application for order to examine witnesses	0 3 0	0 5 0
19	Service	0 1 6	0 1 6
23	Instructions for affidavit in support	0 6 8	0 6 8
37	Drawing and engrossing	0 5 0	0 5 0
	Or per folio	0 1 0	0 1 0
61	Attending deponent on his being sworn	0 3 4	0 6 8
100	Paid oath	0 1 6	0 1 6
44	Copy affidavit for defendant's solicitors, per folio	0 0 4	0 0 4
55	Attending to deliver	0 3 4	0 3 4
66	Attending application before registrar	0 3 4	0 6 8
64	Attending application before judge	0 6 8	0 10 0
		to	to
		0 13 4	1 1 0
I. 8	Paid fee	0 5 0	0 5 0
44, 19	Copy order and receipt and service	0 3 6	0 3 6
83	Attending registrar obtaining appointment to examine.	0 3 4	0 6 8
		to	
		0 6 8	
12, 19	Notice copy and service	0 3 6	0 4 0
O.	Writing witness A. with instructions to attend	0 3 6	0 3 6
XXXIX r. 109 O.	The like witness B.	0 1 6	0 1 6
XXXIX r. 109 5	Subpœna to witness and attending to issue	0 3 0	0 5 0
	If served by bailiff		
VII. 76	Paid.	0 2 0	0 2 0
	If served by solicitor		
VII. 76	Paid.	0 1 0	0 1 0
44	Copy for service	0 1 0	0 1 0
18	Service	0 2 6	0 2 6
15	Mileage for each mile beyond two, but not to exceed ten	0 0 6	0 1 0
16	If served by agent, correspondence	0 7 0	0 7 0
59A	Attending witness, arranging attendance without subpœna	0 3 4	0 5 0

(Interrogatories.
Further
answers.

Examination
of witnesses.

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

	No. in Scale.		B.	C.
			£ s. d.	£ s. d.
Brief on examination.	27	Instructions for brief on examination of witnesses, if allowed by judge or registrar	0 6 8	0 10 0
	35	Drawing same	0 6 8	0 6 8
				to
	67	Attending counsel with brief	0 3 4	0 13 4
	92	Paid his fee and clerk, if allowed by judge or registrar	2 4 6	3 5 6
	68	Attending to appoint conference and thereon	0 6 8	0 13 4
	87	Paid fee on conference	1 6 0	1 6 0
	60	Attending examination, per hour	0 6 8	0 10 0
	I. 21	Paid fee per hour	0 10 0	0 10 0
	VII. 91	If away from court house or office reasonable travelling expenses and subsistence allowance		
	83	Paid shorthand writers' fees		
		Attending registrar bespeaking copy depositions	0 3 4	0 6 8
	VII. 81.	Paid for office copy, per folio	0 0 6	0 0 6
	44	Copy for defendant's solicitors, per folio	0 0 4	0 0 4
	83	Attending to deliver	0 3 4	0 3 4
Minutes of evidence.	O.	If evidence printed—		
	XXXIX.	Examining proof, per folio	0 0 2	0 0 2
	r. 9			
	7	Paid printer's charges		
	59	Attending defendant's solicitors for consent to use depositions at the trial	0 3 4	0 6 8
	83	Attending at court setting case down for hearing	0 6 8	0 6 8
	O.	Writing plaintiffs informing them of date of trial and to keep witnesses in readiness	0 3 6	0 3 6
	XXXIX.			
	r. 109			
	O.	Letters to independent witnesses informing them, each	0 1 6	0 1 6
	XXXIX.			
	r. 109			
		Where no counsel employed—		
	29	Examining and taking minute of evidence for each witness afterwards allowed on taxation or properly examined for preliminary act	0 3 4	0 6 8
	30	If exceeding six folios, for each additional folio	0 1 0	0 1 0
Notices. Inspection. Admission of facts. }	31	Preparing minutes of fact or argument, if allowed by judge or registrar	1 1 0	2 2 0
	26	Instructions to counsel to advise on evidence	0 3 4	0 6 8
	94	Paid his fee and clerk, if allowed by judge or registrar	1 3 6	2 4 6
	59	Attending defendant's solicitors obtaining admission of plan of <i>locus in quo</i> , etc., to save expenses	0 3 4	0 6 8
		See Precedent No. 1.		

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.		B.	C.
		£ s. d.	£ s. d.
12	Preparing notice bespeaking assessors	0 2 0	0 2 6 Assessors.
83	Attending at court, filing notice and bespeaking assessors	0 6 8	0 6 8
I. 28	Paid fee	0 5 0	0 5 0
O. XXI.	Paid assessors' fee		
r. 6			
5	Subpœna for service on witness and attending to issue	0 3 0	0 5 0
	If served by bailiff		
VII. 76	Paid	0 2 0	0 2 0
	If served by solicitor		
VII. 76	Paid	0 1 0	0 1 0
18, 44	Copy and service	0 3 6	0 3 6
15	Mileage, per mile, over two and not exceeding ten	0 0 6	0 1 0
40	Affidavit of service of subpœna	0 2 0	0 3 4
59A	Attending witness, arranging attendance without subpœna	0 3 4	0 5 0
28	Instructions for brief	0 10 6	1 1 0 Brief.
	to		
		1 11 6	3 3 0
34	Drawing same, per folio	0 1 0	0 1 0
44	Fair copy, per folio	0 0 4	0 0 4
43	Fair copy documents to accompany, per folio	0 0 4	0 0 4
	Summons and particulars (fols. .).		
	Preliminary act (fols. .).		
	Defendant's act (fols. .).		
	Counterclaim (fols. .).		
	Depositions (fols. .).		
	Statement of claim (fols. .).		
	Defence (fols. .).		
	Reply (fols. .).		
	Correspondence (fols. .).		
	Plaintiff's documents (fols. .).		
	Extract from logbooks (fols. .).		
	Advice on evidence (fols. .).		
	Plaintiff's notice to produce (fols. .).		
	The like to admit (fols. .).		
	Defendant's notice to admit (fols. .).		
	Survey reports (fols. .).		
	Interrogatories and answers (fols. .).		
95	Paid for chart, usually	0 3 0	0 3 0
95	For plans, charts or models, if allowed by judge or registrar not exceeding	2 2 0	3 3 0
67	Attending counsel with brief	0 3 4	0 6 8
85	Paid his fee and clerk	3 5 6	5 10 0
88	Paid refresher	1 3 6	2 4 6
	to		to
		2 4 6	3 5 6
41	Fair copy documents for judge, per folio	0 0 4	0 0 4
	Correspondence (fols. .).		
	Extracts from log (fols. .).		
	Masters' report (fols. .).		
	Paid for chart (fols. .).		
	Pleadings (fols. .).		

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

	No. in Scale.		B.	C.
			£ s. d.	£ s. d.
	68	Attending appointing conference and thereon	0 6 8	0 13 4
	87	Paid fee and clerk	1 6 0	1 6 0
	59	Attending defendant's solicitors obtaining consent to admit copy of River Bye-laws	0 3 4	0 6 8
	59	Attending defendant's solicitors obtaining consent to question of liability only being decided on hearing	0 3 4	0 6 8
Trial.	71	Attending court on the hearing with counsel	1 1 0	1 1 0
				to
				2 2 0
	69	Attending court on hearing without counsel	1 1 0	1 1 0
				to
				2 2 0
	70	Attending court on hearing without counsel, if allowed by judge or registrar	2 2 0	3 3 0
I. 13		Paid hearing fee		
	72	Where trial commenced but not concluded, etc., for each day or part of a day, etc., with or without counsel	0 15 0	1 1 0
			to	to
			1 1 0	2 2 0
	73	Where trial is adjourned for want of time, or upon payment of costs of the day, in lieu of items 69 and 71, with or without counsel	0 15 0	1 1 0
			to	to
			1 1 0	2 2 0
	74	Where the solicitor does not reside or carry on business within two miles of the town where the trial takes place, in addition the sum paid for locomotion to attend the trial not exceeding	1 1 0	1 1 0
	75	When the solicitor cannot travel to and from the court the same day in addition	1 1 0	1 1 0
Deferred judgment.	78	Attending at court to hear a deferred judgment.	0 6 8	0 6 8
				to
				0 10 0
	90	Paid fee to counsel to hear deferred judgment	1 3 6	2 4 6
			to	to
			2 4 6	3 5 6
Decree.	83	Attending at court taking up decree	0 3 4	0 6 8
			to	
			0 6 8	
	53	Perusing decree	0 3 4	0 6 8
	44	Copy for service, per folio	0 0 4	0 0 4
	19	Service	0 1 6	0 1 6
Reference.	O.	Instructions for claim on reference	0 13 4	0 13 4
	XXXIX			
	r. 97			
	O.	Drawing same, per folio	0 1 0	0 1 0
	XXXIX			
	r. 97			
	44	Fair copy, per folio	0 0 4	0 0 4
	44	Copy vouchers to keep on filing originals, per folio	0 0 4	0 0 4
	44	The like survey reports, per folio	0 0 4	0 0 4
	55	Attending filing claim and vouchers	0 3 4	0 3 4

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.		B.	C.
		£ s. d.	£ s. d.
44	Copy claim and vouchers and survey reports from defendants, per folio	0 0 4	0 0 4
55	Attending to deliver	0 3 4	0 3 4
63	Attending plaintiffs obtaining further particulars required by defendants	0 6 8	0 6 8
57	Attending defendant's solicitors giving them inspection of logbooks	0 6 8	0 6 8
83	On inquiry from defendant's solicitors attending plaintiffs ascertaining whether any other damage was repaired at same time as collision damage	0 6 8	0 6 8
O.	Writing defendant's solicitors informing them	0 3 6	0 3 6
XXXIX r. 109			
63	Attending informing plaintiffs that defendants required inspection of their books and arranging appointment (If a foreign vessel an affidavit is usually made by the owner verifying the earnings of the vessel.)	0 6 8	0 6 8
12, 19	Notice of appointment, copy and service on defendant's solicitors	0 3 6	0 4 0
57	Attending defendant's solicitors giving inspection of books and accounts, per hour	0 6 8	0 6 8
63	Attending plaintiffs on defendant's offer in settlement and taking instructions to decline	0 6 8	0 6 8
O.	Writing defendant's solicitors accordingly	0 3 6	0 3 6
XXXIX r. 109			
63	On letter from defendant's solicitor with an offer of, and enclosing cheque as tender. Attending plaintiffs for instructions	0 6 8	0 6 8
O.	Writing defendant's solicitors agreeing to accept cheque as a cash tender.	0 3 6	0 3 6
XXXIX r. 109			
63	Attending plaintiffs taking instructions to accept tender	0 6 8	0 6 8
12	Notice of acceptance of tender	0 2 0	0 2 6
83	Attending filing	0 3 4	0 3 4
44, 19	Copy and service on defendant's solicitors	0 3 0	0 3
O.	Writing witness A. that case settled	0 3 6	0 3
XXXIX r. 109			
	The like witness B.	0 1 6	0 1 6
59	Attending defendant's solicitors obtaining consent to take money out of court	0 3 4	0 6 8
83	Attending at court taking out amount of tender	0 6 8	0 6 8
66	Attending registrar for a day for the hearing of the reference when a day fixed	0 3 4	0 6 8

ADMIRALTY JURISDICTION—PLAINTIFF'S COSTS—*continued.*

No. in Scale.		B.	C.
O. XXXIX	Writing witness A. to attend reference.	£ s. d. 0 3 6	£ s. d. 0 3 6
r. 109	The like witness B.	0 1 6	0 1 6
63	On letter from defendant's solicitors requiring appointment to inspect plaintiff's vessel. Attending plaintiffs thereon and arranging appointment	0 3 4	0 6 8
O. XXXIX	Writing defendant's solicitors with appointment and authority for surveyor to inspect	0 3 6	0 3 6
r. 109			
28	Instructions for brief on reference	0 10 6 to	1 1 0 to
34	Drawing same, per folio	1 11 6	3 3 0
44	Fair copy, per folio	0 1 0	0 1 0
43	Copy documents to accompany, per folio	0 0 4	0 0 4
67	Attending counsel with brief	0 0 4	0 0 4
92	Paid fee and clerk if judge or registrar allows counsel	0 3 4	0 6 8
68	Attending to appoint conference and thereon	2 4 6	3 5 6
87	Paid fee and clerk	0 6 8	0 13 4
80	Attending hearing with counsel Where no counsel employed—	1 6 0	1 6 0
29	Examining and taking minutes of evidence of witness	0 15 0	1 1 0
30	If exceeding six folios, for each additional folio	0 3 4	0 6 8
79	Attending hearing of reference without counsel	0 1 0	0 1 0
I. 21	Paid fee per hour	1 1 0	1 1 0
83	Attending inspecting registrar's report and obtaining copy.	0 3 4 to	0 6 8 to
83	Attending obtaining amount of damages and interest out of court	0 6 8	0 6 8
42	Drawing bill of costs and copy for registrar, per folio	0 0 8	0 0 8
44	Copy for defendant's solicitors, per folio	0 0 4	0 0 4
83	Attending obtaining appointment to tax	0 3 4	0 6 8
12, 19	Notice copy and service	0 3 6	0 4 0
82	Attending taxing	0 6 8	0 6 8
V. 51	Paid fee for taxation (6d. per £ allowed, minimum 2s.)		0 13 4
101	Witnesses. <i>See Defendant's Costs</i>		
	Postages, etc.	0 5 0	0 10 0

Brief on
reference.

Report.

Taxation.

13. ADMIRALTY JURISDICTION.

DEFENDANT'S COSTS OF ACTION AND REFERENCE.

In Rem and in Personam.

No. in Scale.		B.	C.
		£ s. d.	£ s. d.
20	Instructions to defend	0 6 8	0 13 4
83	Attending plaintiff's solicitors accepting service of summons and giving undertaking for appearance and bail.	0 3 4	0 6 8
83	Præcipe for appearance and attending to enter	0 6 8	0 6 8
12, 19	Notice copy and service	0 3 6	0 4 0 Release.
63	Attending defendant's solicitors on arrest of vessel and taking instructions to obtain release	0 6 8	0 6 8
59	Attending plaintiff's solicitors obtaining consent to release	0 3 4	0 6 8
66	Attending filing and obtaining order for release	0 3 4	0 6 8
I. 25	Paid.	0 10 0	0 10 0
83	Attending high bailiff with order to release and instructing him	0 6 8	0 6 8
III. 39	Paid for keeping possession of a ship for every day and reasonable expenses of ship-keeper per day	0 10 0	0 10 0
12, 19	Notice requiring delivery of statement of claim, copy, service on plaintiff's solicitor.	0 3 6	0 4 0
O.	Writing plaintiff's solicitors that their statement of claim was overdue, and to file same	0 3 6	0 3 6 Affidavit of values.
XXXIX r. 109			
59	Attending plaintiff's solicitors giving consent to further time for statement of claim	0 3 4	0 6 8
51	Perusing statement of claim, per folio	0 0 4	0 0 4
	In salvage actions—		
23	Instructions for affidavit of values	0 6 8	0 6 8
37	Drawing and engrossing	0 5 0	0 5 0
	Or per folio	0 1 0	0 1 0
61	Attending deponent on his being sworn	0 3 4	0 6 8
100	Paid oath	0 2 0	0 2 0
55	Attending filing	0 3 4	0 3 4
44	Copy affidavit for plaintiff's solicitors, per folio	0 0 4	0 0 4
55	Attending to deliver	0 3 4	0 3 4
66	Attending plaintiff's summons to appraise	0 3 4	0 6 8
22	Instructions for defence and counterclaim	0 6 8	0 6 8 Defence and
2	Preparing same	0 12 0	1 1 0 counterclaim.
93	Fee to counsel to settle, if allowed by judge or registrar	1 3 6	1 3 6
			to
55	Attending filing	0 3 4	2 4 6
44	Copy for plaintiff's solicitors, per folio	0 0 4	0 3 4
55	Attending to deliver	0 3 4	0 0 4
			0 3 4

ADMIRALTY JURISDICTION—DEFENDANT'S COSTS—*continued.*

	No. in Scale.		B.			C.		
			£	s.	d.	£	s.	d.
Tender.		If case tried on preliminary acts—						
	11, 19	Notice of counterclaim copy and service .	0	4	6	0	6	6
	55	Attending filing .	0	3	4	0	3	4
	I. 11	Paid (only when counterclaim exceeds claim)						
	83	Præcipe for tender attending to file and pay amount into court .	0	6	8	0	6	8
	44, 19	Notice of tender copy and service on plaintiff's solicitors .	0	3	0	0	3	0
	83	Præcipe for admission of liability and attending to file .	0	6	8	0	6	8
	44, 19	Notice to plaintiff's solicitors, copy and service .	0	3	0	0	3	0
		(For bail and other steps in the action, see "Plaintiff's Costs.")						
	O. LIII. r. 42	Witnesses, e.g., <i>John Smith, Master of —</i>						
Witnesses.		Detention from — to — days at .						
		Rails and expenses from — .						
	O. LIII. rr. 38, 39, 41	<i>John Brown, Pilot</i>						
		Attending court or trial, per day .						
		Rails and expenses from — .						
		<i>John Robinson, Marine Surveyor</i>						
	O. LIII. r. 43	Fee to qualify if allowed by order of the judge	1	1	0	1	1	0
		to				to		
			3	3	0	5	5	0
	O. LIII. rr. 38, 39, 41	Attending at court on trial or reference .	1	1	0	1	1	0
		to				to		
			2	2	0	3	3	0

14. PETITIONING CREDITORS' COSTS OF OBTAINING WINDING-UP ORDER AGAINST A LIMITED COMPANY.

TAXABLE UNDER COMPANIES WINDING-UP RULES, 1909, RULE 184, ON THE LOWER SCALE OF THE HIGH COURT.

(The Fees are regulated by the Table of Fees contained in the County Court Fees Order, 1924.)

No. in Scale.		Payments.	Charges.
		£ s. d.	£ s. d.
I. 2 (iii)	Instructions for petition to wind up company	—	0 13 4 Instructions
	Attending obtaining copy memorandum and articles of association	—	0 6 8
	Drawing petition (fols. 16)	—	0 16 0 Petition.
	Engrossing petition in duplicate	—	0 10 8
	Attending the petitioning creditors on their signing same	—	0 13 4
	Attending court presenting same	—	0 6 8
	Paid fee	1 10 0	—
	Instructions for affidavit verifying petition	—	0 6 8 Affidavit
	Drawing same (fols. 4)	—	0 4 0 verifying.
	Engrossing	—	0 1 4
A. 10, 11	Marking exhibit.	—	0 1 0
	Attending swearing	—	0 6 8
	Paid oath and exhibit	0 3 4	—
	Copy for office copy, per folio	—	0 0 4
VII. 81 (ii)	Paid marking, per folio	0 0 3	—
	If served by solicitor—		
	Service of petition	—	0 5 0 Service.
	Drawing affidavit of service and attending to swear	—	0 5 0
	Marking exhibit.	—	0 1 0
	Paid oath and exhibit	0 3 4	—
	Attending to file affidavit of service and verifying petition	—	0 6 8
	Drawing advertisement of petition (fols. 6)	—	0 6 0 Advertise-
	Copies for <i>London Gazette</i> and local paper	—	0 4 0 ment.
	Attending agent of <i>London Gazette</i> instructing him to insert advertisement	—	0 6 8
	Paid for advertisement	—	—
	Attending to insert in local paper	—	0 6 8
	Paid for advertisement	—	—
	Instructions for application to appoint official receiver as provisional liquidator	—	0 6 8 Provisional liquidator.
	Preparing summons and attending issuing	—	0 6 8
	Copy for chambers	—	0 2 0
	Copy for service on company	—	0 2 0
	Service	—	0 1 6
	Instructions for affidavit in support	—	0 6 8
	Drawing same (fols. 5)	—	0 5 0
	Engrossing	—	0 1 8
	Attending deponent to be sworn.	—	0 6 8

PETITIONING CREDITORS' COSTS, ETC.—*continued.*

No. in Scale.	—	Payments.	Charges.
		£ s. d.	£ s. d.
Restraining action by creditor.	I. 8	Attending summons	0 13 4
		Paid	—
		Preparing and drawing up order and attending to get same entered	0 13 4
		Copy for filing	0 2 0
		Copy for service on official receiver	0 2 0
		Service	0 1 6
		Copy for service on company	0 2 0
		Service	0 1 6
		Drawing notice of motion to restrain action by creditor pending hearing of petition and fair copy (fols. 5)	0 6 8
		Attending before the registrar obtaining leave for short return	0 6 8
		Instructions for affidavit in support	0 6 8
		Drawing same (fols. 13)	0 13 0
		Fair copy	0 4 0
		Attending deponent to be sworn	0 6 8
		Paid commissioner's fee	0 2 0
		Attending filing notice and affidavit in support	0 6 8
		Copy notice and affidavit for service on creditors' solicitors	0 6 0
		Service	0 5 0
	I. 8	Attending court on hearing of motion	1 1 0
Brief.* Note:— Where counsel is not retained substitute the appropriate items from p. 1149.		Paid	0 5 0
		Drawing and fair copy, statement of compliance with the rules	0 5 0
		Attending registrar with same and producing advertisements	0 6 8
		Drawing statement of parties attending, etc.	0 5 0
		If affidavits filed in opposition add for perusing same, and copies for counsel at 4d. a folio	—
		Drawing brief for counsel (fols. 35)	1 15 0
		Fair copy thereof	0 11 8
		Copy petition to accompany	0 5 4
		The like affidavit in support	0 4 4
		The like restraining order	—
		Fee to counsel with brief and clerk	5 10 0
		Attending him	0 6 8
		Attending to appoint conference	0 6 8
		Paid fee	1 6 0
		Attending conference	0 13 4
		Attending court with counsel on hearing of petition when order made	1 1 0
	I. 20 (iii)	Paid hearing fee	1 10 0
		Attending at registrar's office lodging documents	0 6 8

* Note.—In winding-up matters no fee is allowable for instructions for brief except on motions where witnesses are called.

PETITIONING CREDITORS' COSTS, ETC.—*continued.*

No. in Scale.		Payments.	Charges.
		£ s. d.	£ s. d.
V. 51	Order prepared by registrar (no appointment to settle except in special cases (r. 39))	—	—
	Three fair copies of order for service (r. 41 (1A))	—	—
	Attending sealing (order served by registrar)	—	—
	Drawing bill of costs and copy (fols. 9)	—	0 6 0
	Attending obtaining appointment to tax	—	0 6 8
	Attending taxing	—	0 13 4
	Paid fee on taxation (6d. per £ allowed, minimum 2s.)	—	—
	Letters, etc.	—	0 10 6
	Term fee	—	0 15 0

15. COSTS OF CREDITORS APPEARING IN SUPPORT OF PETITION.

		£ s. d.	£ s. d.
V. 51	Instructions to appear	—	0 6 8
	Attending searching file	—	0 6 8
	Paid fee	—	0 1 0
	Writing petitioning solicitor bespeaking copy petition	—	0 3 6
	Paid therefor (fols. 25)	—	0 8 4
	Perusing same	—	0 8 4
	Drawing notice of intention of creditor to support petition (fols. 3)	—	0 3 0
	Fair copy	—	0 1 0
	Service on petitioning solicitor	—	0 2 6
	Drawing brief to counsel to appear (fols. 5)	—	0 5 0
	Engrossing	—	0 1 8
	Copy petition to accompany	—	0 8 4
	The like notice	—	0 1 0
	Attending counsel with brief	—	0 6 8
	Paid his fee and clerk	—	2 4 6
	Attending court on hearing petition	—	1 1 0
	Attending petitioning solicitor perusing and approving order	—	0 6 8
	Drawing bill of costs and copy (fols. 4)	—	0 2 8
	Attending for appointment to tax	—	0 3 4
	Notice of taxation to official liquidator, copy and service	—	0 4 0
	Attending taxing	—	0 6 8
	Paid fee on taxation (6d. per £ allowed, minimum 2s.)	—	—

16. ARBITRATION UNDER THE WORKMEN'S COMPENSATION ACT, 1906.

APPLICANT'S (WORKMAN'S) COSTS.

No. in Scale.		A.	B.	C.
		£ s. d.	£ s. d.	£ s. d.
96	Letter before proceedings	0 3 6	0 3 6	0 3 6
20	Instructions to commence proceedings	0 3 4	0 6 8	0 13 4
2	Preparing request for arbitration	0 6 0	0 12 0	1 1 0
54	Attending to file	0 3 4	0 6 8	0 6 8
19	Service	0 1 0	0 1 6	0 1 6
45	Perusing answer of respondent	0 2 0	0 3 4	0 6 8
63	Attending applicant thereon	0 3 4	0 6 8	0 6 8
	Advice on evidence	See these charges in Precedent No. 1.		
	Notice to produce and admit			
	Examination of witness			
97	Evidence by affidavit			
	The respondents requiring medical examination of applicant, writing applicant to submit himself for same			
12	Drawing application to judge to summon medical assessor	0 2 0	0 3 6	0 3 6
		0 1 6	0 2 0	0 2 6
19	Service on registrar	0 1 0	0 1 6	0 1 6
	Brief, &c.	See these charges in Precedent No. 1.		
	Trial			
	Taxation			

17. ARBITRATION UNDER THE WORKMEN'S COMPENSATION ACT, 1906.

RESPONDENT'S (EMPLOYER'S) COSTS.

No. in Scale.		A.	B.	C.
		£ s. d.	£ s. d.	£ s. d.
20	Instructions to defend	0 3 4	0 6 8	0 13 4
45	Perusing request for arbitration	0 2 0	0 3 4	0 6 8
	Or per folio	0 0 2	0 0 4	0 0 4
12	Writing for further particulars	0 1 6	0 2 0	0 2 6

ARBITRATION UNDER THE WORKMEN'S COMPENSATION ACT, 1906—
RESPONDENT'S COSTS—*continued.*

No. in Scale.	—	A.	B.	C.
		£ s. d.	£ s. d.	£ s. d.
45	Perusing same . . .	0 2 0	0 3 4	0 6 8
	Or per folio . . .	0 0 2	0 0 4	0 0 4
32	Drawing answer . . .	0 3 0	0 5 0	0 6 8
	Or per folio beyond three . . .	—	0 1 0	0 1 0
55	Attending to file . . .	0 2 0	0 3 4	0 3 4
12	Notice requiring applicant to submit himself to medical examination . . .	0 1 6	0 2 0	0 2 6
19	Service . . .	0 1 0	0 1 6	0 1 6
20	Instructions for claim for contribution from other employers, not exceeding . . .	0 3 4	0 6 8	0 13 4
2	Drawing notice of claim, not exceeding . . .	0 6 0	0 12 0	1 1 0
83	Attending registrar to have same sealed . . .	0 2 0	0 3 4	0 6 8
			to	
			0 6 8	
III. 32	Paid filing notice . . .	0 5 0	0 5 0	0 5 0
44	Copy request for arbitration and notice of claim for contribution for service, per folio . . .	0 0 2	0 0 4	0 0 4
2	Drawing notice that respondents allege disease contracted in employment of E.F. . .	0 6 0	0 12 0	1 1 0
83	Attending to file and obtain order adding respondent . . .	0 2 0	0 3 4	0 6 8
			to	
			0 6 8	
44	Copy order request for arbitration for service on added respondent, per folio . . .	0 0 2	0 0 4	0 0 4
45	Perusing answer by added respondent . . .	0 2 0	0 3 4	0 6 8
III. 32	Paid hearing fee on claim for contribution. . .	2 0 0	2 0 0	2 0 0
	Brief, &c.	See these charges in Precedent No. 1.		
	Trial			
	Taxation			
V. 51	Paid fee on taxation (6d. per £ allowed, minimum 2s.)			

PART III.

ADMIRALTY.

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THE COUNTY COURTS ADMIRALTY
JURISDICTION ACT, 1868.

[31 & 32 VICT. c. 71. JULY 31, 1868.]

1. This Act may be cited as The County Courts Admiralty Section 1.
Jurisdiction Act, 1868.

This Act is to be read and interpreted as one Act with the County Courts Admiralty Jurisdiction Act, 1869 (32 & 33 Vict. c. 51) (*see sect. 1 of the Act of 1869, post*).

Short title.

2. If at any time after the passing of this Act it appears to Her Appointment
Majesty in council, on the representation of the Lord Chancellor, of county
expedient that any county court should have admiralty jurisdiction, courts for
it shall be lawful for Her Majesty, by Order in Council, to admiralty
appoint that court to have admiralty jurisdiction accordingly, purposes.
and to assign to that court as its district for admiralty purposes
any part or parts of any one or more district or districts of county
courts; and the district so constituted for that court, with the
parts of the sea (if any) adjacent to that district to a distance of
three miles from the shore thereof, shall be deemed its district
for admiralty purposes; and accordingly the judge and all
officers of the court shall have jurisdiction and authority for
those purposes throughout that district, as if the same was the
district of the court for all purposes; and, from a time to be
specified in each such order, this Act shall have effect in and
throughout the district so constituted; and any such order may
be from time to time varied as seems expedient; and a county
court so appointed to have admiralty jurisdiction, and no other
county court, shall, for the purposes of this Act, be deemed a
county court having admiralty jurisdiction: provided that no
judge of a county court, except the judges of the London court,
shall have jurisdiction in the city of London.

A limited jurisdiction in admiralty had been conferred upon county courts by the Merchant Shipping Acts of 1854 and 1862, but this Act first gave to county courts their real admiralty and maritime jurisdiction.

Section 2
Note.

**Extent of
admiralty
jurisdiction
of county
courts.**

County Courts having Admiralty Jurisdiction.]—The courts which have been appointed to exercise the admiralty jurisdiction are as follows: Newcastle-on-Tyne, Sunderland, West Hartlepool, Stockton-on-Tees, Middlesbrough, Kingston-upon-Hull, Great Grimsby, Boston, King's Lynn, Great Yarmouth, Lowestoft, Ipswich, Colchester, City of London, Rochester, Ramsgate, Dover, Brighton, Portsmouth, Southampton, Poole, Weymouth, Exeter, Torquay, Plymouth and East Stonehouse, Truro, Barnstaple, Bridgewater, Bristol, Gloucester, Newport (Mon.), Cardiff, Swansea, Carmarthen, Haverfordwest, Aberystwith, Bangor, Chester, Liverpool, Manchester, Preston, Blackpool and Fleetwood, Barrow-in-Furness and Ulverston, and Whitehaven. [See Order in Council dated May 19th, 1899 (repealing previous orders), which also specifies the district assigned to each court for admiralty purposes, and amending Orders in Council dated Aug. 12th, 1913, Jan. 16th, 1918, and May 7th, 1928.]

3. Any county court having admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine, subject and according to the provisions of this Act, the following causes (in this Act referred to as admiralty causes):

Original Admiralty Jurisdiction.]—The decisions under the Act of 1868 establish that under that Act no claim can be maintained which is incapable of being maintained under the original jurisdiction of the admiralty division (see *Everard v. Kendall*, (1870) L. R. 5 C. P. 428; 39 L. J. C. P. 234; *The Dowse*, (1870) L. R. 3 A. & E. 135; 39 L. J. Adm. 46; *Robson v. The Kate*, (1888) 21 Q. B. D. 13; 57 L. J. Q. B. 546; *R. v. City of London Court* (3) (C. A.), (1892) 1 Q. B. 273; 61 L. J. Q. B. 337; *Gas Float Whifton*, (1896) P. 42; 65 L. J. P. 17; affirmed, House of Lords, (1897) A. C. 337; 60 L. J. P. 99.

Costs in High Court.]—If an action be brought in the Admiralty Division of the High Court, when it might have been brought in a county court, the plaintiff will be in peril of being deprived by the judge of his costs, sect. 9 of this Act being repealed by 56 & 57 Vict. c. 14 (see *Rockett v. Clippingdale* (C. A.), (1891) 2 Q. B. 293; 60 L. J. Q. B. 782; and also 57 & 58 Vict. c. 60, s. 547, sub-s. 2).

In an ordinary collision case in which a person claimed 328*l.* and recovered 246*l.*, Butt, J., gave him no costs (*The Herald*, (1890) 63 L. T. 324; see also *The Asia*, (1891) P. 121; 60 L. J. Adm. 38; 64 L. T. 327; *The Saltburn*, (1892) P. 333).

Where a claim for 330*l.* was settled for 218*l.*, Bucknill, J., allowed costs on the High Court scale (*The Emden*, (1907) 23 T. L. R. 546, following *The Saltburn*, (1892) P. 333).

- (1) As to any claim for salvage—Any cause in which the value of the property saved does not exceed one thousand pounds, or in which the amount claimed does not exceed three hundred pounds:

Or beyond these limits by agreement, see sub-s. 4 below.

For the general admiralty jurisdiction in the case of wreck and of salvage of life or property, see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 544—556.

Other Claims recoverable as Salvage.]—(1) Claims by the Board of Trade for the costs of, and incidental to, the detention and survey of a ship finally detained under the Merchant Shipping Act, 1894, as an unsafe ship, or of a ship provisionally detained, which was, at the time of the detention, an unsafe ship (sect. 460 of the Merchant Shipping Act, 1894).

(2) Claims by an owner or occupier of land for any damage sustained by the passing and repassing thereon of persons rendering assistance to any vessel or the crew thereof, or for the deposit on any land of cargo or other

Section 3
Notes.

articles recovered from the vessel. These damages are a charge on the vessel, cargo or articles in respect of or by which the damage is occasioned (sect. 513 of the Merchant Shipping Act, 1894).

(3) Claims by a receiver of wreck for the recovery of his expenses and fees (sect. 567 of the Merchant Shipping Act, 1894).

(4) Claims by a local authority for the expenses of the burial or destruction of carcases washed ashore, from the owner of the vessel (sect. 46 of the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57)). This includes carcases shipped as frozen meat (*The Suevic*, (1908) 24 T. L. R. 699).

Disputed Title to Wreck.—Also by sect. 526 of the Merchant Shipping Act, 1894, the disputed title to wreck may be determined as if it were a dispute as to salvage, to be determined summarily under the Act.

Apportionment of Salvage.—By sect. 556 of the Merchant Shipping Act, 1894, the aggregate amount of salvage payable in respect of salvage services rendered within the United Kingdom finally ascertained, to any amount, provided it exceeds 200*l.*, and elsewhere, whatever the amount, may be apportioned by a county court having admiralty jurisdiction, amongst the persons entitled thereto, and the court may appoint any person to carry that apportionment into effect, and may compel any person in whose hands or under whose control the amount may be, to distribute the same, or to bring the same into court to be dealt with.

(2) As to any claim for towage, necessities, or wages—Any cause in which the amount claimed does not exceed one hundred and fifty pounds.

Or beyond this limit by agreement, see sub-s. 4 below.

Necessaries.—For the general admiralty jurisdiction in the case of necessities see sect. 6 of the Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), and sect. 5 of the Admiralty Court Act, 1861 (24 Vict. c. 10); see also *The Henrich Björn*, (1886) 11 App. Ca. 270.

A county court having admiralty jurisdiction has no greater jurisdiction in respect of a claim for necessities than that possessed by the Admiralty Division of the High Court (*Allen v. Garbutt*, (1880) 6 Q. B. D. 165; 50 L. J. Q. B. 141; see also *The Douse*, (1870) L. R. 3 A. & E. 135; 39 L. J. Adm. 46, and *The Alina*, 5 Ex. D. 227; 49 L. J. Adm. 10).

For stevedores' claims as necessities, see sect. 3 of the Merchant Shipping (Stevedores and Trimmers) Act, 1911, see Part V. *post*.

Limitation of above Jurisdiction in Suits for Wages.—By sect. 165 of the Merchant Shipping Act, 1894, a proceeding for the recovery of wages not exceeding 50*l.* shall not be instituted by or on behalf of any seaman or apprentice to the sea service in any superior court of record, nor as an admiralty proceeding in any court having admiralty jurisdiction, except in the four following cases:—

(1) Where the owner of the ship is adjudged bankrupt.

(2) Where the ship is under arrest, or is sold by the authority of any such court as aforesaid.

(3) Where a court of summary jurisdiction, acting under the authority of the Act, refers the claim to any such court.

(4) Where neither the owner nor the master of the ship is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

As to the jurisdiction of courts of summary jurisdiction for claims for wages not exceeding 50*l.*, see sect. 164 of the Merchant Shipping Act, 1894.

Seaman's Lien.—A ship's husband, not being a seaman within sect. 10 of the Admiralty Court Act, 1861, has no maritime lien on which he can found an action *in rem* (*The Ruby* (No. 2), (1898) P. 59; 67 L. J. P. 28).

A shipmaster or seaman suing under the provisions of the Admiralty Court Act, 1861, on a special contract of service has no maritime lien in respect of damages for wrongful dismissal (*The British Trade*, (1924) P. 104).

Section 3
Notes.

Other Claims recoverable as Wages.]—By the Merchant Shipping Acts, 1894 and 1906, there are numerous matters which, though not wages, may be recovered in the same court and manner in which wages of seamen may be recovered. The limits to the jurisdiction mentioned above [“Limitation of above Jurisdiction in Suits for Wages”] will apply in claims made in such matters. Such other claims include the following:—

(1) The property of seamen who die during a voyage (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 169—171).

(2) By the Board of Trade, the wages of seamen lost with their ship (*ib.*, sect. 174).

(3) The expenses of maintenance and passage home of seamen improperly discharged in foreign countries (Merchant Shipping Act, 1906 (6 Edw. VII. c. 48, s. 42).

(4) As a debt due to the Crown, the repayment of expenses attendant on the illness or injury of a seaman which ought, under the provisions of the Act, to have been paid by the master or owner, or any other expenses in respect of illness or injury of any seaman, whose wages have not been accounted for under the Act (*ib.*, sect. 35).

(5) By the Board of Trade, the repayment of expenses incurred on account of any distressed seaman [NOTE.—A seaman shipwrecked abroad is a “distressed seaman,” although the wages due to him and paid abroad are in excess of the expenses incurred for his maintenance and passage home (*Board of Trade v. S.S. Glenpark*, (1903) 2 K. B. 324; 72 L. J. K. B. 697; (C. A.), (1904) 1 K. B. 682; 73 L. J. K. B. 315)] discharged or left abroad (*ib.*, sect. 42, sub-s. 2); except where there is a certificate of desertion or disappearance (*ib.*, sect. 42, sub-s. 4).

(6) Wages earned subsequent to desertion to reimburse the owner or master the expenses caused by desertion (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 232, sub-s. 2).

(7) The amount awarded by a superintendent who has been called in to determine a dispute between the owner and skipper, or between the skipper and seaman of a fishing boat (*ib.*, sect. 387).

(8) Compensation to seaman who has signed a fishing boat agreement, and been improperly discharged (*ib.*, sect. 411).

(3) As to any claim for damage to cargo, or damage by collision [*or otherwise*].—Any cause in which the amount claimed does not exceed three hundred pounds.

Or beyond this limit by agreement, see sub-s. 4 below.

“**Damage by Collision.**”—This covers a claim for damage done to a ship in a collision between it and a barge within the body of a county (*Purkis v. Flower*, (1873) L. R. 9 Q. B. 114; 43 L. J. Q. B. 33); also a claim for negligence against a dock board, whereby a steamer was injured by colliding with a dock wall (*Mersey Docks v. Turner*, (1893) A. C. 468; 63 L. J. P. 17; see also *The Zeta*, (1893) A. C. 468; 63 L. J. Adm. 17); but it does not cover damage done by a ship to a pier (*The Normandy*, (1904) P. 187; 73 L. J. P. 55); nor does it include damage by one barge propelled by oars to another similar craft, because they are not “ships” (*Everard v. Kendall*, L. R. 5 C. P. 428; 39 L. J. C. P. 234); nor by a ship to a floating gas buoy (*The Upcerne*, (1912) P. 160; 81 L. J. P. 110, following *The Normandy*, *supra*); nor by the sailing gear of a barge coming in contact with a pile-driving machine on the bank of the Thames (*Robson v. The Kate*, (1888) 21 Q. B. D. 13; 57 L. J. Q. B. 546); nor to an action *in personam* against a compulsory pilot (*The Alexandria*, (1872) L. R. 3 A. & E. 574; 41 L. J. Adm. 94).

“**By Collision [*or otherwise*].**”—The words “*or otherwise*,” were added by sect. 4 of the County Courts Admiralty Jurisdiction Amendment Act, 1869, *post*, p. 1196.

(4) Any cause in respect of any such claim or claims as aforesaid, but in which the value of the property saved or the

amount claimed is beyond the amount limited as above mentioned, when the parties agree by a memorandum signed by them or by their attorneys or agents that any county court having admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction.

Section 3.

Refer in connection with sub-ss. 1, 2, and 3, above.

[NOTE.—It is advisable that the memorandum should refer to this section.]

“Any County Court.”—This seems to be modified by sect. 518 of the Merchant Shipping Act, 1894, in the cases of disputes as to salvage therein specified (see note to sect. 21, sub-s. 4, *post*).

4. Nothing in this Act, or in any order in council under it, shall confer on a county court jurisdiction in any prize cause, or in any other matter within the Naval Prize Act, 1864, or in any matter arising under any of the Acts for the suppression of the slave trade, or any admiralty jurisdiction by way of appeal. Restrictions on county court jurisdiction in certain cases.

5. From and after the time specified in each order in council under this Act appointing a county court to have admiralty jurisdiction within any district as the time from which this Act shall have effect in and throughout that district, no county court, other than the county court so appointed, shall have jurisdiction within that district in any admiralty cause; provided that all admiralty causes at that time pending in any county court within that district may be continued as if no such order in council had been made. No county court other than that appointed to have jurisdiction.

6. The High Court of Admiralty of England, on motion by any party to an admiralty cause pending in a county court, may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the court may seem fit. As to transfer from county court by order of High Court of Admiralty.

The application to the High Court is made by summons in chambers, not by motion in court (*The Indra*, 94 L. T. 110).

This section is resorted to when it is necessary to take evidence abroad on commission, or for the purpose of being consolidated with an action pending in Admiralty Division. See *The Swan*, (1871) L. R. 3 A. & E. 314; 40 L. J. Adm. 8; *The Rio Lima*, (1874) L. R. 4 A. & E. 157; 43 L. J. Adm. 4; *The Immacolata Concezione*, (1882) 8 P. D. 34; *The Never Despair*, (1884) 9 P. D. 34; 53 L. J. Adm. 30; *The Africano*, (1894) P. 141; 63 L. J. Adm. 125. See also where proceeds of sale in High Court, *The Montrosa*, (1917) P. D. 1.

See Order XXXIX. rr. 50 and 51.

7. If during the progress of an admiralty cause in a county court it appears to the court that the subject-matter exceeds the limit in respect of amount of the admiralty jurisdiction of the court, the validity of any order or decree theretofore made by the court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the court shall retain jurisdiction) the court shall by order As to transfer of causes by order of county court to High Court of Admiralty.

Section 7. transfer the cause to the High Court of Admiralty; but that court may, nevertheless, if the judge of that court in any case thinks fit, order that the cause shall be prosecuted in the county court in which it was commenced, and it shall be prosecuted accordingly.

It seems doubtful whether this section applies after judgment in the county court, and transfer is only required for purpose of reference for claims found to exceed county court jurisdiction.

See Order XXXIX. r. 50, and Form 385, *post*.

As to transfer of causes to other county courts or Court of Admiralty.

8. If during the progress of an admiralty cause in a county court it shall appear to the court that the cause could be more conveniently prosecuted in some other county court, or in the High Court of Admiralty of England, the court may by order transfer it to such other county court, or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be prosecuted accordingly.

See Order XXXIX. r. 50, and Form 386, *post*.

After transfer pleadings will be as in High Court of Admiralty. See *The Carisbrook*, (1890) 15 P. D. 98; 59 L. J. Adm. 37.

[NOTE.—Sect. 9 of this Act is repealed by 56 & 57 Vict. c. 14.]

Powers, &c., of judges and registrars.

10. In an admiralty cause in a county court the cause shall be heard and determined in like manner as ordinary civil causes are now heard and determined in county courts; save and except that in any admiralty cause of salvage, towage, or collision the county court judge shall, if he think fit, or on the request of either party to such cause, be assisted by two nautical assessors in the same way as the judge of the High Court of Admiralty is now assisted by nautical assessors.

As to nautical assessors, see sect. 11.

Power to judge of county court to summon nautical assessors to his assistance.

11. In any such admiralty cause as last aforesaid it shall be lawful for the judge of the county court, if he think fit, and he shall, upon request of either party, summon to his assistance in such manner as general orders shall direct, two nautical assessors, and such nautical assessors shall attend and assist accordingly.

See Order XXXIX. rr. 88—92, and Forms 392—394.

As to the function of assessors, see *The City of Berlin*, (1908) P. 110; 77 L. J. P. 76; *The Beryl*, (1884) 9 P. D. 137; 53 L. J. Adm. 75; *The Gannet*, (1900) A. C. 234; 69 L. J. P. 49.

Decrees in county courts in admiralty causes to have same force as those in civil causes.

12. The decree of the county court in an admiralty cause shall be enforced against the person or persons summoned as the defendant or defendants in the same manner as the decrees of the said court are enforced in ordinary civil causes, save and except as in this Act otherwise provided.

See also sect. 23, *post*.

13. The judge of every county court having admiralty jurisdiction shall hear and determine admiralty causes at the usual courts held within his jurisdiction, or at special courts to be held by him, and which he is hereby required to hold as soon as may be after he shall have had notice of an admiralty cause having arisen within the jurisdiction of his court.

Section 13.

Admiralty causes to be heard at usual courts.

See Order XXXIX. rr. 1, 2, and 3, *post*.

14. The registrar of each county court having admiralty jurisdiction shall from time to time frame a list, to be approved by the judge of the High Court of Admiralty before whom the same shall be laid by the county court judge, and without whose approval it shall have no validity, of assessors, of persons of nautical skill and experience residing or having places of business within the district of the county court, to act as assessors in that court, and shall cause the list to be published in the *London Gazette*.

Appointment of assessors in county court.

See Form 392.

15. Every person named in the list of assessors so framed and approved shall attend the county court under such circumstances and in such rotation, and subject to such regulations, and shall receive such fees, for his attendance, as general orders shall direct, and for every wilful non-attendance shall be liable, at the discretion of the court, to a penalty not exceeding five pounds.

Attendance of assessors.

See Forms 393 and 394.

16. Every assessor named in such list shall hold his office until a new list of assessors shall have been framed and approved as aforesaid, or until he shall resign his appointment.

Removal of assessors.

17. *The registrars of the county courts shall be remunerated for their duties in admiralty causes by receiving for their own use such fees as general orders shall direct.*

Remuneration of registrars.

This section is repealed by the County Courts Act, 1924.

18. A scale of costs and charges in admiralty causes in the county courts shall be prescribed by general orders.

Scale of costs.

As to scale of costs, see Part II., Chap. IV.

19. The registrar of a county court shall have power to administer oaths in relation to any admiralty cause in a county court; [and any person who shall wilfully depose or affirm falsely before the registrar in any admiralty cause shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.]

Power to registrars to administer oaths and take evidence.

By the Perjury Act, 1911 (1 & 2 Geo. V. c. 6), the words in brackets were repealed.

Section 20. **20.** Evidence taken in any admiralty cause before the registrar of a county court, as the judge of a county court or general orders shall direct, shall be received as evidence in any other county court, saving all just exceptions ; and the registrar of any county court shall, for the purpose of the examination of any witnesses within the district of that court, have all and the like powers and authorities of an examiner of the High Court of Admiralty of England, and evidence taken by him in that capacity shall be received as evidence in the High Court of Admiralty of England, saving all just exceptions.

Evidence
before
registrar
receivable in
Admiralty
Court.

As to examination of witnesses, see R. S. C., Order XXXVII. rr. 5—25.

[NOTE.—Section 21 of this Act (which prescribes the county courts in which admiralty proceedings are to be commenced) is repealed by the County Courts Act, 1919 (9 & 10 Geo. V. c. 73), s. 13.]

Limitation
of arrest.

22. In an admiralty cause in a county court if evidence be given to the satisfaction of the judge, or in his absence the registrar of the court, that it is probable that the vessel or property to which the cause relates will be removed out of the jurisdiction of the court before the plaintiff's claim is satisfied, it shall be lawful for the said judge, or in his absence for the registrar, to issue a warrant for the arrest and detention of the said vessel or property, unless or until bail to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to general orders, by or on behalf of the owner of the vessel or property or his agent, or other the defendant in such cause ; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel or property in an admiralty cause in a county court otherwise than in execution.

The evidence is given by affidavit (see Order XXXIX. rr. 11—14, and Form 372).

Power to
issue
process.

23. For the execution of any decree or order of a county court in an admiralty cause the court may order, and the registrar on such order may seal and issue, and any officer of any county court may execute, process according to general orders ; provided that where under such process a vessel or property would or might be sold, then, if the owner of the vessel or property desires that the sale should be conducted in the High Court of Admiralty instead of in the county court, he shall be entitled, on security for costs being first given, and subject and according to such other provisions as general orders direct, to obtain an order of the county court for transfer of the proceedings for sale, with or without (as the judge of the county court thinks fit) the transfer of the subsequent proceedings in the cause, to the High Court of

Admiralty, which court shall have jurisdiction and all powers and authorities relating thereto accordingly. Section 23.

See Order XXXIX. rr. 70—72, and Form 413; see also sect. 12, *supra*.

24. Such decrees and orders of county courts in admiralty causes as general orders shall direct shall be registered with the registrar of county court judgments in London in such manner as general orders shall direct. Registration of decrees and orders.

See sect. 183 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), and Order XXXVI. r. 2.

25. The court of passage of the borough of Liverpool shall, upon an order in council being made which shall appoint the county court of Lancashire holden at Liverpool to have admiralty jurisdiction, have the like jurisdiction, powers, and authorities as by that order are conferred on the said county court; but nothing herein shall be deemed to enlarge the area over which the jurisdiction of the court of passage extends, or to alter the rules and regulations for holding the said court, or to take away or restrict any jurisdiction, power, or authority already vested in that court; and fees received in that court under this Act shall be dealt with as fees received in that court under its ordinary jurisdiction. Concurrent jurisdiction of the court of passage.

26. An appeal may be made to the High Court of Admiralty of England from a final decree or order of a county court in an admiralty cause, and, by permission of the judge of the county court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as general orders shall direct. Appeal to Court of Admiralty.

[NOTE.—There is no appeal where, before the decree or order is made, the parties, by a memorandum, agree that the decree or order shall be final (see sect. 28, below). Also the right of appeal is limited by sect. 31, below; and see notes to that section.]

“Security for Costs.”—Security for costs must be given in the county court, if the appeal is on a question of fact (*The Forest Queen*, (1870) L. R. 3 A. & E. 299; 40 L. J. Adm. 17), but not if it be upon a point of law, because sect. 120 of the County Courts Act, 1888, overrides the particular provisions of this Act (see note to sect. 31, below, “Questions of Law”).

The security for costs must be given before the appeal is lodged, and the bond of the solicitor is usually given and accepted as security in lieu of deposit of money; the amount of bond or deposit is fixed by the registrar of the County Court.

Salvage.—Sect. 549 of the Merchant Shipping Act, 1894, gives the same power of appeal in cases of salvage disputes as is given by this Act.

Viva Voce Evidence.—The court may, on the hearing of an appeal, under special circumstances, take the examination of witnesses *viva voce* (*The Busy Bee*, (1868) L. R. 3 A. & E. 527; see also *The Crescent* (C. A.), (1893) 62 L. J. P. 63).

Further Evidence.—An application to adduce further evidence may be made to a single judge (*The Eclipse*, (1889) 14 P. D. 71).

**Section 26
Notes.**

Elder Brethren of Trinity House.—By sect. 33 (3) of 15 & 16 Geo. V. c. 49, if an action has been heard with the assistance of nautical assessors, Elder Brethren of the Trinity House must be summoned on the hearing of the appeal, if either party requires it, and the High Court deems it necessary or desirable.

**Time for
appeal.**

27. No appeal shall be allowed unless the instrument of appeal is lodged in the registry of the High Court of Admiralty within ten days from the date of the decree or order appealed from, but the judge of the High Court of Admiralty of England may, on sufficient cause being shown to his satisfaction for such omission, allow an appeal to be prosecuted, notwithstanding that the instrument of appeal has not been lodged within that time.

[NOTE.—Refer in connection with this section to *The Two Brothers*, (1875) 1 P. D. 52; 45 L. J., Adm. 47.]

The ordinary practice as to appeals from inferior courts extends only to appeals to the King's Bench Division (R. S. C., Order LIX. r. 9); nevertheless, appeals are in fact brought to the Admiralty Division by motion. As to service of notice of motion on adverse solicitor before original filed in registry, see R. S. C., Order LII., r. 10, and *The Gratia*, (1912) 28 T. L. R. 474.

“Within ten days.”—As a point of practice it is safer to lodge all notices of appeal within ten days, even in cases of appeals on questions of law to which s. 120 of the County Courts Act, 1888, applies. But see R. S. C., Order LIX., r. 12.

Court of Appeal.—An appeal lies of right to the Court of Appeal if the court alters the judgment of the county court (*The Dart* (C. A.), (1893) P. 33; 62 L. J. P. 32); in other cases no appeal lies without leave (36 & 37 Vict. c. 66, s. 45). The appeal will not be granted unless the law is doubtful, or the facts leave a substantial doubt in the mind of the court as to whether its decision is right, or the pecuniary interest is large (*The Samuel Laing*, (1870) L. R. 3 A. & E. 284; 39 L. J. Adm. 42; see *Cargo ex Argos*, (1873) L. R. 5 P. C. 134, 166; 42 L. J. Adm. 1).

When an admiralty judge at chambers refuses an order for a prohibition, the appeal lies straight to the Court of Appeal (*The Recepta* (1) (C. A.), (1893) P. 255; 62 L. J. P. 118).

Judge's Notes.—These must be provided for the hearing of the appeal. See *McGrah v. Cartwright*, (1889) 23 Q. B. D. 3; 58 L. J. Q. B. 331; and also *The Crescent*, (1893) 62 L. J. P. 63.

**Agreement
not to appeal.**

28. No appeal shall be allowed if, before the decree or order is made, the parties shall have agreed by a memorandum signed by them, or by their attorneys or agents, that the decree or order shall be final; and any such agreement need not be stamped, except in respect of any fee imposed by general orders.

[NOTE.—It is advisable that the memorandum should refer to this section.]

29. [Sect. 29 was repealed by the County Courts Act, 1875.]

**Costs of
appeal.**

30. On an appeal under this Act, when the appellant is unsuccessful, he shall pay the costs of the appeal, unless the appellate court shall otherwise direct.

See *Cargo ex Argos* (1873) L. R. 5 P. C. 134, 166; 42 L. J. Adm. 1.

31. No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of fifty pounds. Section 31.

Questions of Law.]—The limit on appeal imposed by this section applies only to questions of fact. As to appeals on questions of law, the Court of Appeal has held that the general provisions of the County Courts Act, 1888, s. 120, override the particular provisions of the County Courts Admiralty Jurisdiction Act, 1868, ss. 26, 31; so that against a final decree or order of the county court there is an appeal on questions of law whether the amount is over or under 50*l.* (*The Delano* (C. A.), (1895) P. 40; 64 L. J. P. 8; following *The Eden*, (1892) P. 67; 61 L. J. P. 68; see *The Burma* (No. 2), (1899) 80 L. T. 839). No appeal unless amount exceeds 50*l.*

Interlocutory Decree or Order.]—There is an appeal, by leave of the judge, from any interlocutory decree or order, even when the amount is under 50*l.* (sect. 26 of this Act, and *The Alert*, (1894) 72 L. T. 124). This right appears to apply to all actions.

Without the judge's consent, no such appeal will lie, notwithstanding the general provisions of sect. 120 of the County Courts Act, 1888 (*The Cashmeer*, (1890) 15 P. D. 121; 59 L. J. Adm. 57).

The refusal of an application for taxation and payment of costs is a final order, and appealable without leave (*The Vulcan*, (1898) P. 222; 67 L. J. P. 101).

32. On an appeal under this Act, the judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty instead of in the county court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which court shall have jurisdiction, and all powers and authorities relating thereto accordingly. Conduct of sale, &c., in Court of Admiralty.

33. In all cases which shall arise within the jurisdiction of the Cinque Ports as defined by the Act first and second George the Fourth, chapter seventy-six, section eighteen, causes may be transferred by the county court and appeals made to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty; and in the case of appeals the instrument of appeal shall be lodged in the registry of the Cinque Ports, and the same discretion vested in the judge official and commissary of the said Cinque Ports court as is by this Act vested in the judge of the High Court of Admiralty. In certain cases causes may be transferred by county court and appeals made to Court of Admiralty of the Cinque Ports.

34. This Act shall be read as one Act with so much of the County Courts Act, 1846, and the Acts amending or extending the same, as is now in force. County Court Acts applied to this.

35. General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure of the admiralty jurisdiction of the county courts, the forms of processes and proceedings therein or issuing Practice, &c., to be regulated by general orders.

Section 35. therefrom, and the days and places of sittings for admiralty causes, the duties of the judges and officers thereof, and the fees to be taken therein.

Authority
for making
general
orders.

36. General orders under this Act shall be made by the Lord Chancellor, with the advice and assistance of the judge of the High Court of Admiralty of England, and, as far as they relate to fees, or to the receipt and expenditure of and accounting for money, with the approval of the commissioners of Her Majesty's Treasury.

THE COUNTY COURTS ADMIRALTY JURISDICTION AMENDMENT ACT, 1869.

[32 & 33 VICT. C. 51. AUGUST 2, 1869.]

Short title.

1. This Act may be cited as The County Courts Admiralty Jurisdiction Amendment Act, 1869, and shall be read and interpreted as one Act with the County Courts Admiralty Jurisdiction Act, 1868.

Extension of
jurisdiction
over ships
and goods.

2. Any county court appointed or to be appointed to have admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating thereto, to try and determine the following causes :

- (1) As to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship, provided the amount claimed does not exceed three hundred pounds :

[NOTE.—For extension of limit of jurisdiction by agreement, see sub-s. 2, below.]

Original Admiralty Jurisdiction.—The decisions under the Act of 1868 establish that under that Act no claim can be maintained which is incapable of being maintained under the original jurisdiction of the Admiralty Division. It has been held, however, that the jurisdiction conferred by the Act of 1869 extends to cases both within and beyond the jurisdiction possessed by the Admiralty Division (*Cargo ex Argos*, (1873) L. R. 5 P. C. 134 ; 42 L. J. Adm. 1 ; *The Alina* (C. A.), (1880) 5 Ex. D. 227 ; 49 L. J. Adm. 40), e.g., claims not exceeding 300*l.* for freight, demurrage and expenses (*Cargo ex Argos*, *supra*, overruling *Simpson v. Blues*, (1872) L. R. 7 C. P. 290 ; 41 L. J. C. P. 121) ; also claims for breach of charterparties (*The Alina* (C. A.), (1880) 5 Ex. D. 227 ; 49 L. J. Adm. 40 ; 5 P. D. 138, overruling *Gunnestead v. Price*, (1875) L. R. 10 Ex. 65 ; 44 L. J. Ex. 44) ; also a claim by the holders of a bill of lading for damage to goods on board ship during the voyage (*The Rona*, (1882) 7 P. D. 247 ; 51 L. J. Adm. 65).

But the following claims have been held to be outside the jurisdiction conferred by this section, viz., a claim for commission for effecting a charterparty (*The Nuova Raffallina*, (1871) L. R. 3 A. & E. 483 ; 41 L. J. Adm. 37) ; also a claim for a penalty of so much per day for late delivery under an agreement to deliver coals on board ship within a certain time (*The Zeus*,

(1888) 13 P. D. 188); also a claim for loss on board ship of a passenger's luggage (*R. v. City of London Court* (1), (1883) 12 Q. B. D. 115; 53 L. J. Q. B. 28); also a claim for negligence against a pilot (*R. v. City of London Court* (3) (C. A.), (1892) 1 Q. B. 273; 61 L. J. Q. B. 337).

Section 2 Notes.

- (2) As to any cause in respect of any such claim or claims as aforesaid, but in which the amount claimed is beyond the amount limited as above mentioned, when the parties agree, by a memorandum signed by them or by their attorney or agents, that any county court having admiralty jurisdiction, and specified in the memorandum shall have jurisdiction.

If parties agree, causes in respect of claims of higher amount may be determined by county court.

3. The jurisdiction conferred by this Act and by the County Courts Admiralty Jurisdiction Act, 1868, may be exercised either by proceedings *in rem* or by proceedings *in personam*.

Proceedings *in rem* or *in personam*.

4. The third section of the County Courts Admiralty Jurisdiction Act, 1868, shall extend and apply to all claims for damage to ships, whether by collision or otherwise, when the amount claimed does not exceed three hundred pounds.

Amendment of sect. 3 of 31 & 32 Vict. c. 71.

See note to sect. 3, sub-s. 3 of Act of 1868.

5. In any admiralty or maritime cause the judge may, if he thinks fit, or on the request of either party, be assisted by two mercantile assessors; and all the provisions of the County Courts Admiralty Jurisdiction Act, 1868, with reference to nautical assessors, shall apply to the appointment, approval, summoning, and remuneration of such mercantile assessors.

As to appointment of mercantile assessors.

See sects. 10 and 11 of the Act of 1868; also Order XXXIX. rr. 88—92, and Forms 392—394.

6. The assessor of the court of passage of the borough of Liverpool shall have power from time to time to make general rules and orders for regulating the practice and procedure of the admiralty and maritime jurisdiction in the said court, and for other purposes mentioned in section thirty-five of the County Courts Admiralty Jurisdiction Act, 1868; and any general rules and orders already made or hereafter to be made by the said assessor for any of the purposes aforesaid shall be of full force and effect as if the same had been made under this or the aforesaid Act.

Power of assessor of court of passage to make general rules and orders.

COUNTY COURT RULES, 1903.

ORDER XXXIX.

ADMIRALTY ACTIONS.

*Sittings of the Court.***Rule 1.**

Where action
may be tried.

1. The judge may try or partly try any admiralty action at any place within the admiralty district of the court.

“**Admiralty District.**”]—This is fixed by the Order in Council under which the court is appointed to have admiralty jurisdiction (see the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 2).

Undertaking
for expenses
of trial at
place where
court is not
held.

2. Where application is made to the judge for the trial or part trial of an admiralty action at a place in which a court is not held, the party making the application shall file a præcipe undertaking to provide at his expense a place to the satisfaction of the judge in which the action may be tried, and to pay the necessary expenses of the judge and officers attending at such place.

For form of præcipe, see Form 369.

Sittings of
the court in
Admiralty.

3. The days of the sitting of the court for the trial of admiralty actions shall be those appointed for the transaction of the ordinary general business of the court held in the city or town mentioned in the name of the court, or such other days as the judge may from time to time appoint on the written application of either party.

Special day
for trial.

Provided that where, from the detention of a vessel or otherwise, a prompt determination of any action is desirable, a special sitting shall on the application of any party be appointed by the judge at as early a date as possible. Such application shall be made on notice being given to the other party, who shall have the right to be heard.

[NOTE.—In most courts admiralty cases are tried upon admiralty action days or other special days, fixed by the judge on application by either party.]

See sect. 10 of the County Courts Admiralty Jurisdiction Act, 1868.

Commencement of Action.

Where
admiralty
action
may be
commenced.

3A.—(1) Proceedings in an admiralty action may be commenced—

(a) in the county court having admiralty jurisdiction within the district of which the vessel or property proceeded against is at the time of the commencement of the proceedings; or

(b) if the foregoing paragraph is not applicable, then in the county court having admiralty jurisdiction in the

Rule 3A.
—

district of which the owner or one of the owners of the vessel or property against which proceedings would have been taken if the proceedings had been *in rem*, or the agent in England of the owners of such vessel or property in relation thereto, resides or carries on business at the time of the commencement of the proceedings, or if no such owner or agent resides or carries on business within any such district, then in the county court having admiralty jurisdiction the district of which is nearest to the place where such owner or one of such owners or such agent as aforesaid resides or carries on business at the time of the commencement of the proceedings; or

- (c) if the foregoing paragraph is not applicable, then in the county court having admiralty jurisdiction in the district of which the defendant or one of the defendants resides or carries on business at the time of the commencement of the proceedings, or, if no defendant resides or carries on business within any such district, then in the county court having admiralty jurisdiction the district whereof is nearest to the place where the defendant or one of the defendants resides or carries on business at the time of the commencement of the proceedings; or
- (d) by leave of the judge or registrar, in the county court having admiralty jurisdiction in the district of which the defendant or one of the defendants resided or carried on business at any time within six months next before the commencement of the proceedings, or with the like leave in the county court having admiralty jurisdiction in the district of which the cause of action or claim wholly or in part arose; or
- (e) in any county court having admiralty jurisdiction which the parties by a memorandum signed by them or their solicitors or agents agree shall have jurisdiction in the matter.

(2) Provided that nothing in this rule shall authorise the commencement of proceedings *in personam* where no owner of the vessel or property against which proceedings would have been taken if the proceedings had been *in rem*, nor any agent of the owner of such vessel or property in relation thereto resides or carries on business in England or Wales, unless the case is one which comes within the provisions of the rules for the time being in force as to the service of summonses or notice of summonses out of England and Wales, and leave to serve the

Rule 3A. summons or notice of the summons out of England or Wales is given under those rules.

(3) Where leave is required for the commencement of proceedings, such leave shall be applied for on affidavit in accordance with the rules for the time being in force as to an application for leave to issue a plaint under section seventy-four of the County Courts Act, 1888, or the rules for the time being in force as to an application for leave to serve a summons or notice of a summons out of England and Wales, as the case may be; and those rules shall with the necessary modifications apply accordingly.

[NOTE.—See County Court Rules, 1920, dated 19th March, 1920, under heading Order XXXIX.; Admiralty Actions; Commencement of Action.

This new Rule 3A is framed under sect. 13 of the County Courts Act, 1919 (9 & 10 Geo. V. c. 73), which repeals sect. 21 of the County Courts Admiralty Jurisdiction Act, 1868, and provides that rules may be made as to the courts in which proceedings in admiralty may be commenced. Sect. 13 was introduced with the object of removing certain difficulties as to the county court in which admiralty proceedings may be commenced, illustrated by the cases of *The County of Durham*, L. R. (1891) P. D. 1; *The Hero*, L. R. (1891) P. D. 294; *Pugsley v. Ropkins*, L. R. (1892) 2 Q. B. 194; *The City of Agra*, L. R. (1898) P. D. 198.]

“Proceeded Against.”—The repealed sect. 21 of the County Courts Admiralty Jurisdiction Act, 1868, read “the vessel or property to which the cause relates.”—See *The City of Agra*, *The County of Durham*, and *Pugsley v. Ropkins* referred to in the above note.

Commence-
ment of
action.

4. A plaintiff desiring to commence an admiralty action shall file a præcipe stating the nature of the action, and, when practicable, his name, address, and description; and if the proceedings are commenced through a solicitor, the name of the solicitor, and an address within three miles of the office of the registrar at which it shall be sufficient to leave all instruments and documents in the action required to be served upon the party commencing such proceedings, and also stating the name of the owner or other person against whom the action is instituted, or that the action is instituted against the vessel or other property to which the action relates.

For form of præcipe, see Form 368.

Plaintiff may
be described
as owner.

5. When it is not practicable at the time of filing the præcipe to state therein the name of the plaintiff, it shall be sufficient (subject to the right of the defendant to demand his name) to describe the plaintiff as “owner of the ship or vessel . . .”

[NOTE.—In a case of damage to cargo, the following description of the plaintiffs has been used in the Admiralty Division, viz., “Owners of the cargo lately laden on board the steamship . . .”]

Where
solicitor
accepts ser-
vice and

6. In admiralty actions *in rem*, no further service of a summons than delivery thereof in accordance with Order VII. Rule 12, and

no execution of a warrant of arrest shall be required where a solicitor represents that he is authorised to accept service on behalf of the defendant, and signs a memorandum agreeing to accept service, and undertaking to appear and to put in bail or to pay money into court in lieu of bail, and, in an action for salvage, to file an affidavit of the value of the vessel or property, unless such value is agreed.

Rule 6.

undertakes to appear, &c., in action *in rem*.

This rule is as amended by Rule 57 of 1904.

[NOTE.—For full form of solicitor's acceptance, etc., see Form 373; but in practice, abbreviated forms of endorsement are used, *e.g.* :—

"I (we) accept service of this summons on behalf of the defendant(s), and undertake to enter appearance and put in bail in due course (in a sum not exceeding £)."

"(Signed) .

"(Date) .
or, in an action for *salvage* :—

"I (we) accept service of this summons on behalf of the defendant(s), and undertake to enter appearance, put in bail and prove values in due course.

"(Signed) .

"(Date) ."

The endorsed summons is filed in court by the plaintiff's solicitor.]

7. A solicitor not entering an appearance or putting in bail or paying money into court in lieu of bail, in pursuance of his written undertaking so to do, shall be liable to attachment.

Solicitor not fulfilling undertaking liable to attachment.

Cf. R. S. C., Order XII., r. 18, and *Re Kerly*, (1901) 1 Ch. 467; 70 L. J. Ch. 189.

8. In an admiralty action for wages against the owners of a foreign vessel, notice of the commencement of the action shall be given to the consul or vice-consul of the State to which the vessel belongs, if there is one resident within the district of the court, and a copy of the notice shall be annexed to the *præcipe*.

Notice of commencement of action to be given to consul in certain cases.

[NOTE.—It is advisable to refer to this section in the notice to the consul.]

Particulars and Summons.

9. A plaintiff desiring to commence an admiralty action shall file with the *præcipe* particulars of his claim, with, in an action *in rem*, a copy thereof for service, and, in an action *in personam*, as many copies thereof as there are defendants to be served. If the proceedings are commenced by a solicitor, the particulars must be signed in accordance with Order VI. Rule 9, otherwise the costs of such particulars shall not be allowed.

Particulars.

See Order VI. r. 9, and cases thereunder.

[NOTE.—In cases of salvage and damage to cargo the usual practice is to give brief particulars specifying the nature of the action, date, place, and the like, and naming a round sum as the claim not exceeding the jurisdiction as to amount, and for the defendant to demand a statement of claim.

In cases of collision where the rule as to preliminary acts applies (see Rule

**Rule 9
Notes.**

32), the particulars of claim are very general in character, so that the case of one party may not be disclosed to the other before the parties have committed themselves to their respective stories in the filed preliminary acts.

In cases of necessities, towage, and wages, and also cases coming within the jurisdiction conferred by the Act of 1869, such as freight, demurrage, and the like, full particulars of claim are usually given which render the statement of the claim by pleading unnecessary.]

Summons.

10. Immediately upon the filing of the *præcipe* the registrar shall enter a plaint and issue a summons according to one or other of the forms in the Appendix, for service by the solicitor if the proceedings have been commenced by a solicitor, or by the bailiff of the court. The particulars shall be annexed to the summons before service, and shall be deemed to be part thereof.

For forms of summons, see Forms 370 and 371.

*Arrest.***Affidavit to
be filed.**

11. Where after the commencement of an admiralty action it is desired to arrest any vessel or property, the plaintiff or defendant counter-claiming shall file an affidavit stating the facts which render it probable that the vessel or property will be removed out of the jurisdiction of the court before the claim or counter-claim is satisfied. It shall not be necessary to show in such affidavit that the vessel or property is likely to be removed immediately.

Action against Vessel already under Arrest.]—Where a cause is instituted against a vessel which is already under the arrest of the Admiralty Division, it is unnecessary, so long as it remains under arrest, for the officer of the county court to place a person in possession, and two sets of possession costs will not be allowed (see *The Rio Lima*, (1873) L. R. 4 A. & E. 157; 43 L. J. Adm. 4). Cf. where proceeds of sale in High Court, *The Montrosa*, (1917) P. D. 1.

**When
nationality
of vessel to
be stated.**

12. In an admiralty action for necessities or wages the nationality of the vessel shall be stated in the affidavit.

**When
warrant of
arrest may
issue.**

13. Where upon the filing of the affidavit the court is satisfied with the evidence, it may issue a warrant in duplicate for the arrest and detention of the vessel or property; and where the court is not satisfied, it may require further evidence to be adduced, and may order the detention of the said vessel or property for the purpose of adducing such evidence.

For form of warrant, see Form 372.

[NOTE.—In case of damage done to property by a foreign ship, and the time is insufficient to enable proceedings to be commenced and a warrant of arrest issued, the powers of detention through the customs under sect. 688 of the Merchant Shipping Act, 1894, may be utilised. Also in case of salvage, the receiver of wreck is under an obligation to detain the salvaged vessel or other property by virtue of sect. 552 of the Act of 1894, and in cases of salvage where the time is insufficient to obtain warrant of arrest, the practice is to apply to the receiver of wreck to exercise these powers.]

14. A summons *in rem* may be served and a warrant of arrest may be executed on Sunday, Good Friday, or Christmas Day, as well as on any other day.

Rule 14.

When summons *in rem* may be served or warrant of arrest executed.

Service of Summons or Warrant.

15. Service of a summons or execution of a warrant against a vessel, freight, or cargo on board shall be effected by delivering the summons, or a duplicate of the warrant, to the person who is at the time of service of the summons or execution of the warrant apparently in charge of the vessel or property, or, by nailing or affixing the summons or duplicate warrant on the main mast or on the single mast of the vessel. In other cases the summons must be served personally upon the defendant, unless the court, upon facts duly verified upon affidavit, allows of substituted service.

Service of summons or warrant of arrest.

This rule is as amended in 1911.

16. If the cargo has been landed or transhipped, service of a summons or execution of a warrant to arrest the cargo and freight shall be effected by placing the summons or warrant for a short time on the cargo, and afterwards leaving a true copy or duplicate of such summons or warrant on the cargo.

Service where cargo landed or transhipped.

17. If the cargo is in the custody of a person who will not permit access to it, service of the summons or warrant may be made upon the custodian.

Where access to cargo denied.

18. When proceedings are commenced under Rule 3a, Para. 1 (b), in a county court in the district of which the agent in England of the owners of any vessel or property in relation to such vessel or property resides or carries on business, or the district of which is nearest to the place where such agent resides or carries on business, the summons shall be served personally on such agent, unless the court, upon facts duly verified by affidavit, allows of substituted service [1920].

Service on agent.

Appearance in Admiralty Actions.

19. A defendant desiring to enter an appearance in an action shall file a præcipe, and thereupon an entry of his appearance shall be made in the admiralty actions book.

For form of præcipe, see Form 374.

20. The præcipe shall state, when practicable, the name, address, and description of the party on whose behalf the appear-

Contents of præcipe.

Rule 20.

ance is entered, and when such appearance is entered by a solicitor, the name of the solicitor, and in either case shall state an address within three miles of the office of the registrar at which it shall be sufficient to leave all instruments and documents in the action required to be served upon the defendant entering the appearance.

Præcipe in actions *in rem* when defendant's name, &c., is not known.

21. Where it is not practicable at the time of entering the appearance to state the name, address, and description of the defendant, it shall be sufficient in actions *in rem* (subject to the right of the plaintiff to demand further particulars) to state that the appearance is entered on behalf of the "owners" of the property proceeded against, or on behalf of "the defendant."

Intervention in action *in rem*.

22. In an admiralty action *in rem* any person not named in the summons may intervene by entering an appearance in the action, on filing an affidavit showing that he is interested in the vessel or property, or the fund in court; and any person so intervening shall be deemed to be a defendant. If the interest claimed by such person is not cognisable by the court, any party may apply to the court or to the High Court to have the action transferred to the High Court.

For form of præcipe on entry of appearance, see Form 374.
Cf. R. S. C., Order XII., r. 24.

Appearance on arrest of vessel, &c.

23. Upon the arrest of any vessel or property an appearance may be entered in the same manner as upon the service of the summons.

Notice of appearance.

24. A defendant or other person entering an appearance shall deliver to the registrar so many duplicate copies of the præcipe as there are persons to be served with notice of appearance; and the registrar shall seal such copies and enter thereon the date of sealing, and return them to the person entering the appearance; and such person shall forthwith give notice of appearance to the plaintiff, and in the case of an intervener to all other parties who have appeared, according to the form in the Appendix; and such notice shall be accompanied by a sealed duplicate of the præcipe. Such notice and duplicate shall be served at the address for service of the party to be served, and may be served in accordance with Order LIV. Rules 2 to 4.

For form of notice of appearance, see Form 374A.
Cf. R. S. C., Order XII., rr. 8 and 9.

Defendants appearing by same solicitor.

25. If two or more defendants in the same action appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one præcipe.

Cf. R. S. C., Order XII., r. 17.

26. A defendant may appear at any time before final judgment. **Rule 26.**
 If he appears at any time after the time limited by the summons for appearance, he shall not, unless the court otherwise orders, be entitled to any further time for any purpose than if he had appeared according to the summons. Time for appearance.

Cf. R. S. C., Order XII., r. 22.

Statement of Claim. Counterclaim. Defence. Reply.
Preliminary Act.

27. The defendant at the time of entering appearance, or within seven days thereafter, may give notice in writing to the plaintiff to deliver a statement of the circumstances in which his claim arises ; and the plaintiff shall within ten days from the time of receiving such notice, or within such further time as may be allowed by the court, file a concise statement accordingly, and deliver a copy thereof to the defendant. Defendant may require statement of claim.

Collision Actions.—In an action for damage by collision between vessels where the amount claimed exceeds 20*l.*, and preliminary acts are required, it is tried without pleadings, unless the court otherwise orders (see Rule 32, *post*).

28. If the defendant does not require a statement of claim to be delivered, he shall within ten days after appearance, or within such further time as may be allowed by the court, file a concise statement of his defence, set off, or counterclaim (if any), and deliver a copy thereof to the plaintiff. Provided that the defendant may at any time within such ten days give notice to the plaintiff and to the court that he does not intend to file any statement, and thereupon either party may apply to the court under Rule 35 of this order to have the action set down for hearing. Defence, set off, or counterclaim, where statement of claim not required.

The proviso was added in 1905.

29. If the defendant requires a statement of claim to be delivered, he shall within ten days from the delivery thereof or within such further time as may be allowed by the court, file a concise statement of his defence, set off, or counterclaim (if any), and deliver a copy thereof to the plaintiff. Defence, set off, or counterclaim, where statement of claim required.

30. The plaintiff shall within six days from the delivery of the defendant's defence, set off, or counterclaim, or within such further time as may be allowed by the court, file a concise statement of his reply (if any) to such defence, set off, or counterclaim, and deliver a copy thereof to the defendant. Reply.

31. Subject to these rules, the rules of the Supreme Court for the time being in force with respect to pleadings and amendment of pleadings shall, with the necessary modifications, apply to every Rules as to pleadings and amendment.

Rule 31. statement of claim, defence, set off, counterclaim, and reply delivered pursuant to these rules.

Preliminary act in actions for damage by collision between vessels.

32.—(1) In actions for damage by collision between vessels where the amount claimed exceeds 20*l.*, unless the court otherwise orders, the plaintiff shall within seven days after the commencement of the action, and the defendant shall within seven days after appearance, file with the registrar a document to be called a preliminary act, which shall contain a statement of the following particulars :—

“**Damage by Collision.**”—A preliminary act is only required in actions for damage “by collision.” See *Armstrong v. Gaselee*, (1889) 22 Q. B. D. 250; 58 L. J. Q. B. 149; *The John Boyne*, (1877) 3 Asp. M. C. 341; *Secretary of State for India v. Hewitt*, (1888) 6 Asp. M. C. 384; *Webster v. Manchester*, (1886) 11 P. D. 20.

Where the parties are the owners of vessels which have not been in collision with each other the practice as to requiring preliminary acts under R.S.C. Order XIX. r. 28 (the corresponding R.S.C.) is a matter for the discretion of the court. Dicta of Lord Merrivale Pres., to the effect that to file a blank preliminary act is not proper compliance with the order. See *The El Oso*, 133 L.T. 269.

Alterations in Preliminary Act.—Not usually allowed, *The Miranda*, (1881) 7 P. D. 185; 51 L. J. Adm. 56; *The Frankland*, (1872) L. R. 3 A. & E. 511; 41 L. J. Adm. 3; *The Seacombe*, (1912) P. 59. But see *The Godiva*, (1886) 11 P. D. 20; 55 L. J. Adm. 13.

- (1) The names of the vessels which came into collision and the names of their masters;
 - (2) The time of the collision;
 - (3) The place of the collision;
 - (4) The direction and force of the wind;
 - (5) The state of the weather;
 - (6) The state and force of the tide;
 - (7) The course and speed of the vessel when the other was first seen;
 - (8) The lights (if any) carried by her;
 - (9) The distance and bearing of the other vessel when first seen;
 - (10) The lights (if any) of the other vessel which were first seen;
 - (11) Whether any lights of the other vessel, other than those first seen, came into view before the collision;
 - (12) What measures were taken, and when, to avoid the collision;
 - (13) The parts of each vessel which first came into contact;
 - (14) What sound signals (if any), and when, were given;
 - (15) What sound signals (if any), and when, were heard from the other vessel;
 - (16) What acts of negligence, or what breach of any navigation rule, bye-law, or regulation, was committed by those in charge of the other vessel:
- and, in the case of a defendant :

- (17) The name of any vessel, other than the plaintiff's vessel, which the defendant alleges to have caused the collision or damage, or with reference to which those in charge of the defendant's vessel had to act.

Rule 32.

Of R. S. C., Order XIX., r. 28; pars. 16 and 17 are not in High Court Rule.

[NOTE.—In the event of the defendant blaming another vessel under head (17) of his preliminary act, the plaintiff will usually desire to add the other vessel as co-defendant. Order XIV. rr. 2 and 11, and Form 94 of County Court Rules, do not appear to contemplate proceedings *in rem*. The following are forms of order and notice respectively, recently adopted in such a case by the learned registrar of a county court which has a large number of admiralty actions, in conjunction with the admiralty practitioners concerned in the case, viz.:—

(FORM OF ORDER ADDING DEFENDANT *IN REM*.)

[*Heading of Action.*]

“Upon hearing Messrs. . . ., solicitors for the plaintiffs, it is ordered that the owners of the . . . or vessel . . . of . . ., now in the River . . ., be added as defendants in this action to defend proceedings against that vessel *in rem*.

“And it is ordered that the costs, etc.”

(FORM OF NOTICE TO PARTIES WHOSE NAMES ARE ADDED AS DEFENDANTS *IN REM*.)

[*Heading of Action.*]

“Take notice that by an order of this court dated the . . ., copy of which order is hereunto attached, together with copy of the summons in the above action, the owners of the . . . or vessel . . . of . . ., were ordered to be added as defendants in this action to defend proceedings against that vessel *in rem*.

“Dated, etc.

“

“Registrar

To the owners of and parties interested
in the . . . or vessel . . .”]

[These forms may be adopted for *personam* actions.]

As to preliminary act in case of second defendant, see *The Carlston* and *The Balcombe*, 42 T. L. R. 312.

(2) Either party may, after (but not before) filing his preliminary act, and after the pleadings (if any) are completed inspect and obtain office copies of the preliminary act filed by the other party.

(3) Where preliminary acts are required, the action shall be tried on such preliminary acts, without pleadings, unless the court orders pleadings to be delivered; but in such case, if the defendant intends to set up a set off or counterclaim, he shall within ten days after appearance, or within such further time as may be allowed by the court, file a concise statement of his set off or counterclaim, and deliver a copy thereof to the plaintiff; and if either party intends to rely on the defence of compulsory pilotage, he shall file a notice of such defence, and deliver a copy thereof to the adverse party, in the case of a defendant within the time allowed by this

Rule 32. rule for the delivery of a set off or counterclaim, and in the case of a plaintiff within six days from the delivery of the defendant's set off or counterclaim, or within such further time as may be allowed by the court.

[*Compulsory Pilotage*: By sect. 15 of the Pilotage Act, 1913, the defence of compulsory pilotage ceased on the 1st Jan. 1918, or earlier by Order of Council.]

Interrogatories.

Interrogatories.

33. Leave shall not be granted to deliver interrogatories seeking information substantially the same as that which would be disclosed by any pleading or preliminary act, unless the court considers such interrogatories necessary either for disposing fairly of the action or for saving costs.

Default of Pleading by Plaintiff.

Default of pleading by plaintiff.

34. If the plaintiff when required to deliver a statement of claim or file a preliminary act does not deliver or file the same within the time allowed for that purpose any defendant who has entered an appearance may at the expiration of that time apply to the judge to dismiss the action with costs for want of prosecution; and on the hearing of such application the judge may, if no statement of claim or preliminary act has been delivered or filed, order the action to be dismissed accordingly, or may make such other order and on such terms as he shall think just.

Cf. R. S. C., Order XXVII., r. 1.

Default of Pleading by Defendant.

Default of pleading by defendant.

34A. If the defendant when required under these rules to deliver a statement of defence, set off, or counterclaim, or a notice that he does not intend to file any statement, or to file a preliminary act, does not deliver or file the same within the time allowed for that purpose, the plaintiff, on filing an affidavit of non-delivery of such statement or notice, or of non-filing of such preliminary act, may apply to have the action set down for hearing, or may sign final or interlocutory judgment, in accordance with Rule 36; and the provisions of that rule shall apply accordingly.

This is a new rule of April, 1913.

Setting down Action for Hearing.

Setting down action for hearing and notice thereof.

35. Where an appearance has been entered, and the pleadings and preliminary acts (if any) have been delivered and filed, or the time allowed for delivering and filing a reply has expired without such reply having been delivered and filed, any party may apply to have the action set down for hearing, and it shall be set down accordingly, either on a day appointed for the trans-

action of the ordinary general business of the court, or on a day appointed by the judge on application made pursuant to Rule 3 of this order; and the registrar shall forthwith give to each party in the action a notice stating the day upon which the action will be heard.

Rule 35.
—

This is a new rule of April, 1913, in lieu of previous Rule 35, annulled.
For form of notice of hearing, see Form 375.

Procedure in Default of Appearance.

36. Where no appearance has been entered within the time limited by the summons, then— Procedure in default of appearance.

- (1) If the claim is for salvage or towage, and is not a claim of a liquidated nature, and is not a claim for damages, the plaintiff may, on filing an affidavit of due service of the summons, apply to have the action set down for hearing, and it shall be set down accordingly, either on a day appointed for the transaction of the ordinary general business of the court, or on a day appointed by the judge on application made by the plaintiff; and the registrar shall forthwith give to the plaintiff a notice stating the day upon which the action will be heard;

For form of notice of hearing, see Form 375.

- (2) In any other case, the plaintiff may apply to have the action set down for hearing; or he shall, on filing an affidavit of due service of the summons, be at liberty to sign final judgment for the amount named in the particulars in claims of a liquidated nature, with costs to be taxed, or interlocutory judgment with costs to be taxed in actions for damages, and in the latter event the damages shall be assessed by the registrar under the rules provided for the assessment of damages.

For forms of judgment, see Forms 395—397.

Bail. Release of Property.

37. Bail in admiralty actions may be taken before the registrar, or before a commissioner to administer oaths; but in every case the sureties shall justify, unless the adverse party gives notice in writing dispensing with affidavits of justification. Bail before registrar or commissioner.

See Rule 38, below, as to commissioner. For form of bail bond, see Form 377; and of affidavit of justification, see Form 378.

38. No commissioner shall take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent. Commissioner in certain cases not to take bail.

Cf. R. S. C., Order XXXVIII., r. 16.

Rule 39.

Preparation
of bail papers.

39. The bail bond and affidavits of justification shall be prepared by the party giving bail; the affidavits shall be according to the form in the Appendix, with such variations as may be necessary.

For form of affidavit of justification, see Form 378.

Bail before
registrar.

40. If bail is to be taken before the registrar, a notice containing the names and addresses of the sureties, and of the time appointed for taking the bail, shall be given or sent by post by the registrar to the party giving bail, and shall be served by such party on the party requiring bail before six o'clock on the day before that which is appointed for taking the bail; and the sureties shall attend at the time appointed for the purpose of executing the bail papers and of being cross-examined as to their means, if required. Where cross-examination is not required, the bail papers may be executed before a clerk to the registrar nominated by the judge under section 83 of the Act to take affidavits.

For form of notice, see Form 376.

Bail before
commis-
sioner.

41. If bail is taken before a commissioner, notice of such bail shall be given, and an affidavit of service thereof filed according to the forms in the Appendix, subject to such variations as may be necessary; but the property shall not be released without consent until the expiration of twenty-four hours from the time of service of such notice.

For forms of notice and of affidavit of service, see Forms 379 and 380.

Notice to
sureties to
attend for
cross-exami-
nation.

42. On receipt of notice of bail having been taken before a commissioner, the property shall not be released, if before the expiration of such twenty-four hours the party requiring such bail gives notice to the party giving bail, and to the registrar, that he requires such sureties to attend before the registrar for the purpose of being cross-examined as to their means.

For form of notice requiring sureties to attend, see Form 381.

Cross-exami-
nation of
sureties.

43. On receipt of such notice the registrar shall appoint a time for such cross-examination, and shall give or send by post notice of the time appointed to the parties forty-eight hours at least before the time so appointed; and the sureties shall attend at the time appointed for the purpose of being cross-examined; and on such cross-examination the registrar may either declare the bail given to be sufficient, or order fresh bail to be given.

For form of notice of time appointed, see Form 382.

44. If in the opinion of the registrar notice of attendance of the sureties for such cross-examination has been given without sufficient cause, the costs of their attendance for cross-examination, and the expenses of the detention of the property kept under arrest in consequence of such notice, shall be paid by the party requiring such attendance, and the registrar shall make an order accordingly.

Rule 44.

Costs of examination of sureties required without sufficient cause.

45. Where the amount sued for is paid into court, together with costs, or when the security has been completed, or in any other case if the plaintiff so requires, the registrar shall deliver to the party applying for the same an order directed to the high bailiff of the court, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the vessel or property, to release it forthwith.

Release on payment into court or completion of bail.

For form of order of release, see Form 384.

46. Notwithstanding the last preceding rule, the property in an action for salvage shall not be released, except with the consent of the plaintiff, until its value has been agreed or an affidavit of value filed on behalf of the party seeking the release, unless the judge otherwise orders.

Release in action for salvage.

47.—(1) If the plaintiff is dissatisfied with the value mentioned in the affidavit filed under the preceding rule, he shall be entitled to have the value ascertained by appraisement, and for such purpose shall file a præcipe.

Appraisement at request of plaintiff.

For form of præcipe, see Form 383.

(2) Where a præcipe for appraisement has been filed, the plaintiff shall deposit with the registrar a sum sufficient to cover the fees and expenses of the appraisement, such sum to be fixed by the registrar; and thereupon the registrar shall issue a request for appraisement according to the form in the Appendix, directed to the high bailiff of the county court having jurisdiction in admiralty within the district of which the property to be appraised shall be, and shall send the same to the high bailiff.

Procedure on request.

For form of request by registrar for appraisement, see Form 383A (see *The Argo*, (1895) P. 33; 64 L. J. Adm. 12).

(3) On receipt of the request the high bailiff shall cause an inventory and valuation of the property to be made by an appraiser, and shall return the request, with a certificate of appraisement signed by the high bailiff and the appraiser, according to the form in the Appendix, to the registrar of the court from which the request issued; and the registrar shall file the same

Certificate of appraisement.

Rule 47.

with the proceedings in the action, and shall give notice to the parties of the certificate having been received, and the parties shall be at liberty to inspect and demand copies thereof.

For form of certificate of appraisalment, see Form 383B.

Appraisalment generally conclusive as to value, *cf. The San Onofre*, (1917) P. D. 96.

Remuneration of appraiser.

(4) The appraiser shall be allowed such remuneration and expenses as may be prescribed by any order as to fees made pursuant to section one hundred and sixty-five of the Act.

See sect. 165 of 51 & 52 Vict. c. 43.

Costs.

(5) The costs of the appraisalment shall be in the discretion of the court.

Where appraisalment not required.

(6) If the plaintiff does not require an appraisalment, he shall not be entitled to dispute at the hearing the value mentioned in the affidavit, unless the judge, in the exercise of his discretion, for good cause otherwise orders.

This rule (sub-ss. 2—6) is as amended in 1912.

Release of cargo.

48. Cargo arrested for freight only may be released by filing an affidavit as to the value of the freight and by paying the amount of the freight into court, or by satisfying the court that it has already been paid.

Cf. R. S. C., Order XXIX., r. 4.

Costs of bail.

48A. Costs properly incurred by any party in respect of instructions for bail, preparation and execution of the bail bond and affidavits of justification, and any notices, perusals, attendances, or other proceedings in relation to bail, may be allowed on taxation, the amounts not to exceed those which may under the scales of costs be allowed in respect of proceedings of a like nature.

This is new Rule 12 of 1905.

Commission recoverable on taxation.

49. A commission or fee paid to a person becoming surety to a bail bond or otherwise giving security may be recovered on taxation. Provided that the amount of such commission or fee shall not in the aggregate exceed 1*l.* per centum on the amount in which bail is given.

Cf. R. S. C., Order XII., r. 21a.

Transfer of Action.

Transfer of action to High Court or another county court.

50. Where an action is transferred to another county court or to the High Court by order either of the court in which the action was commenced or of the High Court, the registrar shall transmit the record of the proceedings to the proper officer of the court, in the

same manner as is prescribed by Order XXXIII. Rule 7, of these rules, for the transmission of proceedings transferred under section ninety of the Supreme Court of Judicature Act, 1873, and sections sixty-eight and one hundred and twenty-six of the Act.

Rule 50.

See sect. 90 of 36 & 37 Vict. c. 66, and sects. 68 and 126 of 51 & 52 Vict. c. 43.

For forms of order of transfer, see Forms 385 and 386.

51. Where the proceedings are transferred by an order of the High Court, a copy of the order transferring the proceedings shall be left with the registrar.

Order of
High Court
for transfer
to be left
with
registrar.

Second or Cross Action.

52. Where it appears to the judge that the plaintiff in an admiralty action (hereafter called the second action) was or is the defendant in an action (hereafter called the first action) in another court arising out of the same transaction, and that he did not propose to the plaintiff in the first action that by agreement jurisdiction should be given to the court in which the first action was commenced to hear and determine the second action, the judge may, if he thinks fit, refuse the plaintiff in the second action his costs.

When costs
in second or
cross action
may be
refused.

53. Where a second or cross action for damage has been commenced by a defendant in an action for damage, and the second action has been commenced, by agreement or otherwise, in the court in which the first action was commenced, or has been transferred to the said court by order of any other court, the court may direct both actions to be tried at the same time and upon the same evidence.

Cross actions
may be tried
together.

Consolidation of Actions.

53A. Admiralty actions pending in the same court and depending on the same facts, or actions of salvage pending in the same court and relating to services rendered to the same ship in relation to the same peril, may be consolidated by order of the court, on application made by any party on notice to all other parties in accordance with the rules in force as to interlocutory applications. On any such application the court may give such directions as to the conduct of the consolidated actions, the delivery of pleadings, and the appearance of the parties at the hearing, and may impose such terms and conditions and make such order in the matter as may be just.

Consolidation
of actions.

Cf. R. S. C., Order XLIX., r. 8.

*Enforcement of Orders.***Rule 54.**

Enforcement
of judgment
in personam.

54. Where a judgment or order has been obtained in an action *in personam*, such judgment or order may be enforced against the defendant in the same manner as judgments or orders of the court are enforced in ordinary actions.

For forms of præcipe for issue of warrant of execution and of warrant of execution, see Forms 402 and 403.

Enforcement
of judgment
in rem, where
vessel or
property
released.

55. Where a judgment or order has been obtained in an action *in rem* in which the vessel or property to which the action relates has been released, such judgment or order may be enforced against the parties giving bail and their sureties, or against the amount paid into court, as the case may be.

For forms of præcipe for issue of warrant of execution and of warrant of execution, see Forms 402 and 403.

Enforcement
of judgment
in rem, where
vessel or
property not
released.

56. Where a judgment or order has been obtained in an action *in rem* in which the vessel or property to which the action relates has not been released, the court may, by the judgment or order, or by subsequent order, order the vessel or property to be taken and sold in execution, subject to the provisions hereinafter contained.

Proceedings
where owners
are known.

57. Where at the time when the judgment or order is obtained the owners of the vessel or property are known, the vessel or property may be arrested and detained under the provisions of section twenty-two of the County Courts Admiralty Jurisdiction Act, 1868, or kept in arrest if already arrested; and the court may, with or without notice to the owners, order such vessel or property to be taken and sold in execution.

Provisions
for protec-
tion of per-
sons having
interest who
are not
before the
court.

Provided that, in the case of a British-owned vessel, before any order for sale is made, the adverse party shall deliver to the registrar a præcipe, with a certified copy of the ship's register: and if the names of any persons who are not before the court appear on the register as having an interest in the vessel, the registrar shall issue to the solicitor, if such præcipe is delivered through a solicitor, or to the bailiff, for service on such persons in accordance with Rule 48 of this Order, a notice of the judgment or order, stating thereon that if such persons do not within seven clear days from the day of service deliver a præcipe to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be taken and sold in execution.

See sect. 22 of 31 & 32 Vict. c. 71.

For forms of præcipe and notice, see Forms 404 and 405 (see *The Ruby* (No. 1), (1898) P. 52; 67 L. J. P. 25).

58. Where at the time when the judgment or order is obtained the owners of the vessel or property are unknown, the vessel or property shall not be taken and sold in execution in the first instance, but it may be arrested and detained under the provisions of section twenty-two of the County Courts Admiralty Jurisdiction Act, 1868, or kept under arrest if already arrested.

Rule 58.

Proceedings
where owners
are unknown.

See sect. 22 of 31 & 32 Vict. c. 71.

59. Where the owners of the vessel or property are subsequently ascertained, the adverse party may deliver to the registrar a præcipe stating the names, addresses, and descriptions of such owners, with, if the vessel be a British-owned vessel, a certified copy of the ship's register: and thereupon the registrar shall issue to the solicitor, if such præcipe is delivered through a solicitor, or to the bailiff, for service on the owners, and, in the case of a British-owned vessel, on the other persons, if any, whose names appear on the ship's register as having an interest in the vessel, a notice of the judgment or order, stating thereon that if the owners or other persons, if any, appearing to have an interest in the vessel do not within seven clear days from the day of service deliver a præcipe to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be taken and sold in execution.

Proceedings
on discovery
of owners.

For forms of præcipe and notice, see Forms 406 and 407.

60. The notice in the last preceding rule mentioned shall be served personally upon the owners and upon the other persons, if any, whose names appear on the ship's register as having an interest in the vessel, unless the court upon facts duly verified upon affidavit allows of substituted service.

Service of
notice on
owners or
persons
having
interest.

61. Where the owners of the vessel or property cannot be ascertained, the court may, on an affidavit showing grounds, make an order directing notice of the judgment or order to be given, by advertisement or otherwise, to the owners of and all persons claiming to have an interest in the vessel or property to which the action relates, together with a notice informing such owners and persons that if they do not within a time to be limited by the order and specified in the notice (which shall not be less than ten clear days from the date of the publication of the notice) deliver a præcipe to the registrar applying for a re-hearing of the action, the vessel or property to which the action relates will be taken and sold in execution.

Proceedings
where
owners
cannot be
ascertained.

For forms of order and notice, see Forms 408 and 409.

Rule 62.

Application
for re-
hearing, and
proceedings
thereon.

Costs before
re-hearing.

Order for
sale in
default of
application
for re-
hearing.

Issue of
warrant for
sale of vessel
or property.

Inventory
and valua-
tion.
Sale.

Proceeds of
sale to be
paid into
court.

Objection to
account of
sale, or to
fees.

62. Any person served with or receiving notice under any of the five preceding rules, and desiring to apply for a re-hearing of the action as owner of or a person claiming to have an interest in the vessel or property, may within the time limited by the notice apply for a re-hearing by filing a præcipe and entering an appearance in accordance with the provisions of this order as to appearance; and thereupon the action shall proceed in the same manner as an action in which appearance is entered within the time limited by the summons. The costs of the plaintiff incurred prior to the entry of appearance shall be in the discretion of the judge, and shall be dealt with on the re-hearing as the judge shall direct.

For forms of præcipe, see Form 410. As to entry of appearance, see Rules 19—26, *supra*.

63. If no appearance is entered within the time limited by the notice, the court may order the vessel or property to which the action relates to be taken and sold in execution.

Execution against Vessel or Property.

64. Where pursuant to these rules the court orders any vessel or property to be taken and sold in execution, the registrar shall, on a præcipe being filed by the plaintiff, issue a warrant of execution according to the form in the Appendix.

For forms of præcipe and warrant, see Forms 411 and 412.

65. Where under a warrant of execution a vessel is seized, the high bailiff shall, before selling the same, cause an inventory and valuation thereof to be made by an appraiser, and the vessel shall not be sold for less than the appraised value thereof, except by order of the court. The appraiser shall be allowed such remuneration and expenses as may be prescribed by any order as to fees made pursuant to section 165 of the Act.

This rule is as amended in 1912.

See sect. 165 of 51 & 52 Vict. c. 43.

66. On the completion of the sale of a vessel or property the high bailiff shall pay the gross proceeds of sale into court, return the warrant, and file an account of the sale and of the fees thereon, signed by him, together with the certificate of appraisal signed by the appraiser.

67. Any person interested in the proceeds of any sale may inspect the high bailiff's account of the sale and of the fees thereon, and may object to such account and fees, and any such objection

shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs. **Rule 67.**

As to objection and review, see Order LIII. rr. 5, 6, and 47, and sect. 118 of 51 & 52 Vict. c. 43.

Cf. R. S. C., Order LI., r. 16.

68. On the completion of the purchase the high bailiff shall deliver up the property to the purchaser, and if required so to do shall execute a bill of sale to him at the expense of the purchaser. **Delivery of property to purchaser.**

69. The costs incurred by the plaintiff in obtaining an order directing any vessel or property to be taken and sold in execution, and in suing out execution, to be taxed by the registrar, shall be allowed and be recoverable against the vessel or property taken in execution. **Costs of obtaining order for sale, and of execution.**

Transfer of Sale.

70. Where a vessel has been arrested or has been seized under a warrant of execution, and the sale of the vessel has been ordered to be transferred to the High Court, the vessel shall be retained by the high bailiff until the marshal shall, by order of the High Court, take possession thereof. **Proceedings on transfer of sale.**

71. The party desiring that the sale of any vessel or property should be conducted in the High Court may at any time after judgment give security to the amount of 10*l.*, and deliver to the registrar an application for an order for the transfer of the proceedings for sale to the High Court. **Application for transfer of proceedings for sale.**

For form of application and order, see Form 413.

72. The registrar shall transmit the application in the last preceding rule mentioned to the judge for his order thereon, if the court is not sitting, and shall in any case certify on the application that the security for costs has been given. **Application to be transmitted to judge.**

For form of application and order, see Form 413.

Tenders.

73. The provisions of Order IX. as to payment into court shall not apply to admiralty actions; but in lieu thereof the following provisions shall apply. **Provisions of Order IX. as to payment into court not apply.**

See *The Vulcan*, (1898) P. 222; 67 L. J. P. 101.

74.—(1) A party desiring to make a tender shall give notice to the adverse party of the terms and amount of the tender, and shall deliver a præcipe, with a copy thereof for the adverse party, and pay the amount of the tender into court. **Tender.**

For form of præcipe, see Form 387.

[NOTE.—Sembles, that these rules as to tender are not applicable to an action in which the question of liability is in the first instance only to be

Rule 74
Note.
—

determined, as there is no claim put forward in the action until the reference stage is reached, upon which the tender can operate. If these rules do not apply to such an action, then a tender made in the "liability" stage of the action will only commence to operate as to costs after the "reference" claim has been lodged.]

- (2) A tender may be made and money paid into court—
 (a) either in respect of the whole of the claim of the adverse party, or in respect of any part thereof:
 (b) with or without costs:
 (c) with or without a denial of liability: and
 (d) with or without a notice of defence on the ground of tender before action brought.

See note under sect. 74, sub-s. 1, *supra*.

(3) The præcipe shall state whether the tender is made in respect of the whole of the claim or in respect of part only thereof, and if it is made in respect of part only of the claim, such part shall be specified in the præcipe.

(4) If the tender is made with costs, the præcipe shall specify what amount is paid in respect of the claim and what amount in respect of costs.

(5) If the tender is accompanied by a denial of liability, that fact shall be stated in the præcipe.

(6) If the tender is accompanied by notice of defence on the ground of tender before action brought, notice of such defence shall be given in the præcipe.

Notice of
payment
into court.

75. The registrar shall, within twenty-four hours from the time of any payment made into court pursuant to the preceding rule, send to the adverse party notice thereof, together with a copy of the præcipe accompanying such payment.

For form of notice, see Form 388.

Notice of
acceptance
or rejection
of tender.

76. Within forty-eight hours of the receipt of notice of any such payment into court, the adverse party shall send to the registrar and to the party making the payment, or his solicitor, by post, or leave at the office of the registrar and at the residence or place of business of such party, or the office of such solicitor, a notice stating whether he accepts or rejects the tender; and if he fails to do so, he shall be deemed to have rejected it.

For form of notice, see Form 389.

Acceptance
of tender in
respect of
whole claim.

77. Where a party accepts a tender in respect of the whole of his claim, he shall, unless the tender is accompanied by notice of defence on the ground of tender before action brought, be entitled

to take the amount of such tender out of court, and shall be entitled to his costs of action; and **Rule 77.**

- (a) if payment into court was made without costs, he shall be at liberty to tax his costs, and obtain and enforce an order for payment thereof; Costs.
- (b) if payment into court was made with costs, he may either accept and take out of court the amount paid in respect of costs, or tax his costs and obtain and enforce an order for payment of the amount by which such costs when taxed exceed the amount paid in respect of costs; but if the amount so paid exceeds the amount of such costs when taxed, the balance thereof, after payment of the taxed costs, shall be repaid to the party making the tender.

See *The Skudenaes*, (1901) 70 L. J. P. 64.

78. Where a party accepts a tender in respect of part of his claim only, he shall, unless the tender is accompanied by notice of defence on the ground of tender before action brought, be entitled to his costs in respect of the amount so accepted up to the time of notice of acceptance; but the amount so accepted shall not be paid out of court, nor shall such costs be taxed or payable until the action is disposed of, and the court may order any costs awarded to the party making the tender to be set off against such amount and costs. Acceptance of tender in respect of part of claim. Costs.

79. Where a party accepts a tender accompanied by notice of defence on the ground of tender before action brought, he shall not be entitled to take out of court the amount so accepted, nor to any costs, without the order of the court; and the court may make such order as may be just as to the costs of either party, and as to the set off of any costs awarded to the party making the tender against the amount paid into court. Acceptance of tender when accompanied by notice of defence of tender before action. Costs.

80. Where a tender is accompanied by a denial of liability, and the adverse party does not give notice that he accepts the tender in accordance with Rule 76 of this Order, such party may nevertheless accept the tender (whether he has previously given notice of rejection or not) at any time before the action is called on and the case is opened, subject to the payment of any costs which may have been reasonably incurred by the party making the tender since the date of payment into court, and which may be allowed by the court. In any other case the money shall not be paid out until the action is disposed of; and if the adverse party recovers less than the amount paid into court, the balance of such amount shall be repaid to the party making the tender, unless the court Where tender accompanied by denial of liability is not accepted. Costs.

- Rule 80.** otherwise orders, and the court may order any costs awarded to such party to be set off against the amount recovered by the adverse party; and if the party making the tender succeeds, the whole amount paid into court shall be repaid to him, unless the court otherwise orders.

Payment out of Court.

- 81.** Money ordered in an admiralty action to be paid out of court may be paid to the solicitor on the record, without the production of a power of attorney from the party entitled to receive the money, unless the judge otherwise orders.
- 82.** Where more actions than one have been commenced against a vessel or any property, and the same has been sold, the proceeds thereof shall be retained in court, to abide the decision of the court in the various actions, unless the judge otherwise orders.

Appraisement.

- 83.** The registrar may, on the application of either party, and whether before or after judgment, order any property under arrest to be appraised, and the same allowances shall be made to the appraiser as are directed to be allowed by Rule 65 of this Order.

Records of the Court.

- 84.** The parties in an action, their solicitors, or the clerks of the solicitors, may while the action is pending, and for one year after its termination, inspect, free of charge, all the records in the action.
- 85.** In a pending action no person other than the parties, their solicitors, or the clerks of the solicitors, shall be entitled to inspect the records in the action without the permission of the registrar.
- 86.** In an action which has been finally disposed of any person may, on delivering to the registrar a præcipe, and on payment of the proper fee, inspect the records in the action.

Copies.

- 87.** Any person entitled to inspect any instrument or document in an action shall, on delivering to the registrar a præcipe, and on payment of the proper charges for the same, be entitled to an office copy thereof.

Assessors.

88. Any party requiring the judge at the trial or the registrar on an assessment of damages to be assisted by assessors, shall deliver a præcipe to that effect, and shall at the time of delivering such præcipe pay to the registrar the sum of two guineas for each assessor if the amount claimed does not exceed 100*l.*, and three guineas if it does exceed that amount, with, in either case, a sum reasonably sufficient to cover the travelling expenses of each assessor to attend the court, the amount to be fixed by the registrar; and such payments shall be considered as costs in the action, unless otherwise ordered by the judge.

Rule 88.

Payment application for assessors by party.

This rule is as amended in 1912 and in 1923.

89. Where the judge or the registrar requires the assistance of assessors the fees in the last preceding rule mentioned shall be paid by the plaintiff before the trial, and shall be costs in the action, unless otherwise ordered by the judge.

The like on requirement of judge or registrar.

90. Where the trial or reference is adjourned the plaintiff shall pay the assessors' fees for the day of adjournment forthwith after the order of adjournment is made by the judge or registrar, as the case may be.

Assessors' fees on adjournment.

91. Upon the delivery of the præcipe in Rule 88 mentioned, or upon the requirement of the judge or registrar as in Rule 89 mentioned, the registrar shall select from the list of assessors the names of two persons whom he may, having reference to the nature of the action to be tried or of the reference to be determined, consider most capable of assisting the judge or registrar in trying and determining it, and shall send to each of such persons by post a summons according to the form in the Appendix.

Selection and summoning of assessors.

As to list of assessors, see sect. 14 of 31 & 32 Vict. c. 71, and Form 392.

For form of summons to assessor, see Form 393; and for order fining assessor for non-attendance, see Form 394.

Nautical Assessors Advisory only.—Nautical assessors when summoned, are present merely to advise the judge, and he ought to decide, both on law and merits, in accordance with his own opinion as to the law and merits of the case (see *The Aid*, (1881) 6 P. D. 84; 50 L. J. Adm. 40; *The Fred*, (1895) 72 L. T. 153).

92. The registrar shall pay to every assessor for each day's attendance and service in every action or reference two guineas or three guineas, according as the amount claimed in the action does or does not exceed 100*l.*

Payment to assessors.

This rule is as amended in 1922.

Admission of Liability.

93. The defendant in an admiralty action may at any time after appearance, and the plaintiff may at any time after the filing

Party may admit liability except in salvage.

Rule 93.

of a counterclaim, admit liability in any action except for salvage. Such admission shall be by præcipe according to the form in the Appendix, and shall be signed by the solicitor for the party, or if signed by the party in person, shall be attested by a solicitor.

For form of præcipe, see Form 390.

Notice
thereof.

94. The party filing such præcipe shall immediately give notice thereof to the other parties in the action, and after receipt of such notice no costs shall be allowed to any party served therewith in respect of the further prosecution of the action so far as regards the question of liability.

Agreement
for assess-
ment of
damages by
registrar.

95. The parties may, before trial, agree that the damages recoverable shall be assessed by the registrar with or without assessors.

Assessment of Damages.

Judge may
order refer-
ence except
in salvage.

96. In all actions except salvage the judge may, instead of giving judgment for any specified amount, give judgment settling the rights of the parties and order a reference to the registrar or to the registrar and assessors as to the amount to be recovered, which amount shall bear interest from such date as the registrar may allow at the rate of four per cent. per annum.

For form of judgment ordering reference, see Form 397.

Claimant
to file
particulars
and vouchers.

97. After an order has been made under the last preceding rule, or an admission of liability has been filed under Rule 93, the claimant shall within seven days file particulars of his claim, if not already filed, and all original vouchers, and shall serve copies thereof on the adverse party.

See Rule 104A, *post*, as to taking vouchers off the file.

Registrar to
appoint time
for reference.

98. Upon the application of either party the registrar shall fix a time and place for proceeding on the reference and shall give at least four days' notice thereof to all parties; and he shall summon an assessor or assessors to be present thereat if so ordered by the judge or required by either party or by himself.

For form of notice, see Form 398.

Assessors.

Registrar
may proceed
with or
adjourn
reference.

99. At the time appointed for the reference, if either party be present, the reference may be proceeded with; but the registrar may adjourn the reference from time to time as he may think fit.

Evidence
may be
given *viva*
voce or by
affidavit.

100. Witnesses may be produced for examination on the reference; or where a witness resides at a distance of not less than ten miles from the registrar's office or in any other case by consent

of the parties, evidence may be given on affidavit, subject to the right of the adverse party to require the deponent to any such affidavit to attend the reference for cross-examination, provided that the registrar may allow the costs of such attendance against the cross-examining party in the event of his considering that it was unnecessarily called for.

Rule 100.

Cross-examination on affidavit.

101. As soon as possible after the conclusion of the reference the registrar shall report in writing according to the form in the Appendix, with such variations as may be necessary, what amount is found to be due in respect of every claim filed, particularizing in a schedule to such report, each amount claimed and allowed, and what part of the costs of the reference (if any) shall be allowed, and to whom. He shall also immediately give notice to both parties that the report has been made, and may be inspected at his office; and unless within seven days after the service of such notice as last aforesaid either party lodges an objection to the report, the same shall become final and binding on all parties, and judgment shall be entered accordingly.

Report by registrar.

For forms of report and notice thereof, see Forms 399 and 400.

102. Any party intending to object to the registrar's report shall within the aforesaid period of seven days file with the registrar and give to the adverse party a notice of such intention. In such notice he may also request the registrar to state in writing the reasons of his decision, either as regards the whole of the same or as regards any particular items to be specified in the notice of objection. If a notice of objection is filed judgment shall not be entered on the report until either the notice has been withdrawn or the matter disposed of by the judge.

Objection to report.

For notice of objection, see Form 401.

103. Within seven days from the notice of the filing of a notice of objection to the report the registrar shall himself file a statement of his reasons as required by the notice; and the report shall be brought up before the judge at the next sitting of the court to be held after the expiration of seven days from the filing by the registrar of such reasons.

Registrar to file reasons.

104. On the matter coming before the judge a hearing shall take place by way of appeal from the report, and the judge may either vary or confirm such report, or refer the same back to the registrar with any such directions as may appear to him to be just, and make such order as to the costs as he may think fit; and on the matter being finally disposed of judgment shall be entered accordingly.

Appeal from registrar's report.

Rule 104A.

Taking
vouchers off
the file.

104A. Original vouchers filed pursuant to Rule 97 may be taken off the file at any time, on filing a written consent of the adverse party, or without such consent at any time after judgment has been signed or the action has been otherwise disposed of; and in either case the party taking such vouchers off the file shall file a receipt for the same.

This is a new Rule of 1909.

Consent Orders.

Orders by
consent.

105. Any consent in writing between the parties to an action or their solicitors may by permission of the court be filed, and shall thereupon become an order of the court, and such order shall be as valid and may be enforced in the same manner as an order made by the court.

For form of consent to order, see Form 391.

Subpœnas.

Subpœnas
may be
issued in
blank.

106. A party shall be entitled to issue subpœnas *ad testificandum* and *duces tecum* under the seal of the court without inserting the names of the witnesses.

Service in
England or
Wales.

107. Service of a subpœna may be effected by any party to the action or his solicitor or the agent of such solicitor, or by any person employed by either of them, in any part of England or Wales.

Service of Notices and Orders.

Service by
post.

108. After an appearance has been entered all necessary notices, orders, and other documents may be served by post when the party appearing or his solicitor resides or carries on business at a distance of more than two miles from the office of the party or solicitor serving the same.

Costs.

Costs of
necessary
letters.

109. The costs of all necessary correspondence in admiralty actions shall be allowed by the registrar.

Costs of
solicitor
acting as
agent out of
the district.

110. When it becomes necessary to employ a solicitor to act as agent out of the district of the court for the purpose of obtaining the evidence of witnesses on the trial of an action, a reference before the registrar, or the taxation of costs, or for any other necessary purpose, the costs of such agent and of instructing him shall be allowed by the registrar.

111. Where any party is allowed at the trial or any adjournment thereof to avail himself of any defence, set off, or counter-claim of which notice should have been given before the trial, the judge in exercising his discretion as to costs shall consider what effect the non-delivery of such notice has had in the action.

Rule 111.

Costs where defence, &c., which should have been pleaded is allowed at trial.

112. In admiralty actions where the amount recovered, or in the case of a defendant the amount claimed, does not exceed 20*l.*, the costs shall be allowed under column B., unless the judge otherwise orders.

Costs where less than 20*l.* recovered or claimed.

Costs, Column B.—See pp. 1160 *et seq.*

113. Subject to the foregoing rules, the costs in admiralty actions shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject-matter of such actions.

General provisions as to costs in Admiralty actions.

This is a rule of 1914. See also Order LIII., r. 8, p. 636.

Application of Order.

114. The provisions of this order shall apply to proceedings instituted as admiralty proceedings in any county court having admiralty jurisdiction as to wages or salvage, or any other matter, under the Merchant Shipping Act, 1894, or any other Act under which admiralty proceedings may be taken in the court.

Application of order to proceedings in Admiralty under 57 & 58 Vict. c. 60, and other Acts.

In cases where no provision is made by the County Court Admiralty Jurisdiction Acts, or by this Order XXXIX., the general practice of the court shall be followed (see Order L. r. 36).

As regards a *jury*, however, the word "actions" in sect. 101 of the County Courts Act, 1888, does not include admiralty actions; therefore, in an admiralty cause, the defendants are not entitled as of right to a jury; if one party desires a jury, and the other party a trial before the judge with or without assessors, no jury ought to be sworn (*The Tynwald*, (1895) P. 142; 64 L. J. P. 1; *The Theodora*, (1897) P. 279; 66 L. J. P. 50; see also *Metropolitan Asylums Board v. Sparrow*, (1913) W. N. 115; 29 T. L. R. 450).

due for the transportation of the cargo now or lately laden therein; or where the action is against the vessel, cargo, and freight, add instead thereof, and the cargo now or lately laden therein, together with the freight due for the transportation thereof], in the sum of [state sum in letters] pounds according to the particulars of claim hereunto annexed:

You are hereby summoned to enter an appearance in the said action within four clear days of the service hereof.

[If the claim is for salvage or towage, and is not of a liquidated nature, and is not for damages, add

You are also warned that if you do not enter an appearance as aforesaid, the judge of this court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.] If claim not liquidated, nor for damages.

[Or, if the claim is of a liquidated nature, add

You are also warned that if you do not enter an appearance as aforesaid, the plaintiff will be at liberty, on filing an affidavit of the service of this summons, to sign final judgment for the amount named in the particulars, with costs, to be taxed by the registrar.] If the claim is of a liquidated nature.

[Or, if the claim is for damages, add

You are also warned that if you do not enter an appearance as aforesaid, the plaintiff will be at liberty, on filing an affidavit of the service of this summons, to sign interlocutory judgment, with costs to be taxed, in which case the damages will be assessed by the registrar under the rules provided for the assessment of damages.] If the action is for damages.

Dated this day of

Registrar.

To the owners of and parties interested in the
[state description and name of vessel], [or
cargo, &c., as the case may be].

N.B.—The solicitor for the plaintiff, A. B., is , of [here state the address given in the præcipe].

371.

Summons in Admiralty Action in Personam.

Admiralty Jurisdiction.

In the county court of holden at

Between A. B.,

[address and description] Plaintiff,
and

C. D.,

[address and description], Defendant.

Whereas an action for [state nature of action] has been instituted in this court on behalf of the plaintiff against you in the sum of [state sum in letters] pounds according to the particulars of claim hereunto annexed:

You are hereby summoned to enter an appearance in the said action, within four clear days of the service hereof.

[If the claim is for salvage or towage, and is not a claim of a liquidated nature, and is not a claim for damages, add

You are also warned that if you do not enter an appearance as aforesaid, the judge of this court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.] If claim not liquidated, nor for damages.

[Or, if the claim is of a liquidated nature, add

You are also warned that if you do not enter an appearance as aforesaid, the plaintiff will be at liberty, on filing an affidavit of the service of this summons, to sign final judgment for the amount named in the particulars, with costs, to be taxed by the registrar.] If the claim is of a liquidated nature.

[Or, if the claim is for damages, add

You are also warned that if you do not enter an appearance as aforesaid, the judge of this court will proceed to hear and determine the said action, or to make such orders therein as to him shall seem fit.] If the action is for damages.

the plaintiff will be at liberty, on filing an affidavit of the service of this summons, to sign interlocutory judgment, with costs to be taxed, in which case the damages will be assessed by the registrar under the rules provided for the assessment of damages.]

Dated this day of 19 .

Registrar.

To the defendant.

N.B.—The solicitor for the plaintiff, A. B., is of [here state the address given in the *præcipe*].

372.

Warrant of Arrest and Detention.

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 18.

In the county court of holden at .
[Title of Action.]

Whereas an action has been instituted in this court on behalf of A. B. of against [state description and name of vessel or property] in the sum of [state sum in letters] pounds:

These are therefore to require and order you to arrest the said and to keep the same under safe arrest until you shall receive further orders from this court.

Given under the seal of the court this day of 19 .

By the court,

Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

373.

Solicitor's acceptance of Service of Summons and undertaking to appear and to put in or give Bail, &c., to be Indorsed on Summons.

[Not to be printed.]

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 6.

I, L. M., of [address], solicitor for C. D., of [address and description], accept service hereof, and I undertake to appear for the said C. D. according to the exigency of the within summons; and I also undertake within days from the date hereof to put in or give bail herein in a sum not exceeding [state amount for which undertaking given] pounds, or to pay such sum into the county court of holden at , [in an action for salvage, add and to file an affidavit of the value of the vessel or property to which this action relates, unless such value is agreed]; and I consent that all instruments and other documents in this action may be left for me at

Dated this day of 19 .

374.

Præcipe to enter an Appearance.[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]

action].

Order
XXXIX.,
Rules 19.

Enter an appearance in this action for the defendant C. D., of [*address and description*] [*or for E. F., of [address and description]*] who claims to have an interest in the vessel [*or property or fund in court*] the subject of this

All instruments and documents in the action may be left for the said C. D. [*or E. F.*] at [*state address*].

Dated this day of 19 .

374A.

Notice of Appearance.[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]Order
XXXIX.,
Rule 24.

Take notice, that I have this day entered an appearance in this action for the defendant C. D., of [*address and description*] [*or for E. F., of [address and description]*] who claims to have an interest in the vessel [*or property or fund in court*] the subject of this action].

Dated this day of 19 .

375.

Notice of Hearing.

Admiralty Jurisdiction.

In the county court of holden at .

[*Title of Action.*]Order
XXXIX.,
Rules 35, 36.

Take notice, that this action will be heard at a court to be holden on the day of at [*here state where court is to be held*], at the hour of o'clock in the noon.

The hearing fee must be paid before the case is called on.

Dated this day of 19 .

Registrar.

To the Plaintiff and Defendant [*or intervener*].

379.

Notice of Bail taken before Commissioner.

[Not to be printed.]

Admiralty Jurisdiction.

In the county court of holden at .

[Title of Action.]

Order
XXXIX.,
Rule 41.

Take notice that bail has been given in the sum of £ on behalf of the
above-named to answer judgment in this action by and that
such bail has been taken before , a commissioner to administer oaths
in the Supreme Court of Judicature.

Dated this day of 19 .

Yours, &c.,

Solicitor for the .

To , and his [or their] solicitor.

380.

Affidavit of Service of Notice of Bail taken before Commissioner.

[Not to be printed.]

Admiralty Jurisdiction.

In the county court of holden at .

[Title of Action.]

Order
XXXIX.,
Rule 41.

I, of , in the of , clerk to of the
same place, solicitor for the in this action, make oath and say as
follows :

That I did on the day of 19 , at of the
clock in the noon serve on , the solicitor for the , a notice of
bail in the words and figures following, viz. :

[Copy notice of bail omitting heading.]

Sworn at , in the county of , this day of 19 .

Before me,

A commissioner for oaths.

381.

Notice requiring Sureties to attend for Cross-examination.

[Not to be printed.]

[Title of Action.]

Take notice that I require the sureties in this action to attend before you
for the purpose of being cross-examined as to their means, and I request that
a time may be fixed for such cross-examination.

Order
XXXIX.,
Rule 42.

Dated this day of 19 .
To the registrar of the court and to
and his [or their] solicitor.

382.

Notice of Time appointed for Cross-examination.[*Title of Action.*]

Order
XXXIX.,
Rule 43.

Take notice that I have appointed the day of at
the hour of in the noon, for the cross-examination of the
sureties in this action, when the said sureties are to attend at for the
purpose of such cross-examination.

Dated this day of 19 .

Registrar.

To the and his [*or their*] solicitor,
and to the and his [*or their*] solicitor.

383.

Præcipe for Appraisement.[*Not to be printed.*][*Title of Action.*]

Order
XXXIX.,
Rule 47.

Take notice, that the plaintiff hereby requires to have the value of the
vessel [*or property*] the subject of this action ascertained by appraisement.

Dated this day of 19 .

To the registrar of the court.

383A.

Request by Registrar to High Bailiff for Appraisement.

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 47 (2).

In the county court of holden at .

[*Title of Action.*]

The plaintiff having required the value of the vessel [*or property*] the
subject of this action to be ascertained by appraisement,

You are hereby requested to choose an experienced person to make an
inventory of and to appraise the (*describe vessel or property*)
being the vessel [*or property*] the subject of this action, and to return this
request with the inventory and appraisement to the registrar of this court,
with an account of the fees and expenses of the appraiser.

Dated this day of .

Registrar.

To the high bailiff of
the county court of
holden
at .

383B.

Certificate of Appraisement.

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 47 (3).

In the county court of holden at .

[*Title of Action.*]

I, , high bailiff of the county court of holden at
hereby certify that in pursuance of a request dated the day of .

and issued in this action, I have chosen of an experienced person to make an inventory of and to appraise at the true value thereof the (*describe vessel or property*) being the vessel [*or property*] the subject of this action :

And I, the said do certify that I have made the inventory of the said vessel [*or property*] hereunto annexed, and that I have lawfully and justly appraised the true value thereof at the sum of £

In witness whereof we have hereunto respectively set our hands this day of

(Signed)

High Bailiff.
Appraiser.

To the registrar of the
county court of
holden
at

384.

Order of Release.

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]

Order
XXXIX.
Rule 45.

You are hereby authorised and directed to release the now under arrest of this court by virtue of its warrant, upon the payment of all costs charges, and expenses attending the custody thereof.

Given under the seal of the court this day of 19

By the court,
Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

385.

Order of Transfer to High Court.

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]

Order
XXXIX.
Rule 50.

Whereas it appears that the subject-matter of this action exceeds the limit in respect of amount of the admiralty jurisdiction of this court [*or state otherwise as the case may be*]:

It is ordered that this action be transferred to the Probate, Divorce, and Admiralty Division of the High Court of Justice, together with the proceedings that have been had therein in this court.

Given under the seal of the court this day of 19

By the court,
Registrar.

386.

Order of Transfer to County Court or High Court.

Admiralty Jurisdiction.

Order
XXXIX.
Rule 50.

In the county court of holden at .
[Title of Action.]

Whereas it hath been made to appear that this action could be more conveniently prosecuted in the county court of holden at , appointed to have admiralty jurisdiction [*or* in the high court of justice] :

It is ordered that this action be transferred to the said court, together with the proceedings that have been had therein in this court.

Given under the seal of the court this day of 19 .
By the court,
Registrar.

387.

Præcipe for paying in money on tender.

[Not to be printed.]

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 74.

In the county court of holden at .
[Title of Action.]

Take notice that I, C. D., of [address and description], [*or* I, L. M., solicitor for C. D., of [address and description]] do pay the sum of [state sum in letters] into court in this action [*when paid by solicitor, add at the request and by the authority of the said C. D.*] I [*or* he] having agreed to tender and pay the same in settlement of the whole claim of the plaintiff [*or* in settlement of so much of the claim of the plaintiff as relates to [state the part of the claim in respect of which payment is made] :]

[And further take notice that I do pay the further sum of [state sum in letters] into court in respect of the costs incurred by the plaintiff :]

[And further take notice that notwithstanding such payment I [*or* the said C. D.,] deny [*or* denies] my [*or* his] liability :]

[And further take notice that I [*or* the said C. D.] intend [*or* intends] to rely on the following ground of defence to this action, viz. :—

That before action brought I [*or* the said C. D.], tendered the said sum of [state sum in letters] to the plaintiff.

Dated the day of 19 .
To the registrar of the court, and to the plaintiff,
and his solicitor.

388.

Notice of payment into Court on tender.

Order
XXXIX.,
Rule 75.

In the county court of holden at .
[Title of Action.]

Take notice that C. D., , of [address and description] has this day paid into court the sum of £ in settlement of your whole claim in this action [*or* in settlement of so much of your claim in this action as relates to] [and the further sum of £ in respect of the costs incurred by you] in accordance with a præcipe, a copy of which accompanies this notice.

You are hereby required, within forty-eight hours of the receipt of this notice by you, to file a notice stating whether you accept or reject the tender so made by the said C. D.

If you fail to do so, you will be deemed to have rejected it.

Dated this day of 19 .

To the plaintiff and to his solicitor.

Registrar.

389.

Notice of acceptance or rejection of sum paid into Court on tender.*[Not to be printed.]*

In the county court of

holden at

*[Title of Action.]*Order
XXXIX.,
Rule 76.

Take notice that the plaintiff accepts [*or rejects*] the sum of £
paid by C. D., of into court in satisfaction of the claim in respect
of which it is paid in.

Dated this day of 19 .

To the registrar of the court and to C. D.

[*address and description*], and his solicitor.

390.

Admission of Liability.*[Not to be printed.]*

Admiralty Jurisdiction.

In the county court of

holden at

*[Title of Action.]*Order
XXXIX.,
Rule 33.

We, the undersigned, solicitors for the defendants, hereby admit the
liability of the defendants for the collision in question in this action, and
consent to a reference to ascertain the amount of damages and interest due
to the plaintiff.

Dated this day of 19 .

To Mr.

Plaintiff's solicitor.

Yours, &c.

Defendants' solicitor.

391.

Consent to Order.*[Not to be printed.]*

Admiralty Jurisdiction.

In the county court of

holden at

*[Title of Action.]*Order
XXXIX.,
Rule 105.

We, the undersigned, solicitors for the plaintiff and defendant respectively
hereby consent to an order for

Dated this day of , 19 .

Plaintiff's solicitors.
Defendant's solicitor.

ADMIRALTY.

392.

List of Assessors.

Admiralty Jurisdiction.

The county court of holden at

The following list has been framed by the registrar of persons of nautical skill and experience residing or having places of business within the district of this court for admiralty purposes, to act as assessors in the court under the County Courts Admiralty Jurisdiction Acts, 1868 and 1869, viz. :—

No.	Name.	Address.	Description.

I hereby lay the above list before the President of the Admiralty Division of the High Court of Justice for his approval.

Judge.

Approved this day of

President of the Admiralty Division,
High Court of Justice.

393.

Summons to Assessor.

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]

You are hereby summoned to appear and serve as an assessor in this court at _____ on the _____ day of _____ 19____, at the hour of _____ in the _____ noon, to assist the judge of this court in the hearing and determining of this action [or to assist the registrar in the assessment of damages], and in default of attendance you will be liable to a penalty not exceeding five pounds under section 15 of the County Courts Admiralty Jurisdiction Act, 1868.

Dated this day of 19 .

Registrar.

To of

394.

Order Fining Assessor for Non-Attendance.

Admiralty Jurisdiction.

In the county court of holden at

[Title of Action.]

Whereas [Name] was duly summoned to appear and serve as an assessor in this court at [Address] on the [Day] day of [Month] 19[Year]; and whereas he has neglected, without sufficient cause shown, to appear and serve as required: It is hereby ordered that he shall forthwith [or on the [Day] day of [Month] 19[Year]] pay to the registrar of this court a fine of £[Amount] for such neglect.

Given under the seal of the court this day of 19 .

By the court,
Registrar.

395.

Final Judgment in Action in Personam.**Admiralty Jurisdiction.**

In the county court of holden at .

[*Title of Action.*]

It is this day adjudged that the plaintiff A. B. of do recover against the defendant [*or defendants*] C. D. of the sum of pounds [*in an action for salvage*], for services rendered to [*state description and name of vessel*]; *or in an action for towage*, for services rendered in towing the [*state description and name of vessel*]; *or in an action for necessaries*, for necessaries supplied to the [*state description and name of vessel*]; *or in an action for wages*, for wages in respect of services rendered on board the [*state description and name of vessel*]; *or in an action for damage to cargo*, for damage caused to the cargo carried in the [*state description and name of vessel*]; *or in an action for damage by collision*, for damage caused to the [*state description and name of vessel*] by the defendant's vessel, the [*state description and name of vessel which caused the damage*], together with the costs of this action, to be taxed by the registrar.

And it is ordered that the defendant [*or defendants*] do pay the said sum and costs to the registrar of this court forthwith [*or within* days] after the certificate of the result of such taxation [*or do pay the said sum of* £ *to the registrar of this court forthwith* [*or on or before the* day of 19] and do pay the amount of the said costs when taxed forthwith [*or within* days after the certificate of the result of such taxation.]

Given under the seal of this court this day of 19 ,

By the court,
Registrar.

396.

Final Judgment in Action in Rem.**Admiralty Jurisdiction.**

In the county court of holden at .

[*Title of Action.*]

It is this day adjudged that the plaintiff A. B. of do recover the sum of pounds [*in an action for salvage*], for services rendered to [*state description and name of vessel*]; *or in an action for towage*, for services rendered in towing the [*state description and name of vessel*]; *or in an action for necessaries*, for necessaries supplied to the [*state description and name of vessel*]; *or in an action for wages*, for wages in respect of services rendered on board the [*state description and name of vessel*]; *or in an action for damage to cargo*, for damage caused to the cargo carried in the [*state description and name of vessel*]; *or in an action for damage by collision*, for damage caused to the [*state description and name of vessel*] by the defendant's vessel the [*state description and name of vessel which caused the damage*], together with the costs of this action, to be taxed by the registrar.

And it is ordered that [*insert such directions as may be given by the judge*].

Given under the seal of this court this day of 19 .

By the court,
Registrar.

397.

Interlocutory Judgment in Action for Damages.

Admiralty Jurisdiction.

Order
XXXIX.,
Rules 36 (2),
96.

In the county court of holden at .
[Title of Action.]

It is this day adjudged that the plaintiff A. B. is entitled to recover
[if the judgment is in personam against the defendant C. D.] damages
for damage caused to the cargo carried in the [state description and name of
vessel] [or for damage caused to the [state name and description of vessel] by
the defendant's vessel the [state description and name of vessel which caused the
damage],] together with the costs of this action, to be taxed by the registrar.

And it is ordered that it be referred to the registrar [and an assessor [or
two assessors]] to assess the said damages under the rules provided for the
assessment of damages.

Given under the seal of the court this day of 19 .
By the court,
Registrar.

398.

Notice of Time and Place for Proceeding on Reference.

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 98.

In the county court of holden at .
[Title of Action.]

Let all parties concerned attend me at on the day of
19 , at o'clock in the noon, to proceed with the reference
directed by the judgment [or order] in this action dated the day of
19 .

Dated this day of 19 .
Registrar.

399.

Registrar's Report.

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 101.

In the county court of holden at .
[Title of Action.]

Whereas by the judgment [or order] in this action, dated the day
of 19 (or by consent of the parties upon an admission of liability,
or as the case may be), the damages recoverable by the plaintiff (or by the
defendant on his counterclaim) have been referred to me [and (if so) to
two assessors] to report the amount thereof.

Now, I hereby report that I have, [with the assistance of Messrs.
and the assessors appointed], carefully examined the claim and
vouchers filed in this action, and having heard evidence on affidavit and *vide*
voce (or as the case may be) on behalf of the plaintiff and defendant, I find
that the defendant is indebted to the plaintiff (or vice versa) in the sum of
£ , as shown by the schedule hereto annexed, which sets forth in
separate columns the several amounts claimed and the amounts which I [in
conjunction with the said assessors] consider justly due to him in respect to
each item.

I am of opinion that interest at the rate of 4l. per cent. per annum from
the day of 19 , should be allowed on the said sum of £
until the date of payment.

I am further of opinion that the costs of the reference should be paid by the defendant or [plaintiff]. (*If for any special reasons, add reasons.*)

Dated this day of 19 .

Registrar.

SCHEDULE TO REPORT.

	Claimed.			Allowed.		
	£	s.	d.	£	s.	d.
1. Shipwright's bill						
2. Noting protest						
3. Extending protest						
4. Survey fees						
5. Examination before receiver of wreck .						
6. Demurrage or damages for detention of the ship of tons register, from the day of 19 , to the day of 19 , days at £ per diem						
<i>(Add any other items.)</i>						

Together with interest.

Registrar.

400.

Notice of Report.

Admiralty Jurisdiction.

In the county court of holden at .
[*Title of Action.*]

Take notice, that my report on the reference ordered by the judgment [*or order*] in this action dated the day of lies in my office, and can be inspected by the parties on : and that unless within seven days from the service of this notice on him either party shall lodge an objection to the report the same will become final and binding on all parties, and judgment may be entered accordingly.

Dated this day of 19 .
To .

Registrar.

Order
XXXIX.,
Rule 101.

401.

Notice of Objection to Report.

[*Not to be printed.*]

[*Title of Action.*]

Take notice that I intend at the next sitting of the court to be held after the expiration of twenty-one days from this date to object to the report of the registrar on the reference ordered by the judgment [*or order*] in this action, dated the day of , 19 , as regards the following items [*here state particulars of objection*] :

And I request the registrar to file within seven days from the filing of this notice a statement of the reasons of his decision as regards the items hereinbefore specified.

Dated this day of 19 .
To the registrar of the court, and
to [*the opposite party*].

Order
XXXIX.,
Rule 102.

402.

Præcipe for Warrant of Execution in Action in Personam, or against the parties giving bail and their sureties in Action in Rem.

Admiralty Jurisdiction.

Order
XXXIX.,
Rules 54, 55.

In the county court of _____ holden at _____

[*Title of Action.*]

Issue a warrant of execution against the goods of the defendant, C. D., of [*address and description*], who was ordered by this court, on the day of _____, to pay to the plaintiff the sum of £ _____ [*here insert for what the sum was ordered to be paid*], and who has not paid the said sum as so ordered.

[*or* Issue a warrant of execution against the goods of [*state names, addresses and descriptions of parties to bail bond*] who on the _____ day of _____, jointly and severally submitted themselves to the jurisdiction of this court, and consented that if _____ should not pay what might be adjudged against him [*or them*] in this action with costs, execution might issue forth against them the said _____ their heirs, executors, and administrators, their goods and chattels, for a sum not exceeding [*state sum in letters*] _____ pounds, the said _____ having been ordered by the court on the _____ day of _____ to pay to the plaintiff the sum of _____ pounds [*here insert for what the sum was ordered to be paid*], and not having paid the said sum as so ordered.]

Dated this _____ day of _____ 19 _____.

403.

Warrant of Execution against goods of Defendant in Action in Personam, or against goods of parties giving bail and their sureties in Action in Rem.

Admiralty Jurisdiction.

Order
XXXIX.,
Rules 54, 55.

In the county court of _____ holden at _____

[*Title of Action.*]

Whereas on the _____ day of _____ 19 _____, the plaintiff obtained a judgment in this court against the defendant C. D., _____ for the sum of £ _____ for _____ and costs to be taxed, and it was thereupon ordered by the court that the defendant C. D. _____ should pay the said sum and costs to the registrar of the court forthwith [*or within* _____ days] after the certificate of the result of such taxation :

And whereas the said costs were duly taxed, and were by the certificate of the registrar, dated the _____ day of _____, allowed at the sum of £ _____ :

And whereas default has been made in payment according to the said order :

[*Or, Whereas on the* _____ day of _____ 19 _____, [*state names, addresses, and descriptions of parties to bail bond*] jointly and severally submitted themselves to the jurisdiction of this court, and consented that if _____ should not pay what might be adjudged against him [*or them*] in this action with costs, execution might issue forth against them the said _____ their heirs, executors and administrators, their goods and chattels, for a sum not exceeding [*state sum in letters*] _____ pounds :

And whereas on the _____ day of _____, 19 _____, the plaintiff obtained a judgment in this court in this action against the said _____ for the sum of £ _____ for _____ and costs to be taxed, and it was thereupon ordered by the court that the said _____ should pay the said sum and costs to the registrar of the court forthwith [*or within* _____ days] after the certificate of the result of such taxation :

And whereas the said costs were duly taxed, and were by the certificate of the registrar, dated the _____ day of _____, allowed at the sum of £ _____ :

And whereas default has been made in payment according to the said order :]

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant C. D.

[*or of the said (parties to bail bond)*] wheresoever they may be found within the district of this court (except the wearing apparel and bedding of him [*or them*] or his family [*or their families*], and the tools and implements of his [*or their*] trade, if any, to the value, as regards each such party, of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order [*or, if the amount remaining due exceeds the sum specified in the bail bond*, being the sum for which in default of payment of the amount adjudged against the said the said (*parties to bail bond*) consented that execution might issue forth against them], together with the costs of this execution; and also to seize and take any money or bank notes (whether the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant C. D. [*or of the said (parties to bail bond)*] which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court this day of 19 .

By the court,
Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Amount for which judgment was obtained			
Costs			
Total			
Amount paid			
Amount remaining due			
[If this amount exceeds the sum specified in the bail bond, add			
Amount for which bail bond given			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

Notice.—The goods and chattels are not to be sold until after the expiration of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant [*or parties to bail bond*].

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of , 19 .

SEE BACK.

For indorsement of fees for execution of warrant, see Form 163.

Note.—If the amount due under the judgment or order does not exceed the sum specified in the bail bond, execution may issue for that amount; if it exceeds that sum, it must issue only for the sum specified in the bail bond.

404.

Præcipe for issue of Notice of Judgment or Order in Rem, for service on persons appearing by the ship's register to have an interest in the vessel, but who are not before the Court.

[*Not to be printed.*]

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 57.

In the county court of holden at
[*Title of Action.*]

I, A. B. , of [*address and description*] the above-named plaintiff
[or I, L. M. , solicitor for (*state name, address and description of plaintiff*)] have annexed hereunto a certified copy of the register of the vessel (*describing such vessel*) to which this action relates.

I request that a notice of the judgment [*or order*] obtained in this action on the day of , may be issued for service on [*state names, addresses and descriptions*] whose names appear on the register as having an interest in the said (*vessel*), but who are not before the court, stating thereon that if they do not within seven clear days from the day of service of such notice deliver a præcipe to the registrar applying for a rehearing of this action, the vessel to which this action relates will be taken and sold in execution.

Dated this day of 19 ,

405.

Notice of Judgment or Order in Rem to persons appearing by the ship's register to have an interest in the vessel, but who are not before the Court.

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 57.

In the county court of holden at
[*Title of Action.*]

To [*state names, addresses, and description of persons whose names appear on the ship's register as having an interest in the vessel, but who are not before the court.*]

Take notice that on the day of the above named action for (*state the nature of the action*), was commenced in this court on behalf of A. B. of , against the (*state the vessel against which the action was commenced, as in the summons*):

And that on the day of it was adjudged (*state the judgment*):
And that the plaintiff has filed a præcipe in this court, and has annexed thereto a certified copy of the register of the said (*vessel*) on which the names of you the above named appear as having an interest in the said vessel.

And further take notice that if you do not within seven clear days from the day of the service of this notice upon you deliver to me at my office situate at a præcipe applying for a rehearing of this action, the vessel to which this action relates will be taken and sold in execution.

Dated this day of 19 ,

By the court,
Registrar.

406.

Præcipe for issue of notice of Judgment or Order in Rem for service on owners of and persons interested in vessel or property, when ascertained.

[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of . holden at .

[*Title of Action.*]

Order
XXXIX.,
Rule 59.

I, A. B., of (address and description), the above named plaintiff [or I, L. M., solicitor for (state name, address, and description of plaintiff)], have ascertained that the names, addresses and descriptions of the owners of the vessel [or property (describing such vessel or property)] to which this action relates are as follows:—

[*If the vessel is a British-owned vessel, add A certified copy of the register of the said vessel is hereunto annexed.*]

I request that a notice of the judgment [or order] obtained in this action on the . day of ., may be issued for service on the said (owners)

[*If the vessel is a British-owned vessel add and upon the other persons whose names appear on the register as having an interest in the said (vessel)*] stating thereon that if they do not within seven clear days from the day of service of such notice deliver a præcipe to the registrar applying for a rehearing of this action, the vessel [or property] to which this action relates will be taken and sold in execution.

Dated this . day of . 19 .

407.

Notice of Judgment or Order in Rem to owners of and persons interested in vessel or property, when ascertained.

Admiralty Jurisdiction.

In the county court of . holden at .

[*Title of Action.*]

Order
XXXIX.
Rule 59.

To (state names, addresses, and descriptions of persons stated in the præcipe to be owners of the vessel or property) [and, if the vessel is a British-owned vessel, state also names, addresses, and descriptions of persons whose names appear on the register as having an interest in the vessel].

Take notice, that on the . day of . the above named action for (state the nature of the action) was commenced in this court on behalf of A. B. of . against the (state the vessel or property against which the action was commenced, as in the summons):

And that on the . day of ., it was adjudged (state the judgment):

And that the plaintiff has filed a præcipe in this court stating that you the above named (owners) . are the owners of the vessel [or property] to which this action relates.

[*If the vessel is British-owned, add and has annexed thereto a certified copy of the register of the said (vessel) on which the names of you, the above named . appear as having an interest in the said vessel.*]

And further take notice that if you do not within seven clear days from the day of the service of this notice upon you deliver to me at my office situate at . a præcipe applying for a rehearing of this action, the vessel [or property] to which this action relates will be taken and sold in execution.

Dated this . day of . 19 .

By the court,
Registrar.

408.

Order directing notice of Judgment or Order in Rem to be given to owners of and persons claiming to have an interest in vessel or property, where owners cannot be ascertained.

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 61.

In the county court of holden at .
[Title of Action.]

Upon the application of and upon reading an affidavit of
of sworn the day of .

It is ordered that notice of the judgment, [or order] obtained in this action on the day of be given to the owners of and all persons claiming to have an interest in the vessel [or property] to which this action relates, by the publication of such notice in (or as the court may direct) together with a notice informing such persons that if they do not within [not less than ten] clear days from the date of the publication of such notice deliver a præcipe to the registrar applying for a rehearing of this action, the vessel [or property] to which this action relates will be taken and sold in execution.

Dated this day of 19 .

By the court,
Registrar.

409.

Notice of Judgment or Order in Rem to owners of and persons claiming to have an interest in vessel or property, where owners cannot be ascertained.

Admiralty Jurisdiction.

Order
XXXIX.,
Rule 61.

In the county court of holden at .
[Title of Action.]

To the owners of and all persons claiming to have an interest in the vessel [or property] to which the above-mentioned action relates.

Pursuant to an order made by the court in the above-mentioned action on the day of .

Notice is hereby given—

That on the day of the above-named action for (state the nature of the action) was commenced in this court on behalf of A. B. of , against the (state the vessel or property against which the action was commenced, as in the summons) :

And that on the day of it was adjudged (state the judgment) :

And pursuant to the said order of the day of ,

Notice is hereby further given—

That unless the owners of and persons claiming to have an interest in the said vessel [or property] shall within [not less than ten] clear days from the date of the publication of this notice deliver to me at my office situate at a præcipe applying for a rehearing of this action, the vessel [or property] to which this action relates will be taken and sold in execution.

Dated this day of 19 .

By the court,

Registrar.

410.

Præcipe applying for Rehearing.[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]Order
XXXIX.,
Rule 62.

Enter an appearance for E. F. [*address and description*]
who claims to be the owner of [*or to have an interest in*] the vessel [*or*
property] to which this action relates, and applies for a rehearing of this
action pursuant to the notice in this action dated the day of

All instruments and documents in the action may be left for the said
E. F. at (*state address*).

Dated this day of 19 .

411.

Præcipe for Warrant of Execution against vessel or property in Action in Rem.[*Not to be printed.*]

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]Order
XXXIX.,
Rule 64.

Issue a warrant of execution against (*state description and name of vessel*
or other property to which the action relates), the judge [*or registrar*]
having ordered the same to be taken and sold in execution.

Dated this day of 19 .

412.

Warrant of Execution against vessel or property in Action in Rem.

Admiralty Jurisdiction.

In the county court of holden at

[*Title of Action.*]Order
XXXIX.,
Rule 64.

Whereas on the day of , 19 , it was adjudged that the
plaintiff in this action should recover the sum of £ for (*follow the*
terms of the judgment as in Form 396) together with the costs of this action,
which have been taxed and allowed at the sum of £ , and it was
ordered that (*insert directions given by the judge as in Form 396*):

And whereas default has been made in payment according to the said
order, and the court has ordered the vessel [*or property*] to which this
action relates to be taken and sold in execution, and has allowed to the
plaintiff the costs of obtaining such order and suing out execution, which
have been taxed and allowed at the sum of £ :

These are therefore to require you forthwith to seize and take in execution

the (*state description and name of vessel or other property to which the action relates*) wheresoever the same may be found within the district of this court, and to reduce into writing an inventory of the said ;

And having chosen one or more experienced person or persons to cause him or them to appraise the same according to the true value thereof, and, upon a certificate of such value having been reduced into writing, to cause the said to be sold by public auction for the highest price, not under the appraised value, that can be obtained for the same.

And you are further required, immediately upon the sale being completed, to pay the proceeds arising therefrom into court, and to return this warrant with an account of the sale and of your fees thereon, and of the costs of the appraisement, signed by you, together with the certificate of appraisement signed by the appraiser.

Given under the seal of the court this day of 19 .

By the court,
Registrar.

To the high bailiff of the said court,
and others the bailiffs thereof.

	£	s.	d.
Amount for which judgment was obtained			
Costs taxed at			
Subsequent costs, allowed and taxed at			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed thereon].			

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

SEE BACK.

[Indorse on warrant the fees allowed for execution of a warrant of execution against vessel or property in action in rem.]

413.

Order for transfer of Sale to High Court.

[Not to be printed.]

Admiralty Jurisdiction.

Order
XXXIX.,
Rules 71, 72.

In the county court of holden at :

[Title of Action.]

Whereas in an action commenced in this court on behalf of A. B., of against [*state name of defendant*] the judge of this court has ordered [*here insert the terms of the order*]:

And whereas the plaintiff [*or defendant*] in the said action is desirous that the sale of the vessel should be conducted in the Probate, Divorce, and

Admiralty Division of the High Court of Justice, and has given security for the sum of ten pounds :

Now I, A. B., the plaintiff [*or* C. D., the defendant, *or* L. M., solicitor for the plaintiff [*or* defendant]], pray that an order to transfer the proceedings for sale to the said division of the High Court of Justice do issue.

Dated this day of 19 .

I hereby certify that the security above mentioned has been duly completed.

Registrar.

I hereby order the transfer to be made as prayed.

Judge.

414.

Admiralty Actions Book.

Pro formâ.

DATE.			
Day.	Month.	Year.	
10	Feb.	19 .	Action for damage by collision, instituted on behalf of A.B., of against the schooner named "The Kate," lying at within the district of the court, in the sum of £200.
10	Feb.	19 .	Solicitor for plaintiff, Mr. L. M., of Application made for arrest; affidavit filed; warrant issued, the evidence being satisfactory.
11	Feb.	19 .	Application for judge's permission for action to be heard at .
13	Feb.	19 .	Permission granted.
15	Feb.	19 .	Appearance entered by R. S., of solicitor for defendant, C. D., of
18	Mar.	19 .	The action having been heard the court adjudged that [<i>here set forth the judgment.</i>] <i>If any further proceedings had, they should be entered in the same manner.</i>

PART IV.

LIABILITY OF EMPLOYERS FOR INJURIES TO WORKMEN.

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CHAPTER I.

INTRODUCTORY REMARKS ON THE RELATION OF MASTERS AND SERVANTS AT COMMON LAW.

The relations between master and servant to-day, whatever may have been the case in the past, are purely founded on contract. Nor is there any reason why such contract should not be exactly what the parties choose to make it. So further, as far as express terms are concerned, it is (saving statutory enactment) entirely as made. As regards implied terms, these have to be sought in the transitional periods and in the dim past of history, and some

of them, no doubt, owe their origin to villenage, feudal tenures, and other ancient usages where the relationship was far from being one of contract.

Broadly speaking, a man is responsible for his own acts and for his own acts only. The great exception, more broadly stated, is that he is also responsible for those who act for him by his authority. But in the case of those employed as his servants, there was always the implied term in their contract of service that he should not be answerable to them for the acts of their fellow servants. Put another way, the implied term was that where a man enters an employment, he takes all the risks incident to it, of which the risk of the negligence of a fellow servant is always one (*Priestly v. Fowler*, (1837) 3 M. & W. 1; 7 L. J. (N. S.) Ex. 42; 49 R. R. 495). But this in no way modifies an employer's responsibility for his own acts.

To his servant, as to any member of the public, the employer owes a duty to take reasonable care in all that he does. He must not lay a trap for him. If the service involve hidden, or secret, or unusual dangers, he must point them out. As regards such secret dangers, the servant is in the position of the public, as no man can be presumed to take a risk of the existence of which he is rightly ignorant. In all their relations together, the master must be reasonably careful, and however he carry on his business, whether in person or otherwise, he must conduct it on a system reasonably safe to all concerned, and in work of a dangerous character must take all reasonable precautions for the safety of his men; for instance, he should not permit fuses to be used which do not give the men sufficient time to get into cover (*Sword v. Cameron*, (1839) 1 D. 439; *Paterson v. Wallace*, 1 Macqueen, 748; *Smith v. Baker*, (1891) A. C. 325; 60 L. J. Q. B. 683). Whether a master conducts his business in person or not will soon transpire, but if he does not, the servant has a right to assume that he has done his best to select a competent man to act in his place (*Wilson v. Merry*, (1868) L. R. 1 H. L. Sc. 326). If he does act in person, it will be a question of fact for a jury whether the act of which his workman has reason to complain, was or was not negligent. *E.g.*, Are fellow servants incompetent? Tools or appliances defective? To which he may answer, he has taken all reasonable care in their selection, or as regards tools, that he has obtained them from responsible makers. He is not bound to provide the latest appliance: he must simply act with reasonable care. It might not be reasonable for a master after making inquiries about safety appliances which would have prevented the accident to fail to adopt any of them (*Toronto Power Co., Ltd. v. Kate Paskwan*, (1915) A. C. 734; 84 L. J. P. C. 148; [1915] W. C. & Ins. Rep. 444). So with similar questions. But however dangerous or perilous a service, a man may choose to face it for the sake of the extra earnings he presumably makes. So on discovering risks, he had not anticipated he may still prefer to run them rather than close the engagement. In case of accident through want of care on the part of the master, the rights of the parties are well shown by the course taken by the pleadings. Thus, suppose a driver injured by a defective kecker to a cart supplied for his use by the defendant. His statement of claim shows a good cause of action when it alleges that by want of care, and in breach of a duty to him by the defendant, he has been injured. The defendant should have taken all reasonable care to supply a proper cart. The defence is complete when it alleges the plaintiff was a servant in the employ of the defendant, and was injured by a risk of such employment. The reply again is an answer when it states that he was ignorant of the risk, and it was not one contemplated by the contract. Such, the strict course of the common law. From time to time the legislature have seen fit to protect a man against his own improvidence, *e.g.*, as where it insists on the fencing of machinery. Apart from such statute, the parties might bargain the machinery should or should not be fenced, and that the man should or should not take the risk. Again, if he did, presumably he would get higher wages and the difference might more than pay for his insuring himself. But the statute says he shall not so contract. Hence the man's statement

of claim, showing a complete cause of action, is met by a defence which the statute says shall be no defence. Therefore he is entitled to judgment (*Baddeley v. Granville*, (1887) 19 Q. B. D. 423; 56 L. J. Q. B. 501; *Britton v. Great Western Cotton Co.*, (1872) L. R. 7 Ex. 130; 41 L. J. Ex. 99; *Groves v. Wimborne*, (1898) 2 Q. B. 402; 67 L. J. Q. B. 862). We now come to injuries caused him by the negligence of fellow servants. This we have seen is a risk he impliedly contracted to take. There is no reason the implied contract should not be varied by express contract. Probably but for the intervention of the legislature, with the growing power of the men's unions, the implied terms would have been modified by an express term in every case, and by one far better suited to the needs of each industry than the cast-iron rule of an inflexible Act. The implied term that a man takes the risk of the negligence of his fellow servants whatever their rank, became general, though in Scotland the rule once prevailed that a master should be responsible for a man who was in his place and acted for him. But as regards such high officials, there is little need for any exception on their account; they will be usually good for damages themselves. The general rule holds in their case that every man is responsible for his own act, and it is no defence to an action for negligence that the injured man was a fellow servant (*Lees and Sykes v. Dunkerley Bros.*, (1911) A. C. 5; 80 L. J. K. B. 135).

Where a master is negligent and otherwise responsible, and relies on the implied term the man took the risk, we have to inquire: Was the risk contemplated? This will depend on the facts in each case, but generally we find that the implied term narrows down to where there is a *common work and a common master* (*Williams v. Linotype and Machinery, Ltd.*, (1915) 84 L. J. K. B. 1620). A man employed as a clerk, say, does not usually take the risk of being shot by a gamekeeper employed by the same master, and, of course, if men are employed on the same job by different masters, and one is hurt by the other's man, there is no contract whatever, express or implied, between them, and he will have the usual rights of a stranger (*Johnson v. Lindsay*, (1891) A. C. 371). One of the merits of the common law is its power of adapting itself to the varying needs of contemporary life. Thus we find that a gradual change was coming (I don't say ~~had~~ come) over this implied term, and it was being modified to suit actual facts. It was becoming more clear that men did not willingly contract to relieve their master of all consequences of his negligence because they happened to know as much about the facts as he did, and hence the implied term was coming rather to be that whilst a man took all the risks really incident to his employment—*e.g.*, a seaman the perils of the sea; a collier the perils of the mine; a driver the perils of the road—he did not take any risk which could have been reasonably avoided by the proper care and attention of a fairly considerate master (*a*). However, the natural development and modification of the implied contract between the parties, has been arrested first by the Employers' Liability Act, 1880, which made statutory what public opinion was beginning to require, and which, if left to itself, it would probably have effected in a far better way, and next by the Workmen's Compensation Act of 1897 and later of 1906 and other amending Acts (all of which are now consolidated in the Workmen's Compensation Act, 1925 (15 & 16 Geo. 5 c. 84)), which introduced the principle of the master insuring his workmen against the risks of the employment, including the risk of injury attributable to the workman's own negligence, and in some cases even where the injury was occasioned by his serious and wilful misconduct.

NOTE.—(*a*) See further under Employers' Liability Act, 1880, "Defences to Action," and Chapter IV., "Liability under Workmen's Compensation Acts."

CHAPTER II.

LORD CAMPBELL'S ACT.

(FATAL ACCIDENTS ACT, 1846)

[9 & 10 VICT. c. 93.]

AN ACT FOR COMPENSATING THE FAMILIES OF PERSONS KILLED
BY ACCIDENTS.

(26TH AUGUST, 1846.)

WHEREAS no action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

2. And be it enacted, that every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

3. Provided always, and be it enacted, that not more than one action shall lie for and in respect of the same subject-matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

Section 4.

4. And be it enacted, that in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

5. And be it enacted, that the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

6. And be it enacted, that this Act shall come into operation from and immediately after the passing thereof, and that nothing therein contained shall apply to that part of the United Kingdom called Scotland.

7. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

LORD CAMPBELL'S ACT AMENDMENT ACT.

(FATAL ACCIDENTS ACT, 1864)

[27 & 28 VICT. c. 95.]

AN ACT TO AMEND THE ACT 9 & 10 VICT. c. 93, FOR COMPENSATING THE FAMILIES OF PERSONS KILLED BY ACCIDENT.

(29TH JULY, 1864.)

By this Act the following provisions were added:

1. If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said Act that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action

Section 1. may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be, as if it were brought by and in the name of such executor or administrator.

2. And whereas by the second section of the said Act it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: Be it enacted and declared, that it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. This Act and the said Act shall be read together as one Act.

Before this Act if a person was killed by the negligence of another his representatives had no right of action on the principle *Actio personalis moritur cum personâ*. As to the case of the wrongdoer dying before verdict given, the law is unaffected by the Act. So the statute only applies to death caused by the wrongful act. If death takes place from an independent cause before judgment obtained, the maxim applies, and the right of action is gone entirely.

The measure of damages where the claim is for a person killed is not the same as where a man is injured and claims for himself. In this case those entitled can only recover compensation for the actual pecuniary loss suffered by them, and not for mental suffering, nor loss of companionship (*Blake v. Mid. Ry.*, (1852) 21 L. J. Q. B. 233), and damages cannot be recovered for funeral expenses or mourning (*Dalton v. S. E. R.*, (1858) 27 L. J. C. P. 227; 114 R. R. 726). But though the estate of the deceased may not have suffered, yet if a person has suffered damage himself he is entitled to recover as where property remains in the family, but he gets less advantage from it (*Pym v. G. N. R.*, (1863) 32 L. J. Q. B. 377). A reasonable expectation of pecuniary advantage from the deceased having remained alive may be taken into account by the jury, e.g., the future earnings of a child (*Taff Vale Rail. Co. v. Jenkins*, [1913] A. C. 1; 82 L. J. K. B. 49); or the superior education children would have received if their father had lived (*Pym v. G. N. R.*, (1863) 32 L. J. Q. B. 377), and legal liability is not the test in respect of which damages may be recovered under this statute. In *Hetherington v. N. E. R.*, (1882) 10 Q. B. D. 160; 51 L. J. Q. B. 495, a son might have helped his father who was fifty-nine and blind, and it was held

there was some evidence of such expectation (see also *Franklin v. S. E. R.*, (1858) 4 Jur. N. S. 565), but where it was admitted that the cost of maintenance exceeded a girl's wages and no evidence of expectation of future benefit was given, it was held that no action was maintainable (*Meddan v. Minnis*, (1893) 37 S. J. 253). In a case where the dependants might have proceeded alternatively under the Workmen's Compensation Act, 1906, the judge should not in directing the jury refer to the amount of compensation which might have been recovered had such proceedings been taken (*Price v. Glynea and Castle Coal and Brick Co.*, (1916) W. C. & Ins. Rep. 93).

If no pecuniary damage be proved the action fails, and the defendants are entitled to a verdict (*Duckworth v. Johnstone*, 29 L. J. Ex. 25); and on the principle of compensation being only given for actual pecuniary loss sustained. In *Grand Trunk Railway of Canada v. Jennings*, (1889) 13 Ap. C. 800; 58 L. J. P. C. 1, it was held that any money received on a policy of insurance on the life of the deceased has to be taken into account in assessing the damages. This has now been altered by the Fatal Accidents (Damages) Act, 1908, 8 Edw. VII., Ch. 7, *i.e.*, it cannot be taken into account, but money paid under the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, must still be taken into account (see *Carling v. Lebbon*, (1927) 2 K. B. 108; 96 L. J. K. B. 515), as must also money paid to a sailor in the Navy under the provisions of the Statutory Rules and Orders made under s. 3 of the Marine Pay and Pensions Act, 1865, and Rules of 1920. See *Baker v. Dalgleish S.S. Co.*, (1922) 1 K. B. 361; 91 L. J. K. B. 392. In this case the widow had actually received payments under the order. Action under the Act will only lie in those cases where the deceased would himself have been entitled to recover if he had remained alive; and if he has settled his claim in his lifetime no further action can be brought on his dying through the same injuries (*Read v. G. E. R.*, (1868) L. R. 3 Q. B. 355; 37 L. J. Q. B. 278). Still, if the representatives are entitled to sue, they may recover more than the deceased himself could have recovered, for the deceased may have contracted to limit his right to recovery. By such a contract the representatives are not bound. This is shown by the case of *Nunan v. Southern Railway*, (1923) 2 K. B. 703; 92 L. J. K. B. 703, where a person had agreed with a railway company that its liability in respect of personal injury should not exceed a certain sum, and he was killed by reason of the negligence of the company's servants. It was held that the damages recoverable by his personal representative under this Act are not limited to such agreed sum. This decision of Swift, J., was affirmed by the Court of Appeal, (1924) 93 L. J. K. B. 140; (1924) 1 K. B. 223. See also *Mersey Docks and Harbour Board v. Procter*, (1923) 92 L. J. K. B. 479 (H. L.); (1923) A. C. 253, where the action failed on the ground that the defendant owed no duty to the deceased, and consequently the deceased himself could not have sued. If, however, he has been induced by fraud, or through a mistake has given a discharge for an inadequate compensation, such discharge will not be conclusive against him if he lives, nor against his representatives in case of his death (*Stewart v. G. W. R.*, (1865) 2 D. J. & S. 319; *Hirschfield v. L. B. & S. C. R.*, (1877) L. R. 2 Q. B. D. 1; 46 L. J. Q. B. 94; *Lee v. L. & Y. R.*, (1877) L. R. 6 Ch. 527; *McDonagh v. MacLellan*, (1886) 13 R. 1000).

A child *en ventre sa mere* is entitled to recover under the Act (*The George and Richard*, (1871) 24 L. T. N. S. 717), but not an illegitimate child (*Re Wilson*, (1865) 35 L. J. Ch. 243, and *Dickenson v. N. E. R.*, (1864) 33 L. J. Ex. 91).

CHAPTER III.

THE EMPLOYERS' LIABILITY ACT, 1880.

[43 & 44 VICT. C. 42.]

AN ACT TO EXTEND AND REGULATE THE LIABILITY OF EMPLOYERS
TO MAKE COMPENSATION FOR PERSONAL INJURIES SUFFERED
BY WORKMEN IN THEIR SERVICE.

(7TH SEPTEMBER, 1880.)

Be it enacted by the Queen's most Excellent Majesty by and
with the advice and consent of the Lords spiritual and temporal
and Commons in this present Parliament assembled and by the
authority of the same as follows :

Amendment
of law.

1. Where after the commencement of this Act personal injury
is caused to a workman

(1) By reason of any defect in the condition of the ways,
works, machinery, or plant connected with or used in the
business of the employer ; or

(2) By reason of the negligence of any person in the service
of the employer who has any superintendence entrusted to
him whilst in the exercise of such superintendence ; or

(3) By reason of the negligence of any person in the service
of the employer to whose orders or directions the workman
at the time of the injury was bound to conform, and did
conform, where such injury resulted from his having so
conformed ; or

(4) By reason of the act or omission of any person in the
service of the employer done or made in obedience to the rules
or bye-laws of the employer, or in obedience to particular
instructions given by any person delegated with the authority
of the employer in that behalf ; or

(5) By reason of the negligence of any person in the service
of the employer who has the charge or control of any signal,
points, locomotive engine, or train upon a railway ;
the workman, or in case the injury results in death, the legal
personal representatives of the workman, and any persons entitled
in case of death, shall have the same right of compensation and
remedies against the employer as if the workman had not been a

workman of nor in the service of the employer nor engaged in his work. Section 1.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases ; that is to say, Exceptions to amendment of law.

(1) Under sub-section 1 of section 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2) Under sub-section 4 of section 1, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned ; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's principal Secretaries of State, or by the Board of Trade or any other department of the Government under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

(3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Generally.—The effect of this sect. 1, as qualified by sect. 2, is to negative to a certain extent the implied contract on the part of the servant to take the known risks of the employment. It does not apply to express contracts to the contrary, nor to contracting out of the Act (*Griffiths v. Dudley (Earl of)*, (1882) 9 Q. B. D. 357; 51 L. J. Q. B. 543), which may be done expressly or by implication or from notices posted about the building if brought to the workman's knowledge before engagement (*Carus v. Eastwood*, (1875) 32 L. T. N. S. 855). If a workman so contracts out, his representatives will be bound (*Griffiths v. Dudley, supra*). In the case of an infant there will be the further question, was it for his benefit (*Clements v. L. & N. W. R.*, (1894) 2 Q. B. 482).

By sub-s. 1 of sect. 1 as qualified by sect. 2, sub-s. 1, a master is made liable for defects, etc., due to his own negligence as at common law, or due to the negligence of some one entrusted by him with the duty of seeing such ways, etc., were in proper condition.

A master is made further liable by sub-s. 2, as qualified by sect. 8, for any one entrusted by him with superintendence, as stated by sub-s. 3 for any one authorised by him to give orders, and by sub-s. 4 for any act, etc., the result of an authorised instruction or of defective rules, unless as qualified by sect. 2, sub-s. 2, the rules have been certified as proper as there mentioned. Sub-s. 5 deals with railway signals, etc.

When a workman brings himself within the Act, his rights are precisely stated at the end of sect. 1. He is to have the same rights as if he were not a workman : in other words, he is to have the rights of a stranger.

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Defences to Action.]—In addition to traversing the workman's statements which bring him within the Act, a master has the special defences under the Act itself, viz., under sect. 2, sub-s. 3, as to the giving of notice of any defect, and under sect. 4, as to the giving of notice of injury and the bringing of an action within the time there limited. But in addition, an employer has the defences he would have had if sued by an actual stranger. These are traverse of the negligence alleged and the plea of contributory negligence. This latter is too well understood to need further comment, but under the traverse of negligence grew up a defence which threatened to shipwreck the Act, viz., the defence known as *volentia*, a useful but inaccurate word. The defence is quite independent of sect. 2, sub-s. 3, which requires a man to give notice of any defect of which he is aware. This defence goes to making the Act not apply at all: *volentia* only arises where the Act has been found to apply and the workman has been given the rights of a stranger. Such rights are founded in tort and can be in no way modified or altered by contract. They exist or they do not exist. In our civic relations with one another, the underlying principle of our mutual responsibilities is found in the maxim, *sic utere tuium ut alienum non laedas*. So in *Heaven v. Pender*, (1883) 11 Q. B. D. 507; 52 L. J. Q. B. 702, Brett, M.R., well tells us "actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care or skill, by which neglect the plaintiff, without contributory negligence on his part, has suffered injury to his person or property." But a person may waive such duty. A person knowing such duty is not discharged, and still acting as if it were, does waive it. *Injuria non fit volenti*. If there is a danger, and you know it is there, you should not run into it, and then seek to make another liable if you are injured. Thus a man having established a case against his master under the Act finds he is to have the same rights as a stranger, and as a stranger he finds that, as he knew of the danger, knew of the neglect of duty, and yet willingly faced it, he has waived such duty being discharged to himself, and therefore has no claim. The logic is unanswerable, but it threatened to repeal the Act. In ninety-nine cases out of a hundred, a workman knows as much or more about defects than his master, and in each case he willingly faces them and waives his right to his master discharging his duty to him. Then what rights has he under the Act of any value? Thus the fine judgment of Bowen, L.J., in *Thomas v. Quartermaine*, (1887) 8 Q. B. D. 685; 56 L. J. Q. B. 340. But Esher, M.R., was against him on broad principles, and in the Divisional Court—overruling (*sic*) the Court of Appeal—in *Yarmouth v. France*, (1888) 19 Q. B. D. 647; 57 L. J. Q. B. 7, the distinction was made between accepting a risk and simply knowing of it. A man was told to drive a vicious beast of a horse and much objected, but in the end grumblingly obeyed. Then he had his leg broken in consequence, and the court held he might have known of the risk—it was evident he did, he had grumbled so much—but he had not agreed to take it. The good sense of the decision was as manifest as the logic was doubtful, and finds a modified confirmation in the House of Lords in the great case of *Smith v. Baker*, (1891) A. C. 325; 60 L. J. Q. B. 683, where the logic was unimpeachable, but the facts found somewhat amazing and startling. Here a man in a quarry was exposed to danger by stones being slung over him on a crane. In the end one slipped and injured him, and the Lords found in his favour. To appreciate the judgments of the majority it must be carefully remembered that the masters not having taken the point below that there was no evidence of negligence, the Lords would not there hear them to deny it before themselves.

The jury's findings in the county court were most jury-like, but the verdict had been challenged on the one point only, that the man had knowingly taken the risk. The law is most unexceptionable, and entirely agrees with that laid down by Bowen, L.J. The way the facts were viewed is alone debateable. As viewed by the majority, they came to this: The man

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knew stones were being slung over him, and had been for months. Therefore he could not be taken to say he was not *volens* so far. But he did not know that the employers were swinging them over him with machinery that was not reasonably fit for the purpose (the first finding of the jury) and which was admittedly negligence on their part. Thus the defence of *volentia* must always be narrowly scrutinized to see exactly how far a man is *volens* or is not. As a rule, in the case of all the ordinary and known risks of his employment, he is *volens*, but when risks are superadded by negligence, it must be further shown that he also knew of such superadded risks, and also took them.

In contract a man's position may be more favourable than under the Act. In contract a man may say to his master, "My implied contract is to take all the risks of my employment, equally yours is to take all reasonable care. I know you are not doing so, but nevertheless, I will continue working for you; but note, if anything happens to me through your want of care, I shall look to you for damages." This was said and assented to in *Yarmouth v. France*, and on such lines would have abundantly satisfied that decision, and in general, very little evidence would be required to establish this modified term instead of the agreement to take all risks as the true contract between the parties, so the *obiter* in *Smith v. Baker* almost go to the length of saying that this really now is the term to be implied. But under the Employers' Liability Act, a workman's rights are rigid and are to be those of a stranger only and are purely in tort, and as such, no modification can be implied. Therefore so far as you can bring home to him knowledge that a duty owed to him is not being discharged, then so far he must be taken to waive its discharge. I am in the streets of London. I take all the perils of crossing—very serious nowadays—but I do not take the superadded perils of negligent driving. But a motor cab is being wildly, madly driven, and I choose to try to run past it, then I know of the added risk, and in taking it, clearly am *volens*. In tort the distinction between *sciens* followed by action and *volens* reduces to nothing. In contract *sciens* may be quite consistent with a master still remaining responsible for his own negligence. That he does, we may take it is very nearly the law, and it will take little to make the courts say that it actually is so in fact.

Sect. 1 in Detail.]—Note the overriding conditions in sect. 2, sub-s. 3.

Sub-s. 1.—By reason of a defect in the condition of the ways.]—This means a defect of a permanent or *quasi*-permanent nature, not merely an obstacle carelessly left in a roadway (*McGiffin v. Palmer's Ship Building Co.*, (1883) 10 Q. B. D. 5; 52 L. J. Q. B. 25), but the way itself may be of a temporary character, e.g., a plank for mill hands to use (*Bromley v. Cavendish*, (1886) 2 T. L. R. 381). "In a shop where workmen are employed, any part of the shop which a workman is required, or it is his duty to traverse in the course of his employment, is a way" (*Willets v. Watt*, (1892) 2 Q. B. 92; 61 L. J. Q. B. 540).

If a man is permitted to use a dangerous way, but an alternative safe way is provided, he may be debarred from recovering (*Prichard v. Lang*, (1889) 5 T. L. R. 639).

A hatchway on a ship left open by a fellow servant did not constitute a defect within this section (*McCarthy v. Bristol Shipowners' Co.*, (1883) 10 L. R. Ir. 384). See, however, *James Nimmo & Co., Ltd. v. Connell*, (1924) A. C. 595; 93 L. J. K. B. 147 (H. L.), where an accumulation of inflammable gas in a working place of a coal mine, otherwise of proper construction, was held by the House of Lords to be a "defect" within the meaning of this sub-section. Work being naturally dangerous, as when a ship is being built, may involve ways being dangerous without being defective (*Forsyth v. Ramage*, (1891) 18 R. 21). A ladder close to an open tank to be used when dark and without a light might be a defective way (*Jamieson v. Russell*, (1892) 19 R. 898).

Defect in the condition of the works, machinery, or plant.]—By works, completed works, not those in course of construction, are to be understood

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(*Howe v. Finch*, (1887) 17 Q. B. D. 187). But a servant injured by a wall falling down, which was in the course of being pulled down was held entitled (*Brannigan v. Robinson*, (1892) 1 Q. B. 344; 61 L. J. Q. B. 202), as similarly where a rotten floor in a building also being pulled down, gave way. A machine, not out of order, but constructively unfit for the purpose, may be defective (*Heske v. Samuelson*, (1884) 12 Q. B. D. 30; 53 L. J. Q. B. 45; *Paley v. Garnett*, (1886) 16 Q. B. D. 52), or being used for a purpose foreign to its intention, e.g., a ladder used to support a scaffold, or a ladder supported against a piece of pipe instead of a wall (*Cripps v. Judge*, (1884) 13 Q. B. D. 583; 53 L. J. Q. B. 517, and *Weblin v. Ballard*, (1886) 17 Q. B. D. 122; 55 L. J. Q. B. 395).

A master is not bound to have the most up-to-date machine on the market if the one he has is reasonably fit for the purpose (*Walsh v. Whiteley*, (1888) 21 Q. B. D. 371; 57 L. J. Q. B. 586; *Buller v. Birnbaum*, 7 T. L. R. 287); but he must not expose his servants to unnecessary risks as by not fencing (*Morgan v. Hutchings*, (1890) 59 L. J. Q. B. 197); on the other hand, neither must a servant wilfully run into danger and then seek to make his employer liable (*Martin v. Connah's Quay Alkali Co.*, (1884) 33 W. R. 216). A man has a right to assume his employer's tackle is sound, and is not bound to provide against possible defects, e.g., as by taking shelter if he might think a chain defective (*Rooney v. Allen*, (1883) 10 R. 1224). Machinery in itself not defective, but liable to be used by unskilled men, becomes constructively defective if they are likely to use it in such a way as to make it prove dangerous (*Staunton v. Scrutton*, (1893) 62 L. J. Q. B. 405). Of course, if a machine properly fit in itself becomes dangerous through the negligent user of a fellow servant, it will not be defective within the Act (*Robbins v. Cubbitt*, (1882) 46 L. T. 535, where a man was injured through a pail falling on him, due to the absence of the man who ought to have steadied it).

In this class of case the defence of *volentia* to which we have referred became one of increasing importance, but this we have discussed in defences to an action.

Along with the defect must also be proved the negligence as specified in the qualifying sect. 2, sub-s. 1, and when a wall was swaying dangerously, and the foreman at once stopped work, called in a proper contractor to make it secure, and when, after he had left it safe as he thought, the men returned and it fell on the plaintiff, it was held the master had been guilty of no negligence, either in person or by his foreman (*Moore v. Gimson*, (1889) 58 L. J. Q. B. 169). As a rule, the employment of a competent contractor to do work for an employer negatives negligence on his part, even if it proves defective (*Kiddle v. Lovett*, (1885) 16 Q. B. D. 605), and even if a master borrow plant, say a ladder, there is no presumption of negligence if it proves defective (*Perry v. Brass*, (1889) 5 T. L. R. 253). Note, this is the general rule as regards servants. As regards the general public it is subject to qualifications; e.g., an owner pulling down a dangerous building cannot escape all responsibility by simply employing someone else to do it for him (*Hughes v. Percival*, (1883) 8 Ap. Cas. 443; 52 L. J. Q. B. 719).

Sect. 1, sub-s. 2.—By reason of the negligence of any person in the service of the employer who has superintendence entrusted to him whilst in the exercise of such superintendence.]—This sub-section must be read with sect. 8 as follows: The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour. This qualification does not apply to where a superintendent voluntarily and temporarily engages in manual labour (*Ray v. Wallis*, (1887) 3 T. L. R. 777); nor need the superintendent of a necessity have actual superintendence over the workman injured. Thus in *Osborne v. Jackson*, (1883) 11 Q. B. D. 619, a bricklayer was at work near a scaffold which was being taken down by other men. The foreman helping them, handed a plank to a labourer, but owing to his being too far off he could not hold it, and through its falling the plaintiff was injured.

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As a rule, one of a gang who himself works will not be a person within this section, even if he be the one to give directions (*Shaffers v. General Steam Navigation Co.*, (1883) 10 Q. B. D. 356; 52 L. J. Q. B. 260, and *Kellard v. Rooke*, (1888) 21 Q. B. D. 367; 57 L. J. Q. B. 599); otherwise if he be a foreman (*M'Monaghee v. Baird*, (1881) 9 R. 364). In *Race v. Harrison*, (1893) 10 T. L. R. 92, a boy lost his fingers when cleaning a machine which the foreman told him to do, at the same time providing him with no proper scraper, and was held entitled.

1.—(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed.

The negligence is not confined to the order itself, nor is it necessary that conformity to the order should be the *causa causans*, but there must be an intimate connection between the negligence, the injury, and the conformity to the order (*Wild v. Waygood*, (1892) 1 Q. B. 783; 61 L. J. Q. B. 391). An order not given in a particular case may be presumed from a course of action where in similar cases orders have been given previously; as where a vanman has usually told a boy to help him to untie packages, and on one occasion he has been hurt through doing so, though without then receiving particular instructions (*Millward v. M. R. Co.*, (1885) 14 Q. B. D. 68; 54 L. J. Q. B. 202). Where men of the same standing and when working at a job, one tells the other to do something, such order does not come within the section (*Howard v. Bennett*, (1889) 58 L. J. Q. B. 129). Orders to do a forbidden thing obviously do not come within the section. A man knows his duty is rather to disobey than to conform to them (*Bunker v. M. R. Co.*, (1883) 47 L. T. 476). A man may be used merely as a medium to convey orders from the master. This does not constitute him one to whose own orders a man is bound to conform (*Snowden v. Baynes*, (1890) 25 Q. B. D. 193; 59 L. J. Q. B. 325).

1.—(4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf.

Note this is to be read as qualified by sect. 2, sub-s. 2. This is a section that has not been largely used. *Whalley v. Holloway*, (1890) 62 L. T. 639, seems to be the only reported case where it has been relied upon, and then hopelessly.

1.—(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway.

The term railway applies to a temporary railway laid down by a contractor for the purposes of construction of works (*Doughty v. Firbank*, (1883) 10 Q. B. D. 358; 52 L. J. Q. B. 480); but a steam crane fixed in a trolley and propelled by steam on a set of rails is not a locomotive (*Murphy v. Wilson*, (1883) 52 L. J. Q. B. 524).

In *Gibbs v. G. W. R.*, (1884) 12 Q. B. D. 208; 53 L. J. Q. B. 543, where it was the duty of "F" to clean and adjust the points, etc., of the defendants' line, and he did it negligently, it was held there was no evidence of control.

In *Cox v. G. W. R.*, (1883) 9 Q. B. D. 106, a man in charge of a capstan worked by hydraulic power, set it in motion and, without giving the usual warning, sent some trucks along a line in a goods station and injured the plaintiff. Held, he had charge or control of a train (see also *Robinson v. Watson*, (1893) 20 R. 144, where a brake on a wagon was defective, but no duty to test was proved against the defendant, and the pursuer failed). In *M'Cord v. Cammell*, (1896) A. C. 57; 65 L. J. Q. B. 202, the question of fact as to control of a train was also involved.

Section 5.

Limit of sum
recoverable
as com-
pensation.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

This section prescribes a limit, not a measure of damages recoverable, and these have to be assessed once and for all (*Mitchell v. Darley Main Colliery Co.*, (1886) 11 A. C. 127; 55 L. J. Q. B. 529). Up to this limit a workman is entitled to receive compensation for all loss sustained as if he were a stranger. Thus in *Bortick v. Head*, (1886) 53 L. T. 909, the plaintiff belonged to a class of workman whose average earnings in three years would have amounted to 169*l.* Anything up to 169*l.* the court held he would have been entitled to, and therefore when the jury gave 69*l.* as damages—60*l.* for loss sustained in the service of his employer, and 9*l.* for loss of overtime worked for someone else—he was held entitled to both.

Nor may the limit thus ascertained be exceeded. In *Noel v. Redruth Foundry Co.*, (1896) 1 Q. B. 453; 65 L. J. Q. B. 330, the county court judge held that the 5*s.* a week which an apprentice received was nominal and gave 80*l.* compensation. The Divisional Court held this wrong, and decided that adventitious advantages such as tuition could not be included.

The principles on which the loss sustained is to be estimated are fully discussed in *Phillips v. L. & S. W. R.*, (1879) 4 Q. B. D. 406, affirmed (1880) 5 Q. B. D. 78; 49 L. J. Q. B. 233. They include: Damages for loss of time and the expense of his cure; for pain and suffering; and for the loss of future profit or earnings; of these the measure is the difference between what the plaintiff might have earned and was likely to have earned if he had not been injured, and what he might earn and was likely to earn in his injured state. The injured man's own damages are not to be lessened on account of any insurance he holds (*Bradburn v. G. W. R.*, (1875) L. R. 10 Ex. 1; 44 L. J. Ex. 9), though a different rule governs in case of death.

In case of death, the rights are provided for by the latter part of sect. 1, and are to be those of a stranger (see *ante*, under Lord Campbell's Act).

Limit of
time for
recovery
of com-
pensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death, within twelve months from the time of death: provided always that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

See under sect. 7.

Money
payable
under
penalty
to be
deducted
from com-
pensation
under Act.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been

Section 5.

brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

If a man has recovered penalties they are simply to be deducted under this section, but where a man has a remedy against two or more wrongdoers, and recovers against one, he cannot recover anything more from any one else, whether he sues such other for the same cause of action or a different cause, but arising out of the same wrongful act. In *Wright v. London Omnibus Co.*, (1877) 2 Q. B. D. 271; 46 L. J. Q. B. 429, a cabman was injured through two 'bus drivers racing. They were summoned and fined, and had to pay him 10*l.* compensation. Afterwards, when he obtained a verdict against the 'bus company for nearly 200*l.*, judgment was entered for the defendants on the ground he had been already compensated. Following a *dictum* of Manisty, J., in *Munday v. Thames Iron Works Co.*, (1883) 10 Q. B. D. 62; 52 L. J. Q. B. 119, a practice has grown up in county courts of not allowing any other cause of action to be joined with that under the Act. But the case of *Yarmouth v. France*, (1888) 19 Q. B. D. 647; 57 L. J. Q. B. 7, is only intelligible on the basis that rights both at common law as well as under the Act were taken into consideration.

6.—(1) Every action for recovery of compensation under this Act shall be brought in a county court, but may upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed. Trial of actions.

(2) Upon the trial of any such action in a county court before the judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

"County court" shall with respect to Scotland mean the "Sheriff's Court" and shall with respect to Ireland mean "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party in the manner provided by, and subject to, the conditions prescribed by section 9 of the Sheriff Courts (Scotland) Act, 1877.

Section 6.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

Sub-s. 1.—In *Munday v. Thames Iron Works Co.*, (1883) 10 Q. B. D. 59; 52 L. J. Q. B. 119, it was held no reason for removal that the plaintiff had given a defective notice and wished to consolidate his action under the Act with one he had commenced in the High Court on his master's common law liability. Nor is it a reason for removal that more than 50*l.* is likely to be recovered (*McEvoy v. Waterford S. S. Co.*, (1885) 16 L. R. Ir. 291). Sect. 62 of the County Courts Act, 1888, entitles the defendant in any action of tort, when the claim exceeds a certain amount, and on certain conditions as to giving security for costs, etc., to remove the case to the High Court. Held by the Court of Appeal this section did not apply to actions under the Act (*Claxton v. Lucas*, 14 Q. B. D. 905). Application for *certiorari* is to a master in chambers on affidavit (Order LIV. r. 12).

In *Bates v. Warner*, (1889) 5 T. L. R. 582 (C. A.), where the defendant alleged he would not get a fair trial in the county court, and undertook to pay all extra costs incurred whether he won or lost, and after Lord Coleridge had been communicated with and had expressed his willingness to hear the case at the Chelmsford Assizes, he was allowed to have it removed.

Practice special to the Act.—Order XLIV. deals with the practice special to the Act subject to which the procedure is that of the county court.

Practitioners should remember that no appeal can be brought on any point unless it has been taken at the trial in the county court, and a note to that effect made by the judge (*Smith v. Baker*, (1891) A. C. 325; 60 L. J. Q. B. 683), as this somewhat differentiates from the more familiar procedure under the Workmen's Compensation Acts.

The following form of particulars can be adapted to most cases:—

In the county court of	No. of plaint.
Holden at	
Between A. B. plaintiff,	
and	
C. D. defendant.	

THE EMPLOYERS' LIABILITY ACT, 1880.

PARTICULARS OF DEMAND.

(1.) The plaintiff [*in case of death*, says that Y. Z., late of *give address*] was on the day of 19 a workman in the employ of the defendant, and on that day when at work [*give a short narrative of where and at what he was working and how the accident came about*] and by reason of such [*fall, blow or as the case may be*] he has sustained personal injuries [*describe such injuries*], and has suffered much pain, and has incurred, and will incur, much expense and loss on account thereof, and the plaintiff says that such injuries were caused him:—

(1) By reason of a defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the defendant namely [*state the defect and how such defect directly caused the accident*], and such defect arose from or was not discovered or remedied owing to the negligence of the defendant, or of E. F. [*give his description*], or some other person in the service of the defendant, and entrusted by him with the duty of seeing that the ways, works, plant, or machinery were in proper order.

(2) By reason of the negligence of J. K., who was in the service of the defendant as their [*describe his position*], and was a person in superinten-

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Notes.

dence, and whilst in the exercise of such superintendence, namely [state facts relied on, and their connection with the accident].

(3) By reason of the negligence of L. M., who was in the service of the defendants as a [describe his position], and was a person to whose orders and directions at the time of such injury he was bound to conform, and did conform, and that his injuries resulted from his having so conformed, namely, in ordering him to [state orders, and their connection with the accident].

(4) By reason of the act—or omission—of N. P., who was in the service of the defendant as [state occupation], done—or made—in obedience to the rules or byelaws of the defendant, namely [describe act or omission, and set out the rule or byelaw relied on].

(4A) By reason of the act—or omission—of N. P., who was in the service of the defendant as [state occupation], done—or made—in obedience to particular instructions given him by R. S. [state his occupation or position], who was a person delegated with the authority of the defendant in that behalf, namely [state act or omission of N. P., and the instructions given him by R. S.].

(5) By reason of the negligence of T. V., who was in the service of the defendant as a [state occupation], and had charge or control of the signal, points, locomotive engine, or train [or as the case may be] upon the railway of the defendant, namely [state facts relied upon].

(II.) The following are particulars of the loss and expenses sustained by the plaintiff by reason of the said injuries:—

Loss of . . . weeks' wages from the [date of accident] to the date hereof, at £ . . . per week . . .

Loss of . . . weeks' wages for overtime worked with X. Y. [give address] between the same dates, at . . . s. per week (a)

Other loss, if any

Paid expenses—

Doctor

Nurse

Extra nourishment

Journey to seaside, lodgings, etc.

Other items actually incurred

£

NOTE.—(a) *Bortick v. Head*, 53 L. T. 909.

The plaintiff claims £ . . . [the aggregate of three years' average wages of a workman in a similar employment].

Dated this . . . day of . . . 19 . . .

(Signed)

Solicitor for the above-named plaintiff, who will accept service of all proceedings on his behalf at his office [give address].

To the Registrar of the Court
and to C. D., the defendant.

In case of death the above form can be readily altered, but this further clause must be added:—

(III.)—This action is brought by the plaintiff as the executor [or as the case may be] of the said Y. Z., deceased, for the benefit of E., the wife, and W. M. and D., the children of the said Y. Z., deceased. Particulars pursuant to statute are delivered herewith.

Particulars under Lord Campbell's Act (9 & 10 Vict. c. 93), s. 4, should be attached, and should give the facts as to the names, ages, and relationship to the deceased of those claiming, as well as the pecuniary advantage they received, or were likely to receive, from him had he not been killed.

It will be observed that the above form only covers a master's statutory liability. If the draughtsman likes to allege personal negligence throughout, in addition, no harm will be done.

Section 7.

Mode of
serving
notice of
injury.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy and that the defect or inaccuracy was for the purpose of misleading.

Also read with this section, sect. 4.

Notice under the Act, except in case of death, is a condition precedent to recovering (*Clarkson v. Musgrave*, (1882) 9 Q. B. D. 386; 51 L. J. Q. B. 525), and it must be in writing, and the courts cannot waive its being given, even where, as in *Moyle v. Jenkins*, (1881) 8 Q. B. D. 116; 51 L. J. Q. B. 112, the defendant visited the injured man when in hospital, and the matron wrote as to his condition. More, a notice should conform to the requirements of sect. 7, and where a notice by the plaintiff's solicitor referred to particulars, given verbally, it was held insufficient (*Keen v. Millwall Dock Co.*, (1882) 8 Q. B. D. 482; 51 L. J. Q. B. 277).

But the notice is enough if it substantially gives the name and address of the person injured, and the cause and date of the injury. In *Stone v. Hyde*, (1882) 9 Q. B. D. 76; 51 L. J. Q. B. 452, the notice only gave the date of the injury, and stated that the plaintiff was and had been for some time under treatment at a hospital for injury to his leg. Held, having regard to the saving clause it might pass. So in *Clarkson v. Musgrave*, (1882) 9 Q. B. D. 396; 51 L. J. Q. B. 525, the notice stated as the cause the defendants' negligence in leaving a certain hoist in their warehouse unprotected, whilst the jury found it was their negligence in allowing the plaintiff, a young girl, to go into the hoist alone. Held notice sufficiently stated the cause of the injury.

In *Carter v. Drysdale*, (1883) 12 Q. B. D. 91; 53 L. J. Q. B. 557, the date was omitted, but the judge at the trial found it was not for the purpose of

Section 7
Notes.

misleading, and it was held a defect that could be cured. So in *Beckett v. Manchester Corporation*, (1888) 52 J. P. 346, the omission of address and date was not held fatal; and in *Previti v. Gatti*, (1888) 58 L. T. 762, where the letter was not registered but was acknowledged, and where the date of the accident was stated as August 8th instead of August 9th, and the address and cause of injury omitted, it was also held good as a notice for the same reason. More, the court held its having been posted on August 19th was evidence of its having been received on the 20th. As regards delivery, this is in accordance with the Scotch case (*McGowan v. Tancred*, (1886) 13 R. 1033), where it was held if a notice be *de facto* received its mode of delivery is not material. But if sent by post on such a day that it could not possibly be received in time it will be bad (*McDonagh v. McLellan*, (1886) 13 R. 1800). In another case (*Rathbone v. Ross*, 35 S. J. 208), a workman who had been injured gave a notice addressed to Mr. Wm. Ross, but who in fact had been dead six months, his business being carried on by his trustee. Held it was sufficient. In case of death of the plaintiff, reasonable excuse for not sending notice is a question for the judge (*Trail v. Kelman*, (1887) 15 R. 4).

On the other hand, if the defendant wishes to avail himself of the want of notice, it being a special defence, he must file the usual five days' notice required by Order X. r. 10, County Court Rules, 1889 (*Conroy v. Peacock*, (1897) 2 Q. B. 6; 66 L. J. Q. B. 425).

Again, the action must be commenced within six months from the occurrence of the accident. This condition cannot be waived. In *Clark v. Adams*, (1885) 12 R. 1092, notice had been given by a former agent who had died. A new agent was ignorant of the notice, and brought action at common law and failed. Then he learnt notice had been given, and asked leave to amend the claim so as to bring it under the statute. Six months having elapsed it was held not competent to allow the amendment.

8. For the purposes of this Act unless the context otherwise Definitions.
requires—

The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour;

The expression "employer" includes a body of persons corporate or unincorporate.

A company acts by its directors acting in their capacity of directors, but their manager is only their servant and fellow-servant with the other employees of the company. It does not change the position that such manager has been appointed in pursuance of an Act of Parliament to that effect (*Howells v. Landore Steel Co.*, (1874) L. R. 10 Q. B. 62; 44 L. J. Q. B. 25). It does not include a mine owner where a workman is employed by an independent contractor, merely because he has a statutory control over his mine (*Marrow v. Flimby Coal Co.*, (1898) 2 Q. B. 588; 67 L. J. Q. B. 976; and *Fitzpatrick v. Evans*, (1902) 1 K. B. 505; 71 L. J. K. B. 302).

The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875, 38 & 39 Vict. applies. c. 90.

In the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 10, a workman is thus defined:—

"The expression 'workman' does not include a domestic or menial servant but save as aforesaid means any person who being a labourer servant in husbandry journeyman artificer handicraftsman miner or other—

Section 8 Notes.

wise engaged in manual labour whether under the age of twenty-one years or above that age has entered into or works under a contract with an employer whether the contract be made before or after the passing of this Act be expressed or implied oral or in writing and be a contract of service or a contract personally to execute any work or labour."

And sect. 13 of the same Act enacts:—

"This Act shall not apply to seamen or to Apprentices to the sea service."

Nor does it apply to apprentices paying a premium of more than 25*l.*, nor to servants of the Crown, as the Crown is never included unless specifically named (*Attorney-General v. Hill*, 2 M. & W. 160; 6 L. J. Ex. 105; 46 R. R. 542).

It is a question of fact for the jury whether a man is a workman or not within the definition (*Pearce v. Lansdowne*, (1893) 62 L. J. Q. B. 441), though perhaps the court in some cases may find a difficulty in explaining to them the meaning to be applied to the word "menial." In Dr. Johnson's Dictionary we find "menial" defined as "Belonging to the retinue or train of servants"; and it is derived from the Saxon "meiny," "many," or "mani," or the old French "mesnie."

Other definitions have been attempted, but this seems to harmonize most with the decisions in some early cases where its meaning was involved. Thus a gardener has been held to be a menial servant (*Johnson v. Blenkinsop*, (1841) 5 Jur. 870; 62 R. R. 865); so also a head gardener, receiving a salary of 100*l.* a year, with the right to take apprentices (*Nowlan v. Ablett*, (1826) 2 Cr. M. & R. 5; 4 L. J. Ex. 155); and a huntsman (*Nicoll v. Greaves*, (1864) 33 L. J. C. P. 259); and in another case a potman in a public-house has also been so held (*Pearce v. Lansdowne*, *supra*).

Again, the following, not being workmen as specified, and not being engaged in manual labour were held not within the Act:—A grocer's assistant (*Bound v. Lawrence*, (1892) L. R. 1 Q. B. 226; 61 L. J. M. C. 21); the driver of a tramcar (*Cook v. North Metropolitan Tramways Co.*, (1887) 18 Q. B. D. 683; 56 L. J. Q. B. 309); and the conductor of an omnibus (*Morgan v. London General Omnibus Co. (C. A.)*, (1883) 13 Q. B. D. 832; 53 L. J. Q. B. 352); but the driver of a cart and horse used by wharfingers is a workman within the Act (*Yarmouth v. France*, (1888) 19 Q. B. D. 647; 57 L. J. Q. B. 7).

The following have been held to be workmen within the Act: A potter's printer, paid by the piece, and employing and paying assistants (*Grainger v. Aynsley*, (1881) 6 Q. B. D. 182; 50 L. J. M. C. 48); a slater, paid by the piece, using his own tools and the materials of his master (*Stuart v. Evans*, (1882) 49 L. T. 138); and a fireman on a steam canal barge is not a seaman within the excepting clause 13, and is within the meaning of the section (*Oates v. Monkland Steam Iron Co.*, (1884) 11 R. 579).

Commence- ment of Act.

9. This Act shall not come into operation until the first day of January one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

Short title.

10. This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

Note.—Now made permanent. See Expiring Laws Act, 1922.

CHAPTER IV.

WORKMEN'S COMPENSATION.

The Workmen's Compensation Acts were passed to enable workmen to recover compensation for injuries, irrespective of whether or not they were caused by negligence, so long as they were accidents which arose out of and in the course of their employment. The first of these Acts was passed in 1897. This was a tentative Act and of very limited application. Then followed the Act of 1906, long known as the principal Act, which applied the principle to all classes of employment and to certain industrial diseases (since added to by various Orders of the Secretary of State).

Statutes increasing the compensation during war-time (known as the War Additions Acts) were passed in 1917 and 1919, but are now repealed.

Then followed the Act of 1923, increasing compensation and extending the principal Act in various respects.

In 1925 the whole of these Acts (with the exception of a few sections of the Act of 1923) were repealed and consolidated by the Workmen's Compensation Act, 1925, which is now the statute in force and follows below.

N.B.—This consolidating Act applies to all accidents at the present time, but where the accident happened before 1st January, 1924, the Acts of 1906 and 1923 are still applicable. These may be found fully set out in the Annual County Court Practice for 1926.

WORKMEN'S COMPENSATION ACTS.

TABLE OF CORRESPONDING SECTIONS.

ACT OF 1906.	ACT OF 1925.	ACT OF 1906.	ACT OF 1925.
1 (1)	1 (1)	11	39
(2) (b)	29 (1)	12	42
(2) (c)	1 (1) (b)	13	3 (1), (2)
(3)	21		4 (1), (3)
(4)	29 (2)		5 (1)
(5)	32		48, 49
2	14	FIRST SCHEDULE.	
3	1, 31		
4	6, 21	(1) (a)	8
5	7	(b)	9
6	30	(2)	10
7	35	(3)	9
8 (1)	43	(4)	17
(2)	44	(5)	26
(3)	44	Sch.	2 (1)
(4)	43	Sch.	2 (3)
(5)	44	(7)	26
(6)	44	(8)	2, 21
(7)	45	(9)	22
(8)	45	(10)	Sch. 2 (4)
(9)	46	(11)	Sch. 2 (5)
(10)	43	(12)	Sch. 2 (6)
9	33	(13)	Sch. 2 (7)
10	38	(14)	18

WORKMEN'S COMPENSATION ACTS.

ACT OF 1906.	ACT OF 1925.	ACT OF 1923.	ACT OF 1925.
(15)	19	13	44
(16)	11	14	12
(17)	13	15	11
(18)	16	16	9
(19)	40	17	31
(20)	20	18	29
(21)	31	19	7
SECOND SCHEDULE.		20	39
(1—8) Sch.	1 (1—8)	21	24, 25
(9)	23, 25	22	4 (2)
(10)	23, 25	23	41
(11)	27	24 (1)	2 (3)
(12)	27	(2)	8
(13)	Sch. 1 (9), (13)	(3)	8
(14)	Sch. 1 (10)	(4)	10
(15)	Sch. 1 (11)	(5)	30, 40
(16)	28	(6)	11
(17) (b)	49,	(7)	13
	Sch. 1 (13)	(8)	16
Sch. 3	Sch. 3	(9)	43
ACT OF 1923.		25	Sch. 1 (9)
2	8	26	37
3	8	27	36
4	9	Sch. 1	7
5	1, 9	SILICOSIS	
7	1 (2)	ACTS OF	
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(2) (a)	3 (1),	EMPLOYMENT	
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	5 (3)	COAL MINES	
(2) (c)	3 (1), 35	ACT, 1919,	
10 (1)	15, 35	s. 110	34
(2)	14, 15	COUNTY COURTS	
(3)	14 (2)	ACT, 1919,	
(4)	15 (3)	s. 25	Sch. 1 (6)
(5)	17	s. 26	Sch. 2 (2)
(6)	15 (4)	COUNTY COURTS	
11 (1)	19	ACT, 1924,	
(2)	43	s. 6 (1)	47
(3)	Sch. 1 (5)	s. 6 (2)	23 (1)
12	23		

WORKMEN'S COMPENSATION ACT, 1925.

[15 & 16 GEO. V. c. 84.]

AN ACT TO CONSOLIDATE THE LAW RELATING TO COMPENSATION
TO WORKMEN FOR INJURIES SUFFERED IN THE COURSE OF
THEIR EMPLOYMENT.

(22ND DECEMBER, 1925.)

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PART I.

COMPENSATION FOR INJURIES.

Right to Compensation.

Liability of
employers
to workmen
for injuries.

1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the provisions hereinafter contained:

“**Any Employment.**”—**Jurisdiction.**—This Act is limited to the ambit of the United Kingdom, *e.g.*, it does not apply to a contractor employing a workman in Malta (*Tomalin v. Pearson*, (1909) 2 K. B. 61), nor to a workman lost on a ship when on his way to do work for his English employers abroad (*Schwartz v. Indiarubber, etc., Telegraph Works*, (1912) 2 K. B. 299), though in

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Krzus v. Crow's Nest Pass Coal Co., (1913) W. C. & Ins. Rep. 38, an alien widow living in Austria, of a workman (also an alien) killed in Canada, was held entitled under an Act with similar provisions (see also *Baird v. Savage*, 43 S. L. R. 370). See now sect. 36 as to aircraft, and sect. 35, sub-s.4, as to persons, not seamen, employed on ships.

"Personal Injury by Accident."—This is not limited to physical results, and nervous shock, etc., is probably included; e.g., where a man became incapacitated through seeing a fellow workman killed (*Yates v. South Kirby, etc.*, Collieries, 3 B. 418. See *Dulieu v. White & Sons* (1901), 70 L. J. K. B. 837, (1901) 2 K. B. 669, in which case the decision of the Privy Council in *Victorian Railways Commissioners v. Coultas*, (1888) 57 L. J. P. C. 69 was not followed. See also *Hambrook v. Stokes Bros.*, (1925) 1 K. B. 141; (1925) 94 L. J. K. B. 435. Whether the shock must be fear of personal injury to oneself or may be a shock caused by apprehension of injury to others appears to be doubtful.

"Accident."—Onus of proof on applicant (*Maxwell v. Ruabon Coal and Coke Co., Ltd.*, (1917) W. C. & Ins. Rep. 36). When accident is admitted the arbitrator has no jurisdiction to inquire into the question whether there has been an accident or not (*Rudge v. G. Young and Son*, (1914) W. C. & Ins. Rep. 374). It has long been settled that an accident may be either external to the subject, e.g., a man injured by an explosion; or be purely subjective, as where a man unintentionally injures himself, e.g., by a strain. But whichever it is it must be traceable to a definite act at a definite time; but it need not be one accident incapacitating at once. A series of small accidents, such as scratches, eventually incapacitating for work if such accidents arise out of the employment, is sufficient (*Selva v. Charles Burrell & Co.*, (1921) 90 L. J. K. B. 1340). See, however, *Williams v. Guest, Keen & Nettlefolds, Ltd.*, (1926) 1 K. B. 497; 95 L. J. K. B. 676. In *Alloa Co. v. Drylie*, (1913) W. C. & Ins. Rep. 213, a pump in a coal mine broke down, water accumulated, the men quit work, it rose to their knees, one of them got pneumonia and died, and it was held through accident (compare *Barbeary v. Chugg*, (1915) W. C. & Ins. Rep. 174). In *Brown v. John Watson, Ltd.*, (1914) W. C. & Ins. Rep. 228, reversing *Watson v. Brown*, (1913) W. C. & Ins. Rep. 225, it was held that where an accident in a neighbouring shaft resulted in a delay in getting out of the mine, with the result a man had to stand waiting for the cage in a draught, and also got pneumonia and died, there was evidence of an accident directly affecting the man. See also *Glasgow Coal Co., Ltd. v. Welsh*, (1916) W. C. & Ins. Rep. 79. Contrast *Lyons v. Woodilee Coal and Coke Co.*, (1916) W. C. & Ins. Rep. 235. It does not follow that the accident must be held to arise out of the employment (*Lyons v. Woodilee Coal and Coke Co.*, (1916) W. C. & Ins. Rep. 235). Injury from disease not traceable to a definite act at a definite time is not injury from accident (*Eke v. Hart-Dyke*, (1910) 2 K. B. 677; *Coe v. Fife Coal Co.*, (1909) S. C. 393; *Martin v. Manchester Corporation*, (1912) W. C. Rep. 289; *Finlay v. Tullamore Union (Guardians)*, (1914) W. C. & Ins. Rep. 222). Contrast *Grant v. Kynoch*, (1919) A. C. 765. See also *Raeburn v. Lochgelly Iron & Coal Co.*, 20 B. W. C. C. 637. The circumstances in which disease may be deemed an injury by accident was discussed in *Scott v. Pearson*, (1916) W. C. & Ins. Rep. 128 (the cattle ringworm case). Anthrax, according to facts, may or may not be traceable to such definite act (*Sherwood v. Johnson*, (1913) W. C. & Ins. Rep. 57); as also an injury from frost bite (*Warner v. Couchman*, (1912) A. C. 35); or injury from heat stroke; or disease caused by inhaling poisonous gases (*Broderick v. L. C. C.*, (1908) 2 K. B. 807; *Finlay v. Tullamore Union (Guardians)*, *supra*). In *Morgan v. Zenaida*, 2 B. 19, the "definite act" was due to exposed position; in *Ismay v. Williamson*, (1908) A. C. 437, to the suddenness of attack. See also *M'Millan v. Singer Sewing Machine Co.*, (1913) W. C. & Ins. Rep. 70 (workman heated, chill, pleurisy; application dismissed); *Martin v. Manchester Corporation*, (1912) W. C.

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Rep. (there must be a definite time and place); *Swinbank v. Bell Bros.*, (1911) 5 B. W. C. C. 48; *Miller v. Jenson & Nicholson, Ltd.*, (1918) W. C. & Ins. Rep. 51; (the disease must be shown to be caused by the accident); *Ritchie v. Kerr*, (1913) W. C. & Ins. Rep. 297; *Coe v. Fife Coal Co.*, (1909) S. C. 393; *Spence v. William Baird & Co.*, (1912) W. C. Rep. 18; *Black v. New Zealand Shipping Co.*, (1913) W. C. & Ins. Rep. 480; *Treasure v. Cardiff Collieries, Ltd.*, (1920) W. C. & I. 18 (heart strain); *Lewis v. Port of London Authority*, (1914) W. C. & Ins. Rep. 299; *Walker v. Hockney Bros.*, (1909) 2 B. 20; *Clarkson v. Charente S. Co.*, (1913) W. C. & Ins. Rep. 422; *Evans v. Dodd*, (1912) 5 B. 305; *White v. Sheepwash*, (1910) 3 B. 382; *Walker v. Murrays*, (1911) Sc. 825; *Hayward v. West Leigh Colliery Co.*, (1915) A. C. 540; (1915) W. C. & Ins. Rep. 235 (disease caused by an accumulation of facts); *Maskery v. Lancs. Shipping Co.*, (1914) W. C. & Ins. Rep. 290 (delicate stoker's death in the tropics due to heat stroke). Contrast *Pyper v. Manchester Liners, Ltd.*, (1916) W. C. & Ins. Rep. 301 (stoker's death from heat-stroke no "accident"). See also *Dennis v. Midland Rail. Northern Counties Committee*, (1921) 90 L. J. H. L. 144; 37 T. L. R. 623; 14 B. W. C. C. 71, where the facts showed no accident within the Act.

It may be held that though disease caused, e.g., a fall, but the injury was caused by the nature of the place in which the fall took place, such injury was injury by accident (*M'Kendry v. Wright and Greig, Ltd.*, (1919) W. C. & I. 33).

Intentional or Felonious Assault may in Some Cases be "Accident."—A free worker injured by strikers is not injured by accident (*Murray v. Denholm*, 48 S. L. R. 896); though a cashier murdered when travelling is (*Nisbet v. Rayne and Burn*, (1910) 2 K. B. 689). It was also held in *Blake v. Head*, (1912) W. C. Rep. 198, that a boy injured by a madman (his employer) was not entitled, though this decision seems doubtful. In *Anderson v. Balfour*, (1910) 2 Ir. R. 497, a gamekeeper while acting as such was attacked by poachers. Held that he had been injured by accident. The matter has now been settled by *Trim Joint District School, etc. v. Kelly*, (House of Lords) (1914) W. C. & Ins. Rep. 359, which decided that accident includes premeditated injury intended by others, but not by the workman, and see *Reid v. British and Irish Steam Packet Co., Ltd.*, (1921) 2 K. B. 319; 14 B. W. C. C. 20; and *Parker v. Federal Steam Navigation Co.*, (1926) 95 L. J. K. B. 664; 134 L. T. 137. But the "accident" must, of course, be incidental to the employment, and in most cases of premeditated injury the consequent incapacity through "injury by accident" would not be "injury by accident arising out of, etc." See, e.g., *Clayton v. Hardwicke Colliery Co., Ltd.*, (1914) W. C. & Ins. Rep. 343 (reversed on appeal to the House of Lords on the ground that there was some evidence to support the arbitrator's finding, (1916) W. C. & Ins. Rep. 33); *Weekes v. Wm. Stead, Ltd.*, (1914) W. C. & Ins. Rep. 434. *Lee v. Breckman*, (1928) 138 L. T. 610.

Suicide may Result from and has been Treated as "Accident."—Suicide while insane where the insanity is induced by the accident may be held to be an injury by accident arising out of, etc. But it would be necessary to give evidence of insanity. See, e.g., *Grime v. Fletcher*, (1915) W. C. & Ins. Rep. 250. Suicide will not be presumed (*Furnivall v. Johnson's Iron and Steel Co.*, 5 B. 45). Of course all the links in the chain connecting injury with death must be proved (see, e.g., *Withers v. L. B. & S. C. Ry.*, (1916) W. C. & I. 317).

If due to Unreasonable Conduct or New Intervening Cause may not amount to "Accident."—The law is easier to state than to apply. Whatever a man's condition and to whatever that condition is due, a man must act reasonably, having regard to that condition. He must do all that he reasonably can to perfect his recovery, and this whether his condition is due to accident or other cause. If he does so act reasonably—irrespective of whether the result proves he acted for the best or not—it is clear that the

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final consequence is as much due to the accident as if it had at once manifested itself. On the other hand if he acts unreasonably, takes no care, the consequences are not due to the accident, but to his own folly. The court may find as a fact that notwithstanding his want of care the same result would have taken place even had he been reasonable and careful, and then the accident may still be held the cause of consequences apparently most remote (*Dunnigan v. Cavan*; *Thorburn v. Bedlington Coal Co.*, 5 B. 128). Arbitrators may find serious injuries developed from neglected trifling hurts to be due, not to the accident, but the neglect (see remarks, Court of Appeal, in *Brady v. Can. Pac. R.*, (1913) W. C. & Ins. Rep. 479). An arbitrator need not necessarily refuse compensation immediately. Thus refusing to undergo a reasonable operation or treatment may debar the workman from recovering, but a suspensory or nominal award may in certain circumstances be made. See *Wright v. Sneyd Collieries, Ltd.*, (1915) W. C. & Ins. Rep. 354. The arbitrator can award so much as he finds due to the accident (*Harwood v. Wyken*, (1913) W. C. & Ins. Rep. 317). In *M'Nally v. Furness, Withy & Co.*, (1913) W. C. & Ins. Rep. 717, where an injured man was sent to gaol for highway robbery, the court held that, since had he been at liberty to work he would be partially incapacitated, the mere fact that a collateral cause (viz., imprisonment) also prevented his working did not prevent his recovering compensation; and see *Harwood v. Wyken Colliery*, (1913) W. C. & Ins. Rep. 317.

But of course there must be incapacity due to the accident. If there is an intervening cause between accident and injury, e.g., workman's own carelessness, refusal to undergo operation, etc., the incapacity is not due to the accident.

It may happen that a supervening cause may be the cause of the incapacity, as where a man broke his arm and it was set so badly by an unqualified man he could not use it. It was held that such bad setting was in no way a necessary result of the accident, and he failed to recover (*Humber Towing Co. v. Barclay*, 5 B. 142), *sed quære*.

But when a lad hurt his knee, and went to a hospital, and there caught scarlet fever which attacked his knee, it was decided: "If the incapacity is the result of the accident, the chain of causation remains unbroken, although a fresh cause arising casually or uninvited by any special conditions of the workman may have aggravated the original injury" (*Brown v. Kent*, (1913) W. C. & Ins. Rep. 639). Note, in the first case, the man acted unreasonably, or as may be said, invited the further injury by going to an unqualified man. In *Brown's case* the boy did the very best he could. Had he deliberately gone to a friend's room sick with the fever, he also might have been said to have invited his own misfortune. A man's own conduct usually differentiates the two classes of cases; e.g., a seaman hurt his wrist, it was getting well. He went on shore, returned the worse for liquor, had a fight, it was hurt again, and he could not recover (*Nelson v. Allan Bros.*, (1913) W. C. & Ins. Rep. 532). Submitted that the test is, did the workman act reasonably? (see *Molamphy v. Sheridan and Others*, (1914) W. C. & Ins. Rep. 19; *Walsh v. Locke & Co.*, (1914) W. C. & Ins. Rep. 95).

If the result of an accident remain it is no answer that a concurrent cause by disease or a second accident would have caused the incapacity. For even if true, the result of the first accident would still be found in diminished earning capacity; e.g., a man might be earning 40s. a week and be entitled to 20s. a week compensation. Partially incapacitated, he might only be able to earn 20s. a week, when if again injured, he would only be entitled to 10s. a week compensation. Thus the result of his first accident is still found in his being reduced from a 40s. to a 20s. a week man (*Harwood v. Wyken*, and *M'Nally's case*, *supra*).

"Accident," when presumed.]—There are cases where, direct proof being wanting, an accident has to be inferred (*Proctor v. "Serbino" (Owners)*, (1915) W. C. & Ins. Rep. 425; (1916) W. C. & Ins. Rep. 30). The leading case is

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Mitchell v. Glamorgan Coal Co., 9 W. C. C. 16. Here a miner injured his finger, and died from blood poisoning. It was unexplained how he injured it. He may have told his wife or doctor, but their evidence would not be admissible. But it was proved he left home and reached the mine with it all right, and that when he again reached home it was crushed. From these facts was inferred that he had been (1) injured by accident, and (2) when at work, as the nature of his injuries was more consistent with what might have happened to him then rather than when on his way home. But note this case does not justify mere guessing nor mere deciding on probabilities. Facts must be proved from which the alleged accident may be inferred (*Howe v. Fernhill Collieries*, (1912) W. C. Rep. 408). "For inference, there is a fact which leads to the inference; in guessing, there is no fact to lead" (Buckley, L.J., in *Fleet v. Johnson*, (1913) W. C. Rep. 149).

Stapleton v. The Dinnington Main Colliery Co., (1912) W. C. Rep. 376, is a valuable illustration of the kind of evidence agreed to warrant such inference. Here a miner complained of having been hurt, a thing a witness could see was the case, who then went to the place where he had been working and saw that a piece of coal three or four pounds in weight had fallen there, and the doctor agreed from what the witness saw that such a piece of coal falling on a man's foot would cause the injury complained of. Again in *Bateman v. Albion Combining Co.*, (1914) W. C. & Ins. Rep. 18, a workman was injured by the fall of a lid of a barrel from a window, no evidence was adduced to show why the lid fell. It did not merely fall perpendicularly, but must have had a considerable horizontal movement when it left the window. Held, that the workman had failed to show that it was an accident arising out of, etc.

"**Accident**" as Contributing Cause.]—A subsequent incapacity is not necessarily to be regarded as due to another accident; the question is not whether the other accident is a contributing cause of the incapacity but whether the incapacity was caused by the accident (*Noden v. Galloways, Ltd.*, (1912) 1 K. B. 46). See also *Hutchinson v. Kiveton Park Colliery Co., Ltd.*, (1926) 1 K. B. 279; 95 L. J. K. B. 531. As to the burden of proof, see *Comery v. New Hucknall Coll. Co., Ltd.*, (1919) W. C. & I. 63. An accident is no less an accident because it would not have happened or there would have been no ill results had there been no other accident or diseased condition (*Borland v. Watson Gow*, 49 Sc. L. R. 10; *Laverick v. William Gray & Co., Ltd.*, (1919) W. C. & I. 173). Of course the incapacity must be due to the accident and not solely to the diseased condition. Which is the cause is a question of fact, and if there is evidence to support the arbitrator's finding it cannot be reversed. See, e.g., *Legge v. Nixon's Navigation Co.*, (1914) W. C. & Ins. Rep. 306; *M'Ardle v. Swansea Harbour Trust*, (1915) W. C. & Ins. Rep. 448; *Beare v. Garrod*, (1915) *ibid.* 438; *Stanley v. William Ayrton & Co.*, (1919) W. C. & I. 266.

Where Contributing Cause is Disease.]—In the first place it is to be observed that whether accident or disease caused the injury is a question of fact, and the arbitrator's finding, if reasonable, will not be upset (*Woods v. Wilson, Sons & Co., Ltd.*, (1915) W. C. & Ins. Rep. 285). The arbitrator has no right to examine the man privately (*Earle's, etc. v. Walker*, (1917) W. C. & I. 54).

An accident causing severe mental shock, followed by depression and suicide, may be within the Act, *Marriott v. Maltby Main Colliery Co.*, (1921) 90 L. J. K. B. 349.

In many cases the disease is really the cause of the so-called accident, as but for it no accident of any sort would have happened. This has occurred again and again when heart disease, and not the employment, has been the cause of the misadventure. Hence this class of case divides into two: (a) where there has been an undoubted accident, and (b) where there has been what we can only term a "fictional" accident.

An accident is no less an accident because, owing to diseased tissues, the

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consequences are most serious and unexpected. (But even here if the injury was due to the disease and would have resulted apart from the accident compensation may not be given (*Doolan v. H. Hope & Sons, Ltd.*, (1918) W. C. & Ins. Rep. 121)). Thus in *Hensey v. White*, (1900) 1 Q. B. 481, a man, trying to start a wheel which stuck, strained himself. Owing to his diseased condition this caused a rupture of blood vessels which killed him. Other men who helped and exerted themselves were not even hurt, but this did not affect the fact he had been clearly injured by an accidental strain. But cases under (b) are full of doubt. Of these the leading cases are *Fenton v. Thorley & Co.*, (1903) A. C. 443; 72 L. J. K. B. 787; and *Clover and Clayton v. Hughes*, (1910) A. C. 242, where anything like an accident never happened. The facts in the latter case were as follows: A man in the last stage of heart disease fell dead when screwing a nut on a bolt. He was doing an ordinary act in an ordinary way, and yet was found to have met his death by accident. The logic of this decision was preserved by the finding that the screwing on the nut caused an extra strain, which extra strain ruptured an artery, which rupture caused the death. This case having passed the House of Lords, mainly that they would not disturb an arbitrator's finding of fact, is unexceptional as regards its law. It really does not say more than in the case of a real accident, viz., a man brings his disability with him and his employer shall not be heard to say, "But for the diseased condition, no ill results would have happened from the accident relied on." For note, the fiction of an accident neither is, nor can be dispensed with, nor is it established by a man merely falling dead (*Barnabas v. Bersham*, 4 B. 119). See also *McFarlane v. Hutton Bros. (Stevedores), Ltd.*, (1927) 96 L. J. K. B. 357; 20 B. W. C. C. 222. And further, if an interval of time elapses between the "fictional" accident and the death, as in *Hawkins v. Powell's Tillery S. C. Co.*, (1911) 1 K. B. 988, where an old man, who might have strained himself in the morning, died of *angina pectoris* in the evening, the court may hold the connection between the accident and the death not proved. See also *Lancaster v. Blackwell Colliery Co.*, (1920) 89 L. J. K. B. 609, a re-affirmment by the House of Lords that facts found by the county court judge cannot be set aside if there is any evidence on which they could be found. And even when death takes place after what has been an undoubted accident, still it must be proved that it was due to such accident and not to the disease. *E.g.*, a driver fell from his bus, and it could not be shown whether heart disease caused the fall or whether the fall aggravated the disease. Here was such failure of proof (*Thackway v. Conelly*, 3 B. 37). But an accident that starts into active malignity from which a man suffers falls within the ordinary rule. Where a man died from apoplexy brought on by the exertion of running to telephone for a doctor (it being his duty so to telephone), it was held in *Aitken v. Finlayson, Bousfield & Co., Ltd.*, (1914) W. C. & Ins. Rep. 398, that his dependants could recover.

The arbitrator should make a specific finding as to the nature of the injuries, at least where this is disputed (*Montgomery v. The Niddrie and Benhar Coal Co., Ltd.*, (1918) W. C. & Ins. Rep. 86).

Arising out of and in the course of the employment.—In considering the meaning of these words "arising out of and in the course of" (by far the most important words in the Act and on which endless decisions have been given) it must now never be overlooked that for practical purposes the effect to be given to these words depends upon the consideration whether the accident in question did or did not result in death or serious and personal disablement. An accident which otherwise would not have arisen out of and in the course of the employment is by the provisions of the Act itself to be deemed to do so though it is attributable to the "serious and wilful misconduct" of the workman or though it may arise from the workman acting in contravention of any statutory or other regulation applicable to his employment or of any orders given by or on behalf of his employer or that he was acting without instructions from his employer if such act was

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done by the workman for the purposes of and in connection with his employer's trade or business. Most of the cases which deal with this extended statutory meaning of the words "arising out of and in the course of" are considered later in notes to sect. 1 (1) (b) and sect. 1 (2), but as cases often involve the general principle as well as the statutory exceptions engrafted upon it, both classes of cases should be considered by any one wishing to ascertain whether a particular case does or does not arise out of and in the course of the employment.

General cases on the words "arising out of and in the course of."—A double condition is in these words. The applicant must prove both that the accident arose *out of*, and *in the course of* the employment. The words are used conjunctively, not disjunctively, not as meaning *out of*, that is to say, *in the course of*. An applicant fails if no evidence be given or if it be as consistent with one view of the facts as another (*Pomfret v. L. & Y. Rail. Co.*, (1903) 2 K. B. 718. Former findings of other tribunals, though judicial, are not available to prove this so the finding at a coroner's inquisition as to the cause of death is inadmissible.

If a man was doing what he was employed to do, even though in a wrong, negligent or forbidden way, the accident still arises out of the employment; on the other hand, if he was even meritoriously doing something he was not employed to do, the accident does not arise out of his employment. See now sect. 1 (2) of present Act.

The first principle involved cannot be better shown than in *Harding v. Brynddu Colliery Co.*, (1911) 2 K. B. 747. Here a collier was set to drill a hole from above a seam in order to draw off dangerous gases which rendered the seam unsafe. He asked if he might go into the seam to see if his drill was running straight and was told, No! But he went all the same and was suffocated in consequence. Here, though disobedient, he was still about the work he was employed to do, viz., drilling the hole. The accident arose out of his trying to do such work, and as disobedience was no defence, his employers were held liable.

This principle that if the workman is really doing what he was employed to do, even though negligently or in a forbidden way, the accident still arises out of the employment, was finally decided by the House of Lords in *Estler Bros. v. Phillips*, (1922) 91 L. J. (H. L.) 470.

All the cases cited below as to breach of statutory rules or orders must now be read in the light of sect. 1 (2) of the present Act.

These cases are not overruled and the principles on which they were decided will still apply to all cases where the accident does not result in death or serious and permanent disablement.

This is shown in such cases as *Kerr v. Baird*, 48 S. L. R. 646, where a miner was injured through firing a shot which it was no part of his business to do. As the Lord President said, "He was arrogating to himself duties which he was neither engaged nor entitled to perform." See also *Pugh v. Dudley (Earl)*, (1914) W. C. & Ins. Rep. 265; *Anderson v. Sir W. G. Armstrong, Whitworth Co., Ltd.*, (1917) W. C. & Ins. Rep. 71; *Sundmore v. London and Thames Haven Oil Wharves*, (1921) 14 B. W. C. C. 116.

So in *Plumb v. Cobden Flour Mills*, (1914) W. C. & Ins. Rep. 48, a man employed to stack bags, for his own convenience, improvised a revolving shaft as a pulley to raise them with and was injured. Held, he was employed to work in a specified way; if he chose to work in another, he was not doing what he was employed to do; and it has now been definitely decided by the House of Lords in *A. G. Moore & Co. v. Donnelly* and other cases heard and decided with that case, reported (1921) 1 A. C. p. 932; 90 L. J. K. B. 49; 37 T. L. R. 198, that the contravention of the coal mining regulations places the miner outside the sphere of his employment, and he cannot recover if injured in consequence of such contravention. See also, to the same effect, *Bourton v. Beauchamp*, (1920) A. C. 1001; 89 L. J. K. B. 1205; followed by Court of Appeal in *Whiddert v. Chislet Colliery, Ltd.*, (1920) 89

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L. J. K. B. 1209; *Howells v. Bedwas Navigation Colliery Co.*, (1921) 14 B. W. C. C. 10; *Cook v. London and South Western Ry. Co.*, (1921) 14 B. W. C. C. 102. Compare *Brinckman v. Harris*, (1916) W. C. & Ins. Rep. 45; *Chinnock v. Potter & Clark, Ltd.*, *ibid.*, 55; *Payne v. Curtis & Son*, (1915) W. C. & Ins. Rep. 501; *Leggett v. Gibbons*, (1916) W. C. & Ins. Rep. 154; *Gaunt v. Babcock & Wilcox, Ltd.*, (1918), W. C. & Ins. Rep. 10; *Armitstead v. Humber, etc., Engineering Co., Ltd.*, (1918) W. C. & I. 342; *Jefferey v. John Mowlem & Co., Ltd.*, (1918) W. C. & I. 328. Although the above principle is so well established, the Court construes the statutory rule with great strictness. *Ruck & Moore v. Stockingford Colliery Co.*, (1923) 92 L. J. K. B. 221; (1923) W. C. & Ins. Rep. 43, show the extreme rigidity with which the courts construe the Coal Mines Rules. Compare, however, *Hawkrigde v. Howden Clough Collieries Co.*, (1923) 92 L. J. K. B. 642, a very similar case, where it was held that the statutory provision as to clear space on a haulage road between the tubs and the side applied to the road as a whole and not only to that part of the road where the accident occurred. Again, in *Coltress Iron Co. v. Baillie*, (1922) 1 A. C. 170; 91 L. J. (H. L.) 75, where the rule declared that a person firing a shot in a mine which does not explode shall not approach the place until after a certain time, it was held this did not prevent a workman from recovering compensation who was engaged in the operation, and who approached the place before the expiration of the time; the reason being, that he was not the "person firing the shot." The workman lighting the fuse is the person alluded to in the rule as "firing the shot," and if he returns to the firing place before the expiration of the statutory time and is injured, he cannot recover. It is no defence for him to say that he did not think the fuse had lighted (*Costello v. Addie & Sons Collieries, Ltd.*, (1922) 1 A. C. 164; 91 L. J. (H. L.) 72). Where the employer had added to the statutory regulation a further regulation to the effect that no person should on any pretext return to the place before the expiration of the prescribed interval of time, this further regulation was held to be binding, and a workman, not being the person "firing the shot" who with knowledge of this further regulation approached the place was held to be acting outside the scope of his employment (*McIntosh v. Arden Coal Co.*, (1924) 93 L. J. K. B. (H. L.) 264). This is an important decision, but will have little or no effect in the future owing to sect. 1 (2) of the Workmen's Compensation Act, 1925. But the mere fact that he is doing his work in a dangerous manner does not debar him from recovering (*Bullworthy v. Glanfield*, (1914) W. C. & Ins. Rep. 221; *Partridge v. Whiteley, Ltd.*, (1915) W. C. & Ins. Rep. 56; *Crooke v. Greenwood and Bailey, Ltd.*, (1918) W. C. & Ins. Rep., p. 198; *Gibbins v. British Dyes, Ltd.*, (1918) W. C. & I. 302; *Clarke v. Anderson & Anderson*, (1919) W. C. & I. 9). Contrast *Russell v. A. & G. Murray, Ltd.*, (1915) W. C. & Ins. Rep. 532. Consider also *Lancashire and Yorkshire Ry. v. Highley*, (1917) W. C. & Ins. Rep. 179. But if disobedience to an order extends the scope of the employment, *i.e.*, adds a risk, and not merely a danger, and it is that risk which induces the accident, it may be as in *Herbert v. Samuel Fox & Co. Ltd.*, (1915) W. C. & Ins. Rep. 154, (1916) W. C. & Ins. Rep. 1, that the resulting injury was not caused by an accident arising out of, *etc.* See also *Fife Coal Co. v. Braid*, (1924) 93 L. J. K. B. (H. L.) 225, and *Leivers v. Barber, Walker & Co.*, (1924) 93 L. J. K. B. 933. These cases of added risk should be very narrowly viewed. They generally resolve themselves into cases of a workman doing something quite apart and distinct from what he was employed to do. See, *e.g.*, *Hopley v. Pool, Lorrimer and Tabberer*, (1915) W. C. & Ins. Rep. 280; *Palmer v. Harrods, Ltd.*, (1916) W. C. & Ins. Rep. 213 (where a man used a parcels lift to go from floor to floor). Phillimore, L.J. in the latter case (at p. 215) suggested a useful distinction when he differentiated between incurred risks and added risks. Contrast *Sexton v. Hosford*, (1916) W. C. & Ins. Rep. 216; *Marshall v. Joseph Rodgers & Sons, Ltd.*, (1918) W. C. & Ins. Rep. 39. If he be merely doing his work in a wrong way he can recover (*Corbett v. H. S. Pitt & Co.*, (1915)

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W. C. & Ins. Rep. 295). Entering a train or a tramcar while in motion has been held to add a risk (*Jibb v. Chadwick*, (1915) W. C. & Ins. Rep. 342; *Byrne v. Larrinaga S.S. Co., Ltd.*, (1918) W. C. & I. 319). A workman in attempting to do so does not, however, necessarily go beyond the limits of his employment (*Guest v. Gaston & Co.*, (1927) 1 K. B. 1; (1926) 95 L. J. K. B. 759). Compare *Baker v. Bradford (Earl)*, (1915) W. C. & Ins. Rep. 576; affirmed, (1916) W. C. & Ins. Rep. 177; *Wilson v. L. & N. W. Ry.*, (1918) W. C. & Ins. Rep. 172; *Stevens v. L. & S. W. Ry. (ibid.)* 126; *Maydew v. Chatterley-Whitfield Collieries, Ltd.*, (1917) W. C. & Ins. Rep. 277.

A general direction "to find a job" might, of course, considerably extend the scope of the employment (*Lane v. W. Lusty & Son*, (1915) W. C. & Ins. Rep. 326). The scope would also probably be extended by a foreman saying that the workman would be dismissed if something happened, and the workman took the risk to prevent that thing happening or being discovered. See *McNally v. Bootle Jute Factory Co., Ltd.*, (1916) W. C. & Ins. Rep. 64.

Difficult questions arise when a man, doing what he is employed to do, is injured by an act not material to the employment. Still the true question seems to be, Was he injured through doing something he was substantially employed to do? An unsettling case and a somewhat doubtful one is *M'Laughlin v. Anderson*, 48 S. L. R. 349, where a driver of a traction engine dropped his pipe, and jumping down to recover it, fell, and was killed, and his widow recovered. Had he dropped a tool it would have been clear. Compare *Evans v. Holloway*, (1914) W. C. & Ins. Rep. 75, where a driver was injured while altering a seat to give a fellow-workman a lift. Held, that the accident arose out of and in the course of, etc. *Watkins v. Guest, Keen and Nettlefold*, (1912) W. C. Rep. 150, raises a similar difficult point. Here employers provided a train for their men. Fifty yards before it arrived at a platform one got on the footboard, fell, and was injured. The court held, substantially he was doing something within his contract of employment, viz., being carried by the train. *Buckley, L.J.*, held he was not, viz., he was riding on the footboard. Contrast *Price v. Tredegar Iron and Coal Co.*, (1914) W. C. & Ins. Rep. 295. A man may be within the "margin" of his employment while on his way to work along his employer's private road if such road be open to workmen. See *Nicol v. Young's Paraffin Light, etc., Co.*, (1915) W. C. & Ins. Rep. 72. Where a man is employed to do work in place A. he is still entitled to compensation if injured in place B. if there is evidence to show that he went to place B. in connection with his work at place A. (*Robert v. George Trollope, etc.*, (1914) W. C. & Ins. Rep. 269; *Corlett v. L. & Y. Ry.*, (1919) W. C. & I. 2; *Wm. Baird & Co., Ltd. v. McGraw*, (1920) 89 L. J. K. B. 188, where workman was waiting for his pay in a place where it was reasonable for him to wait, and *Matthews v. McClure & Sons, Ltd.*, (1921) 90 L. J. K. B. 510, where a girl, directed to wait in a room where there was running machinery, left the safe place in which she was sitting at the invitation of another girl to come and eat an apple with her, and was injured by the machinery. In each of these two last mentioned cases the workman recovered. They are somewhat difficult to reconcile with *Plumb v. Cobden Flour Mills*, ante, p. 1280. See also *Jones v. Ynysarwed Colliery Co.*, (1921) 14 B. W. C. C. 113). But such an act must be reasonably incidental to the employment. Thus where a carter went along a railway line where he had no business to be in order to get a loading permit it was held in *Morris v. Rowbottom*, (1915) W. C. & Ins. Rep., p. 67, that the accident did not arise out of, etc. Where a man is employed to do work A. but it is the practice also to do occasionally work B. and there is no rule against it, and if it were not done the works generally would be inconvenienced, and the workman is injured while doing work B. he can recover (*Robson v. Wm. Baird & Co., Ltd.*, (1914) W. C. & Ins. Rep. 40).

Cases of men injured going to or from work turn frequently on the following principle laid down by the Master of the Rolls in *Whittall v. Staveley Iron and Coal Co., Ltd.*, (1917) W. C. & I. Rep. at p. 205. "If

the circumstances are such that, either expressly or by implication, you must hold that the workman was entitled, as against his employer, to use a particular way over his employer's land, or over somebody else's land, in respect of which the employer has for the purpose of the contract of service obtained a right, then it is an implied term of the contract that the man should be there, and being there is part of his employment, and an accident happening there arises out of and in the course of the employment." See further, as to such cases, *infra* (illustrative cases).

Where a commercial traveller went on a journey to a town on his route for his own convenience and was found dead on the rails and it appeared that shortly before he was drunk, it was held that the accident did not arise out of, etc. (*Renfrew v. R. & J. M'Crae, Ltd.*, (1914) W. C. & Ins. Rep. 195). So where a man was knocked down by a train when crossing the line by walking over the rails instead of crossing by the bridge (*Pritchard v. Torkington*, (1914) W. C. & Ins. Rep. 271). Compare *L. & Y. Ry. v. Highley*, (1917) W. C. & I. 179, a decision of the House of Lords which renders *Fox v. Rees and Kirby*, (1916) W. C. & I. 339, doubtful. The fact that a workman resorts to a dangerous route instead of to a safe one, and the choice is made while engaged in the employment of the master, and no definite prohibition has been made, the workman may recover (*Rossiter v. Commissioners, etc., of Waterford*, (1920) W. C. & I. 67). Where a scene shifter at a theatre was injured whilst doing the work of a baggage man for his own profit, it was held that the accident did not arise out of his employment as scene shifter (*Huscroft v. Bennett*, (1914) W. C. & Ins. Rep. 9). Where a boots, whose duty it was to await trains, fell on the rails it was held that the accident arose "out of" (*Blake v. Ramsay*, (1917) W. C. & I. 84). Interruption of employment does not occur every time the workman stops industrial work, and it has been held that an accident occurring while the workman was waiting for the man who could give him his pay ticket arose out of and in the course of the employment (*M'Graw v. W. Baird & Co., Ltd.*, (1919) W. C. & I. 359).

Although breach of a rule made by the employer himself may make the accident not one "arising out of," the rule must be clear and consistently enforced. If the rule says one thing and the practice is another, it is some evidence that it has been abandoned. Of course as regards statutory rules and requirements, all parties know that these cannot be varied, and ignorance of them is of no avail (*Dobson v. United Collieries*, 43 S. L. R. 260), subject now of course to the provisions of sect. 1 (2) of the present Act.

A workman who does a thing prohibited under penalties by a statutory rule is not acting within the sphere of his employment (*Matthews v. Pomeroy*, (1919) W. C. & I. 194; compare *Maydew v. Chatterley-Whitfield Collieries, Ltd.*, (1919) W. C. & I. 32; *Bourton v. Beauchamp*, (1919) W. C. & I. 137; *Robertson v. Woodilee Coal and Coke Co.*, (1919) W. C. & I. 229). If a rule is disregarded, it is *prima facie* strong evidence a man was doing what he was not employed to do, e.g., a colliery boy riding in a tub when not allowed to (*Barnes v. Nunnery Colliery Co.*, (1912) A. C. 44); but doing a thing in breach of a rule or carelessly or negligently or even disobediently does not necessarily debar the workman from recovering (*Blair & Co., Ltd. v. Chilton*, (1915) W. C. & Ins. Rep. 283; *M'Guire v. Gabbott*, (1915) W. C. & Ins. Rep. 363). If the disobedience adds a risk, distinct from those arising from the employment, which leads directly to the injury the man may not recover (*Herbert v. Samuel Fox & Co., Ltd.*, (1915) W. C. & Ins. Rep. 154; (1916) W. C. & Ins. Rep. 1). Where, however, a workman, while actually doing his work in the course of his employment, meets with an accident, it has been held by the Privy Council that the onus is on the employer to show that the workman himself added a peril or did something which took his action outside the scope of his employment, so that the accident did not arise out of and in the course of the employment within the meaning of sect. 1 (1) of the Act (*A. G. Moore & Co. v. Barkey*, (1924) 93 L. J. P. C. 63).

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(1923) A. C. 790). A man may, however, still be doing what he was employed to do, though most outrageously careless or stupid (*Bullworthy v. Glanfield*, (1914) W. C. & Ins. Rep. 221). Where there is a breach of a rule the workman may still recover (*Sanderson v. H. Wright, Ltd.*, (1914) W. C. & Ins. Rep. 177). It largely (perhaps entirely) depends on **whether the rule limits the ambit of employment or merely defines the modus operandi**, *ibid.* See also *M'William v. G. N. of Scotland Ry.* (1914), W. C. & Ins. Rep. 135; *Jackson v. Denton Colliery Co.*, (1914) W. C. & Ins. Rep. 91; *Hopley v. Pool, Lorrimer and Tabberer*, (1915) W. C. & Ins. Rep. 280; *Corbett v. H. S. Pitt & Co.*, (1915) W. C. & Ins. Rep. 295; *Wardle v. H. G. Enthoven & Sons, Ltd.*, (1917) W. C. & I. 18; *Foulkes v. Roberts*, (1919) W. C. & I. 354.

As regards statutory rules properly posted, a man cannot be heard to say he did not know of them (*Dobson v. United Collieries*, 43 S. L. R. 260); but see with reference to this and all the cases cited, sect. 1 (2) of present Act, *infra*.

"Arising out of" on an emergency.—In exceptional cases a man may do a thing not within the letter of his contract of service, but within the spirit of it as in cases of emergency, *e.g.* stopping a runaway horse in his master's interest (*Rees v. Thomas* (1899) 1 Q. B. 1015); but still he can only recover on the principle that he was doing what he was employed expressly or impliedly to do.

"Arising out of" when due to larking.—This obviously is foreign to the employment altogether and even an innocent workman so injured by another cannot recover (*Armitage v. L. & Y. Rail. Co.* (1902) 2 K. B. 178) (note however the case of *Clayton v. Hardwick Coll. Co., Ltd.*, (1916) W. C. & Ins. Rep. 33); but if a workman properly doing his work is injured by the larking of a stranger, and his employment lends itself to such larking, *e.g.*, an engine driver going through a bridge from which little boys like to drop stones, he can recover (*Challis v. L. & S. W. Rail. Co.*, (1905) 2 K. B. 154). Whether the injury was caused by larking or arose out of and in the course of the employment is a question of fact and the arbitrator's decision will not be upset if there be evidence to support it (*Durrant v. Smith*, (1914) W. C. & Ins. Rep. 282; *Sambrook v. New Sharlton Colliery*, (1914) W. C. & Ins. Rep. 284). Payment of compensation in ignorance that the injury was caused by larking does not estop the employer from raising this defence (*Harrison v. Featherstone*, (1917) W. C. & I. 74).

"Arising out of" where death unexplained.—Where a workman is found dead in the employment and cause not known, there is a presumption that the death was not self inflicted, this being the ordinary presumption against crime, but there is no presumption that the death arose "out of" the employment. The relatives before they can recover, have still to prove this. Difficult questions occur especially where seamen are missing or found drowned, and no direct evidence of the accident is available. To entitle dependants to recover, they must prove (1) facts from which it can be inferred that at the time of his death, the deceased was doing what he was employed to do; and (2) facts from which it can be inferred that such employment would take him into the danger from which his death resulted. Both propositions must be proved. A seaman's contract of employment covers periods of leisure as well as periods of active duty, but during the former there is usually nothing to take him into a danger area. In *Swansea Vale v. Rice*, (1912) A. C. 238, the inferred facts were that a mate on duty fell overboard through being giddy, and his dependants recovered; but in *Bender v. Zent*, (1909) 2 K. B. 41, it was only proved deceased went on deck for air, and they failed. In *Lee v. Stag Line*, (1912) W. C. Rep. 3, it was well held that in the tropics a fireman rightly went on deck for air, but the weak part of the case was its not being shown that this necessarily took him into danger; whilst in *Burwash v. Leyland*, (1912) W. C. Rep. 400, it was held a cook's employment at his galley could not have taken him into danger.

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But against this was the fact that the ship was rolling and the weather bad, and it might well have been held in such a case a seaman's contract of employment, even during the leisure period, took him into danger. The point, however, was not argued, and remains open for decision. The cases on the question of disappearance of seamen at sea were reviewed in *Lendrum v. Ayr S.S. Co.*, (1914) W. C. & Ins. Rep. p. 438; *Proctor v. "Serbino" (Owners)*, (1915), W. C. & Ins. Rep. 425; (1916) W. C. & Ins. Rep. 30. Compare *Rourke v. Holt & Co.*, (1918) W. C. & Ins. Rep. 7. As regards seamen on shore, see, further, "IN THE COURSE OF"; *Carnaby v. S.S. "Bromsgrove"*, (1921) 14 B. W. C. C. 83.

Where a man found dead within the **ambit of his employment** or close to his employment, the whole circumstances must be considered, and the circumstances themselves may raise an inference that the death arose whilst he was doing what he was employed to do, *e.g.*, a man whose duty it was to start machinery and who was found dead under revolving shafting (*McNicholas v. Dawson*, (1899) 1 Q. B. 773), see also *Stroud v. Bath Gas Light & Coke Co.*, 20 B. W. C. C. 496; a man who was being carried from his work and who fell out of a carriage when apparently putting a basket on a rack (*Pomfret v. L. & Y. Rail. Co.*, (1903) 2 K. B. 718); a policeman whose duties took him all over the company's premises and who was killed on a siding (*Grant v. Glasgow and S. W. Rail. Co.*, 45 S. L. R. 128); a carpenter employed at work on a barge who fell into the water on a dark night while crossing a dock quay not open to the public (*J. Stewart & Son* (1912), *Ltd.* v. *Longhurst*, (1917) W. C. & I. 305; compare *Armstrong v. Gregson & Co.*, *ibid.*, p. 226); and a mate who lived on board ship when in dock and was found drowned, and near his body on a jetty was some food he had obviously been obtaining (*Richardson v. Avonmore*, 5 B. 34). Contrast *Renfrew v. R. & J. McCrae, Ltd.*, (1914) W. C. & Ins. Rep. 195; *Booth v. Leeds and Liverpool Canal Co.*, (1914) W. C. & Ins. Rep. 310. The evidence must lead to something more than a mere surmise or guess. It must go to prove definite connection between employment and accident (*Kettle v. McKay and Ryland*, (1916) W. C. & I. 297). If a seaman is drowned by falling from a quay when returning to his ship his dependants must show that he was running a risk not common to everybody (*Craig v. Cormack*, (1914) W. C. & Ins. Rep. 394). See also *Pocock v. Edwards & Son*, (1921) 14 B. W. C. C. 95.

Cases of "arising out of" where the occurrence was only casually connected with the employment.—A man is doing what he was employed to do and is injured. Still he must prove the accident arose out of the employment (or out of a contractual obligation connected with his employment. See and consider *Philbin v. Hayes*, (1918) W. C. & I. p. 194). The murder of a colliery cashier travelling with wages (*Nisbet v. Rayne*, (1910) 2 K. B. 689), and a gamekeeper injured by poachers (*Anderson v. Balfour*, 3 B. 588), have been held to arise out of the employment (these cases rather turn, however, on the meaning of the term "injury by accident"); but otherwise a free worker or so-termed blackleg attacked by strikers (*Murray v. Denholme*, 48 S. L. R. 896; see, however, now *Trim Joint District School v. Kelly*, (1914), W. C. & Ins. Rep. 359), or a carter attacked by a drunken rowdy (*Mitchinson v. Day Bros.*, (1913) W. C. Rep. 324), doubted in *Simpson v. Sinclair*, (1917) W. C. & I., at p. 169. See also *Parker v. Federal Steam Navigation Co., Ltd.*, (1926) 95 L. J. K. B. 664; 134 L. T. 137. Absence of causal relation may prevent an innocent workman injured by his fellows from recovering. For example, a maid injured by a ball playfully thrown at her by the nurse in the same house failed to recover (*Wilson v. Laing*, 2 B. 118). Then there is the well known case of a cockchafer flying into the face of a sempstress sitting at an open window (*Craske v. Wigan*, (1909) 2 K. B. 635). Compare *Griffiths v. Robins*, (1917) W. C. & I. 44; and see *Heathcote v. Grimsby Cordage Co., Ltd.*, (1920) W. C. & I. 27 (a girl combing her hair, a usual practice with spinners while so employed, accident not "out of"). More recently there occurred the case of a sailor who drank a

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solution of caustic soda which he thought was water put out to cool. It was held in the House of Lords that the resulting injury was not the result of an accident arising out of the employment (*Hutchison v. M'Kinnon*, (1916) W. C. & Ins. Rep. 17). Equally failed a sailor who injured himself through his drunken state (*Frith v. "Louisianian,"* (1912) 2 K. B. 155). The principle that when the real effective cause of the accident was the drunken condition of the workman the accident does not arise out of the employment, was finally settled by the House of Lords in *Thomson & Co. v. Anderson* (or *Scrimgeour*), (1922) 91 L. J. (H. L.) 87, in which *Frith's Case* (*supra*), was approved. See *Murphy and Sandwith v. Cooney*, (1914) W. C. & Ins. Rep. 44; *Nash v. "Rangatira" (Owners)*, (1914) W. C. & Ins. Rep. 490; 83 L. J. K. B. 1496. It is thought that *Frazer v. Riddell*, (1914) 7 B. W. C. C. 841, was wrongly decided. *Frith's Case*, *Murphy's Case*, *Nash's Case*, and the Scotch decision in *Renfrew v. R. & J. McCrae, Ltd.*, (1914) W. C. & Ins. Rep. 195, were distinguished, however, in *Williams v. Llandudno Coaching and Carriage Co.*, (1915) 8 B. W. C. C. 143, which case must now be regarded as of doubtful authority. In *Cook v. Manvers Main Colliery*, (1914) W. C. & Ins. Rep. 278, where a man went for his own convenience to a dangerous part of the mine, it was held that a consequent accident did not arise out of his employment or rather that his dependants had failed to discharge the onus of proving that it did. Contrast *Fearnley v. Bates and Northcliff, Ltd.*, (1917) W. C. & I. 207.

Cases of "arising out of" where resulting from a risk common to the public in general.]—See the leading case of *Dennis v. White & Co.*, (1917) W. C. & I. 247.

Formerly the leading cases on either side of the line were *Andrew v. Fails-worth*, (1904) 2 K. B. 32, and *Warner v. Couchman*, (1912) A. C. 35. In the former case a workman while employed upon a building some thirty feet high was struck by lightning. It was held that there was evidence upon which the arbitrator could find that the accident arose out of the employment. In the latter case a journeyman baker was injured by frost bite while on his rounds. The arbitrator held that the accident did not arise out of the employment and the House of Lords held that he was justified in so finding. Both cases proceed on the principle enunciated by Cozens-Hardy, M.R., "it is not enough for the applicant to say the 'accident would not have happened if I had not been engaged in that employment, nor if I had not been in that particular place.' He must go further, and must say, 'The accident arose because of something I was doing in the course of my employment, or because I was exposed by the nature of my employment to some peculiar danger.'" Consider now, however, the House of Lords decision in *Simpson v. Sinclair*, (1917) W. C. & I., p. 164, at p. 169, where it was held that an accident due to a peril peculiar to the locality of the employment though unconnected with the nature of the employment may be injury arising "out of." Compare *Wales v. Lamblon and Helton Collieries*, (1917) W. C. & I. 289; *Marsh v. Pope and Pearson* (*ibid.*) 267. The same point was made in the Scotch case of *Robson v. Blakey*, (1912) W. C. Rep. 86, where a plumber in low health was laying pipes in a trench on a hot day and succumbed to the heat. Lord Kinnear summed up the position excellently as follows: "I only say in a word that I do not think that this man was exposed by his employment to any special risk to which other people were not liable, provided they happened to be working in the open air on July 26th, 1911." See also *Karemaker v. Corsican*, 4 B. 295.

On the other hand a result similar to that arrived at in *Andrew v. Fails-worth* was attained in *Davies v. Gillespie*, 5 B. 64. See also *Pierce v. The Provident Clothing Co.*, (1911) S. C. 12, and *McNiece v. Singer*, (1911) 1 K. B. 997 (both of which cases were discussed in *Hughes v. Bett*, (1914) W. C. & Ins. Rep. 614), where collectors used bicycles to visit customers, and such use was contemplated by their employment, and where they had to continually ride through narrow and crowded streets and were injured by the traffic, it was there held that, though such danger was common to

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all users of the streets, yet it was a danger incident to their particular calling, and arose out of their doing what they were employed to do. See as to this the important House of Lords decision in *Dennis v. A. J. White & Co.*, (1917) W. C. & I. 247, reversing (1916) W. C. & I. 106. Compare *Hefferman's Case*, (1919) W. C. & I. 16. It may be different where the cycling is only occasional (*Slade v. Taylor*, (1915) W. C. & Ins. Rep. 53; *Read v. Baker*, *ibid.*, 133; *Ince v. Reigate Education Committee*, *ibid.*, 278). And why not frostbite caused when delivering bread? Because, to quote Collins, M.R., in *Andrew v. Failsworth*, "If there is, under particular circumstances in a particular vocation, something appreciably and substantially beyond the ordinary normal risk which ordinary people run, and which is a necessary concomitant of the occupation the man is engaged in, then I am entitled to say that the extra danger to which the man is exposed is something arising out of his employment," a dictum quoted in *Slade v. Taylor*, *supra*. In *Martin v. John Lovibond*, (1914) W. C. & Ins. Rep. 76, where a drayman who had left his horse to get beer was injured while crossing the street on the return it was held that he could recover, as did the taxi-cab man who was wounded by a sentry while driving an officer to a fort (*Thorn v. Humm & Co.*, (1915) W. C. & Ins. Rep. 224). In *Symmonds v. King*, (1915) W. C. & Ins. Rep. 282, a painter's assistant who crossed the road to fetch whitening and was knocked down was held not entitled to recover; he was running no risk *qua* painter's assistant. Compare *Harder v. A. E. Ganis & Sons*, (1916) W. C. & Ins. Rep. 99; *Hadwin v. Shepherd*, (1915) W. C. & Ins. Rep. 503 (where, however, had the arbitrator found differently, his finding would certainly not have been upset). Contrast *Mullinger v. Bidewell*, (1917) W. C. & I. 51, there a man was travelling on a cart on which he had been given a lift, the horse took fright, bolted. Result: Accident and injury. The man took the lift to get on his way with a heavy parcel. Held "out of" because the man had need of a lift to convey the parcel. The case raises some very nice points. *Pierce v. The Provident Clothing Co.*, *supra*, was discussed in *Sheldon v. Needham*, (1914) W. C. & Ins. Rep. 274, where a charwoman sent to post a letter stepped on a banana skin and was injured and it was held that the accident did not arise out of the employment. This case is now overruled by the decision of the House of Lords in *Dennis v. White*, *supra*. Now it would be quite clear under this decision of the House of Lords (*Dennis v. White & Co.*, (1917) W. C. & I. 247), and also *Arkell v. Gudgeon*, (1918) W. C. & I. 333, that such an accident did arise out of the employment. In *Upton v. Great Central Ry.*, (1924), 93 L. J. K. B. 224 (H. L.); (1924) A. C. 302, it was held by the House of Lords that an accident arises "out of" a workman's employment, within the meaning of sect. 1 (1) of the Act, if it is due to the particular place at which the conditions of his employment require him to be at the time when it happens. In *Cooper v. North Eastern Ry.*, (1915) W. C. & Ins. Rep. 572, where an engine driver was killed by a shell fired by German warships near the Hartlepoons, it was held that the "accident" did not arise "out of" the employment—it was a risk common to all in the locality. Compare the aircraft bomb cases (*Allcock v. Rogers*, (1918) W. C. & Ins. Rep. 274; *Knyvett v. Wilkinson Bros., Ltd.*, *ibid.*, p. 157). The Irish case (*Aldridge v. Merry*, (1913) W. C. Rep. 97) is a valuable decision. Here a servant slept in a room where plaster from the ceiling was continually falling. A piece struck her in the eye. The continual falling made it a special risk.

"In the Course of the Employment."—As so many of the decisions, probably the majority of them which have been pronounced upon this composite phrase "arising out of and in the course of the employment," involve a consideration of both questions, it is not safe to trust alone to those which are collected under the separate headings.

The course of the employment depends upon what is the contract of service. Where the contract is in express terms little difficulty arises, but in contracts between master and workman express terms are rarely defined.

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It is the indirect or implied terms of such contracts which create the difficulty, and this often becomes a mixed question of fact and law upon which an appeal lies from the decision of the arbitrator.

Where there is no express contract, or no contract to be presumed from the conduct of the parties, decisions on similar cases are gradually becoming a code as to terms to be implied. Difficult questions usually arise where a man is injured before or after his actual work has commenced or ended, or when it has been suspended or been intermittent. Few contracts of service contemplate only steady unintermittent work, and certain cessations are customary and usual and provided for as well. For example, a man may want to relieve nature. This generally is recognized as in the course of the employment if he acts as mutually agreed (expressly or impliedly) but not otherwise. Periods for rest and eating may or may not be in the course of the employment also as agreed, though in the vast majority of cases where nothing to the contrary is provided such periods usually were regarded as in the course of the employment, though this cannot be said to be so, since some recent decisions in the House of Lords. See *infra*.

So employers may agree to employ men in one place and to take them to their actual work in another when such period of carriage with all its incidents would probably be in the course of the employment, or they may employ men to work in a certain place and provide facilities for getting there with or without such facilities when availed of being in the course of the employment, or they may agree that the employment shall begin and end with being on actual premises, even though they permit private paths and short cuts to be used. But the variety of possible agreements is infinite, as the Act nowhere says a man must employ a servant in only such a manner. So as regards decided cases it may be that the practice adopted has been for the very purpose of avoiding a particular decision.

ILLUSTRATIVE CASES.—General Rule. "It is well established that a man is not within the protection of the Act when having left his master's premises—the factory or wherever it may be—he is proceeding to his home" (*per* Cozens-Hardy, M.R., in *Poulton v. Kelsall*, (1912) 2 K. B. 131). But compare the Master of the Rolls' dictum in *Whittall's Case*, quoted *supra*, p. 1282. A reasonable margin is many times an implied term (*Fitzpatrick v. Hindley Field Col. Co.*, 4 W. C. C. 7, waiting at pit brow; *Sharp v. Johnson*, (1905) 2 K. B. 139, early train; *Mackenzie v. Coltness Iron Co.*, 41 S. L. R. 6, slipping just before starting work). The use of employers' paths, etc., may extend period of employment (*Gilmour v. Dorman*, 4 B. 279; *Walters v. Staveley Coal and Iron Co.*, 4 B. 303; and *Williams v. Smith*, (1913) W. C. Rep. 146). But see the case of *Nicol v. Young's Paraffin Light, etc. Co.*, (1915) W. C. & Ins. Rep. 72; and *Stewart & Son v. Longhurst*, (1917) A. C. 249, where the authorities are considered. See also *Howells v. G. W. R.*, (1928) 97 L. J. K. B. 183, where the workman was on the employers' premises proceeding to work over an accustomed and permitted though not a provided route the accident must be held to arise out of and in the course of the employment. The principle laid down in *Gane v. Norton Hill Colliery Co.*, (1909) 2 K. B. 539; 78 L. J. K. B. 921, and *Howells v. Powell Duffryn Steam Colliery Co.* (*infra*) were followed in this case.

Note.—The case of *Gane v. Norton Hill Colliery Co.* (*supra*) was closely examined in the case of *L. & Y. Railway v. Highley*, (1917) A. C. 352; 86 L. J. K. B. 715, and was held to be rightly decided.

Carriage to or from work will depend on exact terms of contract (*Morgan v. Guest, Keen and Nettlefold*, (1923) W. C. & Ins. Rep. 28; 92 L. J. K. B. 192; and *Watkins v. Guest*, (1923) W. C. Rep. 150; *Holmes v. G. N.*, (1900) 2 Q. B. 409; and *Howells v. Powell Duffryn Steam Colliery Co., Ltd.*, (1926) 1 K. B. 472; 95 L. J. K. B. 654, held within course of employment; whilst *St. Helen's Colliery Co., Ltd. v. Hewitson*, (1924) 93 L. J. K. B. 177 (H. L.); (1924) A. C. 59, (which overruled *Cremins v. Guest, Keen and Nettlefold*, (1908) 1 K. B. 469); and *Newton v. Guest, Keen and Nettlefold* (H. L.), (1926),

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19 B. W. C. C. 119, and *Robertson v. Owners of S.S. "Appalachee,"* 20 B. W. C. C. 57, and *Lye v. British and Argentine Meat Co.,* 20 B. W. C. C. 341, are *contra*). In *Richards v. Morris,* (1914) W. C. & Ins. Rep. 112, a labourer working on an island lived on the mainland. It was held that there was an implied term in the contract of service that he might cross over in his employer's boat. In *Whitfield v. Lambert,* (1915) W. C. & Ins. Rep. 48, no such implied term existed and the workman did not recover. As to interruptions in course of employment during meal times it was formerly held that the times allowed for meals, when the workman stayed on the premises, were considered periods during which the course of the employment continued. This was expressly so held in *Blovet v. Sawyer,* (1904) 1 K. B. 271; 6 B. W. C. C. 16. This principle is now overruled together with the case in which it was declared, by the decision of the House of Lords in *Davidson v. McRobb,* (1918) A. C. 304. This case decides that a complete cessation of work during a dinner hour, or other meal period during which time it is open to the workman to leave the premises on which he is employed, constitutes a break in the course of his employment, and that this is so even though the workman is allowed to remain on the premises during such periods, so long as he has no duties of employment at such times. Very slight evidence of duty owing to the employer at such times, may, however, bring the case within the Act. See *Morris v. Lambeth Council,* 8 W. C. C. 1; and *Rowland v. Wright,* 1 B. 192, the stable cat case; so also getting a drink (*Keenan v. Flemington Coal Co.,* 40 S. L. R. 144); and relieving nature (*Lawless v. Wigan Coal Co.,* 124 L. J. C. C.; *Armstrong, Whitworth & Co. v. Redford,* (1920) A. C. 757. Contrast *Horner v. Wandsworth, etc.,* (1919) W. C. & I. 67). This will not extend to going to a distance (*Bell v. Armstrong, Whitworth & Co.,* (1919) W. C. & I. 219; *Thomson v. Flemington Coal Co.,* 48 S. L. R. 740); or an unreasonable place (*Rose v. Morrison,* 4 B. 277; *Cook v. Manvers Main Colliery,* (1914) W. C. & Ins. Rep. 278). In these cases though the accident arose in the course of, it may not arise out of the employment (*Keen v. St. Clement's Press, Ltd.,* (1914) W. C. & Ins. Rep. 292). Then there are acts perfectly justifiable but yet not in course of employment, being for a man's own purposes only (*Smith v. L. & Y. Rail.,* (1899) 1 Q. B. 141, a guard having a chat with a friend; *Reed v. G. W. Rail.,* 99 L. T. 781, an engine driver crossing lines to get a book), etc., all of which cause a break in the employment; *Pruce v. Davy,* 20 B. W. C. C. 237, crossing road to get milk for his own purposes; *Standen v. Smith,* 20 B. W. C. C. 305, cutting turf for his own purposes, also *Moule v. Marmite Food Extract Co.,* 20 B. W. C. C. 446; using motor cycle for his own purposes or at any rate no evidence that it was sanctioned by his employer (*Helena Hetherington v. Dublin & Blessington Steam Tramway Co.,* 20 B. W. C. C. 852 (Irish case)).

Where a deceased workman is engaged in his employment up to a moment before the accident the *onus* is on the employers to prove that his last act causing the accident was inconsistent with his continuing within the employment (*Rigling v. Minister of Munitions,* (1921) W. C. & I. Rep. 163), but where a workman's body is found in a place where he had no business to be, and no explanation of this is produced, the judge may find that the accident is not proved to have arisen out of the employment (*Prosser v. Graham Navigation Collieries,* (1921) W. C. & I. Rep. 167).

Further, a contract may be to work on certain days, and to be paid on another. This latter will still be in the course of the employment, though the service be otherwise terminated (*Molloy v. South Wales Anthracite Colliery Co.,* 4 B. 65).

"The course of the employment" of a seaman.]—It was formerly held that the contract of service, unless otherwise agreed, covered the periods when men go on shore for their own purposes with leave so that they still remained in the course of their employment (*Kitchenham v. S.S. Johannesburg,* (1911) A. C. 417; *Moore v. Manchester Liners,* (1910) A. C. 498;

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3 B. W. C. C. 527), though at the same time as they will then be exposed to no more risk than any other member of the public, an accident then happening to them is not likely to arise out of the employment. All these cases where seamen go ashore for their own purposes are governed by the case of *Davidson v. McRobb or Officer*, 87 L. J. P. C. 58 (in which case *Stewart & Sons, Ltd. v. Longhurst*, (1917) A. C. 249; 86 L. J. K. B. 729, was distinguished (though Lord Finlay, L.C., failed to see the distinction between these cases), and *dicta* in *Moore v. Manchester Liners*, (1910) A. C. 498; 3 B. W. C. C. 527, were disapproved) where the House laid down one general principle. That principle is that an accident neither arises out of the employment, or in the course of the employment, until the seaman returns to the ambit of the ship itself; even though the accident is occasioned by some risk of the dock or harbour which it is necessary to traverse to reach the ambit of employment. If a seaman goes on shore without leave (express or implied), this is of course an *a fortiori* case. When the seaman may again be said to be engaged in his employment will be a question of fact. Probably the test of again coming within it will be when he is doing an act in his master's interest, and not as a result of or to further his own pleasure. Thus, if a seaman went ashore with leave, and returning fell even from the gangway, it is very doubtful if he can now *a fortiori* recover. Where a seaman goes ashore on the business of the ship he is undoubtedly in the course of his employment, and can recover even where the accident happens from the general risks to which he is no more exposed than any other member of the public, e.g., where he is sent to buy provisions for the ship he remains in the course of his employment. Even here, though he goes ashore to buy provisions for the ship, he is not acting within the ambit of his employment if he deviates in order to go home, although permitted so to do (*Lee v. "St. George" (Owners)*, (1914) W. C. & Ins. Rep. 17). Where seamen go ashore to buy their own provisions it is a question whether there is an implied term in the contract requiring them to do so. If not, they will be deemed to be on their own business (*Parker v. "Black Rock" (Owners)*, (1915) W. C. & Ins. Rep. 369). In *Cook v. Montreal*, (1913) W. C. Rep. 206, it has been held a sailor ceases to be in the course of his employment when ending his contract of service he has left the ship and got on the quay or works pertinent to the quay and not to the ship. On the question of "ambit of employment" reference may also be made to *May v. Ison*, (1914) W. C. & Ins. Rep. 40.

Voluntary Service.]—As all legal responsibility between employer and workman must arise out of a contract of service, it follows that where no such contract exists there can be no liability. An employer cannot be held responsible for services thrust upon him without his consent or even against his will. It makes no difference that the work done is meritorious and for his benefit. A volunteer who assists him or his workmen, even in an emergency, cannot recover under the Act.

A doctor in the service of a hospital, who suffered injury in the interest of a patient by allowing himself to be experimented upon with X-rays, was held to be a volunteer and unable to recover (*Curtis v. Talbot*, 5 B. W. C. C. 41).

Exception.—Rescue Work in Mines.]—There is one exception to the above rule, an exception created by statute. This appears in sect. 34 of the present Act. By this section, sub-s. 1, miners, being trained as members of a rescue brigade, are deemed to be within the Act, and by sub-s. 2 any workman engaged in rescue work or ambulance work at a mine, shall be deemed, for the purposes of the Act, while so engaged, to be employed by the owner of the mine.

(This exception first appeared in the Coal Mines Act, 1911 (1 & 2 Geo. 5, c. 50, sect. 110, now repealed.)

Aircraft.]—As to workmen employed in Air Service, see sect. 36.

Provided that—

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- (a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least three days from earning full wages at the work at which he was employed :

With the above must be read proviso 1 (a) of sect. 9. The joint effect is that the workman gets no compensation if the injury does not disable him for more than three days. If the incapacity lasts more than three days and less than four weeks no compensation is payable for the first three days. If the incapacity lasts for four weeks or longer, compensation is payable from the first.

If a workman is in fact disabled from earning full wages for more than three days he is entitled under the Act, even though his employer continues to pay him his full wages. But in this case, as no present weekly sum is payable, he can only ask for an agreement admitting liability, and this he is entitled to. See *Ashrody v. S.S. "City of Edinburgh"* (Owners), (1919) W. C. & I. 257.

- (b) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

Serious and Wilful Misconduct is a question of fact, *per Halsbury, L.C.*, in *Bist v. L. & S. W. Rail. Co.*, (1907) A. C. 209, at p. 212; it must be proved by the employer; and to be a defence must be the cause of the accident. Effect must be given to the word "misconduct," though moral misconduct has not to be shown. It must be serious quite apart from whether the results are serious or slight, *e.g.*, a servant injured while going out by the front door when told to use the back would not be guilty of serious misconduct; and it must be wilful or deliberate, intentional or the result of a reckless indifference to consequences as opposed to mere inattention, carelessness or negligence, however gross (*Johnson v. Marshall*, (1906) A. C. 409). *Bist v. L. & S. W. Rail. Co.*, (1907) A. C. 209, is a valuable illustrative case. An engine driver, in breach of a rule, left the footplate of his engine whilst in motion to get coal from the tender, and on passing under a bridge was killed. He was held guilty of serious and wilful misconduct. It was misconduct, being disobedience of a rule. It was serious misconduct, as the rule was to protect life—the breach of a rule as to trivial matters might only be trifling misconduct—and it was wilful, being deliberate. As nothing was shown requiring disregard of the rule, the House of Lords approved the finding of the arbitrator, and being under the old Act the dependants failed to recover. It may be serious and wilful misconduct to cross a railway line contrary to rules (*Sanderson v. Henry Wright, Ltd.*, (1914) W. C. & Ins. Rep. 177, at p. 179). Getting drunk may amount to serious and wilful misconduct (*Fraser v. John Riddell & Co.*, (1914) W. C. & Ins. Rep. 125, at p. 127).

It must never be forgotten that, though serious and wilful misconduct may be proved, and proved to have caused the injury, it is no defence if such injury results in death or serious and permanent disablement. The *onus* of proving this is on the applicant, and it is a question which sometimes occasions the arbitrator some difficulty. It may be impossible to say a month or two after the injury whether the results will be serious, still more difficult to say whether they will be permanent.

In cases of doubt the editor thinks the arbitrator has power to adjourn the arbitration proceedings for an indefinite though reasonable time, that he may learn what only time can show. Whether the injury does or will cause serious and permanent incapacity is a question of fact. In *Hopwood*

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v. Olive and Partington, Ltd., 3 B. W. C. C. 357, a boy had the top joint of his first and third fingers torn off, and was held by the arbitrator to be so disabled. The Court of Appeal refused to interfere with the finding.

Sect. 1, sub-s. 2, should be considered in connection with the clause above, see *infra*.

(2) For the purposes of this Act, an accident resulting in the death or serious and permanent disablement of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business.

This sub-section must also be considered with the clause above, sect. 1 (1) (b).

The above sub-section, which was an amendment of the Act of 1906, and which first appeared in the Act of 1923, is a most important amendment in the interest of workmen.

All the previous cases (see p. 1280) where the workman failed in consequence of a breach of statutory regulations or regulations made by the employer having the effect of statutory regulations are now of far less importance than heretofore. Still it must be remembered that the workman is only protected whilst acting improperly if the act was done for the purposes of and in connection with his employer's trade or business. The *onus* of proving that an accident to a workman who was acting in contravention of a statutory or other regulation was caused by an act done by him "for the purposes of and in connection with his employer's trade or business" is upon the workman or his representatives. See *Garallan Coal Co. v. Devlin*, (1927) A. C. 59; 96 L. J. K. B. (H. L.) 17; 19 B. W. C. C. 356. See *Davies v. Gwauncægurwen Colliery Co.*, (1924) 2 K. B. 651, (1925) 94 L. J. K. B. 229, for the construction and effect of this section. This case was decided on the ground that the act of the workman was not only forbidden by the employer, but was done entirely for his own purposes, and not in connection with his employer's trade or business. Compare *Stokoe v. Mickley Coal Co.*, (1928) 138 L. T. 566.

Further, even if the work was done for the purposes of and in connection with the employer's trade or business this will not entitle the workman to recover where the act in question did not arise out of and in the course of his employment, so as to bring him in the first instance within sect. 1 (1) of the Act. See *Borley v. Ockenden*, (1925) 2 K. B. 325; (1926) 95 L. J. K. B. 35; and *Jones v. Tarr*, (1926) 1 K. B. 25; (1926) 95 L. J. K. B. 203. See also *Guest v. Gaston & Co.*, (1927) 1 K. B. 1; (1926) 95 L. J. K. B. 759; and *Clarke v. Southern Ry.*, (1927) 96 L. J. K. B. 572; 20 B. W. C. C. 309; also *James v. Penderyn Limestone Quarries (Hirwain), Ltd.*, 20 B. W. C. C. 27.

Further, this sub-section does not apply to the case of a workman who arrogates to himself duties which he was neither engaged nor entitled to perform, whether the act which causes the injury is the subject of a specific prohibition or not. See *Kerr or M'Aulay and Another v. James Dunlop & Co., Ltd.*, reported with *Wilsons and Clyde Coal Co., Ltd. v. M'Ferrin*, (1926) A. C. (H. L.) 377; (1926) 95 L. J. K. B. (H. L.) 130; 19 B. W. C. C. 1; and *Edwards v. Gwauncægurwen Colliery Co.*, (1927) 96 L. J. K. B. 337; 20 B. W. C. C. 75, where though the act was against the instructions of the employer it fell within the section, and in the case of two men who were

killed compensation was awarded, but in the third case where the man was slightly injured it was refused.

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(3) This Act shall apply notwithstanding any contract to the contrary, whether made before or after the commencement of this Act, except that where under this Act the provisions of a scheme are substituted for the provisions of this Act, the employer shall be liable only in accordance with the scheme.

From the time of the passing of the first Workmen's Compensation Act (1897), contracting out of these acts has always been forbidden, except where the provisions of a scheme certified by the Registrar of Friendly Societies has been substituted therefor. The provisions of such a scheme, and the time when it shall remain in operation, etc., are fully provided for in sect. 31 of this Act (see *post*, sect. 31).

2.—(1) The compensation shall be payable to or for the benefit of the workman, or, where death results from the injury, to or for the benefit of his dependants as provided by this Act.

Persons
entitled to
compensation.

The wording of this sub-section is new, though in effect it was contained in the previous Act.

(2) Where there are both total and partial dependants nothing in this Act shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

At one time it was thought that compensation could not be divided between total and partial dependants. Where there was a total dependant, he or she had to take the whole. This is not so now, see *supra*.

(3) Where a dependant dies before a claim under this Act is made, or if a claim has been made, before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the workman.

The provisions of this sub-section first appeared in the Act of 1923.

On the death of the workman his dependants' right to receive compensation became vested and enured for the benefit of their estate, even though they had made no claim (*United Collieries v. Hendry*, (1909) A. C. 383), but see now the above sub-section from which it follows that if a sole dependant dies before claim made, or before agreement as to compensation made or award obtained, the employer is freed from liability. It has no retrospective effect, and consequently only applies to accidents which happen on or before January 1st, 1924. See *Costello v. Brown*, (1925) 94 L. J. K. B. 220, and *Moakes v. Blackwell Colliery Co.*, (1925) 2 K. B. 64; (1925) 94 L. J. K. B. 723, followed by the House of Lords in *Clement v. D. Davis & Sons, Ltd.*, (1927) A. C. 126; 96 L. J. K. B. (H. L.) 284; 19 B. W. C. C. 416.

3.—(1) In this Act, unless the context otherwise requires, the expression "workman," subject to the exceptions hereinafter mentioned, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and

Meaning of
"workman."

Section 3. whether the contract is expressed or implied, is oral or in writing ; and also includes a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise.

"Workman."—To establish the relationship of employer and workman there must be a contract of service as distinguished from an independent contract to do work (*Simmons v. Heath Laundry*, (1910) 1 K. B. 543 ; *Lynch v. Limerick C.C.*, (I. R.) 19 B. W. C. C. 802). The relationship is practically very much the old relationship of master and servant, not that of anyone doing work for another. An appointment, say, as a doctor in a hospital, is not such a contract of service (*Murphy v. Enniscorthy Guardians*, 2 B. 291), nor that of a lecturer about an airship (*Waites v. Franco-British Exhibition*, 2 B. 199). Compare *Hughes v. Quinn*, (1918) W. C. & Ins. Rep. 115 (well-sinker working under agreement). See also the case of a diver who was employed by Harbour Commissioners to get rid of a sunken barge which was an obstruction and who on the special terms of the contract between them was held to be a servant (*Binding v. Great Yarmouth Port and Haven Commissioners*, (1923) 92 L. J. K. B. 377). The relationship may exist although a man is doing work for his own benefit (*Tombs v. Bomford*, (1912) W. C. Rep. 229 (always assuming the accident does not occur while the workman is so working for his own benefit (*Huscroft v. Bennett*, (1914) W. C. & Ins. Rep. 9)), nor is a man estopped from saying he is not an employer because he has made weekly payments, thinking he was liable (*Standing v. Eastwood*, (1912) W. C. Rep. 200).

Under the National Insurance Act, 1911, curates ((1913) W. C. Rep. 34), and poor law officials (*Ib.* p. 245), and the resident staff of a hospital (*Scottish Insurance Commissioners v. Royal Infirmary*, 50 S. L. R. 495), have been held not to work under contract of service. But where a workman under the control of a board of guardians was injured, it was held in *Finlay v. Tullamore Union (Guardians)*, (1914) W. C. & Ins. Rep. 222, that the relationship of employer and workman existed. The stamping of a card under the National Health Insurance Act, 1924, is not conclusive evidence that the insured person is a workman within the meaning of the Workmen's Compensation Act (*Barnes v. Evans & Co.*, (1914) W. C. & Ins. Rep. 109).

The meaning of the term "contract of service" was discussed at length in *Simmons v. Heath Laundry Co.*, (1910) 1 K. B. 543. Buckley, L.J., suggested the following tests: Was the workman employed upon terms that he should within the scope of his employment obey his master's orders, or was he employed to exercise his skill and achieve an indicated result in such a manner as in his judgment was most likely to ensure success? Was his contract a contract of service within the meaning which an ordinary person would give to the words? Was it a contract under which he could be appropriately described as the servant of the employer? With these hypothetical questions, compare the decisions in *M'Nally v. Fitzgerald*, (1914) W. C. & Ins. Rep. 7, where a plumber was held to be a servant of the person in whose house he was executing repairs (and on this observe the criticism in *Graham v. Lewis Picture House, Ltd.*, (1919) W. C. & I. 374), and in *Bobbey v. Crosbie & Co., Ltd.*, (1916) W. C. & Ins. Rep. 36, where the employer of a ganger was held to be the employer of a member of the gang. On the other hand, a rabbit trapper (*M'Connell v. Galbraith*, (1914) W. C. & Ins. Rep. 90); a person who had undertaken to do slating work (*Barnes v. Evans & Co.*, (1914) W. C. & Ins. Rep. 109); a man who had undertaken to supply a yawl and crew for pilotage purposes (*Walsh v. Waterford Harbour Commissioners*, (1914) W. C. & Ins. Rep. 16); carter drawing timber and

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using his own horse and tackle and paid per ton of timber carried (*Bray v. Kirkpatrick & Sons*, (1919) W. C. & I. 151), were held to be independent contractors. In *Kemp v. Lewis*, (1914) W. C. & Ins. Rep. 512; 83 L. J. K. B. 1535, a quarryman who assisted a farmer carrying hay after his work hours in return for payment in kind but not in money, was held not to be under any contract of service within the meaning of this sect. See also *per* Phillimore, L.J., in *Newson v. Burstall*, (1915) W. C. & Ins. Rep. 16. In *Richards v. Pitt*, (1915) W. C. & Ins. Rep. 417, the niece of a hop-picker who helped her aunt to pick hops was held to be under no contract of service with the hop grower. The same result was arrived at on the facts in *Ryan v. Limerick R. D. C.*, (1920) W. C. & I. 71, in the case of a rent collector engaged by the R. D. C., but not controlled by them. A nurse who attends a patient in the patient's flat for a surgical operation is not under a contract of service with the patient (*Bedford v. Marks*, Law Journal, Aug. 18th, 1917, p. 311).

Such contract would hardly appear to exist where work is found by a philanthropic institution as a form of wise charity (*Burns v. Manchester, etc.*, *Mission*, 1 B. 305; *MacGilvrays v. N. Counties Institute for the Blind*, 48 S. L. R. 811, *contra*, seems a doubtful decision); but was held to exist where work was found under Unemployed Workmen Act, 1905 (*Porton v. Central (Unemployed) Body for London*, (1909) 1 K. B. 173). But in the case of *Watson v. Government Instructional Centre (Birmingham)*, (1928) 97 L. J. K. B. 596, where the Minister of Labour provided a training department or course of instruction at an instructional workshop and the court thought there was no contract of service, and though the workman was injured in performing his instructional duties reversed the county court judge and decided that compensation could not be awarded. Many cases on questions of fact have been decided, *e.g.*, whether a shipowner or charterer was employer or whether a man was a partner, co-adventurer, independent contractor, or bailee, but turning on the particular terms of each contract, are of little guidance where the terms may differ however slightly.

A case of wider interest is *Pears v. Gibbon*, (1913) W. C. Rep. 469, where a trustee in bankruptcy employed an old member of the firm to assist in the winding up. Such assistance does not involve a contract of service, though a trustee may in fact employ such member as a servant if so mutually bargained.

In *Ryan v. Tipperary County Council* (No. 2), (1915) W. C. & Ins. Rep. 22, where a workman worked under a ganger breaking stones for a county council the county court judge found that he was not under a contract of service with the county council. On appeal a new trial was ordered. And see as to correct test of "contract of service" *Underwood v. Perry & Co.*, (1922) 15 B. W. C. C. 131.

As to position of a workman lent by his employer to another, see sect. 5 (1) of present Act.

A contract of service is not determined simply by the injured workman receiving compensation and remaining from work (*Warburton v. Co-operative Soc., Ltd.*, (1917) W. C. & I. 124).

It must be noticed that the definition of "workman" now includes a person plying for hire with a vehicle or vessel under a contract of bailment (other than a hire purchase agreement) who receives as payment a fixed sum or share of takings. This will include many drivers of cars or cabs.

It was first added by the Act of 1923.

(2) The following persons are excepted from the definition of Exceptions. workman, that is to say—

- (a) any person employed otherwise than by way of manual labour whose remuneration exceeds three hundred and fifty pounds a year; or

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Formerly £250 a year.

It does not matter how much may be the wages of a workman engaged in manual labour—he is within the Act. If engaged in clerical work or otherwise (and his contract is a contract of service), he is outside the Act if his remuneration exceeds £350.

See sect. 10 of present Act "*Earnings*." For a case where it was considered what may amount to manual labour (within the meaning of the National Insurance Act, 1911), see *Re Dairymen's Foremen and Re Tailors' Cutters*, (1912) 28 T. L. R. 587. In cases other than those of manual labour, "if the contract [of service] is one which may continue for more than a year, and the servant, as incident to that contract, earns, or, but for some circumstance determining his earning power, would be able to earn in a year a sum exceeding £350, he will be within the exception, although at the moment of the accident the remuneration he was actually earning might be at a lower rate than that of £350 per annum. So, on the other hand, if the actual or assumed earnings be less than £350 in the year, the man would be a "workman," although at the moment of the accident the remuneration he was actually earning was at a higher rate," *per Warrington, L.J.*, in *Griffith v. "Penrhyn Castle" (Owners)*, (1917) W. C. & I., at p. 117. See *Jacques v. Steam Tug "Alexandra" (Owners)*, (1921) 90 L. J. K. B. (H. L.) 325; also *Reid v. British and Irish Steam Packet Co., Ltd.*, (1921) 2 K. B. 319. The question whether a workman's duties are those of manual labour is primarily a question for the arbitrator. In a case where a captain of a steam tug, whose remuneration exceeded £250 a year, had to perform some manual labour with the crew, and the arbitrator found that his duties were not primarily those of manual labour, the House of Lords upheld this decision. Where a pilot received wages of £6 a week for ten weeks before the accident and the county court judge found that his remuneration did not exceed £250 a year, the House of Lords held it was within the power of the judge so to find, though it was proved that the usual pay of such a pilot as the applicant was £6 a week (*W. Thomson & Co. v. Mackay*, (1921) 90 L. J. (H. L.) 1337).

- (b) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club; or

A casual labourer is outside the Act unless the work he does is for the purposes of his employer's trade or business, but a person employed for the purposes of any game or recreation and engaged or paid through the club, though he plays intermittently is within the Act.

Decisions.—A charwoman regularly employed held to be not a casual labourer (*Dewhurst v. Mather*, (1908) 2 K. B. 754), a window cleaner's work held to be of a casual nature (*Hill v. Begg*, (1908) 2 K. B. 802), a thatcher employed to thatch the roof of a farmhouse where the farmer carried on his farm business and also resided held a casual labourer (*Manton v. Cantwell*, (1920) A. C. 781), also a man cutting down trees in an employer's garden (*M'Corthy v. Norcott*, 2 B. 279; *Knight v. Bucknill*, (1913) W. C. Rep. 175; compare *Williams v. Haigh*, (1926) 134 L. T. 238). A temporary cook's employment may be held to be of a casual nature, depending much on the length of employment (*Stoker v. Wortham*, (1919) W. C. & I. 58). A labourer regularly employed as a woodman year by year for a season of about two months held not to be a casual labourer (*Smith v. Buxton*, (1915) W. C. & Ins Rep. 126). Where the windows were cleaned casually at a doctor's house, held, did not bring the case within the exception of employers trade or business (*Rennie v. Reed*, 45 S. L. R. 814); but otherwise where the

work done was the lopping of trees and the employer was a retired doctor who farmed 215 acres for profit (*Cotter v. Johnson*, 5 B. 568); the mere owning of eight cottages and managing them does not constitute trade or business (*Bargewell v. Daniel*, 98 L. T. 257), though otherwise if regular business premises are repaired (*Johnston v. Monastrevan General Store Co.*, 2 B. 813). Employment for the purposes of improving a house used for a trade or business is not of itself employment for the purposes of the trade or business (*Alderman v. Warren*, (1916) W. C. & Ins. Rep. 266; contrast *Boothby v. Peter Patrick & Son*, (1918) W. C. & I. 340). For a case in which the employer was held to be estopped from raising the defence of casual employment, see *Fraser v. Driscoll*, (1916) W. C. & Ins. Rep. 222.

As to a person employed for the purposes of a game or recreation, see notes to sect. 5 (3), *post*.

(c) a member of a police force ; or

For definition of "Police Force," see sect. 48 (1) of present Act. This includes a police officer who, as a statutory duty, acts as a fireman (*Sudell v. Blackburn Corporation*, 3 B. 227).

(d) an out worker ; or

For definition of "out worker," see sect. 48 (1) of present Act.

(e) a member of the employer's family dwelling in his house.

See sect. 4 (3) of present Act.

Member of the Employer's Family.—Such cannot recover against a principal under sect. 6 (1) as he is not a workman (*Marks v. Carne*, (1909) 2 K. B. 516); nor if only temporarily absent (*M'Dougall v. M'Dougall*, 48 S. L. R. 315). See also *Wood v. Wood*, (1924) 93 L. J. K. B. 538, where a farm worker employed by the partners in a farming business consisting of his two brothers and his sister, and living in a farmhouse belonging to the partnership, in the occupation of two out of the three partners, was held not to be excepted from the operation of sect. 13 of the Act of 1906 as being a "member of the employer's family, dwelling in his house," and, therefore, his dependants were held to be entitled to compensation under the Act.

As to the position of workmen in the service of the Crown, see sect. 33 of present Act.

(3) If on any proceedings for the recovery of compensation under this Act it appears to the judge of county courts or other person by whom the claim to compensation is to be settled that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened was illegal, he may, if having regard to all the circumstances of the case he thinks proper so to do, deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship.

This was formerly effected by the Workmen's Compensation (Illegal Employment) Act, 1918, now repealed.

4.—(1) The dependants of a workman entitled to claim compensation under this Act where the injury results in death are such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident

Dependants
entitled to
compensation.

Section 4. have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively.

(2) A person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position.

(3) In this Act unless the context otherwise requires the expression "Member of a family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, grand-daughter, stepson, stepdaughter, brother, sister, half-brother, half-sister.

The dependants entitled to compensation are members of the workman's family, as to which see sub-s. 3, *supra*, and an illegitimate child or grandchild or parent or grandparent of an illegitimate child, sub-s. 1. This subsection does not, however, extend to the illegitimate children of the widow by another man born before her marriage to the deceased workman. See *Scott v. L. N. E. Ry. Co.*, (1926) 2 K. B. 204; (1927) 96 L. J. K. B. (H. L.) 135; 19 B. W. C. C. 457.

In every case they must have been dependent on the workman's earnings at the time of death, or but for the incapacity would have been so dependent.

They must also now be dependent for the "ordinary necessities of life" suitable to their class and position (sub-s. 2 above). This latter provision has and will in future cause much difficulty. It is believed that no common standard of living can be laid down. What the judge may be satisfied are necessities of life for one family, having regard to the earnings and expenditure of that family, would not necessarily be the necessities of life for another family, where the income and probably the expenditure were less. This important question has now been considered by the House of Lords in *Welsh Navigation Steam Coal Co. v. Evans*, (1927) A. C. 834; 96 L. J. K. B. (H. L.) 906; 20 B. W. C. C. 537, which decided (overruling the Court of Appeal, (1927) 96 L. J. K. B. 290, and following their own decision in *Fife Coal Co. v. McArthur*, (1927) 96 L. J. K. B. (H. L.) 330; 19 B. W. C. C. 461), and on the express words of the new statute, that the state of the law had been brought back to what was declared in the case of *Simmons v. White*, (1899) 1 Q. B. 1005; 68 L. J. Q. B. 507, and not what was laid down by House of Lords in *Main Colliery Co. v. Davies*, (1900) A. C. 358; 69 L. J. Q. B. 755, namely, that it is only "necessaries of life" which can be recovered by the dependants. "Necessaries of life" must be to some extent a question of fact.

"You are to find out what such a family budget fitting to the class and position would naturally be. I agree that their actual expenditure is a *prima facie* guide, and I agree that there is no meticulous distinction between an absolute necessary and an article of comfort or a luxury. You are not to say that bread and butter is a necessary, but that if jam is added it is a luxury. But still you are to take the necessities of life. The expression is a common, well-understood expression, it indicates food, clothing, shelter and the necessary concomitants thereto. But to extend it to such a thing as saving, or what is the same thing, insurance, do utter violence to the expression, and though the learned Master of the Rolls says that he does not wish to say anything which would discourage thrift, I am afraid that I

must reply that it is not allowable to encourage thrift by wresting a word used in a statute from its ordinary and natural meaning" (*Welsh Navigation Steam Coal Co. v. Evans (supra)*, on p. 910 L. J. Reports).

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The effect of this decision is to reinstate *Simmons v. White (supra)*, to overrule *Main Colliery Co. v. Davies (supra)*, to apply *Fife Coal Co. v. McArthur (supra)*, and to overrule the opposing dicta in *Peart v. Bolckow Vaughan & Co.*, (1925) 1 K. B. 399, and *Kennedy v. Horden Collieries Co.*, (1925) 2 K. B. 438; (1926) 95 L. J. K. B. 307; and *Pearce v. Southern Railway*, (1926) 95 L. J. K. B. 641.

Dependants.—Dependency is now well settled to be a question of fact. But to entirely ignore the legal presumption is to err as much on one side of the law as to found dependency on it is to err on the other. "The fact that a legal duty lay upon the workman to provide maintenance is an element to be considered, no doubt because people usually count upon getting what they are entitled to" (Lord Loreburn, L.C., in *Keeling v. New Monkton Collieries*, (1911) A. C. 648), and now so decided in *Potts or Young v. Niddrie and Benhar Coal Co.*, (1913) W. C. Rep. 547 (Sc.). But it will be a question of fact how far such rights were being actively enforced and with what likelihood of benefit. The dependency of a child is equally a question of fact (*Lee v. Bessie*, (1912) W. C. Rep. 57), as also of illegitimate children. Thus the married daughter of a man who lodged with her may not be a dependant, since the loss of the board money paid really falls on the husband (*Montgomery v. Blows*, (1916) W. C. & Ins. Rep. 89). But if a daughter was in fact living in entire dependence on her father the fact that she was capable of earning a living is not material, and she is entitled to compensation as one totally dependent (*Simms v. Lilleshall Coll.*, (1917) W. C. & I. 218). But a granddaughter employed by the grandfather and paid by him is not dependent upon such grandfather, she is dependent upon her earnings (*Mitchell v. Scottish Iron and Steel Co., Ltd.*, (1920) W. C. & I. 21). A posthumous child is in the same position as any other child, but a posthumous illegitimate child must prove the putative father had recognized the duty to support it before his death. His statement that he will marry the mother and provide a home for her are admissible in evidence on the issues of paternity and dependence (*Lloyd v. Powell Duffryn Steam Coal Co.*, (1914) W. C. & Ins. Rep. 450; *Harris v. Powell Duffryn Steam Coal Co.*, (1915) W. C. & Ins. Rep. 527). The question of paternity is a question of fact to be proved in the arbitration (*Johnstone v. Spencer*, 45 S. L. R. 802). A parent may be a dependant (*Smith v. S.S. "Glendalough"*, (1919) W. C. & I. 365).

See sect. 21. As to determining amount of compensation between dependants and as to deciding who are dependants.

As to taking into consideration a pension payable to the dependants in consequence of the death of the workman, consult *Baker v. Dalgleish Steam Shipping Co.*, (1922) 1 K. B. 361; 91 L. J. K. B. 392.

Widows' Orphans' and Old Age Contributory Pensions Act, 1925.—Sect. 25 of this Act is framed to prevent additional allowance or orphan's pension being paid where the husband or father died from injury, and compensation under the Workmen's Compensation Act or a scheme has been awarded or agreed. On the Minister of Pensions receiving information as to this from the Registrar of the County Court within seven days such additional allowance or orphan's pension is to cease, provided that where the compensation money calculated in prescribed manner awarded to a child produces a smaller pension than would have been payable under this Act the deficiency is to be made up.

Somewhat complex rules have been made as to how this deficiency is to be calculated. See these rules, *infra*, Appendix LL., p. 1612.

Section 5.
Meaning of
"employer."

5.—(1) In this Act unless the context otherwise requires the expression "Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person.

Temporarily Lent on Hire.]—Workman must prove a subsisting contract of service between himself and lender (*Boswell v. Gilbert*, 2 B. 251; *MacKinnon v. Miller*, 46 S. L. R. 299; *Reed v. Smith*, 3 B. 223). Where a jobbing grinder rented power for his work from master cutlers and executed such work in their workshops as they gave him to do and did work for third parties when free, and while doing such work was injured, it was held that this was not a case of "lending" (*Oates v. T. Turner & Co.*, (1916) W. C. & I., p. 335).

(2) In relation to a person engaged in plying for hire with any vehicle or vessel, the use of which is obtained from the owner thereof under a contract of bailment, the owner of the vehicle or vessel shall, for the purposes of this Act, be deemed to be the employer.

There was always great doubt as to the position of the owner of vehicles, such as cabs, etc., let to the drivers on a contract of bailment, and as to whether the owner was the employer of the driver. In the case of *King v. The London Improved Cab Co.* (23 Q. B. D. 281; 58 L. J. Q. B. 456), it was held that he was not, though the owner under the Hackney Carriages Act became liable for his negligence. See also *Gates v. Bill & Son*, (1902) 2 K. B. 38, and the observations of the judges as to the real relationship between cab proprietor and cab driver. For the purposes of this Act the above subsection puts the question beyond doubt. See notes to sect. 3 (1), *ante*, p. 1294.

(3) In relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee, of the club shall, for the purposes of this Act, be deemed to be the employer.

The claim must be brought against the manager or members of committee, though generally a manager or member of a committee unincorporated cannot have a claim brought against them. In *Walker v. Crystal Palace Football Club*, (1910) 1 K. B. 87, the respondents were an incorporated company.

Liability in
case of
workmen
employed by
contractors.

6.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which

Section 6.

he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

It will be observed this section does not apply unless the contract is in the course of or for the purposes of a person's trade or business (*Brine v. May*, (1913) W. C. Rep. 148), and unless it be for any work undertaken by him for such purposes. These latter words have been the occasion of much doubt, which, however, has been considerably cleared up by the cases of *Skates v. Jones*, (1910) 2 K. B. 903; *Luckwill v. Auchin Steam S. Co.*, (1913) W. C. & Ins. Rep. 167; and *Hayes v. Thomson*, *ib.* 161. In *Zugg v. Cunningham*, 45 S. L. R. 670, the Lord President construed the section as if it referred to sub-contracting only, almost as if the words "for another" were to be read into the provision. The English courts would not so limit the words. The section applied to all work undertaken by the principals in the course of their trade. The decisions were given in cases rather peculiar in their special facts and apparently wider than they really have proved to be. The words "undertaken by" are used in contradistinction to "undertaken for a principal." To enable a principal to carry on his trade or business, he may need to have many things done for him by outsiders. If a shipowner, boilers may need scaling; if a manufacturer, tanks may need tarring; if a barge owner, barges may need overhauling; moulding manufacturers may need wood stacking. As to whether in the case of such contracts he is a principal to the men so employed to do the work, see *Hockley v. West London Timber and Joinery Co., Ltd.*, (1914) W. C. & Ins. Rep. 504; 83 L. J. K. B. 1520; *Bobbey v. W. M. Crosbie & Co., Ltd.*, (1916) W. C. & Ins. Rep. 36. But on the other hand, work may be undertaken by him as part of his regular trade or business, and through press of time or for other reason he may contract with others to do it for him, e.g., a speculative builder who sublets the mason work or the plumbing or the brick-setting; or a firm using lighters all over the world for the sale of coal, and wanting another lighter in another place (*Dittmar v. Ship Y.*

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593, (1909) 1 K. B. 389); then in such contracts he will be a principal to the men employed by the contractor. "Trade or business" means something more than trade or business *ad hoc*. As the sheriff-substitute said in *Graham v. Lewis Picture House, Ltd.*, (1919) W. C. & I. 374, at p. 376, "It seems extravagant to suggest that a property owner who wants his roof repaired becomes *pro tempore* a roof-repairer and the master of the tradesman who undertakes the job."

Owing to sect. 48 (2), as to the exercise, etc., of their powers, the liability of corporations under this section is considerably extended (*Mulrooney v. Todd and Bradford Corporation*, (1909) 1 K. B. 165).

A man has no more rights against a principal than against his employer, *e.g.*, *Marks v. Carne*, (1909) 2 K. B. 516; where a man being a member of the employer's family was not a "workman" within the Act. So notice given to an employer does not bind the principal who must be served (*Griffiths v. Atkinson*, (1912) W. C. Rep. 277); and a man having elected to make one liable cannot afterwards proceed against the other (*Meier v. Dublin Corporation*, *ib.* 30). See also *Geddes v. Dunfermline District Committee*, 20 B. W. C. C. 815. Whether both can be rightfully joined together in the same proceedings was left in doubt in *Mulrooney v. Todd*, (1909) 1 K. B. 165.

Machinery driven by Mechanical Power.]—The question of what was mechanical power was involved but not decided in *Walsh v. Hayes*, 43 Ir. L. T. 114, and it must be remembered cases under the old Act are misleading, as there the words were machinery driven by steam, water, or other mechanical power, *i.e.*, other mechanical power *ejusdem generis* with steam and water. Here the words have no such restricted meaning.

A principal who has paid compensation to a workman of the contractor is entitled to be indemnified by any person who otherwise would have been liable to the workman. He can bring an action in the usual way, for this indemnity either in the High Court or in the County Court up to £100, but it can only be settled by arbitration if both parties agree. See sect. 30 and notes thereto. For practice, see rr. 20–28.

Sub-s. 4.]—In *Dittmar's Case*, *supra*, work on the barge, it being still in English waters, was held to be *on or in or about*. For the cases on the words *on*, *in* or *about*, see Ruegg's *Employer's Liability and Workmen's Compensation* (9th Ed.).

Provision as
to cases of
bankruptcy
of employer.

7.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up or a receiver or manager of the company's business or undertaking having been duly appointed, or possession having been taken, by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the charge, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding-up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer. so however that the insurers shall not

be under any greater liability to the workman than they would have been under to the employer.

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(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation, or, as the case may be, he may recover the balance from the receiver or manager.

(3) There shall be included amongst the debts which—

4 & 5 Geo. 5,
c. 59.

- (i) under section thirty-three of the Bankruptcy Act, 1914, and section one hundred and eighteen of the Bankruptcy (Scotland) Act, 1913, are in the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts ;
- (ii) under section two hundred and nine of the Companies (Consolidation) Act, 1908, are in the winding-up of a company to be paid in priority to all other debts ; and
- (iii) under section one hundred and seven of the Companies (Consolidation) Act, 1908, are to be paid in priority to any claim for principal or interest in respect of debentures ;

the amount due in respect of any compensation or liability for compensation accrued before the following date, that is to say :—

- (a) In the first case the date of the receiving order ;
- (b) In the second case the date of the commencement of the winding up of the company ;
- (c) In the third case the date of the appointment of the receiver or of possession being taken mentioned in the said section one hundred and seven.

Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under this Act.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company has entered into such a contract with insurers as aforesaid.

3 & 4 Geo. 5,
c. 20.
8 Edw. 7,
c. 69.

(6) This section shall not apply where a company is wound up

Section 7. voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

50 & 51 Vict.
c. 43.

This section is a consolidation of sect. 5 of the Act of 1906, sect. 19 of the Act of 1923, and Sched. 1 of the Act of 1923.

It subrogates the rights of an employer against his insurance company to the workman or workmen where the employer, whether a private person or a company, becomes bankrupt or is unable to pay his creditors, or even where debenture holders take possession of any of the property.

It also makes in all these cases all compensation money due or to become due a preferential debt, and for the full amount of the compensation money (before the Act of 1923 compensation money was only a preferential debt to a limited amount).

If the insurance company is only liable for a limited sum, less than the compensation payable, the balance may be recovered in full from the trustee, receiver or manager (*Re J., an arranging debtor, Ex parte Reid*, 45 Ir. L. T. 247). See, however, *Clemmons Aluminium, Ltd., In re*, (1925) 94 L. J. K. B. 487. In this case the Workmen's Compensation Act, 1923, was held not to operate retrospectively, and therefore where a company had gone into liquidation before January 1st, 1924, and a workman had given notice to the liquidator of the company that he claimed to have a preferential claim, it was held that his rights had become fixed and ascertained on the date of the commencement of the liquidation, and that therefore sect. 19 (2) which abolished the limitation of £100, did not operate in his favour, and his preferential payment was limited to £100. When fixed, the sum will be paid into court to abide the order of the county court judge (*ib.*). See also *Snowdown Colliery Co., Ltd., In re; South-Eastern Coalfield Extension Co., Ltd. v. Snowdown Colliery Co., Ltd.*, (1925) 94 L. J. Ch. 305. An arbitrator has himself no power to order payment (*Homer v. Gough*, (1912) 2 K. B. 303).

The rights of a workman against his employers' insurers are simply the rights of his employers, and nothing more, nothing less. See, for an example of the extent of the workman's right against the employer's insurers where employer becomes bankrupt, *Craig and Another v. Royal Insurance Co., Ltd.*, (1915) W. C. & Ins. Rep. 139. If arbitration be a condition precedent to their recovering, it will be equally a condition precedent to his recovering (*King v. Phoenix Assurance Co.*, (1910) 2 K. B. 666); if the payment of calls in a mutual society is a condition of benefiting, but the employers through non-payment have not lost their rights, neither will the workman have lost his (*Daff v. Mid. Coll., etc.*, (1913) 82 L. J. K. B. (H. L.) 1340, and 6 B. W. C. C. 799). And in this case as it was an "extraordinary" accident the employers had not lost their right because the insurers had to pay out of the general fund contributed to by all the assured. But in another case (*Pailin v. Northern Employers' Mutual Indemnity Co., Ltd.*, (1925) 2 K. B. 73; (1926) 95 L. J. K. B. 25) the accident was an "ordinary" accident in which case the insurers had only contracted to pay the ordinary claims when they were put in funds by the assured to enable them to do so and as the employers had ceased, on their bankruptcy, to put the insurers in funds the employers had no right of indemnity against the insurers and consequently neither had the workman.

Where an employer company was insured and both the employer company and the insurance office became insolvent and the workman sought to prove in the liquidation of the employer company, it was held in *In re Pethick, Dix & Co., Ltd.*, (1915) W. C. & Ins. Rep. 5, that there was no right in such a case of preferential payment, and the workman's only remedy was proof against the insurance office. See also *In re Renishaw Iron Co., Ltd.*, (1919) W. C. & I. 126.

The effect of sub-s. 2 on sub-s. 1 is explained in *Thrashbush Coal Co., Ltd. v. M'Inally*, (1915) W. C. & Ins. Rep. 267, which also considers the position where both employer and insurer are in liquidation.

For a consideration of the employer's position where he is insured, compromises a claim made by a workman, and then the insurance office goes into liquidation, see *Empire Guarantee, &c. v. Owen & Sons*, (1915) W. C. & Ins. Rep. 270.

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Notes.

Amount of Compensation.

8.—(1) The compensation under this Act where death results from the injury shall be a lump sum of an amount calculated in accordance with the rules hereinafter contained, together with, if the workman leaves a widow or other member of his family (not being a child under the age of fifteen) wholly or partially dependent upon his earnings, and in addition leaves one or more children under the age of fifteen so dependent, an additional sum (hereinafter referred to as the children's allowance) of an amount calculated in accordance with the rules hereinafter contained, so, however, that the lump sum and children's allowance (which shall be added together and dealt with as a single sum) shall not in any case exceed in the aggregate six hundred pounds.

Amount in
fatal cases.

(2) The lump sum shall be calculated in accordance with the following rules :—

- (i) If the workman leaves any dependants wholly dependent on his earnings, the lump sum shall be a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of two hundred pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds ;
- (ii) If the period of the workman's employment by the said employer has been less than the said three years, the amount of his earnings during the said three years shall, for the purposes of the foregoing rule, be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer ;
- (iii) There shall be deducted from the sum as above calculated the amount of weekly payments (if any) made to the workman before his death so, however, as not to reduce the lump sum below two hundred pounds ; and if such weekly payments have been redeemed under this Act, there shall also be deducted the amount paid in respect of the redemption thereof ;
- (iv) If the workman does not leave any dependants wholly dependent on his earnings, but leaves any dependants in part so dependent, the lump sum shall be such sum not exceeding in any case the amount payable under the foregoing rules as may be agreed upon or, in default of agreement, may be determined by arbitration under this Act

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to be reasonable and proportionate to the injury to the said dependants ;

(v) If the workman leaves no dependants, the lump sum shall be an amount equal to the reasonable expenses of his medical attendance and burial, not exceeding fifteen pounds :

(3) The amount of the children's allowance shall be calculated in accordance with the following rules :—

- (i) If both the widow or other member of the workman's family and such child or children as aforesaid were all wholly dependent on the workman's earnings, the children's allowance shall in respect of each such child be a sum equal to fifteen per cent. of the amount arrived at by multiplying the average weekly earnings of the workman, or where such earnings are less than one pound, then by multiplying one pound, or where such earnings exceed two pounds then by multiplying two pounds, by the number of weeks in the period between the death of the workman and the date when the child will attain the age of fifteen, fractions of a week being disregarded ;
- (ii) If the widow or other member of the workman's family and such child or children as aforesaid, or any of them, were partially dependent on the workman's earnings, the children's allowance shall be such proportion of the sum which would have been payable under the foregoing rule if all such persons had been wholly dependent as may be agreed upon or in default of agreement as may, taking into consideration the amount of the lump sum, be determined by arbitration under this Act to be reasonable ;
- (iii) No deduction shall be made from the children's allowance in respect of the amount of any weekly payments which may have been made to the workman under this Act in respect of the same injury, but if such weekly payments have been redeemed the amount paid in redemption thereof, if and so far as it exceeds the lump sum payable, shall be deducted from the amount of the children's allowance as ascertained under the foregoing rules.

Total Dependency.]—Compensation where the workman leaves dependants totally dependent is generally quite clear. It is three year's earnings but not less than £200, and not more than £300. If he has not worked three years, 156 times his average weekly earnings in the employment (As to the mode of ascertaining average weekly earnings, see sect. 10 of the present Act), but payments made to the workman during his lifetime, or in redemption of his compensation, must be deducted, but so as not to bring the total to less than £200.

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In one case this amount is increased, namely where he leaves dependent children under the age of fifteen. This, so far as it relates to young children, seems right, but why it should be dependent upon there being in addition a widow or member of the family over fifteen seems incomprehensible. The result is that young children totally unprovided for and with no grown-up person to look after and assist them, do not get the increase, whilst if they have, say, a mother or brother or sister of mature age and earning something, they do get it.

This children's allowance is dealt with under sub-s. 3, which must be carefully considered. In this case payments made to the workman during his lifetime are not to be deducted, but amount paid in redemption of such payments is. As to the amount of additional compensation payable in the case of a posthumous child, see *Athey v. Pickerings*, (1927) 136 L. T. 535; 20 B. W. C. C. 215.

In the peculiar case of *Green v. Premier Glynrhonwy Slate Co.*, (1928) 1 K. B. 561; 97 L. J. K. B. 32; 20 B. W. C. C. 563, the intriguing provisions of sect. 8 had to be dealt with. The workman left a widow and three children, two of whom were totally dependent on his earnings and the third partially dependent. The question was what was the children's allowance provided by the section. The county court judge apparently found that as there was one partial dependent the whole of the children must be treated as partially dependent, although two of them were wholly dependent and assessed compensation under r. ii of sect. 8 (3). This seems to be clearly wrong, but the decision of the Court of Appeal seems questionable upon a similar ground. The court apparently held that as there were children wholly dependent and partially dependent they must all be treated as wholly dependent, and held that they were driven to this conclusion by the wording of the whole section. The decision seems to be contrary to the intention of the Act.

It must be noted that in no case can the compensation, including the children's allowance, exceed £600, but the children may get the full allowance though the widow's allowance is reduced by payments during the workman's lifetime (*Malcolm v. Barber, Walker & Co.*, 20 B. W. C. C. 516.)

Note.—Here the widow by appealing on behalf of her children was not attempting to approbate and reprobate the award at the same time.

An illegitimate grandchild (under the age of fifteen) of a workman who meets with a fatal accident in the course of or arising out of his employment, is a "child" within the meaning of sub-s. 1 above, and the workman in addition having left a widow wholly dependent upon his earnings, such grandchild becomes entitled to the additional compensation (*Pritchard v. Bettisfield Colliery, Ltd.*, (1925) 2 K. B. 284; (1926) 95 L. J. K. B. 49), and on the construction of this involved and peculiar section it has now been held in the case of *Faulkner v. Owners of Ship Sutton*, (1927) 1 K. B. 207, as it was held in Scotland in the case of *Campbell v. Portland Colliery Co.*, 19 B. W. C. C. 594, that where the deceased left a mother who was, of course, a member of the family, and two sisters under the age of fifteen, such sisters were held to be "children" left by the deceased, and so entitled to receive the additional compensation. But the employers of a deceased workman are not liable to pay compensation in respect of the accident which caused his death to the illegitimate children of his widow by another man born before her marriage to the deceased. See *Scott v. L. N. E. Rail. Co.*, (1926) 2 K. B. 204; (1927) 96 L. J. K. B. (H. L.) 135; 19 B. W. C. C. 457.

The Court of Appeal will not generally inquire into the amount of the award when the county court judge awards a sum within the statutory maximum (*Healey v. Reilly*, (1918) W. C. & Ins. Rep. 89). The county court judge should state in terms whether the dependency is total or partial. The scheme of the Act makes a great distinction between total and partial dependants, and the same conditions do not apply to the two cases, per

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Lord Cozens-Hardy, M.R. in *Whittaker v. J. Joicey & Co., Ltd.*, (1915) W. C. & Ins. Rep. 548. The award may connote partial dependency without any formal finding (*Ford v. Oakdale Colliery Co., Ltd.*, (1915) W. C. & Ins. Rep. 46). In total dependency the amount is fixed as specified (note the words in sect. 8 (2) (1) "in the employment of the same employer," words which were explained in *Greenwood v. Joseph Nall & Co., Ltd.*, (1915) W. C. & Ins. Rep. 346, where it is pointed out that a change of grade is a change of "employer").

There may be total dependency in the case of a posthumous illegitimate child (*Harris v. Powell Duffryn Steam Coal Co.*, (1915) W. C. & Ins. Rep. 527).

Taylor v. Powell Duffryn Steam Coal Co., (1916) W. C. & I. 325, is a curious case. There A. married B. and had three children. A. went to live with C. B. joined army. A. had illegitimate child by C. A. received B.'s separation allowance. C. killed by accident arising, etc. Held the illegitimate child was totally dependent, and that had it been proved that the separation allowance went into a common fund it would not follow that C.'s child was not totally dependent on C.'s earnings.

Partial Dependency.—“A person is not to be deemed a partial dependant of another unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position.” See sect. 4 (2) of the present Act. As to this question now see decisions of the H. L. in *Welsh Navigation Steam Coal Co. v. Evans*, and *Fife Coal Co. v. McArthur*, and remarks thereon as to cases affected or overruled on p. 1298. There was formerly considerable difficulty where the partial dependant died before the award was made, and it was held in such a case the compensation must bear a proportion to the injury received by that dependant. See *Phillips v. Kershaw, Leese & Co.*, (1920) 3 K. B. 297; 89 L. J. K. B. 1016. This is all provided for now by the Act, sect. 2 (3). Where partial dependant dies now before award, nothing is payable.

In arriving at the amount there are two limits. One practice is: Find the actual benefit received, reduce to a weekly average, and by analogy with total dependency multiply by 156. See *Smith v. S.S. "Glendalough"*, (1919) W. C. & I. 365, where this mode was adopted. The other is: Find the amount payable for total dependency, and simply deduct the capital value of the independent income. This was so done in *Osmond v. Campbell and Harrison*, (1905) 2 K. B. 852; followed in *Littleford v. Connell*, 3 B. 1. Here a woman earned 1s. 11d. a week, lost her husband, and the arbitrator gave her as totally dependent 156l., and deducted 6l. on account of her independent earnings. The reasonableness of either limit will depend on the particular facts of every case. Either adopted as an invariable rule may prove absurd. *E.g.*, a mother receives, say, 10s. a week from a son earning 2l. wages. Wholly dependent she would receive 300l. If she earned 1s. 11d. (or 11s. 1d., the result would be the same) she would only receive 10s. $\times 156 = 78l.$ By the other method of computation, whether her son allowed her 2s. 6d., 10s., or even 1l. a week, she would still receive the same, namely 300l., less 1s. 11d. or 11s. 1d. $\times 156$, as the case might be. To find what is therefore reasonable, regard must be had to deceased's wages, dependant's income, and the amount allowed—three variants, not two. To work this out, no better system can be found than that of Judge Parry in *Turner v. Miller*, 3 B. 307, when awarding 125l., arrived at by no particular method: “I considered that the son had been a substantial contributor to the family for many years, and would have continued to be so had he lived, and assessed the money to be paid on that basis.” In *Tamworth Colliery Co. v. Hall*, (1911) A. C. 665, a father earned weekly 16s. 9d. in a colliery, and 13s. as a barber. His boy, maintained at home, earned 6s. 11d. in the colliery, and was worth 6s. further, helping him as barber. He was killed, and his father claimed as partially dependent. It was held dependency is a question of fact. The contribution of 6s. 11d.

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a week might or might not balance the cost of the maintenance. But the boy also was of value helping his father. This could not be reckoned as earnings being made as a member of the family, but there was no reason this claim should not be set off against his maintenance. This might leave a balance to the good contributed to the family chest, which the arbitrator would have to determine. So the facts presented themselves to the House of Lords. What weight (if any) was to be given to the independent income of the father (if any) was not discussed. *Osmond's Case*, *supra*, perfectly right on its own facts, could not possibly apply. Even if he were dependent and the earnings of the boy estimated at 6s. 11d. plus 6s., and with no deduction for maintenance, still such sum would be more than swamped by deducting the capital value of his own independent income. Here the old general practice might be fairest to give 156 times the amount of the weekly surplus. But even for this there is no rule, and the whole is a question of fact in which every incident at the time of the death, the salient period, must be considered. *Cheverton v. Oceanic S.S. (No. 2)*, (1913) W. C. & Ins. Rep. 462 ("The Titanic" disaster), is an extreme case. The deceased contributed to partial dependants 30s. a week, and the arbitrator gave the maximum 300*l.* But see *Gourlay v. Murray*, 45 S. L. R. 577, where the court did not approve of full amount given to an illegitimate child unwillingly supported by the father. Subject to the maximum in fixing a sum reasonable, etc., an arbitrator may take into account funeral expenses (*Bevan v. Crawshaw*, 4 W. C. C. 110). Evidence of the earnings which the workman would probably have earned had he survived is relevant (*Fraser v. Fairfield, etc., Co., Ltd.*, (1919) W. C. & I. 129).

9.—(1) The compensation under this Act where total or partial incapacity for work results from the injury shall be a weekly payment during the incapacity of an amount calculated in accordance with the rules hereinafter contained : Amount in cases of total and partial incapacity.

(See these rules below.)

Provided that—

- (a) if the incapacity lasts less than four weeks, no compensation shall be payable in respect of the first three days; and
- (b) in fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity; and
- (c) the weekly payment shall in no case exceed thirty shillings.

(2) The rules for calculating the weekly payment in the case of total incapacity shall be—

- (i) The weekly payment shall subject to rule (ii) be a sum not exceeding fifty per cent. of the workman's average weekly earnings during the previous twelve months, if he has been so long employed by the same employer, but if not, then for any less period during which he has been in the employment of the same employer :

- (ii) Where the maximum weekly payment calculated according to rule (i) is less than twenty-five shillings, the workman shall be entitled during such total incapacity to a weekly

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addition equal to one-half of the difference between such maximum weekly payment and the sum of twenty-five shillings or his average weekly earnings, whichever is the less, and such addition shall, for all the purposes of this Act, be treated as if it were part of the weekly payment.

(3) The rules for calculating the weekly payment in the case of partial incapacity shall be—

(i) If the maximum weekly payment would, had the incapacity been total incapacity, have amounted to twenty-five shillings a week or upwards, the weekly payment in case of partial incapacity shall be one-half the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident :

(ii) If the maximum weekly payment would, had the incapacity been total incapacity, have amounted with such addition, if any, as is provided by rule (i) in the case of total incapacity, to less than twenty-five shillings, the weekly payment in case of partial incapacity shall be a sum bearing the same proportion to the said difference as the said maximum weekly payment with such addition as aforesaid bears to the amount of the average weekly earnings of the workman before the accident.

(4) If a workman who has so far recovered from the injury as to be fit for employment of a certain kind proves to the satisfaction of the judge of the county court that he has taken all reasonable steps to obtain, and has failed to obtain, such employment, and that his failure to obtain such employment is a consequence, wholly or mainly, of the injury, the judge shall order that his incapacity shall, for the purposes of this Act, continue to be treated as total incapacity for such period, and subject to such conditions, as may be provided by the order, without prejudice however to the right of review conferred by this Act :

Provided that every such order shall be made subject to the condition that it shall cease to be in force if the workman receives unemployment benefit.

Regard shall be had to any payment, allowance, or benefit.—See generally, as to the meaning of “payment, allowance or benefit” the important case of *Considine v. McNery*, (1916) W. C. & Ins. Rep. 114. This case was considered at some length in *Watts v. Manchester Corporation*, (1917) W. C. & I. 151, and in *Langford v. Port of London Authority*, (1926) 95 L. J. K. B. 887. These are concerned primarily with the question whether the right to participate in benefits from a pension fund contributed to by the employers is within clause 3. As a rule all payments pending incapacity should be considered. It enables an employer to assist

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at once an injured man, knowing he has this qualified right to be indemnified. The parties agreed to settle for 10*l.*, which was paid. Though the court would not pass the agreement, it was held that regard would have to be had to this sum paid (*Horsman v. Glasgow Navigation Co.*, 3 B. 27). It is immaterial that the workman's application for compensation relates only to a period subsequent to the time when the payment, allowance, or benefit was received (*Porter v. Whitbread & Co.*, (1914) W. C. & Ins. Rep. 59). Amounts received *aliunde*, as in poor relief, do not fall within the provision (*Gilroy v. Mackie*, 46 S. L. R. 325). So under the Merchant Shipping Act, 1894, whilst a seaman is not to receive overlapping benefits, yet this paragraph does not operate to deprive him of compensation on a mere technicality (*McDermott v. Tintoretto*, (1911) A. C. 35). Overpayments made prior to the commencement of the proceedings should not be taken into account (*Doyle v. Cork Steam Packet Co.*, (1912) W. C. Rep. 203; *Flynn v. Burgess and Others*, (1914) W. C. & Ins. Rep. 238).

“Where . . . partial Incapacity results.” — **Weekly Payment.**—The average weekly earnings prior to the accident is fixed once and for all, and in all subsequent proceedings is *res judicata*.

Important questions arise as to the meaning of “incapacity for work.” A man may be quite capable of work and yet be incapacitated, because employers won't give him work because of his injuries (*Ball v. Hunt*, (1912) W. C. Rep. 261). Again, the incapacity must in fact result from the injury (*Ystradowen Colliery Co. v. Griffiths*, (1909) 2 K. B. 533). The *onus* is on the applicant to prove incapacity due to accident (*Brownlee v. Coltness Iron Co., Ltd.*, (1917) W. C. & I. 235); on the employer to prove an intervening cause (*Bown v. Meggitt & Jones*, (1917) W. C. & I. 40). If it be due to an unreasonable refusal to undergo an operation, it is not incapacity resulting from the injury (*Walsh v. Locke & Co. (Newland), Ltd.*, (1914) W. C. & Ins. Rep. 95), but the *onus* is upon the employer to prove that the refusal of the workman to undergo the operation was an unreasonable refusal (*Fife Coal Co. v. Cant*, (1921) 90 L. J. H. L. 69). See also *Fyfe v. Fife Coal Co.*, 20 B. W. C. C. 548. In this case the H. L. held that the question whether a workman's refusal to undergo treatment was reasonable or unreasonable was a question of fact. *Secus*, if the refusal was reasonable (*Molamphy v. Sheridan and Others*, (1914) W. C. & Ins. Rep. 19). The following cases may also be referred to where the incapacity was due to *obesity*: *Clark v. George Taylor & Co.*, (1914) W. C. & Ins. Rep. p. 448; *unskilful surgical treatment*: *Della Rocca v. Stanley Jones & Co.*, (1914) W. C. & Ins. Rep. 33; *old age*: *Lewis v. Wrexham and Acton Collieries Co., Ltd.*, (1916) W. C. & Ins. Rep. 275; *unnecessary operation*: *Lakey v. Blair & Co., Ltd.*, (1917) W. C. & I. 78. A man may be incapacitated by the injury, although a collateral cause also prevents him earning wages, *e.g.*, being shut up in an asylum (*Slater v. Blyth Shipbuilding and Dry Dock Co.*, (1914) W. C. & Ins. Rep. 38), or prison (*McNally v. Furness, Withy & Co.*, (1913) W. C. & Ins. Rep. 717), or internment (*Cargo Fleet Iron Co. v. Funck*, (1916) W. C. & Ins. Rep. 87); or heart disease (*Harwood v. Wyken Colliery Co.*, (1913) W. C. & Ins. Rep. 317). If it be shown on an original application that the workman is capable of light work, the *onus* is upon him to show that he is unable to obtain suitable light work (*Williams v. Ruabon Coal and Coke Co.*, (1914) W. C. & Ins. Rep. 32). If the man is able to do and get his old work, he is not incapacitated although the risk he runs in so working is greater than before, *e.g.*, a one-eyed man risking the loss of the remaining eye, but whether such employment is suitable or not is a question of fact (*Law v. William Baird & Co.*, (1914) W. C. & Ins. Rep. 140, as explained in *Burt v. Fife Coal Co.*, (1914) W. C. & Ins. Rep. 629). See also *Pearson v. Archibald Russell, Ltd.*, (1916) W. C. & Ins. Rep. 71; *Jackson v. Hunslet Engine Co.*, *ibid.*, 183. If suitable work at his old wages which he can do is offered without clogging conditions, the workman is not incapacitated from earning wages, and cannot refuse the offer and claim compensation (*Keavans v.*

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Mundy, (1914) W. C. & Ins. Rep. 180). See also *Potts v. Guildford Syndicate*, (1914) W. C. & Ins. Rep. 330. The position is, of course, different if no light work is available (*Bonsall v. Mid. Coll., etc.*, (1914) W. C. & Ins. Rep. 331). Assuming incapacity, a workman is not disentitled from recovering compensation because he fails to return to work (*Chapel Coal Co., Ltd. v. Devlin*, (1914) W. C. & Ins. Rep. 621). For the position where the employer was prevented from giving the old work by a Trade Union, see *Thompson v. Johnson and Nephew, Ltd.*, (1914) W. C. & Ins. Rep. 333; *Williams v. Oakwood Colliery, Ltd.*, (1919) W. C. & I. 238. Compare *Woodhouse v. Midland Ry.*, (1914) W. C. & Ins. Rep. 595; *Webster v. Harrison*, (1920) 89 L. J. K. B. 1077.

Workman under age.]—Special provisions for assessing the compensation of a workman under twenty-one years of age are gone, but now the case of any workman receiving small wages is regulated by sect. 9 (2) (ii) above.

An infant or indeed any workman who enjoyed the war additions compensation is entitled to keep it. See sect. 1 of Act of 1923 (not repealed).

An infant workman may have his compensation reviewed after six months, if he would, at the time of review, have been earning more wages. See sect. 11 (2) (3) of present Act.

N.B.—The provision in sub-s. 4 above is of great importance, for it enables the judge when he is satisfied that a man can do particular kinds of work, but cannot get any of them in consequence of his accident, to treat the incapacity as total incapacity, though this must cease if the workman chooses to receive unemployment benefit.

Rules for
determining
earnings.

10. For the purposes of the provisions of this Act relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—

- (i) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated: Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;
- (ii) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

- (iii) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause ;
- (iv) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings ;
- (v) Upon request of the workman to the employer liable to pay compensation, that employer shall furnish in writing a list of the earnings of that workman upon which the amount of the average weekly earnings may be calculated for the purpose of determining the amount of any weekly payment under this Act.

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This last sub-section appeared first in the 1923 Act.

Earnings have long been held to include overtime, extras, tips (see *G.W.R. v. Helps*, (1918) W. C. & Ins. Rep. 287), profits, board and lodging, a house rent free, and such like, and the actual value to the man is the measure of value (*Dothie v. MacAndrew*, (1908) 1 K. B. 803 ; *Green v. G. N. of Scotland Ry. Co.*, (1919) W. C. & I. 160). On the other hand, incidental advantages, as tuition, are not to be reckoned. No deductions are to be made for small payments a man has to make out of his wages, e.g., as for oil for a miner's lamp, or the sharpening of picks, essentials for a well-equipped workman to do his work with (*Abram Coal Co. v. Southern*, (1903) A. C. 306). Probably, expenses a man has to so incur to make himself personally fit—say, a joiner, who has to provide his own tools—would follow this decision, though given under the old Act and before par. (iv) was added. In *M'Kee v. Stein*, 47 S. L. R. 39, the Court of Session went so far as to allow no deduction for dynamite a miner had to provide in the course of his work (contrast *Jones v. International Anthracite Collieries Co., Ltd.*, (1919) W. C. & I. 49) ; but in *Skipp v. Frodingham Iron and Steel Co.*, (1913) W. C. Rep. 230, without directly disagreeing, the Court of Appeal held that the terms of the contract—a gang to receive a lump sum, deduct cost of powder, and then divide—did not even raise the question, as the man's earnings were his share of the balance, neither more nor less. But apart from this, it is clear that there is all the difference possible between providing dynamite, which might be a very large item, and is only supplied this way to prevent wastefulness, and providing one's own personal tools and keeping them in order. Equally, where a man at his own expense gets another to help him (*M'Kee v. Stein*, 47 S. L. R. 39). In *M. Ry. v. Sharpe*, 6 W. C. C. 119, the House of Lords held that allowances to a guard in respect of board and lodging when away were to be included in earnings. This is clearly changed by this sub-paragraph.

In *Williams v. "Maritime" (Owners)*, (1915) W. C. & Ins. Rep. 97—where the question was whether the captain of a ship was a "workman"—it appeared that he received £20 per month and a gratuity of £48 per annum if he kept the ship free of all damage and claims. If he did not keep the ship so free his remuneration was to be reduced to £16 per month and no gratuity. The ship was lost and it was held that the remuneration must be taken at £16 per month + the value of board and lodging.

Measure of Earnings.—Where an injured workman ceases to work as a servant, and commences business on his own account, the measure of his

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Average weekly earnings.

earnings will not always be governed by his profits or losses, but may be by what he would have to pay a man to do the work he is then doing (*Duberley v. Mace*, (1913) W. C. Rep. 199). For the position of a coal-cutting contractor see *Logan v. Shotts Iron Co., Ltd.*, (1919) W. C. & I. 86.

Computation of Weekly Earnings.—Average weekly earnings are to be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. In considering his remuneration no account must be taken of earnings received under a contract of service not within the Act (*Soles v. Abbott*, (1916) W. C. & Ins. Rep. 124). The judge, however, is entitled to take into account wages paid by other employers (*Twidale v. L. N. E. Rail. Co.*, (1925) 2 K. B. 455; (1926) 95 L. J. K. B. 292). See as to the general meaning of the words, "average weekly earnings," *Cue v. Port of London Authority*, (1914) W. C. & Ins. Rep. 481; 83 L. J. K. B. 1445. To find the weekly rate we first divide the amount earned by the weeks in which it was earned, noting, if a man takes a week off, he will not earn anything in it, nor will such week be included in those worked. Next, the idea of the Act is to take a period long enough for incidentals and accidentals to average themselves out—fifty-two weeks being the usual time indicated when, if there are some weeks in which no work is done, then for working purposes his year will be not one of fifty-two weeks, but one of fifty-two weeks less such weeks. In *Bailey v. Kenworthy*, (1908) 1 K. B. 441, where these rules are given, a man earned 82*l.* 2*s.* 1*d.* in forty-nine weeks, but the full working year was only fifty weeks out of fifty-two. Thus the average rate at which he was being remunerated was $\frac{82\text{l. } 2\text{s. } 1\text{d.}}{49} \times \frac{50}{52}$.

Whilst weeks in which work could be done, but is not done, are to be disregarded, the same rule does not apply to broken weeks, e.g., in a colliery where a miner as a practice will often only work three or four days a week at most, and therefore a week is to mean an aggregate of days amounting to a week at the rate of as many days to the week as is usual to the employment (*dictum* of Cozens-Hardy, M.R., on *Anslow's Case*, and *Carter v. Laing*, 45 S. L. R. 938). The first part of the rule is unsatisfactory, e.g., a man earns 2*l.* a week, "plays" alternate weeks and is killed. If he has been employed three full years, his dependants will only be entitled to his aggregate earnings of 156*l.*; but if for a day less, they will be entitled to 156 times his average earnings of nearly 2*l.* a week, or the maximum of 300*l.* So as the man himself, if only incapacitated, will be entitled to half 2*l.* as compensation or exactly what satisfied him when working, viz., 1*l.* a week; therefore it will not grieve him if he never does another stroke of work in his life. This part of the rule has not yet been approved, save as an *obiter* in the House of Lords in *Anslow v. Cannock Chase Colliery Co.*, (1909) A. C. 435. In this case the other part of the rule, much to the workmen's loss, was approved. Here a man, owing to stoppages, etc., could only be employed thirty-six weeks in a year and was employed only thirty-three weeks, in which he earned 68*l.* Thus the amount he was held entitled to was $\frac{68\text{l.}}{33} \times \frac{36}{52}$. Being practically, as he well knew, a 2*l.* a week man, he was much aggrieved at being thus rated at less than 30*s.*, and appealed to the Lords, but without success. In *White v. Wiseman*, (1912) W. C. Rep. 403, a man employed first by time and then by piece-work, had busy, ordinary, and slack days. On some he worked overtime, on the others there was not enough for a full day's work. The arbitrator found this was an abnormal incident, and so only regarded the busy and ordinary days. The Court of Appeal had little doubt the slack time was as much a normal incident as the busy times, and required all to be taken into account. So as regards illness, it must be regarded reasonably. To regard two weeks' illness where eight weeks' employment was taken as the basis of calculation, would mean a man would be expected to be ill two out of every eight weeks. But in a long period

some illness is rightly to be expected and should be considered (*Turner v. Port of London Authority*, (1913) W. C. Rep. 123). Similarly if the workman is in the habit of only working, e.g., as fruit picker, for a few days a year that should be taken into consideration (*Williams v. Hollings*, (1915) W. C. & Ins. Rep. 540). Where a man obtains successive employments the average weekly earnings may be the total yearly earnings divided by 52 (*Calver v. Groom and Symonds*, (1918) W. C. & I. 364). For the position where stoppage of work is due to the war, see *Griffiths v. W. Gilbertson & Co., Ltd.*, (1915) W. C. & Ins. Rep. 359.

Where a workman, a dairyman, is assisted voluntarily by his sisters to whom he makes an allowance, that allowance must not be deducted in estimating his average weekly earnings (*Roper v. Freke*, (1915) W. C. & Ins. Rep. 377).

Provided that . . . Shortness of Time, etc.]—A man's own history, however short, may furnish the best data for computing his compensation. It should be long enough for all incidents to average themselves out, or to furnish an average by inference. But where not sufficiently long, an arbitrator may arrive at his conclusion in any way he thinks best. He may be guided by what the man has previously earned where similarly employed—note be guided—or inquire into the earnings of others as specified. If again he simply has regard to such earnings, merely takes them as a guide, not as a precise measure, his conclusions cannot be interfered with.

See *Bones v. Associated Portland Cement Manufacturers* (1900), *Ltd.*, (1921) 90 L. J. K. B. 456, where a very small sum was earned by a schoolboy during his holidays.

Same Grade.]—“In my opinion, the provisions of sched. I. (2) of 1906 Act (now above sect.) are intended as a guide, not a fetter” (Farwell, L.J., in *Perry v. Wright*, (1908) 1 K. B. 441). What is really wanted is to find the earnings of a man similarly employed, to refer to as a *guide*. See *Cox v. Trollope & Sons*, (1916) W. C. & Ins. Rep. 270, for an example of the way this guide may be employed. Whether grade be the same or not, if one man can command four days a week and another only three, the arbitrator should certainly have regard to this fundamental difference (*Barnett v. Port of London Authority*, (1913) W. C. Rep. 250). Personal qualifications as well as grade should be taken into consideration (*Snell v. Bristol Corporation*, (1914) 7 B. W. C. C. 236). Special qualifications in the employment itself should be regarded but not outside it, as where a skilled artisan takes work as a casual labourer, say, with a different employer.

Change of grade is a question of fact, and operates as a new employment. A temporary change, even with change of designation, as from hobbler to mate, is not conclusive (*Jury v. Atalanta*, (1912) 3 K. B. 366). For the position where the grade was changed after filing of declaration of liability, and in consequence of a cause unconnected with the accident, see *Thompson v. Richard Johnson and Nephew, Ltd.*, (1914) W. C. & Ins. Rep. 333. Earnings in *mixed grades*, i.e., where men in one grade are employed off and on in another, may be well if not best calculated by adding the earnings in both together, and dividing by the relevant period. The time in either grade is obviously too short to form a conclusive basis of estimating, and therefore an arbitrator must be guided by other factors. In fact, if an arbitrator will only preface his award with the remark that he thinks the time too short to be solely guided by it, and he has to do the best he can from the other evidence before him and says no more, appeals will be even less successful than they now are (*Edge v. Gorton*, (1912) 3 K. B. 360).

Unavoidable Cause.]—When ascertaining a particular workman's wages by means of comparison with a grade of workmen in the same employment, then the Act it is assumed means that interruption of the work of the grade due to illness or other unavoidable cause is not to be taken into account. Absence from work owing to a strike is not absence due to unavoidable cause (*Price v. Guest, Keen and Nettlefolds, Ltd.*, (1918) W. C. & I. 175).

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Concurrent Contracts.—In *Brandy v. S.S. Raphael*, (1911) A. C. 413, a reservist's pay in the Navy was held to be received under a concurrent contract. This case was relied upon in the case of *Harrison v. New Brynmally Colliery Co.* in the Wrexham County Court, where a Territorial paid while in camp was treated as having received pay under a contract concurrent with his contract of service as a collier. Where a man has actually been employed three years with the same master, the compensation will be the aggregate of such earnings without including such concurrent earnings (*Buckley v. London Docks*, 2 B. 327). To be concurrent, the services need not be *ejusdem generis* (*Lloyd v. Midland Railway*, (1914) W. C. & Ins. Rep. 105). For the effect or non-effect of a railway company's rules forbidding employees working at other employments, see *Lloyd v. Midland Railway*, *supra*. But the remuneration received must be received under a contract of service. In *Wild v. John Brown & Co.*, (1918) W. C. & I. 352, where a miner was also branch delegate of his Trade Union and also received payment from the checkweigh fund to inspect on behalf of the men abnormal plans, it was held that these earnings were not earnings under a concurrent contract. For the position where the person is employed regularly by A. and in work of a casual nature by others, see *In re Hugh Peoples and Belfast S.S. Co., Ltd.*, (1917) W. C. & I. 318.

If a workman is injured while employed by A. and compensation is paid, and then the workman is employed by B., again injured, and paid maximum compensation, the weekly payments still being made by A. may be ended until further order (*M'Kinstrey v. Anchinlia Coal Co., Ltd.*, (1919) W. C. & I. 327).

Earning or is able to earn.—Under the old Act, the only questions were: What was the man earning? What is he earning? (*James v. Ocean Coal Co.*, (1904) 2 K. B. 213). The words, *shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper*, were added to the Act but repealed by 1923 Act. These necessitated an inquiry into other facts. In *Bevan v. Energlyn Collieries*, (1912) W. C. Rep. 126, a miner had been earning 2l. 19s. 1d., and at the time of review was earning only 1l. 16s. The arbitrator awarded him 11s. 7d. as compensation. This made his total receipts 2l. 7s. 7d. for the week. But owing to the Eight Hours Act, had he been in full work and had never been injured, he could only have earned 2l. Thus it was held that though an arbitrator is bound by the difference between the two limits, yet when he determines what proportion of that difference to give, viz., 10, 20, 40, 60 per cent. or even the whole, he must consider all the circumstances of the case, of which such change in a scale of wages would be one. Compare *Woodilee Coal and Coke Co., Ltd. v. M'Neill*, (1918) W. C. & I. 282; *Rennoldson v. Ellerman-Wilson Line, Ltd.*, (1918) W. C. & I. 229; *Sheldon v. Butterley Co.*, (1919) W. C. & I. 311; *Cory Bros. & Co., Ltd. v. Tarr*, (1917) W. C. & I. 271, where a general rise in wages was taken into account.

Where, after total incapacity, a workman is given light work and some compensation, and, owing to general rise in wages, he eventually earns at the light work his pre-accident wage, and subsequently, owing to further change in the condition of the labour market, either the wages earned at the light work fall below the pre-accident wage, or no light work is available, there being no change in the man's physical condition, his right to receive compensation for partial incapacity revives. See judgments in the House of Lords in the cases of *Portland Colliery Co. v. Murray*; *John Watson, Ltd. v. Quinn*; and *Wm. Dixon, Ltd. v. Madden*, reported together, (1923) A. C. 566. See also *Lewis v. Guest, Keen and Nettlefolds, Ltd.*, (1928) 1 K. B. 20, (1927) 96 L. J. K. B. 664; 20 B. W. C. C. 359, in which the Court of Appeal, following the above cases, held, that when a workman is partially incapacitated and being employed at partial wages and compensation by the former firm, his right to receive proper compensation revives even where the cesser of work is due to economic causes, and it appears he would probably have

been unemployed in any event. This case was followed in *Bevan v. Nixon's Navigation Co.*, (1928) 97 L. J. K. B. 179 ; 20 B. W. C. C. 622, where the C. A. held that the arbitrator had properly applied the principles laid down in the above case ; but where the injury is such—as in the case of a small limp—and the workman does not prove that it affects either his capacity for work, or his opportunities of obtaining work, he is not entitled even to a declaration of liability (*Williams v. Tredegar Iron & Coal Co.*, (1927) 96 L. J. K. B. 722 ; 20 B. W. C. C. 480).

Where a workman partially incapacitated has been given light work in lieu of compensation, and such employment fails by reason of a strike, the right to compensation revives. See *Hamilton v. Shelton Iron, Steel and Coal Co.*, *Leigh v. The Same*, and *Timmins v. The Same*, reported together, (1927) 96 L. J. K. B. 295.

If a man's earning capacity is reduced by two causes, only one of which is due to the accident, the other cause must be taken count of (*Hoyland Brick Co. v. Ward*, (1918) W. C. & Ins. Rep. 33). If it appears that for reasons apart from the accident the injured person did not wish to work, the probabilities are that such person's earning capacity is *nil* (*Abbey v. James Nichols & Sons, Ltd.*, (1919) W. C. & I. 97).

If an injured man is employed, he will get the benefit or otherwise of a general rise or fall in wages (*Merry v. Cunningham*, 46 S. L. R. 312). So where a man goes into business, the measure of his earnings will be not his profits nor losses, but what he would have to pay another as a servant to do his work (*Paterson v. Moore*, 47 S. L. R. 30 ; *Duberly v. Mace*, (1913) W. C. Rep. 199).

Compensation may be calculated by ascertaining wages earned before and after the accident without taking into account the amount the man might have earned (*Heathcote v. Haunchwood Collieries, Ltd.*, (1918) W. C. & Ins. Rep. 292, reversing (1917) W. C. & Ins. Rep. 140). The employment to be considered is the employment out of which the accident arose and it is the earnings in that employment that are to be contrasted with the earnings after the accident and the fact that formerly the applicant was employed in another employment was held to be irrelevant in *Ling v. De Dion Bouton, Ltd.*, (1919) W. C. & I. 315.

Able to Earn.—Generally.—All the cases, *infra*, must now be considered in the light of sub-s. 4 of sect. 9 (*ante*, p. 1310), which enables the arbitrator to take into consideration the question whether inability to obtain suitable work is due wholly or mainly to the injury. "If he would have got work but for the accident, but cannot otherwise, it is because of the accident" (Kennedy, L.J., in *Dobby v. Pease*, 2 B. 370). This failure may be due to (a) physical incapacity ; (b) want of suitable employment ; (c) disability created by the Act itself. As to (a), physical capacity is a pure question of fact ; as to (b), it is not necessary the employment should be the same as before done by the man, and the one test is : is a man reasonable or not in wanting or refusing a certain class of work ? He has lost an eye. It may be reasonable to refuse work to imperil his remaining eye ; it may not. Cases are both ways, and it is solely for the arbitrator to decide. His discretion is practically unlimited. See, e.g., *Housley v. Hadfields, Ltd.*, (1915) W. C. & Ins. Rep. 456 ; *Penman v. Smith's Dry Dock Co., Ltd.*, *ibid.*, 452. In *Radcliffe v. Pacific Navigation Co.*, (1910) 1 K. B. 685, a ship's butcher, two years after losing his first finger, had his full compensation restored because there was no suitable employment for such an unfortunate. In *Hargreave v. Haughhead Coal Co.*, (1912) A. C. 319, a man had a right eye destroyed by accident, and was refused a suspensory order. Presumably the loss of his eye would never affect his obtaining suitable employment. Compare *Hart v. Cory Brothers*, (1915) W. C. & Ins. Rep. 522. (c) Disability due to the Act is responsible for half the anomalies and most of the difficulties in administering this part of the Act. Men can do work, and but for the Act would get work, and employers with two men to choose from choose the one least likely to

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make a claim. This is a real and serious disability due to the accident. It would be met by allowing such to contract out of the Act. *Ball v. Hunt*, (1912) A. C. 496, is a striking case of incapacity caused by the Act. A man lost the sight of an eye, its appearance being unchanged. He got his work and did his work. An accident to this sightless eye necessitated its removal, and he could get work no more. But for the Act employers would not mind whether a man had one eye or two, so long as he did his work.

If the result of the accident, though not to entirely incapacitate for work, renders the workman an "odd lot" in the labour market, the *onus* is on the employer to show that work of the kind which the workman is able to do is available (*Cardiff Corporation v. Hall*, (1911) 1 K. B. 1009; 4 B. W. C. C. 159). See also *Yates & Thom, Ltd. v. Duxbury*, (1921) 14 B. W. C. C. 82; *Kear v. Shelton Iron, Steel & Coal Co.*, (1921) 14 B. W. C. C. 123; *United Steel Companies, Ltd. v. Clarke*, (1926) 134 L. T. 456; 95 L. J. K. B. 684, and *Higgs v. Sloan and Davidson*, (1926) 95 L. J. K. B. 662. See cases on last page.

Quite recently the question whether or not a workman can be described as an "odd lot" in the labour market has received special attention from the Court of Appeal. The principle enunciated appears to be that the workman is not an "odd lot" merely because he is incapacitated from following his own employment, neither is it sufficient generally to show that other fields of labour which he is competent to engage in are closed to him by the conditions of the labour market (*H.M. Secretary of State for War v. Willoughby*, (1922) W. C. & I. R. 171; *Foster and others v. Wharnccliffe Woodmoor Colliery Co.*, (1922) 2 K. B. 701; (1923) 92 L. J. K. B. 5; (1922) 15 B. W. C. C. 136; *Gaffney v. Chorley Colliery Co.*, (1923) 92 L. J. K. B. 1; (1922) 15 B. W. C. C. 158; *Middleton v. Wharnccliffe Woodmoor Colliery Co.*, (1922) 15 B. W. C. C. 166; *Jones v. Wharnccliffe Woodmoor Colliery Co.*, (1922) 15 B. W. C. C. 172, in which cases the decision in *Kear v. Shelton Iron, Steel & Coal Co.* (*supra*), is considered and explained.

Physical Incapacity.—What steps must a man take to get well? Every rule reduces to one. He must act reasonably, and of what is reasonable the arbitrator is sole judge. It may be reasonable for him to undergo an operation; it may not. The arbitrator must decide reasonably. See, e.g., *Joseph Dolan & Sons v. Ward*, (1915) W. C. & Ins. Rep. 274. So if through idleness and loafing a man lets his muscles get soft so that he cannot work, an arbitrator may find his incapacity is no longer due to the accident (*David v. Windsor Steam Coal Co.*, 4 B. 177). But an arbitrator may not anticipate and reduce an award from a future date. Such award will be bad (*Baker v. Jewell*, (1910) 2 K. B. 673—which, however, does not invalidate awards made before the determination of that case (*Evans v. Barrow Haematite Steel Co.*, (1914) W. C. & Ins. Rep. 355)). He can, however, effect the same thing by making an order for the time being and adjourning the hearing. This is useful in cases of neurasthenia, where a man will take no steps for his recovery. Neurasthenia may be as much the result of the accident as any other injury. Whilst it exists, an arbitrator cannot end the award, but can direct the man to take reasonable steps for his recovery, as indicated by evidence—he is not a doctor to say what in particular—and if on the adjournment he has not done so, he can then end or reduce the payments. As a rule, following the advice of one's doctor is strong evidence of such reasonable conduct, but it is not conclusive (*O'Neil v. John Brown & Co.*, (1913) W. C. Rep. 235). See sect. 1, sub-s. 1, "Consequent Results due to Unreasonable Conduct, etc." A man may be suffering from incapacity and entitled to an award though his old employers offer him his old work at his old wages (*Jackson v. Hunslet Engine Co.*, (1915) W. C. & Ins. Rep. 389).

Suitable Employment.—See notes to next sect., "Review."

Reviews of
weekly
payments.

11.—(1) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review

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may be ended, diminished, or increased, subject to the maximum hereinbefore in section nine provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(2) Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident *and the application for the review is made before or within six months after the workman attains the age of twenty-one years,** the amount of the weekly payment may be increased to such an amount as would have been awarded if the workman had at the time of accident been earning the weekly sum which he would probably have been earning at the date of the review if he had remained uninjured.

* Words in italics substituted by Workmen's Compensation Act, 1926.

(3) Where the review takes place more than six months after the accident, and it is claimed and proved that, had the workman remained uninjured and continued in the same class of employment as that in which he was employed at the date of the accident, his average weekly earnings during the twelve months immediately preceding the review would, as a result of fluctuations in rates of remuneration, have been greater or less by more than twenty per cent. than his average weekly earnings during the twelve months previous to the accident (or if the weekly payment has been previously varied on a review during the twelve months previous to that review or the last of such reviews), the weekly payment shall be varied so as to make it such as it would have been if the rates of remuneration obtaining during the twelve months previous to the review had obtained during the twelve months previous to the accident.

For the purposes of this subsection "review" includes a review under the provision of any Act repealed by this Act corresponding to this section.

Under clause (2) the workman was bound to make his application for increased compensation before he attained twenty-one years (*Jones v. Meiro's Collieries*, (1926) 95 L. J. K. B. 754, now before he is twenty-one and six months. See above.

A weekly payment may be reviewed at the instance of workman or employer at any time, but there must be a change of circumstances, otherwise the arbitrator would be asked to alter his own award. A change in the workman's physical condition is a change of circumstances. In most cases the question for review turns upon what the workman at the time of review is able to earn. See *ante* under sect. 10; but it must never be forgotten that since the provision in the Act of 1923 (now sub-s. 4 of sect. 9 of the present Act) the arbitrator must consider the question not only of the capacity to work, but the capacity to obtain work. (See note to sect. 9, above.)

Practice.—Suspension of compensation pending review (r. 59); execution (rr. 82-84).

A Review is not a re-hearing, nor available as a new trial, though in *The Tync-Tees S. Co. v. Whitteck*, (1913) W. C. Rep. 579, it was held that an out-

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standing question was not a condition precedent to giving jurisdiction on review, though absolutely necessary on an original application. Save as to this, so completely is a review regarded as fresh proceedings, that in *Ree v. Templer*; *Howarth, Ex parte*, (1912) 2 K. B. 444, it was held that a workman who had consented to an original application being determined by a committee could yet seek review by the county court judge. Had the matter been regarded as a continuing one, jurisdiction once established could not have been ousted. At the same time, at such hearing it will be *res judicata* that the original applicant is a "workman" and the respondent an "employer," that the workman has been injured by accident arising out of and in the course of the employment, that his original wages were so much, and his average weekly earnings were so much. See, e.g., *Linthorpe v. Dinsdale Smelting Co., Ltd.*, (1917) W. C. & I. 212. But the Act contemplates incapacity varying from time to time, therefore no finding as to incapacity at one date, whether as to physical condition or ability to earn, is *res judicata* as to a subsequent date; nor generally are inferences of fact, especially when actual developments may prove such inferences to be or not to be correct. The existence of a prior application to redeem (see sect. 13) does not deprive the arbitrator of jurisdiction to review on a workman's application (*Moreland & Sons v. Eley*, (1915) W. C. & Ins. Rep. 554).

Review generally operates from the date of application (*Morton v. Woodward*, (1902) 2 K. B. 276), but may from a date prior to the application where incapacity alters prior to that date, and the same is claimed in the application for review (*George Gibson & Co. v. Wishart*, (1915) A. C. 18, overruling *Donaldson Bros. v. Cowan*, (1909) S. C. 1292, and considering *Morton v. Woodward*, *supra*; *Upper Forest and Western Steel and Tinplate Co., Ltd. v. Thomas*, (1909) 78 L. J. K. B. 1113; *Charing Cross, etc. v. Boots*, (1909) 78 L. J. K. B. 1115; *Hosegood and Sons v. Wilson*, (1911) 80 L. J. K. B. 519). See also *Talbot v. Vickers, Ltd.*, (1925) 2 K. B. 682; (1926) 95 L. J. K. B. 282, in which case *Williams v. Bullfa and Merthyr Dare Steam Collieries* (*infra*) was distinguished. See also *Bagley v. Furness, Withy & Co.* (1914) W. C. & Ins. Rep. 518; 83 L. J. K. B. 1546, where it was held that the arbitrator had jurisdiction to terminate the award as from the antecedent date, the issue of incapacity as from that date having been raised in the application. In *Williams v. Bullfa and Merthyr Dare Steam Colliery, Ltd.*, (1914) W. C. & Ins. Rep. 527, where a minor applied to review, it was held that the arbitrator could not award an increase of compensation as from a date prior to the date of the application to review. An award cannot be terminated as from a future date (*Baker v. Jewell*, (1910) 2 K. B. 673).

The arbitrator has no jurisdiction to impound so many weeks' compensation on the ground that the employer had been defrauded where there is no actual evidence of fraud before him; still less has he jurisdiction to impound a further number of weeks' compensation towards payment of the employer's costs (*Kirk & Randall, Ltd. v. Bourke*, (1919) W. C. & I. 275).

If a memorandum of a disputed agreement be recorded, the order should be appealed against and not review asked. On the other hand, if an order be made, the parties may not subsequently commence fresh proceedings, they should apply for a review (*Watts v. Logan and Hemingway*, (1914) W. C. & Ins. Rep. 47).

Review acts on facts as then existent, but in case of ending compensation provision should be made for the future if a recrudescence of incapacity due to the accident may reasonably be anticipated. It can be done either by suspensory order, reducing the amount to 1*l.* a week, or by ending the order with declaration of liability. If one of these is not done, the award cannot be re-opened. In *Wheeler v. Dawson*, (1913) W. C. Rep. 59, after compensation had been ended, the arbitrator thought the man a malingerer; X-rays showed he still suffered from a piece of broken bone in his arm, but yet the award as made was final. A suspensory award ought not to be made

where the man has completely recovered and there is no reasonable probability of a recurrence of incapacity (*Leverington v. A. Dodman & Co., Ltd.*, (1916) W. C. & Ins. Rep. 109), but, in the words of Lord Moulton (then Fletcher Moulton, L.J.), "no judge is entitled to treat the fact that a man can at the moment earn just as much as he could before his accident as being a justification for terminating the compensation" (*The Tynron* (Owners) v. *Morgan*, (1909) 2 K. B. 66). The test is—Is incapacity reasonably likely to supervene? (*Chapman v. Sage & Co.*, (1915) W. C. & Ins. Rep. 472).

Receipt of full wages is not conclusive of restored capacity, but is only an element to be considered, though combined with restored physical capacity it may be a good cause for finally ending payments, but whilst the workman is receiving full wages no compensation can be awarded. So if there be permanent outstanding physical injury, yet if on the evidence such does not interfere with present earnings, nor is likely to affect future ones, an arbitrator may equally refuse a suspensory order. Although the workman is earning his old wages the arbitrator has no jurisdiction to terminate a declaration of liability where, in the employers' answer to the workman's application for review, the employers simply denied incapacity (*Henshaw v. Fielding and Son*, (1914) W. C. & Ins. Rep. 326).

A Condition Precedent to Review is that some change shall have taken place since the previous hearing. If a man be comparatively slightly injured but, by agreement, is paid full compensation, and then the injury develops so that he becomes really totally disabled, that is not a change of circumstances which could justify a review (*Scott v. Long Meg Plaster Co.*, (1914) W. C. & Ins. Rep. 258). The *onus* of proving such change is on the party seeking a review, and once proved the question of "*onus*" is no longer involved. Each side should give evidence, and on such evidence, together with a note of matter already *res judicata*, an arbitrator must decide *de novo*. If a party does not prove any change he should practically be non-suited; if he does prove a change the matter is at large, and an arbitrator must decide on the evidence before him.

One of the most perplexing of questions an arbitrator has to decide is whether there is any suitable employment the man can do and what it will bring him in. If suitable employment be offered and refused full compensation cannot be awarded. Consider *Jenkinson v. F. Steiner & Co.*, (1917) W. C. & I. 104. The arbitrator may supplement evidence by his own local knowledge (*Silcock & Sons v. Golightly*, (1915) W. C. & Ins. Rep. 164). As regards the man, what will impress him most will be the endeavour he has made to get work. The amount of compensation may be increased if on review evidence is adduced which shows a greater difficulty in finding work than was suffered at the time of the award (*M'Alinden v. James Nimmo & Co., Ltd.*, (1919) W. C. & I. 285). Persistent attempts coupled with failure would usually satisfy him no suitable employment was available. This is practically the result of *Proctor v. Robinson*, (1911) 1 K. B. 1004; a rider to this is the decision in *Cardiff Corporation v. Hall*, *ib.* 1009, that a man's accident may be such that whilst it incapacitates him from doing his old work of a special kind, say that of a skilled fitter, it still leaves open to him the whole market of work of an inferior grade which he can be reasonably asked to do. In this case a master does not guarantee the labour market, and attempts and failure to get work by no means conclude the matter. But see *Ball v. Coulthard & Co., Ltd.*, (1919) W. C. & I. 369, and as to what constitutes a workman an "odd lot" in the labour market. And as to the master, though it is open to him to prove a man will not seek suitable employment, or that there is a market for such class of worker, yet in practice the only effective evidence to rebut a workman's evidence he cannot get suitable work is proof that he himself has offered it. If he can prove the case in any other way, it is perfectly open to him to do so, he is not bound to offer work, but the difficulty is to prove it without doing so. If an arbitrator finds on the evidence there is no suitable employment

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available, he can continue the compensation as for total incapacity, and that, notwithstanding the employer has proved improvement in the physical condition—to have got a hearing at all implies that an employer must have proved so much—for though *prima facie* this establishes a presumptive right for the compensation to be reduced (*Moore v. Pryde*, (1913) W. C. Rep. p. 105), it is not conclusive. Whilst *Roberts & Ruthven, Ltd. v. Hall*, (1912) W. C. Rep. 269, carries these principles no further, still it is a most valuable case for the clear judgment in it on the point by Cozens-Hardy, M.R. (see *ante*, sect. 10, notes, “Able to earn”). Service in the army is not “suitable employment” (*Thomson v. John Watson, Ltd.*, (1915) W. C. & Ins. Rep. 498; but see *Port of London Authority v. Gray*, (1918) W. C. & I. 348, where it was directed that army pay must be taken into account as being what the man is earning, though it may not be all that he is able to earn in some suitable employment).

The cases mentioned in the above paragraph must now be read in the light of sect. 9 (4) of the present Act, which allows partial incapacity to be treated as total incapacity, if the judge is satisfied the workman, though fit for employment of some kind, has taken all reasonable steps to obtain it, and failed to obtain it, and that the failure is a consequence wholly or mainly of the injury.

Reduction of Payments to Nominal Sum.]—Usually resorted to where workman earning full wages at his old work, but handicapped if competing in the open labour markets, or where fresh symptoms may subsequently develop. It is now settled that the arbitrator has power to make it (*Taylor v. L & N. W. Rail.*, (1912) W. C. Rep. 95). A suspensory award may be made on an original application for arbitration (*Grigor v. S.S. Harelda*, (1910) 26 T. L. R. 272; *Green v. Cammell Laird*, (1913) W. C. & Ins. Rep. 707). If not asked for at the hearing before the arbitrator it will not be granted on appeal (*Harlock v. S.S. “Coquet” (Owners)*, (1914) W. C. & Ins. Rep. 73).

Termination of Payments.]—It is a question of fact for the arbitrator whether incapacity has ended or is continuing, or, in other words, whether payment should be terminated or not (*Cranfield v. Ansell*, (1910) 4 B. 57; *Edmondsons, Ltd. v. Parker*, (1911) 5 B. 70; *Wheeler, Ridley & Co. v. Dawson*, (1912) W. C. Rep. 410; *Simpson v. Byrne*, (1913) W. C. & Ins. Rep. 240; *Maunder v. Hancock*, (1914) W. C. & Ins. Rep. 327). The mere fact that the workman is permanently maimed does not prevent the payments being terminated if his wage-earning capacity be not reduced (*Watson v. William Beardmore & Co., Ltd.*, (1914) W. C. & Ins. Rep. 240). If the payments be once terminated, that is final (*Nicholson v. Piper (No. 1)*, (1907) A. C. 215; *Codenhead v. Ailsa Shipbuilding Co.*, (1910) S. C. 1129). Consequently payments should not be terminated if there be evidence that future incapacity may supervene (*Braithwaite and Kirk v. Cox*, (1911) 5 B. 877).

Review of Unrecorded Agreement.]—An application to review may be made where there is only a verbal agreement (*Southbook Fireclay Co. v. Laughland*, (1908) S. C. 831).

Review in the Case of Infants.]—Sub-s. 2 above deals with the case of infants. Three things are necessary. The workman must have been an infant at the time of the accident; the review must take place more than six months after the accident, and the application for the review must be made before or within 6 months after the workman attains the age of 21 years. If these three things occur, compensation may be raised to the amount he would probably have been earning at the date of review.

The fact that the workman (minor) had attained full earning capacity at the date of the accident does not *per se* deprive him of the benefit of the proviso (*Quinn v. John Watson, Ltd.*, (1917) W. C. & I. 57).

In *Malcolm v. Spowart & Co.*, (1913) W. C. Rep. 523 (Sc.), a minor was injured, and twelve months after his estimated wages were agreed at 25s.,

giving 12s. 6d. as compensation. He claimed to take this 25s. as a datum line, and there being a general rise in wages, he asked for his compensation to be proportionately increased. The arbitrator rightly said, his duty was to inquire into all the facts to determine what he would then probably be earning, which he did, and found 25s. was enough. Reference may also be made to *Thompson v. Newton & Co.*, (1914) W. C. & Ins. Rep. 413; *Marshall, Sons & Co., Ltd. v. Prince*, (1914) W. C. & Ins. Rep. 559.

As to review in cases of infants where the accident happened before 1st January, 1924, see *Briggs v. Dryden* and *Talbot v. Vickers*, (1925) 2 K. B. 667; 95 L. J. K. B. 275.

Note.—Sub-s. 3 above was formerly sect. 15 of the Act of 1923. By this sub-section the weekly payment may be reviewed after six months, not only where the condition of the workman is said to have changed, but it may be reviewed also at the request of either party if it is alleged that there has been a fluctuation in rates of remuneration of over 20 per cent. in the wages on which the compensation was before based.

12. An employer shall not be entitled otherwise than in pursuance of an agreement or arbitration to end or diminish a weekly payment except in the following cases:—

- (1) where a workman in receipt of a weekly payment in respect of total incapacity has actually returned to work;
- (2) where the weekly earnings of a workman in receipt of a weekly payment in respect of partial incapacity have actually been increased;
- (3) where the medical practitioner who has examined the workman under section eighteen of this Act has certified that the workman has wholly or partially recovered, or that the incapacity is no longer due in whole or in part to the accident, and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with notice of the intention of the employer at the expiration of ten clear days from the date of the service of the notice to end the weekly payment, or to diminish it by such amount as is stated in the notice, has been served by the employer upon the workman:

Limitation of power of employer to end or diminish weekly payments.

Provided that—

- (i) in the last-mentioned case, if before the expiration of the said ten clear days the workman sends to the employer the report of a duly qualified medical practitioner (which report shall set out the grounds of his opinion) disagreeing with the certificate so served by the employer, the weekly payment shall not be ended or diminished, except in accordance with such report, or if and so far as the employer disputes such report, except in accordance with the certificate given by the medical referee in pursuance of section nineteen of this Act; and

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- (ii) where an application has been made in pursuance of the said section nineteen to refer the dispute to a medical referee, it shall be lawful for the employer, pending the settlement of the dispute, to pay into court—
 - (a) where the notice was a notice to end the weekly payment, the whole of each weekly payment becoming payable in the meantime ;
 - (b) where the notice was a notice to diminish the weekly payment, so much of each weekly payment so payable as is in dispute ;
 and the sums so paid into court shall, on the settlement of the dispute, be paid to the employer or to the workman according to the effect of the certificate of the medical referee, or, if the effect of that certificate is disputed, as in default of agreement may be determined by the registrar or, on appeal, the judge ;
- (iii) nothing in this section shall be construed as authorising an employer to end or diminish a weekly payment in any case in which, or to an extent to which, apart from this section, he would not be entitled to do so.

This important section (formerly sect. 14 of the Act of 1923) was framed for the purpose of preventing employers, generally employers who were paying compensation by agreement unregistered stopping the compensation at their own will and pleasure, which often resulted in workmen being deprived of compensation for one or two months, *i.e.*, until their case was heard.

Unless in pursuance of an agreement (it is not necessary that such an agreement should be a recorded agreement complying with Schedule II. (9) of the Act of 1906 (now sect. 23 of the present Act), see *Feeney v. Firbeck Main Collieries, Ltd.*, (1926) 2 K. B. 218 ; 95 L. J. K. B. 689), or arbitration he can only do so now in three cases : (1) Where the man has returned to work ; (2) where the weekly earnings of the workman have actually been increased (it is difficult to see what this means) ; and (3) where a medical practitioner certifies that the workman has recovered wholly or in part, or that the incapacity is no longer due wholly or in part to the accident. Then he must (within six days, see *infra*) send this certificate together with notice that he proposes to stop or diminish the compensation in ten days from that date. Even in this last case the workman may meet the certificate of the employer's medical man by a counter-certificate of his own medical man who has examined him and which disagrees with the certificate of the employer's medical man. Then the matter may go before a medical referee. Here note the important effect of taking the referee's opinion is that both parties are not only bound by the opinion for the purpose of stopping the compensation, but are bound by it in any subsequent arbitration, unless and until he can show that since the making of the order fresh circumstances have arisen which will justify an independent application for arbitration (*Rhodes v. Digby Colliery Co., Ltd.*, (1927) 1 K. B. 152 ; (1927) 96 L. J. K. B. 127. Consequently the Editor strongly advises workmen not to agree in such circumstances to go before a medical referee. By refusing he does not lose his right to bring arbitration proceedings. See the cases of *Pudney v. William France, Fenwick & Co., Ltd.*, and *Smith v. Leach & Co., Ltd.*,

reported together, (1925) 1 K. B. 346; (1925) 94 L. J. K. B. 513, which cases also decide that the "weekly payments" referred to in this section include weekly payments made voluntarily or under an unrecorded agreement and are not confined to weekly payments under an award or recorded agreement.

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Where the employer has stopped compensation in any other circumstances than allowed by this section he must pay it up to the time of the arbitration proceedings. Where there is an application to the medical referee under this section the employer may if he chooses safeguard himself by paying the payments in dispute into court.

Note.—An employer, seeking the benefit of the procedure provided by this section, must comply with sect. 19 by serving the certificate of his medical practitioner within six days from the date thereof, for unless this is done there is no power or procedure available for the subsequent appointment of a medical referee. See *Gillett v. John Fowler & Co. (Leeds), Ltd.*, (1927), 1 K. B. 435; 96 L. J. K. B. 261.

If the employer fails to proceed under the section after receipt of the workman's counter-report, but stops payment and does nothing more, and the workman then goes to arbitration, the workman, in spite of the fact that the judge finds that he had wholly recovered at the time of the service of the ten days' notice, was formerly held entitled to recover from the employer the weekly payments as from that date down to the date of the award. See *Davies v. Glyncoerrug Colliery Co.*, (1925) 2 K. B. 339; (1926) 95 L. J. K. B. 42. This case and the Court of Appeal decision in *Ocean Coal Co. v. Davies*, 19 B. W. C. C. 223, were both overruled by the decision in *Ocean Coal Co. v. Davies*, (1927) A. C. 271; 96 L. J. K. B. (H. L.) 364, which decided that where the workman had received a notice under sect. 14 of the Act and had sent a counter-notice, but before hearing admitted he had recovered, was not entitled to compensation after cesser of the incapacity up to date of award. See also *Niddrie and Benhar Coal Co. v. Dee*, (1927) A. C. 299; 96 L. J. K. B. (H. L.) 143; 20 B. W. C. C. 1. In this case it was held that the employer, where a registered agreement to pay existed could, pending arbitration, pay the compensation into court, and following their decision in *Ocean Coal Co. v. Davies* (*supra*), and to deal with the money in court in such manner as was right when the arbitration was concluded. These two cases, *Ocean Coal Co. v. Davies* and *Niddrie and Benhar Coal Co. v. Dee* (*supra*), were followed by C. A. in *Catton v. Ashwell and Nesbitt*, (1928) 97 L. J. Ch. 199; 20 B. W. C. C. 594. The peculiarity of this case was that the workman had commenced an action in the Chancery Division asking for an injunction to restrain the defendants from discontinuing the weekly payments. The action was dismissed, and the C. A. held it had been rightly dismissed and that the case must be decided in accordance with the above two cases.

See also *Pullen v. Enthoven*, 20 B. W. C. C. 248; and *Lowe v. Essex C. C.*, 20 B. W. C. C. 452; and *Macaulay v. William Baird & Co.*, 20 B. W. C. C. 802.

The workman is not entitled to have his expenses paid as a condition of going before the Medical Referee under this section (*Richards v. United National Collieries*, (1927) 96 L. J. K. B. 716; 20 B. W. C. C. 465).

13. Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to

Redemption
of weekly
payments.

Section 13. seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act; and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto:

Provided that—

- (a) nothing in this section shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum; and
- (b) the provisions of this section which fix the amount of the lump sum for which a weekly payment may be redeemed where the incapacity is permanent, shall not apply in the case where the injured workman is at the date of the application under twenty-one years of age, and where, in the case of an injured workman under the age of twenty-one, the lump sum for which the weekly payment may be redeemed is determined by arbitration, the right which if the redemption did not take place the workman would have to have the weekly payment increased on a review under subsection (2) of section eleven of this Act shall be taken into account.

The additional compensation given by the War Addition Acts of 1917 and 1919 was not the subject of redemption, but any workman receiving weekly payment for total incapacity from an accident before December 31st, 1923, was entitled to continue to receive the same sums as he would have received if the Acts had not been repealed.

Whether this additional payment went on where the employer redeemed was a question much mooted, because the section said that the addition should only be to a "weekly payment" payable to the workman, and after redemption, of course, no weekly payment is payable. See notes to sect. 1 of Workmen's Compensation Act, 1923.

If applications to redeem and review are in the list for the same day relating to the same workman, the arbitrator should hear both together, and should deal first with the question whether the compensation should be increased and then with the application to redeem (*Moreland & Sons v. Eley*, (1915) W. C. & Ins. Rep. 554).

If an employer applies to redeem under this paragraph his right is absolute (*Kendall and Gent v. Pennington*, (1912) W. C. Rep. 144), and at the hearing the arbitrator must fix the amount to be paid; if the incapacity, partial or total, is permanent, he must fix it at the sum settled by the Act as stated; if the incapacity is not permanent, at such an amount as he may assess on the evidence. The arbitrator must satisfy himself as to whether the physical condition of the injured workmen is stable. If the incapacity is permanent an infant is in no better position than an adult. If the incapacity is not permanent the amount is in the discretion of the arbitrator (*Marshall, Sons & Co., Ltd. v. Prince*, (1914) W. C. & Ins. Rep. 559).

Where the injury is permanent and the workman is in receipt of certain benefits besides a weekly payment the lump sum must not be calculated on the basis of the weekly payment simply, but on the weekly payment plus so much of the benefits as will make up the difference between the statutory liability and the agreed weekly payment (*Clawley v. Carlton Main Colliery Co., Ltd.*, (1918) W. C. & I. 265).

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The arbitrator's award must be definite and one that can be enforced by either party. In *Booth v. Calico Printers Association*, (1913) W. C. Rep. 540, where employers filed an application for review and redemption, the arbitrator found the incapacity permanent, and assessed a weekly sum of which the annuity value was 613*l*. At the same time he said he considered 300*l*. would be an ample amount under the circumstances. Before making his award he said he was bound to give the larger amount having no discretion in cases of permanent incapacity, and asked the employers if they wished to withdraw their application (*Dixon v. Patten*, 120 L. T. 170, where Irish Court of Appeal held they were so entitled). This not being done, he made his award practically in the terms of the paragraph:—the employers may redeem on payment of 613*l*.—leaving it optional with them to so redeem or continue the weekly payment.

The Court of Appeal held this was not correct; that they were bound by *The Castle Spinning Co. v. Atkinson*, (1905) 1 K. B. 336; that awards had to be definite and that speculative applications were not within the purview of this section.

There was a cross appeal that the incapacity (partial) was not permanent. The man had lost his left hand, but the stump was well healed. As regards the permanence of the physical incapacity there was no doubt, but the employers argued it could not be said a stage of finality had been reached in the case of his earning powers. The arbitrator found that as far as he could determine, there was evidence that the weekly payment he was likely to earn had arrived at a point of stability. There is no doubt he had most carefully considered all the facts and was fully alive to all the legal niceties involved, and the Court of Appeal held there was evidence to support his finding. Seeing, then, the danger of a general application to redeem, can an employer make one conditional on the arbitrator finding the incapacity not permanent? It would seem not. The *Castle Spinning Co. Case* is clear; speculative applications are not permissible. Here the employer applied to redeem if the amount assessed did not exceed 150*l*. Does this differ in principle from applying to redeem if the incapacity is not permanent? Apparently the only course open is to apply to redeem, and on the arbitrator expressing his opinion the incapacity is permanent, to withdraw the application before the award is made.

In the case of assessing an amount where the incapacity is not permanent, an arbitrator's discretion is almost unlimited, provided he only has regard to facts actually existing at the time of the application to redeem (*Birmingham Carriage & Wagon Co., Ltd. v. Round*, (1918) W. C. & Ins. Rep. 77). He cannot say, "I would at the date of the accident have given so much," and then deduct intermediate payments (*Victor Mill, Ltd. v. Shackleton*, (1912) W. C. Rep. 33), but short of this it is for him and him only to arrive at the amount. To assess an amount on the basis of incapacity being permanent without first deciding whether it is so or not is a misdirection (*Swannick v. Congested Board of Ireland*, (1913) W. C. Rep. 96). An order for redemption by consent cannot be appealed against (*Howell v. Blackwell's Executors*, 5 B. 293).

Review in the Case of Infants.—Proviso (b) of this section first appeared in the Act of 1923. The object is to prevent a very small compensation earned by an infant being redeemed for a small and insufficient sum. It is not necessary that a review should have taken place. The judge must consider what the compensation would probably have been if a review had taken place.

Assurance Companies Act, 1909.—Schedule 8, D. (2), of the Assurance Companies Act, 1909, provides that "Where the person insured [against workmen's compensation risks] by any policy issued by an underwriter is liable to make a weekly payment to any workman during the incapacity of the workman, and this weekly payment has continued for more than six months, the liability therefor shall before the expiration of twelve months from the commencement of the incapacity be redeemed by the payment of a lump sum in accordance with Sched. I. (17) of the Work-

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men's Compensation Act, 1906 (now above sect.) and the underwriter shall pay the lump sum into the county court, and shall inform the court that the redemption has been effected in pursuance of the provisions of this schedule." Sect. 33 (1) (f) of the same Act provides that where money is so paid into a county court "the court shall (unless the court for special reasons sees fit to direct otherwise) order the lump sum to be invested or applied in the purchase of an annuity or otherwise, in such manner that the duration of the benefit thereof may, as far as possible, correspond with the probable duration of the incapacity." It should be noted that the Act does not apply to certain cases of mutual insurance societies or to marine offices issuing marine policies which *inter alia* cover workmen's compensation risks. See Assurance Companies Act, 1909, sect. 33 (1), (a), (b).

Conditions of Compensation.

Require-
ments as to
notice
of accident
and claim
for compen-
sation.

14.—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death :

Provided that—

- (a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause ; and
- (b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this Act may be given either in writing or orally to the employer (or if there is more than one employer to one of such employers) or to any foreman or other official under whose supervision the workman is employed, or to any person designated for the purpose by the employer, and shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened.

(3) The notice if in writing may be given by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person to whom it is to be given. Section 14.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice, if in writing, may also be given by delivering it or by sending it by post in a registered letter addressed to the employer, at the office, or, if there be more than one office, any one of the offices, of such body.

Several new provisions as to notice of injury and claim appeared in the 1923 Act, and are now incorporated in this Act, chiefly as to circumstances in which notice is excused. It is excused if the employer had knowledge of it. Oral notice is good. (This had been decided before it appeared in the Act.) It may be given to a foreman or other official with supervision over workmen, and if the employer should be the owner of a mine, quarry, or occupier of a factory or workshop, it is excused in other cases for which see next section, which relates to special provisions as to notice of accidents in mines, factories, etc.

The giving of notice *as soon as practicable*, and the making a claim within six months, unless excused, are conditions precedent to recovering. The claim need not be in writing (*Lowe v. Myers*, 8 W. C. C. 22). If the arbitrator leaves undecided the question of want of notice a new trial may be ordered (*Silk v. Isle of Thanet Rural Council*, (1913) W. C. & Ins. Rep. 647). Weekly payments made are usually conclusive evidence of a claim made and recognised, and certainly furnish a reasonable cause for its absence. Whether a notice has been given "*as soon as practicable*" is a question of fact. When a letter making a claim is posted a presumption arises that it has been delivered (*Watts v. Vickers, Ltd.*, (1917) W. C. & I. 24).

As to Notice.—The giving of it and complying with the formalities are questions of fact, as also the giving it as soon as possible. If a workman fails in giving a proper notice he may be excused if he prove *either* that his employer has not been prejudiced in his defence, *or* that he has done so through mistake, etc., and now sometimes in other cases (see next section). The conditions are disjunctive. If a workman proves mistake a master will be liable, even if prejudiced to an extent of losing an insurance indemnity, and, if he is not prejudiced, it is not material how the defect or non-giving came about. If "reasonable cause" for the failure to give notice is once established, then proceedings under the Act may be maintained at any time, subject of course to the ordinary Statute of Limitations (*Lingley v. Thomas Firth and Sons, Ltd.*, (1921) 1 K. B. 655; 90 L. J. K. B. 290). Principle applied in *Drewett v. Britannia Assurance Co.*, 20 B. W. C. C. 434.

Prejudiced.—Formerly it was considered that like every other fact, no prejudice must be proved by evidence, though "no specific evidence of 'no prejudice' is required; it is an inference to be drawn from the whole facts of the case" (Farwell, L.J., in *Eaton v. Evans*, 5 B. 82). In the absence of any evidence one way or another the workman's claim was held to be barred (*Ing v. Higgs*, (1914) W. C. & Ins. Rep. 84; *Lacey v. John Mowlem & Co.*, (1914) W. C. & Ins. Rep. 63; *Hodgson v. Robins, Hay, Walters and Hay*, (1914) W. C. & Ins. Rep. 65). Slight evidence is sufficient to shift the *onus* (*Shearer v. Miller*, (1899) 2 F. 114). It is clear, however, that since the House of Lords decision in *Eydmann v. Premier Accumulator Co., Ltd.*, (1916) W. C. & Ins. Rep. 167, the earlier cases will have to be limited in application, since that case decides that there is no *onus* on the applicants of establishing the negative proposition that the respondents were not prejudiced and that the question of prejudice or no prejudice must be answered from a consideration of the evidence generally, and if the evi-

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dence is negative either way, the respondents must give positive evidence of prejudice. In other words, the burden is upon the respondents of establishing prejudice and not upon the applicant of establishing no prejudice, but the judge may find that the respondent was prejudiced from the general facts of the case. See *Howard v. Sun Mill, Ltd.*, (1920) W. C. & I. 5. Certainly, in the words of Scrutton, L.J., in *Mills v. Donnington Main Coal Co.*, (1917) W. C. & I. at p. 17, "under the present decisions of the House of Lords, employers will always run great risks who do not try and give some positive evidence of prejudice [in doubtful cases]." Compare and consider *Selkirk v. National Radiator Co.*, (1917) W. C. & I. 99; *Howarth v. Clifton and Kersley Coal Co., Ltd.*, (1920) 89 L. J. K. B. 1249. Reference may also be made as to what time will not be deemed as soon as practicable to *Hunt v. Highly Mining Co.*, (1914) W. C. & Ins. Rep. 406; *Dalgleish v. J. H. Gartside & Co., Ltd.*, (1914) W. C. & Ins. Rep. 319. But note, an employer must be prejudiced in his defence, not merely in his pocket (*Butt v. Gellyceidrim Colliery Co., Ltd.*, (1909) 3 B. 44; *Snelling v. Norton Hill Colliery Co.*, (1913) W. C. & Ins. Rep. 497). The words "in his defence" are not confined to cases where owing to absence of notice the employers cannot ascertain the true facts or set up the proper defences. See *per Phillimore, L.J.*, in *Wassall v. James Russell & Sons, Ltd.*, (1915) W. C. & Ins. Rep. 88, at p. 90. If the injury is fatal in any event it would probably be held, apart from exceptional circumstances, that the employer was not prejudiced (*Lochgelly Iron & Coal Co., Ltd. v. Kirk*, (1916) W. C. & Ins. Rep. 342; *Burvil v. Vickers, Ltd.*, (1915) W. C. & Ins. Rep. 563). Contrast *Jones v. Arnold*, (1915) W. C. & Ins. Rep. 513; *Jones v. Thomas & Co., Ltd.*, (1916) W. C. & Ins. Rep. 761. Compare the case of cancer induced by a fall, *Howard v. Rowsell and Mattheus*, (1914) W. C. & Ins. Rep. 314. The Court of Appeal has recently held that the question of prejudice or no prejudice is entirely a question for the arbitrator (*Hinks v. James Riscoe & Sons*, (1927) 96 L. J. K. B. 1068; 20 B. W. C. C. 558).

By this section an employer is entitled to the earliest possible notice, that he may at once investigate all the circumstances attending the accident. If want of notice prevents this, unless it can be shown it would have been useless in any event, it is strong evidence he is prejudiced (*Leach v. Hickson*, 4 B. 153). For the workman to recover in such a case the arbitrator must find specifically that there has been no prejudice. Thus in *Hayward v. West Leigh Colliery Co.*, (1914) W. C. & Ins. Rep. 21, where workman died of septic poisoning due to a scratch and no notice was given for a week (and then was verbal), *i.e.*, two days before death, the master was held by the Court of Appeal to have been prejudiced. The House of Lords, however, reversed the court below, (1915) W. C. & Ins. Rep. 233, largely on the ground that knowledge would have been useless in any event and that there was evidence to support the arbitrator's finding of "no prejudice." See also *Miller v. Richardson*, (1915) W. C. & Ins. Rep. 381; contrast *Unger v. Howell*, (1914) W. C. & Ins. Rep. 58; on the other hand, if knowledge of the accident in fact can be brought home to him, it will be strong evidence of *no prejudice*. Evidence of a conversation between the wife of the injured workman and the employer's book-keeper was apparently held admissible in *Eydmann v. Premier Accumulator Co., Ltd.* (*supra*). But the employer may waive (*Davies v. Point Ayr Collieries*, (1909) 2 B. 157). Entry by a manager of the particulars of the accident in a special book supplied for the purpose will be sufficient written notice (*Stevens v. Insoles, Ltd.*, (1912) W. C. Rep. 111).

Mistake, Absence or other Reasonable Cause.—These words equally refer to claims not made in time. Mistakes may be mistakes of law, or mistakes of fact. Ignorance of law, or that the law exists, is not a mistake (*Bramley v. Evans*, 3 B. 34; *Roles v. Pascall*, (1911) 1 K. B. 982; even though the master's advice as to the right to claim was relied on and he innocently made a mistake (*Prophet v. Roberts*, (1919) W. C. & I. 5). But it is possible

that ignorance in the case of an infant may be an excuse. (See *per Judge Mulligan in Mason v. King's Lynn Docks Co.*, L. J. C. C. Rep., April 14th, 1917, p. 27.) A mistake in law may be taking a wrong view, or wrongly construing an Act of Parliament. A mistaken belief is not a mistake of fact (*Clapp v. Carter*, (1914) W. C. & Ins. Rep. 80). A mistake of fact must be a mistake of an existing fact (*Roles v. Pascall*, (1911) 1 K. B. 982). For the cases as to how far if a man does not realise he is injured, that is such a mistake, see *Coulson v. South Moor Colliery Co., Ltd.*, (1915) W. C. & Ins. Rep. 161; *Flood v. Smith and Leishman*, (1915) W. C. & Ins. Rep. 212; *Clapp v. Carter*, (1914) W. C. & Ins. Rep. 80; *Fox v. Barrow Hematite Steel Co., Ltd.*, (1915) W. C. & Ins. Rep. 321; *Haward v. Rowsell and Matthews*, (1914) W. C. & Ins. Rep. 314; *Hoare v. Arding and Hobbs*, 5 B. 36; *Millar v. Refuge Ass. Co.*, (1912) S. C. 37; *Breakwell v. Clechill Granite Co.*, 5 B. 133; *White v. Ford Motor Co. (England)*, (1918) W. C. & Ins. Rep. 25; *Walton v. T. Wall & Sons (ibid.)*, p. 17; *Clay v. Sherwood Colliery Co.*, (1923) W. C. & Ins. Rep. 18; 92 L. J. K. B. 169. The determining question probably is, Is the injury latent or trivial—or patent or serious? See *Potter v. John Welch & Sons, Ltd.*, (1914) W. C. & Ins. Rep. 607. If he does so realise he must at once give notice and make his claim (*Edgerton v. Moore*, (1912) 2 K. B. 308; *Webster v. Cohen*, (1913) W. C. & Ins. Rep. 268; distinguished in *Thompson v. N. E. Marine Engineering Co.*, (1914) W. C. & Ins. Rep. 13). In *Griffiths v. Atkinson*, (1912) W. C. Rep. 277, a plumber gave notice to his employer, a sub-contractor, in the expectation he would pass it on to the principal. The expectation was not realised, but it was held not a mistake as to an existing fact, and so not within the proviso. See also *Pimm v. Cement Talbot, Ltd.*, (1914) W. C. & Ins. Rep. 350.

There have been innumerable cases of fact decided, but an arbitrator can find no better guide than that given by Cozens-Hardy, M.R., in *Eaton v. Evans*, 5 B. p. 83, "I have said more than once that where there is a possible doubt of an accident at all, the court should be astute to require notice speedily, and should also be astute on the question whether the employer has been prejudiced. . . . That must not be taken to lay down any principle of law applicable to a case where the *bona fides* of the claim is absolutely beyond dispute, where the fact of there having been an accident has been proved to the satisfaction of the county court judge, and where the ailment from which the applicant is suffering is one which does not make itself manifest immediately."

Similarly, his lordship expressed a still stronger opinion on the duty of men at once to report slight hurts where first aid was provided, and which, if used, might prevent serious developments (*Brady v. Can. P. Rail.*, (1913) W. C. & Ins. Rep. 479).

The following cases may also be referred to: *Thompson v. N. E. Marine Eng. Co.*, (1914) W. C. & Ins. Rep. 13 (workman thought accident trivial for some time when he saw doctor, held reasonable cause); compare the similar cases of *Zillwood v. Winch*, (1914) W. C. & Ins. Rep. 87; *Rankine v. Alloa Coal Co.*, (1904) 6 F. 375; *Ellis v. Fairfield S. & E. Co.*, (1913) W. C. & Ins. Rep. 88; *Brown v. Lochgelly Iron and Coal Co.*, (1907) S. C. 198. See also *Fenton v. Owners of Ship Kelvin*, (1925) 2 K. B. 473; (1926) 95 L. J. K. B. 316, in which it was held that the fact that the workman did not realise the connection of cause and effect between the accident and the incapacity from which he was suffering was reasonable cause for his delay in giving notice. If the injury were not apparent at the time it was received the court may hold it a reason for want of notice, even where the employer has put up notices in the works requiring notice to be given within a certain time. See *Albison v. Newroyd Mill, Ltd.*, (1926) 95 L. J. K. B. 667. See cases, *supra*, and *Tibbs v. Watts Blake, Bearne & Co.*, (1909) 2 B. 164; *Fry v. Cheltenham Corp.*, 81 L. J. K. B. 41. Contrast *Webster v. Cohen*, (1913) W. C. & Ins. Rep. 268; *Clapp v. Carter*, (1914) W. C. & Ins. Rep. 80. Receipt of *ex gratia* payments made by the employer after notice

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of accident may form a reasonable excuse for not making a claim (*King v. Port of London Authority*, (1919) W. C. & I. 241; *Hillman v. L. B. & S. C. Ry.*, (1920) W. C. & I. 38; *Harper v. Harper*, (1916) W. C. & Ins. Rep. 260). See also *Hill v. L. B. Holliday & Co.*, (1926) 95 L. J. K. B. 897, in which it was held that where a workman is in such a serious state of health that he can neither make a claim nor consult anyone in reference to the claim such condition constitutes such a case of mental inertia as to furnish a "reasonable cause." Admission of liability by the employer is no excuse for failure to make a claim (*Abel v. Estler Bros.*, (1919) W. C. & I. 156; *Dobson v. Anglo-Saxon Petroleum Co.*, (1921) 14 B. W. C. C. 97.)

In *Hillman's case*, *supra*, the Court of Appeal expressed the duty of a county court judge as being in this regard to find the facts, and having done so to direct himself as a matter of law whether these facts constituted, within the true meaning of the Act, a reasonable cause. This is a matter of law and is subject to appeal.

Absence.—In *Dight v. S.S. Craster Hall (Owners)*, (1913) W. C. & Ins. Rep. 714, a sailor suffered severe injuries; he reached a port in U.S.A. There he spent a considerable time in hospitals and convalescent homes, eventually reaching England two years later as a distressed seaman. He might have returned earlier as a distressed seaman. Held, want of notice due to absence, and absence due to accident, not to another cause, *e.g.*, settling down abroad.

As to Claim (As to failure to make claim in consequence of **Mistake, Absence or other Reasonable Cause**, see *supra*).—Claim for compensation means, not initiation of proceedings, but a notice of claim for compensation (*Powell v. Main Colliery Co.*, (1909) A. C. 366). Since this case and *Thompson v. Gould & Co.*, [1910] A. C. 409, mere notice of intention to claim is sufficient (compare *In re Allen and Hoey Arbitration*, (1915) W. C. & Ins. Rep. 193, and contrast *Bennett v. Wordie & Co.*, (1899), 1 F. 855; *Marno v. Workman Clark & Co.*, (1900) 2 Q. B. 149, n.). It is not necessary to state amount claimed (*Thompson v. Gould, supra*). It need not be in writing (*Lowe v. Myers*, (1906) 2 K. B. 265). A conversation between the applicant's wife and respondent in which the latter is asked by her whether he will compensate is apparently insufficient (*Johnson v. Woolton*, (1911) 27 T. L. R. 487). But conversations which showed the employer clearly that the workman intended to seek legal aid unless payments which had been stopped were continued is sufficient (*In re Allen and Hoey Arbitration, supra*). Mere notice of accident is not a claim (*Perry v. Clements*, (1901) 49 W. R. 669; *Abbott v. Biggleswade Joint Hospital Bd.*, (1915) W. C. & Ins. Rep. 533). An application for arbitration is a claim (*Fraser v. G. N. of Scotland Rail.*, (1901) 3 F. 908). The *onus* that claim is made within time is upon the applicant (*Roberts v. Crystal Palace Football Club*, (1909) 3 B. 51). Where a workwoman omitted to make a claim, wishing to conceal her injury in order to be able to continue at work, the Court of Appeal reversed the finding of an arbitrator who had held that this was a reasonable cause for failure to make the claim within the prescribed time (*Lingley v. Firth*, (1920) 37 T. L. R. 149; and compare *Dobson v. Anglo-Saxon Petroleum Co.*, (1921) 14 B. W. C. C. 97); *Bishop v. Civil Service Supply Association*, (1922) 15 B. W. C. C. 128, where judge refused to accept a letter marked "without prejudice" as evidence of a claim).

As to whether an absolute bar.—The employer may be estopped from denying the claim (*Turnbull v. Vickers, Ltd.*, (1914) W. C. & Ins. Rep. 323; *Wright v. Bagnall*, (1900) 2 Q. B. 240; *Heaton v. Tomlinson & Son*, (1904) 117 L. T. Jo. 3). The question is whether the workman has been lulled into security (*Heaton v. Tomlinson & Son, supra*); or employer may have waived (*Linklater v. Webster & Son*, (1904) 117 L. T. Jo. 3). Where it was doubtful whether there was estoppel or waiver owing to state of the evidence the case was sent back in *Lee v. Cortonwood Colliery Co.*, (1901) *Times Newspaper*, November 11th. Payment by the employer of compensation may or may

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not constitute waiver (*Rendall v. Hill's Dry Dock, etc., Co.*, (1900) 2 Q. B. 245; *O'Neill v. Motherwell*, (1907) S. C. 1076; *Healey v. Galloway*, (1907) 41 Ir. L. T. 5; *Lynch v. Lansdowne (Marquis)*, (1914) W. C. & Ins. Rep. 244). Payment of full wages may be a "reasonable cause" for not making a claim (*Luckie v. Merry*, (1915) W. C. & Ins. Rep. 395). In *King v. Port of London Authority*, (1919) W. C. & I. at p. 245, the Lord Chancellor refused to lay down any general principle that, under all circumstances, the continued payment of the same wages by the employer to the injured workman after the accident amounts to reasonable cause for not giving notice, and the same presumably applies in the case of failure to claim. See *Soyer v. Johnson Matthey Co.*, (1927) 96 L. J. K. B. 1011; 20 B. W. C. C. 504, in which the headnote apparently lays down that the fact that the workman continued in the employment receiving full wages is not a reasonable cause for the workman failing to make his claim. This seems to be putting the principle too high, and is scarcely supported by the judgments, especially when regard is had to the dictum of the Earl of Birkenhead in *King v. Port of London Authority (supra)*.

Six Months.—The claim must be brought by dependants within six months of death, even though the workman had made a claim in his lifetime (*Wilson v. Maple Mill, Ltd.*, (1926) 95 L. J. K. B. 666). Where the accident happened at 11.30 a.m. on November 24th, and claim was lodged at 5.30 p.m. on May 24th following, it was held to be within the six months in *Peggie v. Wemyss Coal Co.*, (1909) S. C. 93.

Acquiescence in Stoppage of Payments.—See *Rankine v. Fife Coal Co.*, (1915) W. C. & Ins. Rep. 207.

Notice of accident to inspectors.—The Workmen's Compensation Act, 1923, sect. 28, reduces the time provided by the Notice of Accidents Act, 1906, and the Coal Mines Act, 1911, with regard to the giving of notice by the employer to the inspectors from seven days to three days. Although not very cognate to the Workmen's Compensation Acts this may prove useful as enabling, in many cases, the workman to prove that the employer had notice of the accident. This section is not repealed, see p. 1408.

Prevention of or remedies for relief of accidents.—With the object of preventing, or providing means of remedy for accidents, the Workmen's Compensation Act, 1923, by sect. 29 makes various provisions as to first aid boxes, ambulance rooms and persons in charge of such, in factories, and in addition empowers the Secretary of State to make similar rules for the purposes of safety with regard to places to which any of the provisions of the Factories Acts apply. This section is not repealed, see p. 1408.

15.—(1) There shall be kept constantly posted up in some conspicuous place at or near every mine, quarry, factory or workshop where it may be conveniently read by the persons employed, a summary, in such form as may be prescribed, of the requirements of this Act, with regard to the giving of notice of accidents and the making of claims and the procedure to be followed in the case of industrial diseases, and, in the event of such summary becoming effaced, obliterated or destroyed, it shall be renewed with all reasonable dispatch.

In the event of any non-compliance with the provisions of this subsection the owner, agent or manager of the mine or quarry or the occupier of the factory or workshop shall be guilty of an offence and liable on summary conviction to a fine not exceeding five pounds, and any such proceedings may be instituted by an inspector of mines or factories.

Special provisions as to notice of accident in mines, factories, &c.

Section 15.

(2) The want of, or any defect or inaccuracy in, the notice of an accident required by the last preceding section of this Act shall not be a bar to the maintenance of proceedings for the recovery of compensation under this Act where the employer is the owner of a mine or quarry or the occupier of a factory or workshop—

- (a) if such summary as aforesaid has not been posted up in accordance with the provisions of this section; or
- (b) if the accident has been reported by or on behalf of the employer to an inspector of mines or factories; or
- (c) if the accident has been entered in any register of accidents kept by or on behalf of the employer at the mine, quarry, factory or workshop; or
- (d) if the injury has been treated in an ambulance room at the mine, quarry, factory or workshop.

(3) For facilitating the giving of notice of accidents for the purposes of this Act, a book in the prescribed form shall be kept at every mine, quarry, factory or workshop, in which the prescribed particulars of accidents happening to persons employed at the mine, quarry, factory or workshop may be entered by the injured workman or some other person acting on his behalf, and an entry in such book, if made as soon as practicable after the happenings of the accident, shall be sufficient notice of the accident for the purposes of this Act.

The book shall be kept at such place as to be readily accessible at all reasonable times to any injured workman who was employed at the mine, quarry, factory or workshop, and any person *bonâ fide* acting on his behalf.

If in the case of any mine, quarry, factory or workshop the provisions of this subsection are not complied with, the mine, quarry, factory or workshop shall be deemed not to be managed or kept in conformity with the enactments relating thereto.

(4) For the purposes of this section, the expression "factory or workshop" shall include any works or premises to which any of the provisions of the Factory and Workshops Acts, 1901 to 1920, apply; and the expression "prescribed" means prescribed by the Secretary of State.

The comparatively new provisions of this section first appeared in the Act of 1923.

It must be noted that they apply only to mines, quarries, factories and workshops and works or premises to which any provisions of the Factory and Workshops Acts apply.

Parts of the Factory Acts were by the 1901 Act applied to docks, wharves quays and warehouses and machinery used for loading and unloading ships.

The section not only requires the employer to post up the provisions of

the Act as to notice, etc., and keep an accident book, but excuses notice of accident where this is not done or where the employer has reported the accident to the Government inspector, or entered it in the accident book, or where the workman has been treated at the works ambulance.

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16.—(1) If a workman receiving a weekly payment ceases to reside in the United Kingdom, the Channel Islands, or the Isle of Man, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. Conditions as to residence.

(2) If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

The Secretary of State may prescribe the fee to be paid for such a certificate. The words "The Channel Islands or the Isle of Man" were added to the words "United Kingdom" by the 1923 Act, sect. 24 (8). It also added "Northern Ireland," but this is omitted as in the definition section (sect. 48), the expression "United Kingdom" includes "Northern Ireland."

17. Where a workman has given notice of an accident, or where an accident has occurred in respect of which the necessity of giving notice under this Act is dispensed with, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place. Conditions as to submission to medical examination in first instance.

This section embraces clause (4) of Sched. I. of the old Act as altered by sect. 10 (5) of Act of 1923. With this section the provisions of sect. 18 must be considered.

Medical Examination.—The one rule is a workman must be reasonable: an employer must be reasonable, and it does not follow that what is reasonable in one case will be reasonable even in a similar case. Of what is reasonable, the arbitrator is sole judge (*Morgan v. Dixon*, (1912) A. C. 74). He may decide it is reasonable for a workman to have his own doctor present when examined by his employer's doctor—though he cannot order the employer to pay such doctor's fees (*Osborn v. Vickers Maxim*, 2 W. C. C. 130); he may decide it is not. Both parties should do their utmost to facilitate a fair examination, and with as much regard for the convenience of each other as the nature of the case permits of. This section is not limited to one examination if a further one is reasonably required (*Mayor v. South Kirkby, etc., Collieries*, (1913) W. C. Rep. 305), even where the first examination took place after the dispute arose (*Smith v. D. Davis and Sons, Ltd.*, (1915) W. C. & Ins. Rep. 299), and provides for effective examination before an award is made; whilst sect. 18 similarly provides for examination afterwards, when compensation is being paid.

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The workman, besides submitting to examination, should place no difficulties in the employer's way to hinder him from seeing the medical notes relating to the treatment of the injuries. *Per Swinfen Eady, L.J.*, in *Booth & Sons v. Carter*, (1915) W. C. & Ins. Rep. 59.

A workman who enlists and is sent abroad and cannot therefore be medically examined in England cannot be deemed to have obstructed medical examination (*J. & C. Harrison, Ltd. v. Dowling*, (1915) W. C. & Ins. Rep. 351).

See also Rule 58.

Periodical
submission
to medical
examination.

18. Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

See last section.

This section applies only to the case of a workman who is actually at the time receiving weekly payments under the Act (*Smith v. Davis & Sons, Ltd.*, (1915) W. C. & Ins. Rep. 299).

It must be noted that where the workman refuses the examination or obstructs it, though he afterwards consents, he can get no compensation for the period when the payments were suspended either under sect. 17 or sect. 18. (See sect. 20.)

Provisions
as to sub-
mission to
medical
examination.

19.—(1) A workman shall not be required to submit himself for examination by a medical practitioner under either of the two last preceding sections otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

(2) Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, or, subject to appeal to the judge, by one of the parties, may refer the matter to a medical referee:

Provided that where the application is made by only one of the parties, the registrar, or on appeal the judge, if he is of opinion that, owing to the exceptional difficulty of the case or for any other sufficient reason, the matter ought to be settled in default of agreement by arbitration, shall refuse to allow the reference.

(3) The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his

fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified. Section 19.

(4) Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this section shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

(5) If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

(6) Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this section and the forms to be used for those purposes.

This embraces Sched. I. (15) of the old Act as amended by the Act of 1923.

The important alteration in the section is that if after examination the parties cannot agree as to the workman's condition or fitness for employment, the registrar of the court may send it to a medical referee on the application of one party only, whereas previously both parties had to consent. As the medical referee's opinion is final, the editor recommends that the workman should not consent to the case going before the medical referee, who very rarely is able to hold a proper inquiry on evidence. If it is sent against his wish he can now appeal to the judge.

It is important to note that not only is the certificate of the medical referee conclusive as to the condition of the workman, but it is also conclusive of his fitness for employment and the *kind* of employment for which he is fit which the medical referee has generally no proper opportunities of deciding. See *Short v. Parker*, (1926) 95 L. J. K. B. 849. The judge cannot interfere with it, even to the extent of giving a declaration of liability (*Richard Evans & Co., Ltd. v. Gilbie*, (1927) 96 L. J. K. B. 117).

He may also have to decide, where the matter has been sent to him, whether the incapacity was due to the accident, generally the most difficult question for the court to decide under the Act.

A medical referee apparently may subsequently give a second certificate inconsistent with his first (*Richard Evans & Co. v. Scahill*, 20 B. W. C. C. 348).

A Reference by Mutual Agreement.—Although under this paragraph the medical referee's decision is final, the extent of earning capacity may still remain for decision (*Cruden v. Wemyss Coal Co.*, (1913) W. C. Rep. 188), and the finality of the certificate does not extend to matters of cure, *e.g.*, where the medical referee stated that a small surgical operation would remove the incapacity (*Earl Fitzwilliam's Collieries v. Crossley*, (1925) 133 L. T. 495). If the certificate is ambiguous, an arbitrator may rightly ask for an explanation (*Kennedy v. Dixon*, (1913) W. C. Rep. 333).

Section 20.

Provision as
to suspension
of right to
compensation.

Procedure
for settling
questions.

20. Where under this Act a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

See note to sect. 18 above.

Procedure for determining Compensation and settling Questions.

21.—(1) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, or, except as otherwise expressly provided, to the right to or amount of any indemnity under this Act, the question, if not settled by agreement, shall, subject to the provisions of this Act, be settled by the arbitration of a representative committee, or of an arbitrator, or of a judge of county courts in accordance with the First Schedule to this Act.

(2) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this Act, shall be settled by the county court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this Act, by the county court.

This section embraces sect. 1 (3) of the old Act, and in addition the parts of the old Act which allow the right or amount of any indemnity under the Act to be settled by arbitration (see sect. 6 (2) of old Act) also the question as to who is a dependant, which was formerly Sched. I. (8) of the old Act.

Question must be specified in application for arbitration (Rule 8).

If any Question.]—Some question, is a condition precedent to arbitration and must be existent on the launching of the application (*Wooder v. Lush*, (1914) W. C. & Ins. Rep. 328; *Higgins v. Poulson* (No. 1), 5 B. 66). To what must an employer agree if he would avoid litigation and “any question”? His attitude is, “I will give everything the Act requires of me.” The workman on his part asks for an agreement in terms expressing this, so that he may register it. Then what does the Act give?

This we find in sect. 1, sub-s. 1, read with sect. 9 of the Act. Read together shortly we get—*his employer shall be liable to pay compensation where total or partial incapacity results, which shall be a weekly payment during the incapacity not exceeding so much.*

Here it is clear that whatever the amount, the payment is to be during the incapacity however long it continues. And therefore, at the outset a workman has a right to an unqualified agreement by the master to pay him compensation during such incapacity. A master cannot say, “Yes, you are incapacitated this week and I will pay you,” and then go on admitting liability from week to week only. The man’s right is a vested right to compensation for the whole period of the incapacity, and a master must admit this or a question will arise (*Shaddick v. Palmer’s Shipbuilding and Iron Co.*, (1917) W. C. & I. 225). But the incapacity may vary. Certainly this is the very thing the Act contemplates, and the compensation should automatically vary with it. A master must admit liability to pay compensation, i.e., some compensation, during the whole term of the incapacity, but this does not mean he must admit liability to pay any specific amount the whole time. The amount, as we have said, must vary as the incapacity varies.

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So a test of any proffered agreement in this respect is : Suppose the employer at any time stops payment, will the workman be able to enforce his rights or have to take proceedings to have his rights declared (see judgment, Haldane, L.C., in *Freeland v. Summerlee Iron Co.*, (1913) W. C. Rep. 302). Thus for an employer to make an agreement beyond cavil, it should be to pay the agreed amount during the total incapacity, and thereafter during partial incapacity such amount as might from time to time be agreed, or failing agreement as might be determined by arbitration. Agreement to pay the full compensation during total incapacity only does not preclude a question arising (*Cooper v. Wales, Ltd.*, (1915) W. C. & Ins. Rep. 307; *Round v. Watken & Son*, (1917) W. C. & I. 134). See also *Parker v. London Brick Co. & Forders, Ltd.*, (1928) 97 L. J. K. B. 42; 20 B. W. C. C. 573.

The position is somewhat different where compensation is being actually paid and received, for then, if an employer thus admits amount and liability, the fact that he further intimates that he thinks the man almost well, or that when he does think he is well, or that when his doctor certifies he is well he will stop payment does not raise a question, certainly not a present one. And so where a memorandum of agreement is filed providing for payment of an agreed sum during total disablement, but leaving future payments, when disablement has ceased to be total, open for future agreement, it was held in *Sampson v. G. S. N. Co.*, (1914) W. C. & Ins. Rep. 36, that no question had arisen. Again, where the employers did not deny liability but asked for and obtained medical examination, and no further correspondence passed, and thirteen days later the workman commenced proceedings, it was held that no question had arisen (*Crone v. Donaldson Line, Ltd.*, (1916) W. C. & I. 235). See also *Bedwell v. London Electric Rail. Co.*, (1914) W. C. & Ins. Rep. 408, where employers expressed willingness to pay full compensation until in their opinion workman was fit to resume but declined to make an unqualified admission and it was held that no question had arisen. See, also, *Smith v. Redpath, Brown & Co., Ltd.*, (1918) W. C. & Ins. Rep. 14, where the employer denied concurrent employment but paid compensation. Here it was held that the man was receiving compensation under an implied agreement and that no question had arisen, and the proper course for the workman to take, if he was dissatisfied, was to apply for a review. Compare *Wright v. Minister of Munitions*, (1919) W. C. & I. 154. A question may arise when for any reason he says the incapacity is ended or altered and the workman says it is not (*Payne v. Fortescue*, (1912) W. C. R. 386). If the workman desires the more exact agreement to which he is entitled, he must demand it before accepting compensation, the giving and receiving of which without reservation goes far to establishing a present agreement between the parties. If he does so insist, he will be entitled to an agreement to be paid during the incapacity, and not during the pleasure of his employer's doctor.

Form 24 gives the form of award made on arbitration proceedings. It has been approved in *Higgins v. Poulson (No. 2)*, (1912) W. C. Rep. 244. After first stating the weekly sum to be paid, it then says—but which the Act does not—that it, the particular amount, is to be continued during the total or partial incapacity of the workman, or until ended, diminished, etc., as provided. This hitherto has proved highly favourable to the workman, who gets the full amount between the application and the hearing of the review, even if totally recovered. True, by *Morton v. Woodward*, 4 W. C. C. 143, an employer may get an order dating from the application, though not earlier, but virtually it is useless, as he cannot set off the over-payments against current compensation (*Hosegood v. Wilson*, (1911) 1 K. B. 30). So an arbitrator may have regard to them under sect. 9 (1) (b) in fixing a new weekly sum, but this does not help when the amount should be ended.

For the form of order approved in cases where the applicant is not incapacitated at the time of the hearing, but may become so, see *King v. Port of London Authority*, (1919) W. C. & I. 241, at p. 245.

If not Settled by Agreement.]—It is almost needless to observe that for an

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agreement to hold it must have been made with a full appreciation of its terms (*Brown v. Hunter*, 49 S. L. R. 695); and an arbitrator must inquire into its validity so as to determine how far he has jurisdiction. Such validity will, of course, be governed by the common law applicable to all agreements (*Ellis v. Lochgelly Iron, etc., Co.*, 46 S. L. R. 960).

When a claim is made, an employer is entitled to a reasonable time in which to admit or deny liability, and proceedings must not be rushed (*Caledon, etc. v. Kennedy*, 43 S. L. R. 637).

An infant's agreement, apart from the Act of 1906, needs the consent of the court to make it binding (*Bates v. John Holding & Co.*, (1914) W. C. & Ins. Rep. 6).

If a point be agreed, *e.g.*, that the applicant is a "workman" the arbitrator has no jurisdiction, either on an original application for compensation and on an application to record a memorandum of agreement, to open up the point agreed (*Goodsell v. "Lloyds" (Owners)*, (1914) W. C. & Ins. Rep. 585).

The critical time to consider in determining whether a question has arisen or whether the parties are *ad idem* is the date of commencing proceedings (*Baldwin v. Electric and Ordnance Accessories Co., Ltd.*, (1919) W. C. & I. 263). An offer to give an agreement "in suitable terms" is not an offer to pay the maximum compensation to which the man might be entitled on arbitration (*Goode v. Sentinel Wagon Works, Ltd.*, (1920) W. C. & I. 8).

See notes to Sched. I. of this Act (formerly Sched. II. of old Act) dealing with arbitrations.

Power to
vary
awards.

22. Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

This section was formerly Sched. I. (9) of the Act of 1906.

The sum awarded must be apportioned between the *dependants*. The arbitrator has no power under the Act to deprive its statutory guardian of the custody of an infant (*Fleming v. Roburite Co., Ltd.*, (1917) W. C. & I. 82).

Registration
of agreements
and awards.

23.—(1) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court, who shall, subject to such rules and subject to the provisions hereinafter contained, on being satisfied as to its genuineness, record such memorandum in a special register, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment:

Provided that—

(a) no such memorandum shall be recorded before seven days

after the despatch by the registrar of notice to the parties interested ; and Section 23.

- (b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just.

(2) The judge of the county court may at any time rectify the register.

(3) Where a memorandum of an agreement for the payment of a lump sum is so sent for registration, the registrar, and if in pursuance of this Act the matter is referred to the judge, the judge of the county court, shall have power, in accordance with rules of court,—

- (a) to require either party to the agreement to furnish him either orally or in writing with such information as he may consider necessary, or to require the attendance of any of the parties to the agreement before him ;

- (b) when the information as to the workman's condition appears to him to be insufficient or conflicting, to require a report as to the workman's condition to be obtained from a medical referee ;

and in the event of either of the parties failing to comply with any such requirement of the registrar, the registrar may refuse to record the memorandum and refer the matter to the judge, who shall have power to make such order as he may in the circumstances think just.

(4) Where it appears from any such report of a medical referee that the prospects of the workman's recovery from incapacity cannot as yet be approximately determined, the registrar, or on appeal the judge, may refuse to record the memorandum.

(5) Any agreement for the payment of a lump sum shall disclose the amount (if any) paid or payable under or in respect of the agreement by the employer to the solicitor of the workman or his dependants as costs, and, if it appears to the registrar that the amount is excessive, the registrar may direct that the bill of costs be submitted to him for taxation, and thereupon the registrar shall, subject to review by the judge, tax such costs in accordance with rules of court ; and if the costs are reduced on such taxation, the amount of such reduction shall either be applied or dealt with for the benefit of the workman or his dependants, or paid to the employer, or otherwise dealt with as the judge may direct.

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14 & 15 Geo.
5, c. 38.

(6) The approved society or committee by which sickness or disablement benefit under the National Insurance Act, 1924, payable to the workman is administered, shall be entitled to send to the registrar objections to the registration of an agreement for the payment of a lump sum, and, in the event of the attendance of any of the parties to the agreement being required, shall be entitled to appear before the registrar, or, if the matter is referred to the judge, before the judge.

(7) Rules of court may be made providing that in any case where in connection with an application for the registration of any such agreement as aforesaid there is a hearing before the registrar or the judge, or a report from the medical referee is required to be obtained, the registrar or judge shall have the power of awarding costs.

This section embraces Schedule II. (9) of Act of 1906 (except that the part where the registrar has authority to deal with inadequacy of sum or improper means, which now appears in sect. 25), and sect. 12 of the Act of 1923.

“Parties Interested.”]—Where the workman is a member of an approved society under the National Health Insurance Act, 1924, the approved society is a “party interested” for the purpose of the registration and may appear and object to the recording of a memorandum of agreement.

When the parties come to an Agreement, under the Act (which they may do without arbitration), either party may apply for it to be recorded under this paragraph as provided by above rules. There must, however, be “agreement” (*Madden v. Guest's Executors*, (1915) W. C. & Ins. Rep. 559). And this application may be made at any time, provided meanwhile it has not become spent or worked out. But only a memorandum of the actual agreement entered into can be recorded. It can neither be added to nor modified. If not satisfactory, *some question may arise* (see sect. 21 of Act); but if accepted at all, the very terms agreed must be recorded. Agreements may be verbal. What has been agreed will be a question of fact to be decided by evidence, but no implied term can be introduced into the agreement so formed. An agreement may be implied from payment of compensation, and in *Hartshorne v. Coppice Colliery Co.*, (1912) W. C. Rep. 256, it was powerfully argued the agreement to be implied was to bear the full burden of the Act. Contrast, however, *Madden v. Guest's Executors*, *supra*. The court could by no means agree with the proposition that from payment in one class of circumstances—during total incapacity—there could be implied a quite different term, *e.g.*, to pay during partial incapacity. See also *Godbold v. L.C.C.*, (1914) W. C. & Ins. Rep. 336. Payment is evidence of admission of liability, may justify no notice being given or claim being made, but how far it can be registered as an agreement must be entirely governed by the surrounding circumstances (*Phillips v. Vickers, Maxim*, (1912) 1 K. B. 16).

Where there is an agreement the terms of which neither disputes, but under which the amount of compensation payable is doubtful, the proper course is to deal with the matter under Rule 82 (4). See *Moake's Case* quoted in the notes to that rule.

In registering an agreement the functions of the court are generally ministerial only. Its duty is to inquire: Does the agreement submitted for registration express in fact the agreement actually made? If so, and only if so, it should be registered (*Hudson v. Camberwell Borough Council*, (1917) W. C. & I. 144). If by mistake an agreement as registered does not record the agreement as made, the register may be rectified by the judge. But

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rectification of the register cannot be used to modify or vary the agreement itself. If through mistake or error an agreement has been entered into and registered, steps must be taken for rectification of the agreement made before any alteration can be made in the register (*Schofield v. Clough*, (1912) W. C. Rep. 301).

Inconsistent Applications.]—The applicants applied to register an agreement; the employers objected; without withdrawing application to register the applicants then applied for arbitration as if no agreement. Not allowed to be heard as one case (*Armston Coal Co. v. King*, (1913) W. C. Rep. 388 (Sc.)).

Workman's Death.]—For the position where the workman died from a cause unconnected with the accident after a redemption agreement had been sent to the registrar to record but before the time for sending in notices of objection had elapsed, see *Price v. Westminster Brymbo Coal and Coke Co., Ltd.*, (1915) W. C. & Ins. Rep. 245. It was there held that the registrar and employer having no knowledge of the death the memorandum was duly recorded and was enforceable.

Spent Agreement.]—If at the time of applying for registration the agreement has worked itself out, is in fact *spent*, it should not be recorded, nor is there an absolute right to record if a considerable time to has been allowed to elapse during which the employer can come forward and say the workman has recovered. It is then in the arbitrator's discretion to refuse to allow the agreement to be registered (*Somerville v. Barclay, Curle & Co.*, 19 B. W. C. C. 536). The registration only applies to where compensation is payable, and not to where as a matter of history it has been payable (*Popple v. Frodingham Iron and Steel Co.*, (1912) 2 K. B. 141; an important decision of most extensive application which, however, has been limited considerably by the decision in *Rex v. Thetford C. C. Registrar*, (1915) W. C. & Ins. Rep. 136). The case of *Rex v. Thetford C. C. Registrar* decides that even where the agreement gives to the workman all he could possibly claim and gives it him in the form of a lump sum so that there can be no future payments, the employer can still insist on registration. Whether an agreement is in fact spent will have to be found on the evidence. Where there was an agreement containing a condition "that this weekly payment is only to be continued so long as I am totally incapacitated for work and that the amount of any payment due in respect of subsequent partial incapacity is to be ascertained as and when a question arises," it was held that in view of this term in the agreement, which provided for the case of partial incapacity, the agreement was not "spent" on the cesser of total incapacity, and that therefore the agreement was a proper one to be recorded. See *Hulmston v. Birkenhead Union*, (1926) 95 L. J. K. B. 529. Not unusually, the practice is to decide whether an "agreement" is spent and hear an application to review at one and the same time. A memorandum must be recorded before it can be basis of proceedings (*Colville v. Tigue*, 43 S. L. R. 129).

Memorandum enforceable as a County Court Judgment.]—A workman must obtain leave before issuing execution. Rule 82 is even more stringent than the old rule for which it is substituted, and not only must he show default in payment of a weekly sum, but also that default has been made in complying with the agreement (*Ibrahim Said v. Welsford*, 3 B. 233), and the employers are entitled to be heard that this is not the case (*ib.*). Cf. *McDowell v. McGladdery*, (1916) W. C. & Ins. Rep. 228. A registrar is not entitled to give leave to issue for execution when the incapacity is in dispute (*Warren v. Roxburgh*, (1912) W. C. Rep. 306); this seems to be the result of this case, though it is really difficult to see where the registrar went wrong.

Probably the practice will now be governed by sub-rule 5 of Rule 82. It will be noted many difficult points of practice are cleared up by rules actually made *ad hoc*, and old decisions should be closely scanned in the light of recent rules.

An agreement for compensation can only be enforced by a memorandum being registered and not by action (*Cochrane v. Trail*, 37 S. L. R. 662).

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For circumstances where an administratrix was held capable of enforcing a recorded agreement, see *Price v. Westminster Brymbo Coal and Coke Co., Ltd.*, (1915) W. C. & Ins. Rep. 245.

Variation of Agreement.—The prudent rule that one order should be varied by another order equally applies to a recorded agreement, and if such be varied it is not usually wise to leave it on the register without also recording the varying agreement (*Fife Coal Co. v. Lindsay*, 45 S. L. R. 317). The effect of returning to work is to impliedly vary an agreement. A workman having returned to work for six months sought to recover on an agreement the whole of the compensation accrued for the same time, but his claim was disallowed (*Baird v. McWhinnie*, 45 S. L. R. 338). Compensation that has so accrued on a recorded agreement is usually recoverable on simple proof it is outstanding, without inquiry into the incapacity subsisting or otherwise, but if there is no record the whole circumstances must be inquired into. The analogy is much that of payments under an award. Till challenged it stands, and payments then due or paid cannot be taken exception to, though it be otherwise when once review is demanded.

Costs.—An agreement sent for registration must disclose the costs paid or to be paid by the employer to the solicitor of the workman, and if excessive may be added to the compensation or returned to the employer as the judge may direct (sub-sect. 5).

Where the court refused to record (the workman opposing) and ordered the employer to pay costs and then the workman changed his mind and later opposed his own opposition, it was held on appeal that the order as to costs must be discharged, the order refusing to record the agreement standing (*Cambridge v. Taylor*, (1918) W. C. & Ins. Rep. 96, followed in *Scott v. Shilling*, (1920) W. C. & I. 1).

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of compo-
sition agree-
ments.

24. Where the person against whom a claim for compensation is made under this Act disputes his liability to pay compensation, but makes an agreement (in this Act referred to as a composition agreement) whereby in consideration of the payment of a lump sum the claim for such compensation purports to be precluded, the agreement shall be sent for registration in like manner and subject to the like conditions as in the case of an agreement for the redemption of a weekly payment by a lump sum.

This provision first appeared in the Act of 1923 (sect. 21).

This section will also prove of great practical use. It enables an employer who disputes his liability to pay compensation, but is nevertheless willing to pay a certain sum, and makes an agreement with the workman to this effect, to have such an agreement registered in the same way as an agreement for redemption of weekly payments by a lump sum. The registrar, or on appeal the judge, in considering whether the sum named in the agreement is adequate, must take into consideration the question whether or not liability to pay compensation is doubtful.

See as to the registration of such an agreement, sect. 25, *infra*.

Invalidity
of certain
agreements
unless
registered.

25.—(1) An agreement as to the redemption of weekly payments by a lump sum, if not registered in accordance with this Act, shall not, nor shall the payment of the sum payable under the agreement, exempt a person by whom the weekly payment is payable from liability to continue to make that weekly payment, unless he proves that the failure to register was not due to any neglect or default on his part.

(2) An agreement as to the amount of compensation to be paid

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to a person under a legal disability or to dependants, if not registered in accordance with this Act, shall not, nor shall the payment of the sum payable under the agreement, exempt a person by whom the compensation is payable from liability to pay compensation unless he proves that the failure to register was not due to any neglect or default on his part.

(3) A composition agreement if not registered in accordance with this Act shall not, nor shall the payment of any sum payable thereunder, exempt the employer from liability under this Act.

(4) Where it appears to the registrar of the county court on any information which he considers sufficient that an agreement to which this section applies ought not to be registered by reason of the inadequacy of the sum or amount agreed to be paid, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration and refer the matter to the judge, who shall in accordance with rules of court make such order (including an order as to any sum already paid under the agreement) as in the circumstances he may think just:

Provided that in the case of a composition agreement in determining whether or not the sum agreed to be paid under the agreement is adequate the registrar, or if the matter is referred to the judge, the judge, shall have regard to the question whether or not liability to pay compensation under this Act is doubtful.

(5) The judge may within six months after a memorandum of an agreement to which this section applies has been recorded in the register order that the record be removed from the register on proof to his satisfaction that the agreement has been obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as in the circumstances he may think just.

This section embraces Schedule II. (10), and parts of Schedule II. (9) of the old Act, and parts of sect. 21 of Act of 1923.

Practice.—Record memorandum (Rules 43—49); rectification (Rule 50); proviso (d) (Rule 51); proviso (e) (Rule 52); execution (Rule 82); setting aside award (Rule 85); enforcing memorandum in another court (Rule 89).

See generally as to this clause *Macey v. Edmonton Munitions Co., Ltd.*, (1918) W. C. & I. 224.

Rule 19 (1) (a) (ii.) seems *ultra vires*, because compensation in the first instance must be a weekly payment (*Mulholland v. Whitehaven Colliery Co.*, (1910) 2 K. B. 228). The rule may, however, be intended to be confined to cases where incapacity has ceased before the hearing.

Redemption of a Weekly Payment—Duty of Registrar.—Under this sect. a registrar can refuse to record a memorandum of agreement (1) if not satisfied as to its genuineness; (2) if there be evidence that it was improperly obtained; (3) if the sum is inadequate and the lump sum is to be paid in redemption of a weekly payment; (4) if the sum is inadequate and the payment is to be made to a person under disability or to dependants (*H. D.*

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Rawlings, Ltd. v. Hodgson, (1918) W. C. & I. 184; *Segura v. Blampied*, 4 B. 192), but he cannot fix it (*Mortimer v. Secretan*, (1909) 2 K. B. 77). In considering whether an amount arrived at by agreement is adequate the judge is not bound by Schedule I., par. 17, now sect. 13, though the sum agreed on may be the same as would, at the time, have been the amount awarded on an application by the employers to redeem the weekly compensation (*Sharp v. Richardson and Co.*, (1920) 3 K. B. 152; 89 L. J. K. B. 1050). In *O'Neill v. The Anglo-American Oil Co.*, 2 B. 434, the arbitrator held 175*l.* was inadequate to redeem 17*s.* 3*d.* a week. The parties and their advisers wished to close at this sum, and on it appearing on appeal that the arbitrator had seemingly misdirected himself by regarding the incapacity as permanent, the court approved the transaction. In two cases a judge has found the amount inadequate, and on subsequent proceedings has correctly found for the employer altogether (*Beech v. Bradford Corporation*, 4 B. 236; *Marriott v. Brett*, 5 B. 144). The scope of this section is considerably extended by sect. 16 (1) (c) of the National Insurance Act, 1924, in cases where the workman is an insured person.

The Court of Appeal in *Ryan v. Hartley* held that the registrar under the above section had no power to refuse to register agreement except in the three cases mentioned in the sub-section, namely: Where it was in redemption of a weekly payment, or an amount payable to person under disability, or to dependants, and consequently where an agreement was made for a lump sum by a workman of full age in respect of his own injury not receiving weekly payments, the registrar had no jurisdiction. This decision was followed in *Hudson v. Camberwell Corporation*, (1917); *Rawlings, Ltd. v. Hodgson*, (1918); *Williams v. Minister of Munitions*, (1919); and *Haydock v. Goodier*, (1921), some of which cases went much further and laid down that a workman could not be in receipt of weekly payments unless the payments had been settled by arbitration or agreed between him and the employer, and the employer was under an obligation to continue the payments.

All these cases have been overruled by the House of Lords in *Russell v. Rudd*, (1923) A. C. 309; (1923) 92 L. J. K. B. (H. L.) 429, which decided: Firstly, that a workman cannot make an agreement with the employer for a lump sum, except as provided in the Act, and this, therefore, must be subject to approval by the registrar or the court; and secondly, that any sum agreed upon in substitution for the right given to an injured workman by the Act must be regarded as a sum in redemption of weekly payments, and thus again become subject to the approval of the registrar.

The effect of all this is that now every agreement whether with person of full age or on behalf of infants, by which a sum is taken in exchange for abandoned rights under the Act, *must* be registered. Even a composite agreement as it is called must be registered, but the registrar or judge in considering whether this is a fair agreement must consider whether or not liability to pay compensation under the Act is doubtful. Rule 85 provides for agreements, etc., obtained by fraud, though not for mistake. The arbitrator has no right to find fraud if no allegation of fraud is made (*Hudson's Case*, *supra*).

Infants.—Following the decision of the Court of Appeal in *Rhodes v. The Soothill Colliery Co.*, (1909) 1 K. B. 191, which declares that agreements with infants shall be conditional only unless and until a memorandum has been recorded, elaborate rules (60, 61, and 62) have been made, enabling employers to pay money into court where there are infants, and providing for registrars approving of agreements on their behalf under this paragraph. Rule 60 (12) makes an employer liable for costs prior to payment in, but relieves him from them thereafter.

It has been held by the Court of Appeal that where an agreement has been entered into between the father as next friend of an infant workman and the employers, for the payment of a lump sum by way of compensation, and a memorandum thereof had been duly recorded by the registrar under the

provisions of this paragraph, the agreement becomes as effective as if it had been signed by the infant workman himself (*Rhodes v. The Soothill Wood Colliery Co.*, (1909) 1 K. B. 191, followed), and the county court judge, in the absence of proof that the agreement was obtained by fraud, etc., has no jurisdiction to order the agreement to be removed from the register (*Ware v. Whitlock*, (1923) 2 K. B. 418; (1923) 92 L. J. K. B. 763).

Removal of Agreement from Register.—The judge may at any time within six months remove an agreement from the register if obtained by fraud or improper means; afterwards it cannot be removed. This means if the application to remove is made within six months, although the hearing may be later (*Paterson v. Ardrossan Harbour Co.*, 19 B. W. C. C. 621).

26.—(1) The compensation payable in the case of death shall, Payments unless otherwise ordered, as hereinafter provided, be paid into into court. the county court:

Provided that if so agreed the compensation in the case of death shall, if the workman leaves no dependants, be paid to his legal personal representative or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(2) Where a weekly payment is payable under this Act to a person under any legal disability, the county court may, on an application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court.

(3) The provisions of the Second Schedule to this Act shall have effect with respect to money paid into court under this Act and the application and investment thereof.

Practice, Rules 60—62.

As to payment in with denial of liability, see now composition agreements dealt with in last section; also *Johnston v. Oceanic Steam Navigation Co.*, (1912) W. C. Rep. 162; and Rule 60 as to payment in, generally; Rule 61, with admission of liability; and Rule 62, with denial of liability. The amount payable to each dependant must be apportioned (*Daniels v. Ocean Coal Co.*, (1900) 2 Q. B. 250), though in the case of the death of one participant, her share does not go to her estate, but so far as unappropriated, remains as part of the original fund to be for the benefit of the remaining dependants (*Ivey v. Ivey*, (1912) 2 K. B. 118). Where pursuant to Rule 53 a lump sum has been paid into court in satisfaction of all claims in respect of an accident to an infant workman, the latter, on attaining full age, is entitled to have the money paid out to him, there being no discretion in the county court judge to refuse payment of the whole or any portion of the sum to a person not under any legal disability (*Johnston v. H. Liston & Co.*, (1919) W. C. & I. 277).

For the general provisions as to payment into court and investment, see Schedule II. of the present Act.

27.—(1) Where any matter under this Act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

Provisions
as to county
courts.

Section 27.

51 & 52 Vict.
c. 43.

(2) The duty of a judge of county courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

This section embraces Schedule II. (11) and (12) of the old Act.

This section includes all respondents as employers within United Kingdom (*Rex v. Owen*, (1902) 2 K. B. 436), and also employer respondents resident abroad where the claim arises out of a contract of service made in this country (*Hunter v. Stadtische Co.*, (1925) 2 K. B. 493; (1926) 95 L. J. K. B. 300; (1925) 133 L. T. 488). Service can be made by registered post (Rule 16).

As to court in which proceedings are to be taken (Rule 88); stay of proceedings when several applications for arbitration (Rule 17); transfer of proceedings (Rule 90); proceedings subsequent to award (*e.g.*, execution) in a court other than that in which award was made (Rule 89); service and substituted service (Rules 16, 92 and 93).

Rules are the machinery by which an Act is reduced to practice; if they fall short in this respect they are defective, if they do more than this, they are *ultra vires*, as far as they do this, they have statutory effect.

As to procedure generally (Rule 29); anything not covered by special rules to follow practice in county court as far as possible (Rule 96).

For Rules to be used in proceeding under the Act, see *post*.

Extension
of powers of
representa-
tive com-
mittees.

28. The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of subsections (4) and (5) of section twenty-five of this Act agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

This section was formerly Schedule II. (16) of the old Act. It gives the Secretary of State power to confer the privileges which county courts enjoy

on a committee, and may allow them to approve agreements of settlement instead of the registrar or judge of the county court.

A county court judge has no jurisdiction to set aside an award made by a Committee. *Blakey v. Samuelson*, (1920) 3 K. B. 508.

Section 28
Notes.

Alternative remedies, &c.

29.—(1) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid.

Remedies
independ-
ently of
Act against
employer.

(2) If, within the time hereinbefore limited for taking proceedings under this Act, an action is brought to recover damages independently of this Act for injury caused by an accident, and it is determined in such action or on appeal that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried, or, if the determination is the determination (on an appeal by either party) by an appellate tribunal, that tribunal, shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs, which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this subsection, when the court or appellate tribunal assesses the compensation, it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction of costs, and such certificate shall have the force and effect of an award under this Act:

Provided that an appellate tribunal may, instead of itself assessing such compensation, remit the case to the county court for the assessment of the compensation, and in such case may order the county court to deduct from the amount of compensation assessed by it all or part of such costs as aforesaid.

This section embraces sect. 1 (2) (b) of the old Act, and sect. 18 of the Act of 1923.

This provision reserves to a workman all rights against his employer other than under the Act. But such rights reserved are only alternative, not cumulative, and the Act is clear as to the workman's personal rights. A workman shall not attempt to be paid twice for the same injury. He must elect which remedy he will enforce, and having elected will be bound by it. It may be that he may try to assert other rights against his employer

Section 29 Notes.

and fail; in this case, sub-s. 2 provides machinery—which must be adopted—by which he may fall back upon the Act for compensation. So it may be he may try to assert rights under the Act and fail, but if the Act in no way applies—to give him compensation, *e.g.*, if he claims as a workman when he is not a workman—neither will it apply to deprive him of any rights he may have outside it. It will be otherwise, however, if a claim be made and dismissed on its merits, *e.g.*, for wilful disobedience (*Burton v. Chapel Coal Co., Ltd.*, 36 S. L. R. 375). There are many cases as to what is an effective exercise of an option, but none furnish a conclusive test. Such exercise is clearly a question of fact to be determined by evidence in every case. See *Bennett v. L. and W. Whitehead, Ltd.* (*infra*). The filing a claim, withdrawn on receipt of respondent's answer and the initiation of legal proceedings, generally is only some evidence of the exercise of such option, and is by no means final. The one only test that emerges as at all general—and it is by no means of universal application—is, has the man deliberately taken money with the full knowledge it has been given him and only given in discharge of the payer's liability. If so, he has elected and can seek further payment from no one else and for no other cause. If the payment and receipt has been with a reservation, *e.g.*, by a master making an allowance to a workman pending an action against a third party, there is no evidence of an election, rather the reverse (*Oliver v. Nautilus S.S. Co.*, 5 W. C. C. 65; *Wright v. Lindsay*, 49 S. L. R. 210). In the case of *Codling v. John Mowlem & Co.* (No. 1), (1914) W. C. & Ins. Rep. 579, where the workman died and the employers paid into court £300, the maximum sum due under the Act, and it was invested on behalf of his children with the knowledge and consent of his widow, the widow was held to have elected and an action by her at common law for negligence was held not maintainable.

So it has been held that an arbitrator rightly found there was no evidence of a *bonâ fide* election when the parties settled under the Employers' Liability Act to avoid coming under the Act. The man died, his dependants tried to reopen the matter and succeeded (*Howell v. Bradford*, 4 B. 203; also *Hawkes v. Cole*, 3 B. 163). As to independent rights of dependants, see *Gill v. Fortescue*, (1913) W. C. Rep. 471.

Practice, Rule 54.

The prosecution of an action—certainly to its conclusion—is an election under sub-sect. 1, above.

See *Bennett v. L. and W. Whitehead, Ltd.*, (1926) 2 K. B. 380; (1927) 96 L. J. K. B. 268. In this case there were three alternative claims: (1) for damages under the Employers' Liability Act; (2) for damages for negligence at common law; and (3) for compensation under the Workmen's Compensation Acts. This action was discontinued and the workman commenced fresh proceedings for compensation only under the Workmen's Compensation Acts. Held by a majority of the Court of Appeal that there had been no conclusive election, and that consequently he was not debarred from proceeding with this claim for compensation.

The effect of sub-sect. (2), above, is to reverse the previously existing law, *viz.*, that it was the court alone which tried the abortive action which could assess the compensation. Now the workman may appeal in the action, and still reserve his right to ask for compensation under the Act. The decision in *Harrison v. Wythemoor Colliery Co.*, (1922) W. C. & Ins. Rep. 180; 2 K. B. 674; 91 L. J. K. B. 832; is consequently no longer law. See also *Adair v. David Colville & Sons*, 20 B. W. C. C. 702.

If there is an appeal the Court of Appeal may upon dismissal of the appeal, either assess the compensation itself and deal with the costs or send the case to the county court to have compensation assessed. On any such application further evidence may be given (*Baxter v. Norris*, 9 W. C. C. 33), and the judge will hear it as an arbitrator would (*Slavin v. Train*, 49 S. L. R. 93). Rights under this sub-section are limited to the actual parties in the action, and do not enure for the benefit of other dependants (*Kyle v. M'Gintys*, 4 B. W. C. C. 389).

30. Where the injury for which compensation is payable under this Act, or any scheme certified under this Act, was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

Section 30.

Remedies
both against
employer and
stranger.

- (1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act or such scheme for such compensation, but shall not be entitled to recover both damages and compensation; and
- (2) If the workman has recovered compensation under this Act or such scheme, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under section six of this Act relating to liability in case of workmen employed by contractors, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

Under the last section, where the workman had a double claim against his employer, it has been seen he has to elect. Under this section, where he has a claim against his employer and an outsider, he can proceed against both, but he is to be paid once only. Probably the section does not mean that he can take proceedings against both at the same time, but that if he fails against one he can then try the other. See *Long v. G. N. Rail. Co.*, (1902) 86 L. T. 802. See also *Cumberland v. Lanarkshire Tramways Co.*, 20 B. W. C. C. 780. Acceptance of compensation from an employer is probably a "recovery" (*Aldin v. Stewart*, (1915) W. C. & Ins. Rep. 454; *Gray v. N. B. Ry. Co.*, *ibid.*, 458, 460). It is different, however, if the compensation is accepted with the reservation of all rights against third parties and on the terms that if damages are obtained the compensation will be refunded (*Kelly v. N. B. Ry. Co.*, (1915) W. C. & Ins. Rep. 516). If a workman recovers under the Act and then dies his dependants cannot proceed at common law against the persons guilty of the negligence which caused the injury (*Gray v. N. B. Rail. Co.*, (1915) S. C. 211). See generally as to the position as regards election of remedies, Ruegg's *Workmen's Compensation*, 9th edition, pp. 218-220.

Sub-s. 2. Employer's Indemnity.]—Where a workman would have a right of action against another for the injuries he has sustained, so far, and only so far, and no further has an employer a right to an indemnity. See *Saies v. British Petroleum Co., Ltd. & Great Western Rail.*, (1921) 90 L. J. K. B. 1289, where the county court judge awarded indemnity to the employers, because, though holding that there was some contributory negligence on the part of the workman who was killed, the effective negligence, which occasioned the death, was the negligence of the third parties. See also *Hines v. Tousley (Newell (third party))*, (1926) 95 L. J. K. B. 773.

If a workman would have a right against fellow workmen for negligence, and he has (*Lees v. Dunkerley Brothers*, (1911) A. C. 5), an employer has the same. His rights are simply co-extensive with those of his workman. And if such rights once become vested, so also do those of the employer, and even where death would have ended the workman's rights, his death does not end those of his employer. Under the definition, "workman" includes dependants, and in *Smith's Dock v. Redhead*, (1912) 2 K. B. 323, the employer

Section 30
Notes.

on the workman's death had to compensate an illegitimate child with no rights against the third party; but as the injury was caused under circumstances creating a liability in some person other than the employer, and the workman, as defined, recovered compensation, therefore the employer was entitled to be indemnified.

If the employer's own negligence, equally with that of the third party, is the cause of the accident, he has no right over under sub-sect. 2, *supra* (*Cory v. France*, (1911) 1 K. B. 114).

In *Dickson v. J. A. Scott, Ltd.*, (1914) W. C. & Ins. Rep. 67, it was decided that the occupiers of premises in which a workman was injured by falling down an unlighted unfenced hole some short time after working hours were liable to the employer who had paid compensation. The workman was regarded as a licensee to whom a duty to take care was owed.

The Public Authorities Protection Act, 1893, does not apply to an action under this section by an employer who has paid compensation and sues the defendants for indemnity (*Tuckwood v. Mayor, &c., of Rotherham*, (1921) 1 K. B. 526; 90 L. J. K. B. 341).

What does the Indemnity cover?—The whole matter is fully discussed in *Nettleingham v. Powell*, (1913) W. C. Rep. 22. On February 18th, 1911, a workman was injured and compensation 15s. a week paid. In August, the employer first found injuries due to negligence of defendants and wrote demanding indemnity, which was refused. December 2nd they reduced payments to 7s. 6d. January 1st, 1912, workman instituted proceedings. Hearing fixed for February 6th. February 5th, informed defendants, who did not attend. On hearing, settled for £52 10s. and costs, £22 10s. They claimed indemnity:—fifty weeks' compensation; workman's fare to be medically examined, 14s. 6d.; his costs, £22 10s.; own costs, £17 16s.; medical fee, £9 9s.; total £136 12s. They did not comply with r. 24, now r. 25 and modified to meet this case. It was held this did not forfeit their rights under this section, but put them to strict proof of every item.

Settled by Action.—If third parties agree to settlement by arbitration, they seriously limit their right of appeal (*Cutsforth v. Johnson, N. E. Rail. third parties*, (1913) W. C. Rep. 131), as they can only object to a finding of fact if no evidence.

Substitution
of liability
under scheme
for liability
under Act.

31.—(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies—

- (a) that any scheme of compensation, benefit or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and
- (b) that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act; and
- (c) that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme;

the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the

employer shall be liable in respect of those workmen only in accordance with the scheme. **Section 31.**

(2) The Registrar may give a certificate to expire at the end of a limited period of five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) The Registrar shall not certify, or renew a certificate of, any such scheme unless he is satisfied that adequate provision is made to secure the discharge of liabilities arising under the scheme, both during the currency of the scheme and after the scheme is revoked or expires, so far as there may be any liabilities outstanding at the date of revocation or expiry.

(5) If complaint is made to the Registrar by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(6) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar in the event of a difference of opinion.

(7) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar.

(8) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(9) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

(10) The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.

Section 31
Notes.

This section embraces sect. 3, Schedule I. (21) of the old Act, and sect. 17 of the Act of 1923.

Sect. 6 of the Act of 1923 also deals with the same subject. This section is not repealed, and will be found on p. 1407, and *infra*.

By sect. 6, sub-s. (1), of the Workmen's Compensation Act, 1923, if it appears to the Registrar of Friendly Societies that any scheme duly certified by him under sect. 3 (1) of the Act of 1906 (now sub-s. (1) above) no longer complies with the requirements of that section by reason of the foregoing provisions of this Act, he shall make such amendments of the scales of compensation provided by the scheme as may in his opinion be necessary to render them not less favourable to the workmen and their dependants than the corresponding scales contained in the principal Act as amended by this Act.

By sect. 6 (2) of Act of 1923, where the Registrar has amended scales of compensation provided by any such scheme as aforesaid the scheme shall have effect as if when originally made it had provided for the substitution as from the date of the commencement of this Act of the amended scales for the scales originally contained therein and the amended scales shall continue to apply until the expiry of the certificate in force at the commencement of this Act, or of any renewal thereof given by the Registrar under the principal Act.

By sect. 17 of Act of 1923 (now sub-s. (4), above) the Registrar is not to certify or renew the certificate of any scheme under sect. 3 of the principal Act unless satisfied that adequate provision is made to secure the discharge of all liabilities arising under the scheme both during the currency of the scheme or after it is revoked or expires.

For rules, see Appendix GG.

By *Horn v. The Lords Commissioners of the Admiralty*, (1911) 1 K. B. 24 (compare *Barton v. Admiralty Commissioners*, (1918) W. C. & Ins. Rep. 37), a valid scheme under this section is substituted for the provisions of the Act in its entirety. It is under this section only that contracting out of the Act is provided for, but when a workman does come within the scheme he is outside the Act altogether. This case was followed in *Haworth v. Andrew Knowles* (No. 2), (1913) W. C. & Ins. Rep. 746, when a scheme came to an untimely end, and the man wanted to make the masters liable, but could not. He had contracted out of the Act. *Horn's Case* was distinguished in *Leaf v. Fuzze*, (1914) W. C. & Ins. Rep. 601, where the meaning of the word "accident" in a valid scheme was read according to the extended meaning given to it in the Act, i.e., so as to include industrial disease.

In *Godwin v. Admiralty Commissioners*, (1913) W. C. & Ins. Rep. 680, the same decision was given, and the objection to the recertifying of the scheme under the old Act of 1897 was disallowed.

Where the rules are revised with the result that the compensation payable is increased a workman injured before the revision is entitled to compensation at the increased rate as from the date of revision (*Beard v. Committee, etc. West Yorkshire Coll.*, (1918) W. C. & I. 159).

Apart from this section contracting out is forbidden, but in *Ryan v. Hartley*, (1912) W. C. Rep. 236, it was decided that a disputed claim might be settled by payment of a lump sum, and that this did not constitute an agreement requiring registration.

The view taken in *Ryan v. Hartley* was shown to be incorrect by the decision of the House of Lords in *Russell v. Rudd*, (1923) A. C. 309 and (1923) 92 L. J. K. B. (H. L.) 429. See *supra*. *Ryan v. Hartley* is, therefore, overruled. Since these cases, however, the matter has been set at rest by sect. 24 of the present Act, which allows an employer in a doubtful case to make a composition agreement, though such an agreement must be registered. (See notes to sects. 24 and 25.)

Apart from this, the only protection a master has is, a "spent agreement" cannot be registered (*Popple v. Frodingham Iron and Steel Co.*, (1912) 2 K. B. 141).

In *British and South A. S. N. Co. v. Neil*, 3 B. 413, the parties agreed

that if a dispute arose as to total incapacity the workman should join in an application for a reference to a referee under Schedule I. (15) of Act of 1906 (now sect. 19), and that if he refused compensation should be ended. This penal clause was held to be a contracting out of the Act, and therefore rendered the agreement void.

Section 31
Notes.

Where a scheme provided that any question with regard to what was an injury within the meaning of that term as used in the scheme should be determined by the committee, it was decided in *Allen v. G. E. R.*, (1914) W. C. & Ins. Rep. 388, that the decision of the committee was final and ousted the jurisdiction of the courts. If the workman complains that he has not been heard, his remedy is to apply for an order upon the committee or tribunal to hear and determine his claim in accordance with substantial principles of justice (*Dowling v. G. E. Ry.*, (1919) W. C. & I. 75).

Money paid or payable under a scheme approved under this section cannot be assigned, charged or attached (see sect. 40, *post*).

32.—Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines, factories or workshops, or the application of any such fine.

Saving as respects fines under Mines and Factories Acts.

If the employer is fined, this is no defence to an action for damages by an injured man (*Lees v. Sykes* (third parties) v. *Dunkerley Bros.*, (1911) A. C. 5).

Application to special Classes of Persons.

33.—(1) This Act shall not apply to persons in the naval or military or air service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person :

Application to workmen in employment of Crown.

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The Treasury may, by warrant laid before Parliament, 50 & 51 Vict. modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act. c. 67.

Practice, Rule 95.

Concurrent Contracts.—In *Brandy v. S.S. Raphael*, (1911) A. C. 413, a stoker on a merchant vessel was a member of the Naval Reserve, and received 6*l.* a year as a retainer. Held this was earnings under a concurrent contract of service under Sched. I. (2) (b) of old Act (now sect. 10 (ii)). The Crown not being liable in certain cases did not mean no other employer should be.

34.—(1) When provision has been made in pursuance of regulations under the Coal Mines Act, 1911, or under any order which has effect as if made under that Act, for the formation or training of a rescue brigade, any accident caused to a workman employed in or about a mine to which that Act applies, who is with the consent of his employer being trained as a member of the rescue brigade, and arising out of and in the course of his training, shall,

Application to men being trained or engaged in rescue work in mines. 1 & 2 Geo. 5, c. 50.

Section 34.

for the purposes of this Act, be deemed to arise out of and in the course of his employment in the mine.

(2) Any workman engaged in any rescue work or ambulance work at any such mine shall, for the purposes of this Act, be deemed while so engaged to be employed by the owner of the mine, as defined by the Coal Mines Act, 1911.

See notes to Rescue Work in Mines, under sect. 1.

Application
of Act to
persons
employed on
ships.

35.—(1) This Act shall apply to masters, seamen and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, of * (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:—

(a) The notice of accident and the claim for compensation may, except where the person injured is the master, be given to the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident:

Practice Rules 38-40.

(b) The provisions of subsection (1) of section fifteen of this Act (other than those relating to the institution of proceedings by an inspector of mines or factories) shall apply to ships and the masters thereof in like manner as it applies to factories and the occupiers thereof:

(c) In the case of the death of the master, seaman or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant:

(d) Where an injured master, seaman or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply, accordingly:

* Query "or."

Sect. 695 is printed *post*, Part V. For Order in Council, see Appendix HH. p. 1608.

Section 35.

- (e) In the case of the death of a master, seaman or apprentice, leaving no dependants, no compensation shall be payable if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial :

This seems to be sect. 34, Merchant Shipping Act, 1906, substituted for sect. 207, Merchant Shipping Act, 1894 (see *post*, Part V.).

- (f) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman or apprentice :

- (g) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under section thirty of this Act relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury :

- (h) Subsections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (a) (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices ; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands. :

(a) See Part V. The provisions are additional, not substitutive, means of proof (*Maginn v. Carlingford Lough S.S. Co.*, 43 Ir. L. T. R. 214), and application for arbitration may be brought at any time if other proof of death be available (*Ib.*).

- (2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated wholly or mainly by shares in the profits or the gross earnings of the working of such vessel, except in such cases and subject to such modifications as the Secretary of State may by order provide :

Provided that no such order shall come into force until it has

Section 35. been laid before each House of Parliament for a period of not less than twenty-one days during which the House has sat, and, if
 2 & 3 Geo. 5, either House before the expiration of those twenty-one days
 c. 31. presents an address to His Majesty against the order or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of a new order.

(3) This section shall extend to pilots to whom the Pilotage Act, 1913, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

(4) This Act shall also apply to any person, not being a master, seaman or apprentice to the sea service or the sea fishing service, employed on board any such ship as is mentioned in this section, if he is so employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship, and if he is otherwise a workman within the meaning of this Act.

This section comprises sect. 7 of the old Act, sect. 8 of Act of 1923, and part of sect. 9 of Act of 1923.

As to meaning of "ship," "seamen," etc., see sect. 48 of Act, and Merchant Shipping Act, 1894, s. 742. The Act does not seem strictly limited to services actually on board. In *Dothie v. MacAndrew*, (1908) 1 K. B. 803, a captain went on shore about deserting seamen and was injured when stepping into a tram, and it seemed accepted he was within the Act.

"Manager" by sect. 48 means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner.

Seamen must also be workmen. A master may still be a workman, though owner of shares in the ship. Such ownership does not necessarily make him a partner (*Sharpe v. Carswell*, (1910) S. C. 391; 47 S. L. R. 335).

Although a seaman is within the Act, it does not enable him to recover in respect of an industrial disease under sect. 43, since he cannot get the necessary certificate. See *Curtis v. Black & Co.*, (1909) 2 K. B. 529.

Members of the Crew.]—This may possibly limit "seamen" to regular hands as distinguished from temporary workers, though "signing on" may not be a necessary formality. Cattlemen employed by cargo owners to see after their animals on board have been held not part of the crew (*Anglo-Argentine Co. v. Temperley S. Co.*, (1899) 2 Q. B. 403); but see now sub-s. (4).

Registered.]—This section applies only to registered or British ships as specified (*Mortimer v. Wisker*, 83 L. J. K. B. 1245). A colonial sailor on a colonial ship belonging to a colonial owner had, therefore, no rights under this section, and though injured locally has no rights apart from it (*Panagotis v. Pontiac*, (1912) W. C. Rep. 74).

Sub-s. (1) (f) only means benefits must not overlap (*McDermott v. Tintoretto*, (1911) A. C. 35). Thus the court has no jurisdiction to award compensation instead of wages under an apprenticeship deed (*Turner v. "Haulwen" (Owners)*, (1915) W. C. & Ins. Rep. 50). Nor will the usual general release signed at the end of the voyage apply to a claim under the Act (*Buls v. Teutonic*, (1913) W. C. & Ins. Rep. 752). The mere fact that the injured seaman is being maintained and paid his wages under the provisions of sect. 34 (2) of the Merchant Shipping Act, 1906, does not debar the seaman from proceeding under the Workmen's Compensation Acts. In such a case the arbitrator, if he finds in favour of the seaman, should make a declaration of liability simply (*Ashrody v. S.S. "City of Edinburgh" (Owners)*, (1919) W. C. & I. 257).

Where a seaman had deserted the House of Lords held, by a majority,

that, as the shipowner was no longer liable to defray the expenses of his maintenance under the Merchant Shipping Act, 1894 (now 1906), the seaman could recover compensation, though he was liable to penalties for deserting his ship (*Anchor Line, Ltd. v. Mohad*, (1922) 1 A. C. 146; 91 L. J. (H. L., 65).

A man employed on a fishing vessel who received, in addition to his food and some other small perquisites, wages at a fixed rate per week, and also poundage on the net profits of the voyage, was under the principal Act a "member of the crew of a fishing vessel . . . remunerated by a share in the profits" (*Costello v. Kelsall Bros.*, (1913) W. C. & Ins. Rep. 410). A man in receipt of a bonus varying with the catch, a bonus called "trip money," is not "remunerated by shares in the profits," *Duck v. North Sea Steam Trawling Co., Ltd.*, (1915) W. C. & Ins. Rep. 527; *Newstead v. "Labrador" (Owners)*, (1915) W. C. & Ins. Rep. 519. Under the old Act the sub-section was held no less to apply because a share fisherman was paid a wage for shore duty (*Gill v. Aberdeen S. T. and F. Co.*, 45 S. L. R. 247), or received payment in kind and a regular wage as well as his share (*Costello v. S.S. Pigeon (Owners)*, (1913) A. C. 407; (1913) W. C. & Ins. Rep. 410), or did something incidental to his work as an optional extra (*Whelan v. G. N. S.S. Co.*, 78 L. J. K. B. 860), or was guaranteed a minimum weekly amount (*Admiral F. Co. v. Robinson*, (1910) 1 K. B. 540), or received a share and a weekly wage even if the share be a trifle, 3d. in the pound of net profits, and the weekly wage the substantial remuneration. Contrast *Woolfe v. Colquhoun*, (1912) W. C. Rep. 342. But a man is not a share fisherman, even under sub-s. 2 of the old Act, who, though remunerated by a share, does not fish, but simply carries fish from curing stations to vessels (*Jamieson v. Clark*, 1 B. 228). Men receiving "Stocker" and "Liver money" were held under the old sub-section to be remunerated by shares (*Burman v. "Zodiac" Steam Fishing Co.*, (1914) W. C. & Ins. Rep. 520; 83 L. J. K. B. 1683; *Stephenson v. Rossall S. F. Co., Ltd.*, (1915) W. C. & Ins. Rep. 121). Even under the old sub-section, the question whether a member of such a crew was remunerated by a share in the profits or gross earnings of the vessel was always to some extent a matter of degree. Now he cannot be excluded from the benefits of the Acts unless his remuneration is wholly or mainly remuneration of this description. The cases quoted above have lost some of their application.

Sub-s. (4) was added by the 1923 Act, and is an extension of the meaning of "seaman."

A person employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship is now deemed to be a "seaman."

36.—(1) The Secretary of State may by order extend the provisions of this Act, subject to such modifications and exceptions as may be specified in the order, to such persons, being workmen within the meaning of this Act, employed as pilot, commander, navigator, or member of the crew of any aircraft to which this section applies when outside Great Britain, in such circumstances as may be specified in the order.

Power to extend principal Act to aircraft outside Great Britain.

(2) The aircraft to which this section applies are aircraft registered in the United Kingdom the owner of which resides or has his principal place of business in Great Britain.

(3) An order under this section shall not come into force until it has been laid before each House of Parliament for a period of not less than twenty-one days during which that House has sat, and if during that period either House presents an address to His Majesty against the order or any part thereof, no further pro-

Section 36. proceedings shall be taken thereon, but without prejudice to the making of a new order.

The Secretary of State has made the Order, dated December 19th, 1924, which came into force on April 1st, 1925. The Order is set out *post*, Appendix KK.

Power to
make Orders
in Council for
giving effect
to conven-
tions with
Foreign
States.

37.—(1) For the purpose of giving effect to any Convention with a Foreign State providing for reciprocity in matters relating to compensation to workmen for injuries by accident, it shall be lawful for His Majesty by Order in Council to make provision—

- (a) for modifying this Act in its application to cases affected by the Convention, so, however, as not to alter the amount of compensation in any case to which this Act may apply;
- (b) for determining, in cases where rights to compensation accrue both under this Act and under the law of the State with which the Convention is made, under the law of which country the workman shall be entitled to recover compensation;
- (c) for conferring on county courts powers for the admission of evidence taken abroad and the procuring and taking of evidence for use abroad, or otherwise for the purpose of facilitating proceedings for the recovery of compensation under the respective laws of the two countries.

(2) If the Convention extends to Northern Ireland, the provisions of this section shall extend to the enactments regulating the payment of compensation to workmen for injuries by accident for the time being in force in Northern Ireland.

(3) In particular, but without derogating from the generality of the foregoing provisions of this section, any such Order in Council may make such modifications in this Act in its application to workmen who are French citizens as appear to His Majesty to be necessary to give effect to a convention between His Majesty and the President of the French Republic signed at Paris on the third day of July, nineteen hundred and nine, and this Act shall apply to such workmen subject to the modifications contained in the Order.

The Workmen's Compensation Acts never applied outside the United Kingdom (*Tomalin v. Pearson*, (1909) 2 K. B. 61), but by this section His Majesty may make conventions with foreign States for reciprocity in matters relating to compensation to workmen.

As His Majesty has now power by Order in Council to make a convention with any foreign State, the Workmen's Compensation (Anglo-French Convention) Act, 1909, is repealed (see Schedule IV.), but the Order in Council made thereunder is still in force (sect. 50 (2), *post*, p. 1377). For text of Order in Council, see *post*, Appendix EE., p. 1596.

A convention between the United Kingdom and Denmark has now been concluded. For text of Convention and of Order in Council see *post*, Appendix FF, p. 1598. See also Rules 75A and 75B.

*Administrative Provisions.***Section 38.**

38.—(1) The Secretary of State may appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may, with the sanction of the Treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this Act shall, subject to regulations made by the Treasury and except so far as they are defrayed by fees received from the parties under this Act, be paid out of moneys provided by Parliament.

Appoint-
ment and
remuneration
of medical
referees and
arbitrators.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the First Schedule to this Act shall be paid out of moneys provided by Parliament in accordance with regulations made by the Treasury.

The medical referee under sect. 43, *post*, has an appellate jurisdiction from the certifying surgeon, and his decision is final; under sect. 19, in a reference by order of the court, his certificate is final; under Schedule I. (11) he simply makes a report, which the judge may accept or not, and now if the case is referred under sect. 12, his decision is likewise final. By Schedule I. (5) he may be summoned as an assessor, and may state his opinion, but he cannot be examined, sworn or cross-examined. By leave of court he may be asked questions, but not as a witness, but as adviser (*Hugo v. Larkins*, 3 B. 228). For Special Regulations, see Appendix CC. So, further, he may there and then examine the applicant, and an arbitrator may act on his advice without disclosing to the parties what such advice is (*Smith v. Foster*, (1913) W. C. Rep. 420).

Until 1923 the medical referee had to be invoked by both parties. Now the registrar may send the dispute to the medical referee on the application of one party, though where made by one party, the registrar, or on appeal the judge, if he thinks the case of exceptional difficulty, or other sufficient reason exists why it should be settled by arbitration, shall refuse the application.

The same thing occurs if the matter is referred under sect. 12 to a medical referee.

In the Editor's opinion, registrars should be most careful about referring under either of these sections where the decision is final on the application of one party only, and the workman or his advisers should never agree to it. The judge may always appoint a medical referee (see Schedule I. (5)), and until 1923 the fees of medical referees were paid by money provided by Parliament. Now a party requiring a medical referee must pay or give security for costs.

The medical assessor must confine himself to assisting the arbitrator with his expert medical knowledge (*Earwicker v. London Graving Dock Co., Ltd.*, (1916) W. C. & Ins. Rep. 137).

A medical referee who on an appeal under sect. 43 had expressed the opinion that the workman had recovered ought not to sit as a medical assessor at a subsequent hearing of an application for compensation. See *Wallis v. A. G. Soutter & Co., Ltd.*, (1915) W. C. & Ins. Rep. 113.

The arbitrator may act upon the advice of the medical assessor on matters of medical opinion or inference although there be no such opinion or inference expressed or drawn by the medical witnesses (*Woods v. Wilson*,

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Notes.

Sons & Co., Ltd., (1915) W. C. & Ins. Rep. 285; *Carpenter v. Wandsworth Borough Council*, (1918) W. C. & Ins. Rep. 28). The opinion of the medical assessor is not binding of course on the judge (*Connelly v. Alex. Cross & Sons*, (1917) W. C. & I. p. 121).

In general, when difficult medical questions may arise, it is better to have an assessor to sit in court with the judge. The arbitrator has no power, before hearing evidence on either side, to refer the matter for report to him (unless by consent (*Renshall's Case*, *infra*)). Should he do so the resulting report is not admissible in evidence on the hearing of the application (*Peill & Sons v. Payne*, (1915) W. C. & Ins. Rep. 205). The report, when made, is not conclusive, still less binding on the arbitrator. In *Scotstoun Est. Co. v. Jackson*, 48 S. L. R. 440, an arbitrator referred to a referee and then found the exact opposite of his report. It was held he could so find. But the arbitrator may accept it as conclusive of the point at issue and refuse to hear evidence to the contrary (*Renshall v. Spencer*, (1917) W. C. & I. 233). For regulations referred to, see Appendix BB. On the face of them they seem to contemplate a living person, one who can be examined; but in *Carolan v. Harrington*, (1911) 2 K. B. 733, it was held they did not so cut down the paragraph, and that a reference as to the cause of death was within its purview. The regulations equally contemplate a conflict of evidence before such reference is made, and if no medical evidence be given, such reference should not be made (*Carroll v. Gray*, 47 S. L. R. 646), and see *Renshall's Case*, *supra*.

See Rules 56 (1) and 98, as to appointment of referee; Rule 56 (2), as to examination of workman; Rule 76 (6), as to costs; and by Rule 43 (2), a copy of the report must be annexed to the memorandum filed under Schedule I. (11).

Detention
of ships.

39.—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, or any corresponding enactment for the time being in force in Northern Ireland, and at any time that ship is found in any port or river of England or Northern Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Northern Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in Great Britain or Northern Ireland, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

Section 39.
—

(3) Where a complaint is made to the Secretary of State that before an application can be made under this section the ship in respect of which the application is to be made will have departed from the limits within which she can be arrested, the ship shall, if the Secretary of State so directs, be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention, if made in accordance with the directions of the Secretary of State.

(4) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

See Part V.

(5) Where a ship has been demised to charterers, the provisions of this section shall apply to claims against the charterers of the ship as they apply to claims against the owners of a ship with the substitution of charterers for owners :

Provided that no ship shall be detained on a claim against the charterers of the ship after the expiration of the term for which the ship is demised to them.

(6) The foregoing provisions of this section shall extend to Northern Ireland.

(7) Without prejudice to any other means of enforcing claims in Scotland, this section shall, with the substitution of references to the sheriff for references to a judge of any court of record in England, apply to a ship found in any port or river of Scotland, or within three miles of the coast thereof, in like manner as it applies to a ship found in any port or river of England or within three miles of the coast thereof.

This section embraces sect. 11 of the old Act and sect. 20 of the Act of 1923.

Practice, Rules 39, 40 and 88.

It must be noted that if the ship is demised to charterers, the Act applies to them in the same manner as to the owners.

Suppose a "workman," not a member of the crew, was injured in a home port, when working on a foreign ship for a foreign owner, could he avail himself of the machinery of this section to secure compensation? As it contemplates foreign owners being so liable, probably if he could get over the initial difficulties of making a claim and giving notice—of course sect. 35 would not apply to help him—there seems no reason why he should not. (Consult *Hunter v. Stadtische, &c., Co.*, (1925) 2 K. B. 493; 95 L. J. K. B. 300.) But for our courts so to interfere on behalf of a foreign seaman on a foreign ship belonging to a foreign owner merely because he happened to

Section 39 Notes.

Prohibition
against
charging or
assigning
weekly
payments.

be within our territory would seem to be wanting in the courtesy which is due from one nation to another. We have no right to interfere in the relations of foreign masters with their own servants. The point is discussed in *Panagotis v. Pontiac*, (1921) K. B. 74; see also *The "M. Moxham,"* 1 P. D. 107.

40. A weekly payment payable under this Act or any scheme certified under this Act, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

This section is Schedule I. (19) of the old Act, with the words "or any scheme certified under this Act," above added by the 1923 Act.

This clause does not bar a claim by a legal personal representative to enforce a deceased workman's right against his employer (*Price v. Westminster Brymbo Coal and Coke Co., Ltd.*, (1915) W. C. & Ins. Rep. 245).

Overpayment of Compensation.—In *Hosegood v. Wilson*, (1911) 1 K. B. 30, a workman had been overpaid compensation. Although his employer could recover this amount by action, or, at least, get judgment for it—not quite the same thing—yet he could not treat such overpayments as payments on account of future weekly payments, and to stop payment of compensation until the balance was wiped off was decided to be wrong.

Though the compensation money cannot be charged, yet, under the National Health Insurance Act, 1924, advances may be made to an injured workman generally, pending the time he is claiming compensation, and on notice by the society or committee which advanced the money, such money has to be repaid out of the compensation (see Appendix AA). This is in effect charging the compensation, but it is under statute.

The purpose of sect. 16 of the National Health Insurance Act, 1924 (*post*, p. 1563), is to ensure that a workman shall not receive both National Insurance benefit and compensation under the Workmen's Compensation Act at the same time. If his compensation is less than the benefit to which he is entitled as National Insurance benefit he only receives the balance to make up this sum.

In order to determine this, clause (c) of sub-s. (1) requires the employer who has agreed the compensation with the workman at less than fifteen shillings a week or who has agreed upon a lump sum as redemption of weekly payments to send notice in writing to the Minister or the society or committee concerned giving the particulars of such agreement. The agreement then is subject to the provisions of sect. 25 (4) of the present Act, and the registrar may refuse to record it.

This section does not extend the power of the registrar (*Hudson v. Camberwell Borough Council*, 10 B. W. C. C. 400). The Insurance Commissioners or society have now a right to appear before the Registrar and object to a memorandum being recorded (sect. 23 (6), *ante*). See also next section as to repayment of Poor Law relief.

Repayment
of poor
relief.

41. Where an authority has granted out-door relief to a person pending the settlement of his claim to compensation under this Act or any scheme certified thereunder, and either—

(a) such relief would not have been granted had the person then received or been in receipt of compensation under this Act; or

(b) such relief is in excess of the amount which would have been granted had the person then received or been in receipt of such compensation;

the authority may give notice of the relief so provided to the person liable to pay the compensation, and if such notice is given the person so liable shall on demand, and on being furnished with a certificate by the authority of the amount of the relief so provided or of the amount of such excess, as the case may be, repay to the authority, up to the amount which he is liable to pay as compensation, less such part (if any) of that amount as he has already duly paid at the time of receiving the notice aforesaid, the amount of the relief or of the excess certified as aforesaid, and the receipt of the authority shall, up to the amount of the repayment, be a full and valid discharge to that person in respect of the compensation payable by him to the person relieved :

Section 41.

Provided that, if the person so liable to pay compensation gives to the authority by which such notice as aforesaid is given notice that he intends to pay, or that he has paid, compensation, he shall not be under any obligation to make any repayment in respect of any relief provided after the date of the payment of the compensation or after the time at which the notice so given is received by the authority, whichever is the later.

This section was formerly sect. 23 of the Act of 1923. The words "an authority," *supra*, are very wide. It is thought it only applies to guardians of the poor who grant out-door relief.

Where the guardians of the poor have granted out-door relief to a person pending the settlement of his claim for compensation and such relief would not have been granted, or not granted to the same extent had the person then received or been in receipt of compensation, they may give notice of such fact to the person liable to pay the compensation, who must, on receiving such notice and certificate of the amount of the relief so given, repay to the guardians up to the amount he is liable to pay as compensation. He is not bound to pay again compensation already paid, and the receipt of the guardians for money so paid to them is his full discharge.

If the person liable to pay compensation gives notice to the authority that he intends to pay or has paid compensation, he is not liable to repay in respect of relief provided after the date of the payment of compensation, or the time at which the notice so given is received by the authority. See above section.

See also notes to last section as to advances under the National Health Insurance Act, 1924, becoming a charge on the compensation.

42.—(1) Every employer in any industry to which the Secretary of State may direct that this section shall apply shall, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

Returns as to compensation.

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(2) Any regulations made by the Secretary of State containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

This was formerly sect. 12 of the old Act. Regulations dated October 17th, 1913, are now in force.

PART II.**APPLICATION TO CERTAIN INDUSTRIAL DISEASES.**

Application
of Act to
industrial
diseases.
1 Edw. 7,
c. 22.

43.—(1) Where—

- (i) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act and is thereby disabled from earning full wages at the work at which he was employed ; or

The industrial diseases to which the Act applies are those set out in Schedule III. to this Act and the numerous other diseases which have from time to time been added by the Secretary of State. All these cases appear immediately after Schedule III. on pp. 1380 *et seq.*

- (ii) a workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment, on account of having contracted any such disease ; or

(iii) the death of a workman is caused by any such disease ; and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications :—

- (a) The disablement or suspension shall be treated as the happening of the accident ;

As to the meaning of these words see the decision of the Privy Council in a case from the Supreme Court of New South Wales upon like words in the Act of New South Wales (*Victoria Insurance Co. v. Junction North Broken Hill Mine*, (1925) A. C. 354, (1925) 94 L. J. P. C. 78).

- (b) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable ;
- (c) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due :

Provided that---

Section 43.

(i) the workman or his dependants if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation ; and

(ii) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable ; and

(iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for settling the amount of the compensation, or, if the amount of compensation is not in dispute, as may be determined by arbitration under this Act.

- (d) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable ;
- (e) The employer to whom notice of the death, disablement or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment ;
- (f) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the

Section 43.

Secretary of State be referred to a medical referee, whose decision shall be final, and the medical referee when deciding the matter shall also certify as to the condition of the workman at the time when he is examined by him, and such certificate by the medical referee shall be conclusive.

(2) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given :

Provided that—

(a) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine :

(b) Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(3) The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

(4) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act.

The section of the old Act which dealt with industrial disease was sect. 8. This section was added to and amended by the Act of 1923, and the joint provisions now appear in sects. 43, 44 and 45 of the present Act. Sect. 43 is composed of sub-ss. 1, 4, 6 and 10 of sect. 8 of the old Act, and sub-s. 2 of sect. 11, and sub-s. 9 of sect. 24 of the Act of 1923.

Sect. 44 is composed of sub-ss. 2, 3 and 5 of sect. 8 of the old Act, and sect. 13 of the Act of 1923.

Sect. 45 is composed of sub-ss. 7 and 8 of sect. 8 of the old Act.

A previous employer joined as a party, or from whom the last employer seeks to obtain contribution under this section, has no right in the event of his being aggrieved by the action of the certifying surgeon in granting the certificate to appeal to a medical referee. The last employer, who between himself and the workman has to pay the compensation, can alone appeal. See *Anderton v. Markham, Heywood & Co., and James Eastwood & Sons*, (1925) 94 L. J. K. B. 525.

The medical referee can only decide (1) whether or not the workman is suffering from an industrial disease; (2) whether he is disabled thereby; (3) the date of the commencement of that disability: he cannot decide whether or not the disease was contracted in the service of the employers against whom the claim is brought (*Turton v. East Barnsley Colliery Co.*,

(1921) 90 L. J. K. B. 267); though now, by sect. 1 (f), he must, when giving his certificate under the above section, also certify as to the condition of the workman at the time he examines him, which certificate is to be conclusive.

If the report is ambiguous the judge may, and should, communicate with the medical referee in order, if possible, to clear up the ambiguity (*Fowler v. British Dye Stuffs Corpn.*, (1921) 14 B. W. C. C. 34).

"Suffering from Industrial Disease."—These words may include, and should if the facts so show be construed to include, the case of a workman suffering from the results of a surgical operation rendered necessary by the disease (*Archibald Russell, Ltd. v. Corser*, (1921) 1 A. C. 351; 90 L. J. (H. L.) 77). The Court of Appeal has also held that proneness to recurrence is "suffering from" a disease (*Starkey v. Clayton*, (1925) 133 L. T. 612; *Prendergast v. Lancaster Collieries*, (1926) 134 L. T. 166). See, however, *M'Dougall v. Summerlee Iron Co., Ltd.*, 19 B. W. C. C. 774, in which it was held that where the disease is recurrent and the arbitrator finds that the workman had never recovered from the first attack, and the workman has settled his claim under the first attack for a lump sum, compensation cannot be given in respect of a recurrence of the disease. Reversed in House of Lords on ground that the second disablement was a new accident (20 B. W. C. C. (H. L.) 419).

For practice, see Rules 41, 98, and for Regulations with Regard to Certifying Surgeons and Medical Referees, Appendix BB.

Silicosis.—By the present Act both the Silicosis Acts have been repealed and in effect re-enacted as to workmen suffering from silicosis by sect. 47 of the present Act. See notes to that section.

Workmen's Compensation (Ironworkers' Cataract) Order, 1925.—Cataract was added to the list of industrial diseases on May 18th, 1925, but the order limited compensation to not longer than six months in all, and not more than four months unless he has undergone an operation for cataract. For order see *infra*, p. 1383. See *Davies v. Baldwins* (20 B. W. C. C. 116), where it was held under the proviso added to the order in 1925 that when a workman has undergone an operation at any time, even after a period of four months from the date of disablement and the medical referee advises that the workman is still disabled, the compensation is not limited by the order to any stated period.

The absence of a bed or a place in a ward or a vacancy in a suitable place for an operation may be a good medical reason for the non-performance of such an operation.

Against whom to Proceed.—The workman should in general proceed against the employer in whose service he was when the disability, in respect of which he is proceeding, occurred, not against an employer in whose employ he was when an earlier attack of the same disease disabled him (*Timpson v. John Mowlem & Co., Ltd.*, (1915) W. C. & Ins. Rep. 219).

The workman who has been suspended under this sub-s. 1 (2) may at once obtain a certificate of disablement under this sub-s. 1 (1), and this certificate is good even where it names a date as the commencement of the incapacity earlier than the date named in the first certificate. The judge is bound by the certificate unless appealed from, and cannot hear evidence to prove that the man is not suffering from the disease named in the certificate at the time to which the certificate relates. See *Rollings v. Thompson*, (1922) 1 K. B. 329; 91 L. J. K. B. 301.

Sub-s. 1 (iii.). **Death** may result directly from the disease, or indirectly from its sequelæ, e.g., from granular kidney following lead poisoning. Whilst sect. 44, sub-s. (1), assumes a disease in certain cases to be due to the nature of the employment, it does not assume that sequelæ are the result of the disease. This the applicant must prove (*Haylett v. Vigor*, (1908) 2 K. B. 837). It was formerly held that dependants must prove in all cases (unless sect. 44 (1) applies) that the disease was caused or aggravated by the employment

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under the respondent employer (*Dean v. Rubian Art Pottery, Ltd.*, (1914) 2 K. B. 213). This case was followed in *Blatchford v. Staddon and Founds*, but the latter case has now been overruled in the House of Lords, (1927) A. C. 461; 96 L. J. K. B. 608; 20 B. W. C. C. 391. The House of Lords held that to entitle a workman to compensation under this section it is sufficient for him to prove that his work with his last employer during the twelve months previous to the date of the disablement was of the same nature as the work to which the disease was due, although such work was neither responsible for nor aggravated the disease.

In *M'Ginn v. Udston*, (1912) W. C. Rep. 134, a miner suffered from nystagmus. He was certified to be suffering from miner's nystagmus due to the employment. This presumption was rebutted by the finding of the medical referee that it was ordinary, not miner's nystagmus. But this did not preclude his proving it was miner's nystagmus in the ordinary way; it only altered the onus of proof. In *Scullion v. Cadzow Coal Co.*, (1914) W. C. & Ins. Rep. 129, it was held that the work of a surface labourer was not mining. See now, however, definition of miner's nystagmus in Schedule, *post*, p. 1383. The workman suffering from nystagmus is now within the Act, whether he was engaged in mining or not.

Notice must be given and claim made as in general, but the nature of the disease may furnish a reasonable cause for delay (*Moore v. Naval Colliery Co.*, (1912) 1 K. B. 28; Rule 41). The date of the certificate must not by analogy be deemed the date of the quasi-accident (*Keary v. Archibald Russell, Ltd.*, (1915) W. C. & Ins. Rep. 201).

If an employer having to pay compensation can prove that the disease was contracted with another employer, he may join such employer, and if he succeeds in proving this, such other employer has to pay the compensation assuming the other employer has employed him within twelve months. Under sub-s. 1 (c) (iii.), where the disease is of gradual contraction, he may, without proving anything more than that the workman was with such employer during any part of the preceding twelve months, recover contribution (*Mallinder v. Moores, Booth and Moores third parties*, (1912) 2 K. B. 124). In calculating contribution payable the arbitrator ought to take into consideration the working conditions in the various employments (*Barron v. Seaton Burn Coal Co., Ltd.*, (1915) W. C. & Ins. Rep. 132).

In apportioning the respective liability of consecutive employers the arbitrator must not merely take the respective length of time the workman has been in the several employments, but must consider all the facts (*Barron v. Seaton Coal Co.*, (1915) 1 K. B. 756). The meaning of the term "employment" was considered by Lord Johnston in the Scots case of *M'Gowan v. Merry and Cunningham, Ltd.*, (1914) W. C. & Ins. Rep., at p. 545.

If the employer cannot trace the employer in whose service the disease was contracted he must pay the compensation subject to his right to contribution (*Doeherty v. Arch. Russell, Ltd.*, (1918) W. C. & Ins. Rep. 68).

Certificate.—Condition precedent, but if procured only in time for hearing will be in order (*Taylor v. Burnham*, 46 S. L. R. 482). A seaman suffered from lead poisoning, though within the Act he failed to recover because there was no certifying surgeon to whom he could apply for a certificate (*Curtis v. Black*, (1909) 2 K. B. 529). The order of a medical referee allowing an appeal against the refusal of a certifying surgeon to give a certificate of disablement and fixing the date of the man's disablement is a sufficient certificate for the purpose of this section (*Chuter v. J. J. Ford & Sons, Ltd.*, (1915) W. C. & Ins. Rep. 104). If the party complaining does not appeal against the terms of the certificate he cannot impugn the certificate at a subsequent hearing of the workman's application for compensation (*Bedford v. Cowtan & Sons, Ltd.*, (1916) W. C. & Ins. Rep. 168); even though it can be shown that the certifying surgeon has made a slip (*Chippendale v. High Explosives, Ltd.*, (1918) W. C. & I. 338). It is essential to a

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Notes.

workman's claim that he should prove the date of the disablement, and if the date alleged in the application is a date which has been finally negated by the decision of the medical referee, the application may be dismissed (*Frost v. Clanway Colliery Co., Ltd.*, (1920) W. C. & I. 47).

In *Powell v. Cauldon Potteries, Ltd.*, (1927) 96 L. J. K. B. 245; 20 B. W. C. C. 16, the certificate was incomplete in that it did not state the date of disablement or say that the surgeon was unable to state that date; the surgeon died before it could be amended. Held, certificate never having become effective, the workman could obtain a valid certificate from the new certifying surgeon.

Appeal to Medical Referee.—Sub-s. 1 (iii.), proviso (f).—This limits the functions of the referee to allowing or disallowing the certificate of the certifying surgeon having regard to the facts then existing (*Garrett v. Waddell*, 48 S. L. R. 937, and *Winter v. Addie*, *ib.* 940). If he adds a note to his finding, it must be read, but if inconsistent with the finding it must go back to him for a proper report (*M'Ginn v. Upton Coal Co.*, (1912) W. C. Rep. 134). In *Birks v. Stafford Coal Co.*, (1913) W. C. & Ins. Rep. 755, the date fixed by such surgeon was useless to the applicant. He appealed to the referee. The employer argued no such appeal lay, the finding of such surgeon as to date being final. Held not so. Applied in *Rees v. Imperial Navigation Coal Co.*, 20 B. W. C. C. 287. The medical referee may do anything that the certifying surgeon could have done (*M'Ginn v. Upton Coal Co.*, (1912) W. C. Rep. 134). He may not make a finding on the evidence (*Booth & Sons v. Carter*, (1915) W. C. & Ins. Rep. 59). If the certificate is ambiguous and contradictory the arbitrator may refuse compensation (*Mapp v. A. Straker & Son, Smith Bros., Ltd.*, (1914) W. C. & Ins. Rep. 98). The certificate must specify the workman's employment at the date of the disablement, whether or not the employment was a process referred to in the Schedule (*Marr v. The Leadhills Co., Ltd.*, (1918) W. C. & I. 296).

Review.—Where the employer applies to review on the ground that the workman is no longer suffering from the industrial disease, evidence showing that the workman is suffering from another disease caused by the industrial disease is relevant and should not be excluded (*Westminster Brymbo Coal and Coke Co. v. Evans*, (1916) W. C. & I. 241); consider also *Chorley Colliery Co. v. Bolton*, (1916) W. C. & I. 329. As to the questions, and the only questions, which a medical referee has to consider when the case is appealed to him, see *Turton v. East Barnsley Colliery, Ltd.*, (1921) 1 K. B. 369.

As to practice, see Rule 41.

44.—(1) If the workman at or immediately before the date of such disablement or suspension as aforesaid was employed in any process mentioned in the second column of the Third Schedule to this Act, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment unless the employer proves the contrary.

Supplemental provisions as to industrial diseases.

For the meaning of "at or immediately before" see *Dean v. Rubian Art Pottery Ltd.*, (1914) 2 K. B. 213, and *M'Taggart v. William Barr & Sons, Ltd.*, (1915) W. C. & Ins. Rep. 335.

See *Meadows v. Ellerman Lines, Ltd.*, (1920) 3 K. B. 544; 89 L. J. K. B. 1234, as to meaning of words "employed in any process"; what is necessary to rebut the statutory presumption created by this sub-section, see *Glancy v. John Watson, Ltd.*, (1915) W. C. & Ins. Rep. 40.

Section 44.

(2) Where a workman claims to be suffering from and disabled by a disease to which the foregoing provisions of this Part of this Act apply, the employer may agree with the workman that he is liable to pay compensation without requiring the workman to obtain the certificate of the certifying surgeon mentioned in those provisions, and thereupon the workman shall be entitled to compensation as for injury by accident from the date of the agreement or from such other date as may be agreed.

Any such agreement may be recorded in the manner provided by section twenty-three of this Act, and shall be enforceable against the employer in like manner and subject to the same provisions as an agreement to pay compensation in case of an injury by accident.

(3) In such cases, and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose shall have the powers and duties of a certifying surgeon under the foregoing provisions of this Part of this Act, and those provisions shall be construed accordingly.

(4) The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under the foregoing provisions of this Part of this Act.

It must be noticed that under sub-s. 2 of the above section, if employer and workman can agree that the workman is suffering from an industrial disease within the Act, a certificate of the certifying surgeon need not be obtained. The agreement can be registered and enforced like any other agreement to pay compensation. Sub-s. 3, above, seems to give the Secretary of State power to appoint any medical man and invest him with the duties of a certifying surgeon.

Mutual
insurance of
employers
engaged in
industries.

45.—(1) Where, after inquiry held on the application of any employers or workmen engaged in any industry to which the foregoing provisions of this Part of this Act apply, it appears that a mutual trade insurance company or society for insuring against the risks under those provisions has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by Provisional Order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the Order.

(2) Where such a company or society has been established but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this section treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

Section 45.

(3) A Provisional Order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills, and any Act confirming any Provisional Order under this section may be repealed, altered or amended by a Provisional Order made and confirmed in like manner.

This section embraces sub-ss. 7 and 8 of sect. 8 of the old Act. Generally it gives the Home Secretary power, where a mutual insurance company exists for the purpose of insuring the employers of a particular trade, to insist by provisional order that all the employers insure in that company, subject to such conditions and exceptions as set out in the order. It has to be confirmed by an Act of Parliament.

46. Any expenses incurred by the Secretary of State in respect of any Order, Provisional Order, or confirming Bill under the foregoing provisions of this Part of this Act shall be defrayed out of moneys provided by Parliament.

Expenses of Secretary of State.

This section was formerly sub-s. 9 of sect. 8 of the old Act.

47.—(1) The Secretary of State may by scheme provide for the payment of compensation by the employers of workmen in any specified industry or process or group of industries or processes involving exposure to silica dust—

Power by scheme to apply Act to workmen suffering from silicosis.

(a) who are certified in such manner as may be prescribed by the scheme to have suffered death or total disablement from the disease known as fibroid phthisis or silicosis of the lungs (in this section referred to as silicosis) or from that disease accompanied by tuberculosis; or

(b) who, though not totally disabled, are found on medical examination to be suffering from silicosis, or from silicosis accompanied by tuberculosis, to such a degree as to make it dangerous to continue work in the industry or process, and are for that reason suspended from employment:

(2) The scale of compensation fixed by the scheme in the case of death or total disablement due to silicosis or silicosis accompanied by tuberculosis shall be that prescribed by this Act and in any other case shall be such as may be prescribed by the scheme.

(3) Provision may be made by the scheme—

(a) for the establishment of a general compensation fund, to be administered either through a mutual trade insurance company or society of employers, or in such other manner as may be provided by the scheme;

(b) for requiring employers to subscribe to the fund, and for the recovery of such subscriptions, and for the payment and recovery out of the fund of all compensation under

Section 47.

the scheme, and of any expenses arising under the scheme which are directed by the scheme to be so paid, subject to such exceptions in special cases as may be made by the scheme ;

- (c) for the settlement of claims and other matters arising under the scheme by committees representative of both employers and workmen, with an independent chairman, and for the procedure to be adopted before such committees ;
- (d) for the appointment and remuneration of medical officers, medical boards and advisory medical bodies, and for their duties and powers in connection with the scheme ;
- (e) for requiring workmen to whom the scheme applies (i) to submit themselves to such periodical medical examination, and (ii) to furnish such information with respect to their previous employment in any industry specified in the scheme, as involving exposure to silica dust, as may be prescribed by the scheme, and for making the right of the workmen to compensation conditional on compliance with such requirements, and for the suspension from employment of workmen who are found at any time to be suffering from silicosis or tuberculosis, or silicosis accompanied by tuberculosis, or who, when first medically examined in pursuance of the scheme, are found unsuitable for work in the industry or process by reason of their failure to satisfy such requirements with respect to physique as may be prescribed by the scheme ; and
- (f) for the application with the necessary modifications of any of the provisions of this Act, or of any enactment relating to compensation thereunder, and for defining the industries or processes to which the scheme applies, and generally for such further or supplemental matters, including provisions as to the determination of disputes arising between employers and the authority administering the fund, as appear necessary for giving full effect to the scheme.

(4) Any scheme made under this section may be extended or varied by any subsequent scheme made in the like manner, and shall have effect as if enacted in this Act, but any scheme made under this section shall be laid before each House of Parliament forthwith, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House sits next after any such scheme is laid before it praying that the scheme may be annulled, His Majesty in Council may annul the scheme, and it shall thenceforward be void, but without prejudice to the validity of anything done thereunder.

(5) Section one of the Rules Publication Act, 1893, shall not apply to any scheme made under this section. Section 47.

This section embraces the whole of the provisions of the Workmen's Compensation (Silicosis) Acts of 1918 and 1924, both of which Acts are now repealed by Schedule IV. to this Act. Workmen suffering from silicosis are suffering generally from the inhalation of silicon dioxide dust which escapes in the treatment of stones, quartz or sand which contain silicon dioxide, and which is especially injurious to the lungs. A scheme has been made under the Acts of 1918 and 1924 which will apply until a new scheme is promulgated under the present section (see sect. 50 (2), *post*). This scheme will be found *post*, pp. 1387 *et seq.* Under para. 3 the expressions "employer," "workman," and "dependants" have the same meanings as in this section. 56 & 57 Vict.
c. 66.

The industries or processes to which this section applies are specified in Schedule I. of the scheme.

In the case of *Williams v. Guest, Keen and Nettlefolds, Ltd.*, (1926) 1 K. B. 497; 95 L. J. K. B. 676, a miner was suffering from silicosis gradually brought on by his having breathed in particles of silica dust which occasionally came from the boring operations on which he was engaged. Silicosis, not being a scheduled disease for miners, he could only recover compensation on the ground that he was suffering from an injury by accident within sect. 1 (1) of the Act. But the Court of Appeal held in this case that the gradual inhalation of silica throughout a long period did not amount in any ordinary sense to an accident or series of accidents, and that consequently he was not entitled to compensation. See, further, notes to sect. 1 (1) ("accident").

PART III.

GENERAL.

48.—(1) In this Act unless the context otherwise requires— Interpreta-
tion.
"Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

See sect. 35 (4) and notes as to persons not seamen engaged on a ship being entitled to compensation.

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

"Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, and the City of London Police Force; 53 & 54 Vict.
c. 45.
53 & 54 Vict.
c. 67.

This includes a police officer who, as a statutory duty, acts as a fireman (*Sudell v. Blackburn Corporation*, 3 B. 227).

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

"United Kingdom" means Great Britain and Northern Ireland.

(2) The exercise and performance of the powers and duties of a

Section 48. local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority.

Exercise and Performance.—By virtue of this definition in *Mulrooney v. Todd and Bradford Corporation*, (1909) 1 K. B. 165, the corporation were made liable under sect. 4 (now sect. 6) as principals making a contract for work undertaken by them.

(3) Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative, or to his dependants, or other person to whom or for whose benefit compensation is payable.

Any Reference to a Workman, etc.—A dependant's right is independent, not derivative, and an award terminating the rights of the workman is no bar to the claim by the dependants (*Jobson v. Cory*, 4 B. 284). See *Tucker v. Oldbury Urban Council*, (1912) 81 L. J. K. B. 668, followed in *Harper v. Dick, Kerr & Co.*, (1921) 90 L. J. K. B. 1313. Whether these words go this length is doubtful. The Act is clear that if a man dies when in receipt of a weekly payment it intends his dependants to then step into his shoes and receive a lump sum less what has been paid him (sect. 8). But does it intend more? does it intend conflicting rights? for it is clear an injured workman must settle for less for himself if he cannot bar the rights of his dependants. This is the result of an unsatisfactory series of cases commencing with an *obiter* in *O'Keefe v. Lovatt*, 4 W. C. C. 109, where the precise meaning was not material, and in all of which were other reasons for the decisions. Hitherto, this has been of little moment, but new developments have now made the question one of importance.

See also notes to sect. 4.

Application
to Scotland.
7 Edw. 7,
c. 51.

49.—(1) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty of the Sheriff Courts (Scotland) Act, 1907, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords.

(2) In this Act the expressions "county court," "judge of the county court," "registrar of the county court," "county court judgment," "plaintiff," "contract of bailment," and "rules of court," as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, recorded decree arbitral, pursuer, contract of letting to hire, and act of sederunt.

Commence-
ment, repeal
and extent.

50.—(1) This Act shall come into operation on the first day of May, nineteen hundred and twenty-six, but shall not apply in any case where the accident happened before the first day of January, nineteen hundred and twenty-four.

It is important to remember that though this Act came into operation on May 1st, 1926, it does not apply to any case where the accident happened before January 1st, 1924. The old statute as amended by the Act of 1923 will therefore apply to such cases.

Section 50.

(2) The enactments mentioned in the Fourth Schedule to this Act are so far as they relate to England and Wales and Scotland hereby repealed to the extent mentioned in the third column of that Schedule, but shall continue to apply to cases where the accident happened before the first day of January, nineteen hundred and twenty-four, and to which they apply at the commencement of this Act :

Provided that nothing in this repeal shall affect any scheme, order, rule, regulation, agreement or award, or other instrument certified, issued or made, or any other thing done under the enactments so repealed and in force at the commencement of this Act, but any such scheme, order, rule, regulation, agreement, or award, or other instrument, or other thing, shall continue in force and have effect as if certified, issued, made or done under this Act.

(3) The repeal of subsection (2) of section sixteen of the Workmen's Compensation Act, 1906, shall not affect the application of the Workmen's Compensation Acts, 1897 and 1900, to cases to which by virtue of that subsection they are to continue to apply. 6 Edw. 7, c. 53*.

Note.—This sub-section means that if there are any cases still existing under the Acts of 1897 and 1900 (which probably there are not), those Acts shall continue to apply to such cases.

(4) This Act shall not, except as otherwise expressly provided, extend to Northern Ireland.

51. This Act may be cited as the Workmen's Compensation Short title. Act, 1925.

* This is an error in the official copy of the Act. It should read 6 Edw. 7, c. 58.

SCHEDULES.

FIRST SCHEDULE.

Section 21.

ARBITRATION, &c.

1. For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

2. If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

3. In England the matter, instead of being settled by the judge of the county court, may, if the Lord Chancellor so authorises, be settled according

1st Schedule. to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this Act, have all the powers of that judge.

52 & 53 Vict. c. 49. 4. The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

5. A judge of county courts may in any case, if he thinks fit, and shall, if any party in accordance with rules of court so requires and gives security for the payment of the prescribed fee, summon a medical referee to sit with him as assessor.

If a medical referee is so summoned on the application of any party, that party shall, subject to any directions as to costs, be liable to pay in respect of the attendance of the medical referee such fee as may be prescribed by the Secretary of State.

6. Rules of Court may make provision—

- (a) for the appearance in any arbitration under this Act of any party by some other person; and
- (b) for conferring on the judge or registrar of a county court in proceedings under this Act the like powers of making orders for the examination of witnesses and persons, and for discovery, interrogatories, inspection of documents, and further particulars, and of granting a new trial, as are exercisable as respects actions in county courts.

Note.—The important right to grant a new trial in a workman's compensation case is now provided for in clause (b) above.

It was first granted by the County Courts Act, 1919, which gave power to make rules for the purpose. The rules have been made and appear as Rule 29 of the County Court Rules.

7.—(1) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court.

Note.—Where applicant and respondent each partially succeed and partially fail the judge may award no costs to either (*McArdle v. J. & R. Howie, Ltd.*, 20 B. W. C. C. 790).

Where an award existed and the matter subsequently by agreement went before the medical referee. Held by House of Lords that the arbitration was still existing, and costs of going before the medical referee were costs incidental to the arbitration (*William Baird & Co., Ltd. v. Summers*, 19 B. W. C. C. 17).

(2) The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the judge of the county court.

8. In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

9. Where a reference is made to a medical referee under section sixteen or section nineteen of this Act, or where on an application for the registration of a memorandum of agreement a report of a medical referee is required under this Act to be obtained, there shall, subject to any directions as to costs and to the provisions hereinafter contained, be payable by the applicant for the

reference or for the registration of the memorandum such fee in respect of the remuneration and expenses of the medical referee as the Secretary of State may prescribe, and provision may be made by rules of court for the payment of such fees through the registrar of the county court. 1st Schedule.

All such references shall be made and reports obtained in accordance with regulations of the Secretary of State.

10. Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

11. Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

12. No court fee shall be payable by a workman in respect of any proceedings in a court under this Act.

Note.—For court fees payable by an employer, see County Court Fees Order, 1925, sect. 3, *ante*.

13. Paragraphs 3, 4, 6 (b), and 8 of this Schedule shall not apply to Scotland, and in its application to Scotland this Schedule shall have effect as if for paragraph 12 the following paragraph were substituted:—

No court fee shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award, or for recording a memorandum of agreement under this Act.

SECOND SCHEDULE.

Section 26.

PROVISIONS AS TO PAYMENTS INTO COURT AND INVESTMENT.

1. Any sum paid into court under this Act shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in.

2. In the event of the death of any person entitled as a dependant to money paid into a county court under this Act, then, if no direction has been given as to the disposition thereof for the benefit of other dependants in the event of the death of the person entitled thereto, the court may, without probate or letters of administration, distribute the sum amongst such persons as appear to the court, upon such evidence as the court may deem satisfactory, to be entitled by law to receive the same, or if the dependant so dying is illegitimate and dies intestate, amongst the persons who in the opinion of the court would have been entitled thereto if the dependant had been legitimate; and, if there are no such persons, the court shall deal with the sum as the Treasury may direct:

Provided that, where the principal value of the estate of the dependant so dying exceeds one hundred pounds, any sum paid under this paragraph without probate or letters of administration shall be liable to estate duty as part of the amount on which that duty is charged, and the county court shall, before making any such payment, require a statutory declaration by the claimant, or by one of the claimants, that the principal value of the estate, including the sum in question, does not, after deduction of debts and funeral expenses, exceed the value of one hundred pounds, or the production of a

2nd Schedule. letter or certificate from the Commissioners of Inland Revenue stating either that all duties payable in respect of the sum in question have been paid, or that no duty thereon is payable.

This paragraph does not apply to Scotland.

Notes.—This useful provision was formerly sect. 26 of the County Courts Act, 1919. See Rule 64A.

In *Ivey v. Ivey*, (1912) 2 K. B. 118, money was in court for the benefit of a widow and four dependant children. On her death, such children asked that the unspent portion of her share might be appropriated for their benefit under this paragraph. This was opposed by other children, but without success. See now Rule 64A.

3. Rules of court may provide for the transfer of money paid into court under this Act from one court to another, whether or not the court from which it is to be transferred is in the same part of Great Britain as the court to which it is to be transferred, and for the transfer to a county court in Northern Ireland of money paid into court under this Act, and to a county court in Great Britain of money paid into court in Northern Ireland under any enactment for the time being in force in Northern Ireland relating to the compensation of workmen for injuries suffered in the course of their employment.

4. Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

5. Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

6. No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, subject to regulations of the Treasury, by the judge or registrar of the county court.

7. Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act, may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

Sections 43,
44.

THIRD SCHEDULE.

Description of Disease.	Description of Process.
Anthrax	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis . . .	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in

certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the Secretary of State otherwise directs, include only the processes so specified. **3rd Schedule.**

In pursuance of powers given him by sub-sect. (6) of sect. 8 of the old Act (see now sect. 43 (3)), this list, by Orders of the Secretary of State dated May 22nd, 1907, and December 2nd, 1908, was extended to include other diseases. These Orders were superseded by the Order of the Secretary of State dated July 30th, 1913. Further modifications and additions were made by Orders dated July 1st, 1914, July 7th, 1915, and May 6th, 1916, which in turn were consolidated and amended by Order No. 287 of 1918, dated February 26th, 1918, which provides as follows:—

In pursuance of the power conferred on me by section 8, sub-section 6, of the Workmen's Compensation Act, 1906, I hereby make the following Order:—

(1) Subject to the modifications hereinafter specified the provisions of section 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the diseases, injuries, and processes, specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases and injuries were included in the first column of the Third Schedule to the Act, and (where processes are specified in the second column of the annexed Schedule) as if the said processes were specified in the Schedule to the Act and were set opposite to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

(2) A person suffering from any of the diseases described in the Schedule as dermatitis produced by dust or liquids, ulceration of the skin produced by dust or liquids, and ulceration of the mucous membrane of the nose or mouth produced by dust, shall not be entitled to compensation under the provisions of the said section on account of the said disease if he is disabled only for employment in the particular process in which the disease has been contracted (a) (b), or other processes involving risk of the said disease, unless the judge, committee or arbitrator is satisfied that the disease has been contracted through long continued exposure to dust or liquids in the industry in which he was engaged at the time of his disablement.

(3) A glass worker suffering from cataract shall be entitled to compensation under the provisions of the said section for not more than six months in all, and for not more than four months unless he has undergone an operation for cataract.

(4) A person suffering from writer's cramp shall be entitled to compensation under the provisions of the said section for not more than 12 months.

(5) In the application of the provisions of the said section to telegraphist's cramp so far as regards a workman employed by the Postmaster-General, the Post Office Medical Officer under whose charge the workman is placed shall, if authorised to act for the purposes of the said section by the Postmaster-General, be substituted for the Certifying Surgeon (c).

(6) The Orders of the 30th July, 1913, 1st July, 1914, 7th July, 1915, and the 6th May, 1916, made under section 8, sub-section 6, of the Workmen's Compensation Act, 1906, are hereby revoked, except as regards cases arising before the date of this Order.

GEO. CAVE,
One of His Majesty's Principal
Secretaries of State.

WHITEHALL,
26th February, 1918.

(a) From here to end of section the words were added by the Workmen's Compensation (Dermatitis) Order, 1923, which came into force 22nd January, 1923.

(b) "If he is disabled only for employment in the particular process in which the disease has been contracted." See *Allmark v. White*, (1923) 92 L. J. K. B. 1084.

(c) See *Rex v. Postmaster-General, Carmichael ex parte*, (1928) 1 K. B. 291; (1927) 96 L. J. K. B. 347.

3rd Schedule.

SCHEDULE.

Description of Disease or Injury.	Description of Process.
1. Arsenic poisoning or its sequelæ .	Handling of arsenic or its preparations or compounds.
2. Lead poisoning or its sequelæ .	Handling of lead or its preparations or compounds.
3. (a) Poisoning by benzene and its homologues, or the sequelæ.	Handling benzene or any of its homologues, or any process in the manufacture or involving the use thereof.
(b) Poisoning by nitro- and amido-derivatives of benzene and its homologues (trinitrotoluene, anilin, and others), or the sequelæ.	Handling any nitro- or amido-derivative of benzene or any of its homologues, or any process in the manufacture or involving the use thereof.
4. Poisoning by dinitrophenol or its sequelæ.	Handling dinitrophenol, or any process in the manufacture or involving the use thereof.
5. Poisoning by nitrous fumes or its sequelæ.	Any process in which nitrous fumes are evolved.
6. Dope poisoning ; that is, poisoning by any substance used as or in conjunction with a solvent for acetate of cellulose, or its sequelæ.	Any process in the manufacture of aircraft.
7. Poisoning by tetrachlorethane or its sequelæ.	Any process in the manufacture or involving the use of tetrachlorethane.
8. Poisoning by carbon bisulphide or its sequelæ.	Any process involving the use of carbon bisulphide or its preparations or compounds.
9. Poisoning by nickel carbonyl or its sequelæ.	Any process in which nickel carbonyl gas is evolved.
10. Poisoning by <i>Gonioma Kamassi</i> (African boxwood) or its sequelæ.	Any process in the manufacture of articles from <i>Gonioma Kamassi</i> (African boxwood).
11. (a) Dermatitis produced by dust or liquids (see para. 2 of Order, <i>supra</i>).	—
(b) Ulceration of the skin produced by dust or liquids (<i>ib</i>).	—
(c) Ulceration of the mucous membrane of the nose or mouth produced by dust (<i>ib</i>).	—
12. (a) Epitheliomatous cancer or ulceration of the skin due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.	Handling or use of tar, pitch, bitumen, mineral oil or paraffin or any compound, product or residue of any of these substances.
(b) Ulceration of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.	Handling or use of tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.

SCHEDULE—*continued.*

3rd Schedule.

Description of Disease or Injury.	Description of Process.
13. Chrome ulceration or its sequelæ.	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
14. Scrotal epithelioma (chimney-sweep's cancer).	Chimney-sweeping.
15. Compressed air illness or its sequelæ.	Any process carried on in compressed air.
16. Cataract in glassworkers (see para. 3 of Order, <i>supra</i>).	Processes in the manufacture of glass involving exposure to the glare of molten glass.
17. The disease known as Miner's Nystagmus, whether occurring in miners or others, and whether the symptom of oscillation of the eyeballs be present or not.	Mining.
18. Subcutaneous cellulitis of the hand (beat hand).	Mining.
19. <i>Subcutaneous cellulitis over the patella (miner's beat knee).</i>	Revoked.*
20. <i>Acute bursitis over the elbow (miner's beat elbow).</i>	Revoked.*
21. Inflammation of the synovial lining of the wrist joint and tendon sheaths.	Mining.
22. Glanders	Care of any equine animal suffering from glanders; handling the carcass of such animal.
23. Telegraphist's cramp (see para. 5 of Order, <i>supra</i>)	Use of telegraphic instruments.
24. Writer's cramp (see para. 4 of Order, <i>supra</i>)	—

* These two diseases, which were included by order of the Home Secretary, dated 26th February, 1918, are revoked, save as to pending cases, from 1st June, 1927. See Order, 30th April, 1927, *infra*, p. 1385, as to cases arising after 1st June, 1927.

As regards the word *sequelæ* used in the above Order and Schedule, T. Luson, M.D., thus well writes:—" 'Sequelæ' is the plural form of *sequela*, which in medicine means a morbid phenomenon left as the result of a disease. Thus paralysis is the *sequela* or after effect of lead poisoning."

The Order of the Secretary of State relating to Ironworkers' Cataract, dated November 15th, 1921, is revoked (see below) except as to cases arising before July 1st, 1925. The annulled Order was in the same terms as the new Order, with the exception that it did not contain the proviso to paragraph 2.

THE WORKMEN'S COMPENSATION (IRONWORKERS' CATARACT) ORDER, 1925, DATED MAY 18TH, 1925, MADE BY THE SECRETARY OF STATE, EXTENDING THE PROVISIONS OF SECTION 8 OF THE WORKMEN'S COMPENSATION ACT, 1906 (6 EDW. 7, c. 58), TO OTHER DISEASES.

In pursuance of the power conferred on me by sect. 8, sub-s. 6, of the Workmen's Compensation Act, 1906, I hereby make the following Order:—

(1) Subject to the modifications hereinafter specified the provisions of

3rd Schedule. sect. 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the disease or injury and processes specified in the first and second columns of the Schedule annexed to this Order, as if the said disease or injury were included in the first column of the Third Schedule to the Act, and as if the said processes were set opposite in the second column of that Schedule to the disease or injury to which they are set opposite in the second column of the Schedule annexed hereto.

(2) A worker suffering from cataract shall be entitled to compensation under the provisions of the said Section, as applied by this Order, for not more than six months in all, and for not more than four months unless he has undergone an operation for cataract.

Provided that where the judge, committee or arbitrator is satisfied on the advice of the Medical Referee that an operation could not for medical reasons be performed within four months from the date of disablement, or that having undergone an operation, the worker is still disabled by the cataract after the expiration of six months from such date, compensation may be continued for such further period and subject to such conditions as the judge, committee or arbitrator may direct, without prejudice, however, to the right of review conferred by paragraph (16) of the First Schedule to the Act.

(3) This Order may be cited as the Workmen's Compensation (Iron-workers' Cataract) Order, 1925, and shall come into force on 1st July, 1925.

(4) The Order dated 15th November, 1921, made under sect. 8, sub-s. 6, of the Workmen's Compensation Act, 1906, is hereby revoked except as regards cases arising before the commencement of this Order.

W. JOYNSON-HICKS,
*One of His Majesty's Principal
Secretaries of State.*

WHITEHALL, 18th May, 1925.

SCHEDULE.

Description of Disease or Injury.	Description of Process.
Cataract caused by exposure to rays from molten or red hot metal.	Processes normally involving such exposure in the manufacture of iron or steel.

See *Davies v. Baldwins*, 20 B. W. C. C. 116.

THE WORKMEN'S COMPENSATION (TWISTER'S CRAMP) ORDER, 1921, DATED DECEMBER 31ST, 1921, MADE BY THE SECRETARY OF STATE UNDER SECT. 8 OF THE WORKMEN'S COMPENSATION ACT, 1906.

In pursuance of the power conferred on me by sect 8, sub-s. 6, of the Workmen's Compensation Act, 1906, I hereby make the following Order:—

(1) Subject to the modifications hereinafter specified, the provisions of sect. 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the disease or injury specified in the Schedule annexed to this Order as if the said disease or injury were included in the first column of the Third Schedule to the Act.

(2)—(a) A person shall not be entitled to compensation under the provisions of the said section, as applied by this Order, unless he is totally disabled from following the occupation of a Twister.

(b) The compensation shall cease as soon as he is able to earn at another occupation a weekly sum equal to 75 per cent. of the average weekly earnings on which the compensation has been fixed, or at the expiration of six months, whichever is the earlier.

(3) This Order may be cited as the Workmen's Compensation (Twister's 3rd Schedule Cramp) Order, 1921, and shall come into force on January 16th, 1922.

WHITEHALL,
31st December, 1921.

E. SHORTT,
*One of His Majesty's Principal
Secretaries of State.*

SCHEDULE.

DESCRIPTION OF DISEASE OR INJURY.

Twister's Cramp caused by twisting of cotton or woollen (including worsted) yarns.

THE WORKMEN'S COMPENSATION (INDUSTRIAL DISEASES) ORDER, 1924,
DATED JANUARY 16TH, 1924, MADE BY THE SECRETARY OF STATE UNDER
SECT. 8 OF THE WORKMEN'S COMPENSATION ACT, 1906 (6 EDW. 7,
C. 58).

In pursuance of the power conferred on me by section 8, sub-section 6, of the Workmen's Compensation Act, 1906, I hereby make the following Order :

1. The provisions of section 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the diseases or injuries and processes specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases or injuries were included in the first column of the Third Schedule to the Act, and as if the said processes were set opposite in the second column of that Schedule to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

2. This Order may be cited as the Workmen's Compensation (Industrial Diseases) Order, 1924, and shall come into force on 1st February, 1924.

WHITEHALL,
16th January, 1924.

W. C. BRIDGEMAN,
*One of His Majesty's Principal
Secretaries of State.*

SCHEDULE.

Description of Disease or Injury.	Description of Process.
Inflammation, ulceration and malignant disease of the skin and subcutaneous tissues due to exposure to X-rays or radio-active substances.	
Manganese poisoning 	Handling of manganese or substances containing manganese.

THE WORKMEN'S COMPENSATION (INDUSTRIAL DISEASES) ORDER, 1927,
DATED APRIL 30TH, 1927, MADE BY THE SECRETARY OF STATE UNDER
SECTION 43 (3) OF THE WORKMEN'S COMPENSATION ACT, 1925 (15 & 16
GEO. 5, C. 84).

In pursuance of the power conferred on me by sect. 43, sub-s. 3, of the Workmen's Compensation Act, 1925, I hereby make the following Order :—

1. The provisions of sect. 43 of the Workmen's Compensation Act, 1925, shall extend and apply to the diseases or injuries and processes specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases or injuries were included in the first column of the Third Schedule to the Act, and as if the said processes were set opposite in the second column of that Schedule to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

2. The Order of the 26th February, 1918, so far as it applies to subcutaneous cellulitis over the patella (miner's beat knee) and acute bursitis over the elbow (miner's beat elbow), is revoked, except as regards cases arising before the commencement of this Order.

3. This Order may be cited as the Workmen's Compensation (Industrial Diseases) Order, 1927, and shall come into force on 1st June, 1927.

W. JOYNSON-HICKS,
*One of His Majesty's Principal
Secretaries of State.*

WHITEHALL, 30th April, 1927.

SCHEDULE.

Description of Disease or Injury.	Description of Process.
Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee).	Mining.
Subcutaneous cellulitis or acute bursitis over the elbow (beat elbow).	Mining.

FOURTH SCHEDULE.

Section 50.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
6 Edw. 7, c. 58	The Workmen's Compensation Act, 1906.	The whole Act.
9 Edw. 7 c. 16	The Workmen's Compensation (Anglo-French Convention) Act, 1909.	The whole Act.
1 & 2 Geo. 5, c. 50.	The Coal Mines Act, 1911.	Section one hundred and ten.
8 & 9 Geo. 5, c. 8	The Workmen's Compensation (Illegal Employment) Act, 1918.	The whole Act.
8 & 9 Geo. 5, c. 14.	The Workmen's Compensation (Silicosis) Act, 1918.	The whole Act.
9 & 10 Geo. 5, c. 73.	The County Courts Act, 1919	Sections twenty-five and twenty-six.
13 & 14 Geo. 5, c. 42.	The Workmen's Compensation Act, 1923.	The whole Act, except sections one, six, twenty-eight, twenty-nine, thirty and thirty-one.
14 & 15 Geo. 5, c. 17.	The County Courts Act, 1924.	Section six.
14 & 15 Geo. 5, c. 40.	The Workmen's Compensation (Silicosis) Act, 1924.	The whole Act.

SCHEMES OF COMPENSATION MADE BY THE SECRETARY OF STATE UNDER THE WORKMEN'S COMPENSATION (SILICOSIS) ACTS, 1918 AND 1924, AND THE WORKMEN'S COMPENSATION ACT, 1925, SECTION 47.

Note.—The Workmen's Compensation (Silicosis) Acts are now repealed, but the schemes of compensation made under those Acts appearing below will continue to apply. See sect. 50 (2) of 1925 Act.

SCHEME OF COMPENSATION, DATED JANUARY 6, 1919, MADE BY THE SECRETARY OF STATE UNDER THE WORKMEN'S COMPENSATION (SILICOSIS) ACT, 1918 (8 & 9 GEO. 5, c. 14), FOR THE REFRACTORIES INDUSTRIES.

Note.—This scheme (as amended in 1924) only applies to cases where the workman was suspended or certified to have been totally disabled as from a date prior to May 1st, 1925, and will be found in the 1928 and earlier editions. All other cases come within the scheme dated January 30th, 1925, set out below. See notes to sect. 47 of 1925 Act, *ante*, p. 1375.

THE REFRACTORIES INDUSTRIES (SILICOSIS) SCHEME, 1925, DATED JANUARY 30, 1925, MADE BY THE SECRETARY OF STATE UNDER THE WORKMEN'S COMPENSATION (SILICOSIS) ACTS, 1918 (8 & 9 GEO. 5, c. 14) AND 1924 (14 & 15 GEO. 5, c. 40).

In pursuance of the powers conferred on me by the Workmen's Compensation (Silicosis) Acts, 1918 and 1924, I hereby direct that on and after 1st May, 1925, the Scheme of Compensation for the Refractories Industries made by the Secretary of State on the 6th January, 1919, and amended by the Order dated 18th January, 1924, shall be further amended and take effect as set out below.

Provided that in the case of workmen suspended from employment or certified to have been totally disabled as from a date previous to 1st May, 1925, the provisions of the Scheme made on 6th January, 1919, as amended by the Order dated 18th January, 1924, shall continue to apply except that the provisions as to medical examinations in Part IV. of this Scheme shall be substituted for the provisions in Part IV. of that Scheme.

HOME OFFICE, WHITEHALL,
30th January, 1925.

W. JOYNSON-HICKS,
*One of His Majesty's Principal
Secretaries of State.*

REFRACTORIES INDUSTRIES (SILICOSIS) SCHEME.

1. *Title of Scheme.*—This Scheme may be cited as "The Refractories Industries (Silicosis) Scheme, 1925."

2. *Application of Scheme.*—This Scheme shall apply to all workmen employed at or after the 1st February, 1919, in any of the refractories industries.

"Refractories Industries" (hereinafter referred to as the industries) means for the purposes of this Scheme the following processes carried on at mines, quarries, factories and workshops at which refractory material containing not less than 80 per cent. total silica (SiO_2) is got or manipulated with a view to manufacture or sale; namely—

All processes in or in connection with the getting, handling, moving, breaking, crushing, grinding and sieving of such material and all processes in the manipulation of such material in the manufacture of bricks or other articles containing not less than 80 per cent. total silica (SiO_2).

Provided that—

- (a) a mine or quarry in which refractory material is only occasionally worked or is only occasionally supplied for use in the Industries;
- (b) iron or steel works in which refractory material is crushed, ground or pugged for use only in the works; and
- (c) quarries at which the only refractory material worked is natural sand;

shall not be deemed to be included.

If any question arises whether this Scheme applies to any particular process or works or as to the individual workers covered by the Scheme the question shall be referred for decision to the Secretary of State or if the parties prefer to a single arbitrator in accordance with the provisions contained in the Third Schedule to this Scheme and in any Rules made by the Secretary of State for the purpose. Such arbitrator shall be agreed to by the parties and approved by the Secretary of State, or failing agreement appointed by the Secretary of State, and his decision shall be final.

The Arbitration Act, 1889, shall not apply to any arbitration under this Scheme.

3. *Definitions.*—In this Scheme, unless the context otherwise requires :—
The expressions “employer,” “workman,” and “dependants” have the same meanings as in the Workmen’s Compensation Acts, 1906 to 1924.
“Medical Board” means a Medical Board appointed by the Secretary of State under this Scheme.

“Duly Appointed Medical Practitioner” means a medical practitioner appointed by the Secretary of State for the purposes of this Scheme.

“Joint Committee” means the local committee representative of employers and workmen which has been appointed by the Secretary of State under this Scheme for the area comprising the works at which the workman is or was last employed in the industries.

“The Fund” means the General Compensation Fund established under this Scheme for the industries.

“Prescribed” means “prescribed by the Secretary of State.”

“Tuberculosis” means tuberculosis of the lungs.

PART I.—PROVISIONS AS TO COMPENSATION.

4. Where the Medical Board certifies in pursuance of this Scheme :—

- (1) that the death of a workman has been caused by silicosis or by silicosis accompanied by tuberculosis ; or
- (2) that a workman is totally disabled for work in the industries from silicosis or from silicosis accompanied by tuberculosis ; or
- (3) that a workman, though not totally disabled for work in the industries, is suffering from silicosis or from silicosis accompanied by tuberculosis to such a degree as to make it dangerous for him to continue work in the industries, and is for that reason suspended from employment ;

the workman or his dependants shall be entitled to compensation under this Scheme.

Provided that no compensation shall be payable :—

- (a) if the Medical Board certifies that the silicosis cannot have been contracted in the industries owing to the shortness of the time during which the workman has been employed therein ;
- (b) in cases where the workman has left the industries, unless it is proved to the satisfaction of the Joint Committee that since his last employment therein he has not been employed in any of the occupations specified in the First Schedule to this Scheme.

5. Any certificate given by the Medical Board or by a duly appointed medical practitioner in pursuance of the provisions of this Scheme shall be conclusive evidence of the matters therein certified.

6. The question of the award of compensation and the amount and apportionment thereof shall in all cases be determined, subject to the provisions of this Scheme, by the Joint Committee, and no agreement in regard thereto between the representatives of the Fund and the workman shall relieve the Fund from any liability under this Scheme.

7. (1) In cases of death or total disablement due to silicosis or silicosis accompanied by tuberculosis, the amount of compensation shall be determined in accordance with the provisions of the Workmen’s Compensation

Acts, 1906 to 1924, as set out in the Second Schedule to this Scheme, for fixing the amount of compensation in cases of death or total incapacity.

Provided that in the case of a workman who has left the industries, the date on which he left the employment of his last employer in the industries shall for the purposes of those provisions be taken to be the date of the injury.

In all cases of total disablement the compensation shall be payable from the date certified by the Medical Board as the date on which such disablement commenced, or, if the Board is unable to certify such a date, the date on which the certificate is given.

(2) In cases of suspension due to silicosis or silicosis accompanied by tuberculosis, the workman, if he is unable immediately to obtain other suitable employment at a not less rate of remuneration, shall be entitled for a period of two weeks from the date of suspension to a weekly payment equal to the full amount of his wages; and thereafter

- (a) if the Medical Board certifies that his general physical capacity for employment is not impaired by reason of the disease, but he is still unable to obtain such employment as aforesaid, the Joint Committee shall have power to direct payment to him, while he remains out of employment, for a further period or periods not exceeding eleven weeks in all, of a weekly sum equal to 50 per cent. of his average weekly earnings computed in accordance with the provisions of the Workmen's Compensation Acts, 1906 to 1924, as set out in the Second Schedule to this Scheme;
- (b) if the Medical Board certifies that his general physical capacity for employment is impaired by reason of the disease, he shall be entitled, while impairment continues, to a weekly payment as for partial incapacity fixed in accordance with the provisions of the Workmen's Compensation Acts, 1906 to 1924, as set out in the Second Schedule to this Scheme.
- (c) If on suspension the workman is compelled, in order to obtain other suitable employment, to remove from the district, he shall be entitled to such sum not exceeding five pounds as the Joint Committee may consider reasonable in respect of the expenses of such removal.

8. Any weekly payment shall, if the Medical Board alters the previous certificate, and may at any time on application made on behalf of the Fund or the workman, be reviewed by the Joint Committee, and on such review may be ended, diminished, or increased as the Joint Committee may decide.

9. Where any weekly payment has been continued for not less than six months, the liability therefor may, if the Joint Committee so directs, be redeemed by the payment of a lump sum of such an amount as would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment.

10. Any lump sum payable in pursuance of the foregoing provision or in the case of death shall be paid to the Public Trustee or to any other person nominated by the Secretary of State to hold moneys in trust under this Scheme, and shall, subject to any general or special directions of the Joint Committee, be held and applied by the Public Trustee or such other person as in his discretion he thinks best for the benefit of the persons entitled thereto under this Scheme.

Provided that where the sum payable is less than £50 it may be paid over to the worker or his dependants as the case may be in such weekly payments or otherwise as the Joint Committee may direct.

Provided further that in the case of death, if the workman leaves no dependants, payment shall be made by the Fund to his legal personal representative or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

11. Where it appears to the Joint Committee, on application by the Public Trustee or other person charged with the administration of the trust, that on account of the variation of the circumstances of the various dependants or for any other sufficient cause any order made by the Committee as to the apportionment amongst the several dependants, or any directions given as to the administration, of any sum paid as compensation ought to be varied, the Committee may vary such order or directions in such manner as in the circumstances of the case the Committee may think just.

12. Where a weekly payment is payable under this Scheme to a person under any legal disability, the Joint Committee may direct that the weekly payment shall be paid during the disability to any person nominated by the Committee for the purpose, or to the Public Trustee, to apply, subject to any directions of the Committee, as in his discretion he thinks best for the benefit of the person entitled thereto.

13. A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

14. The provisions of subsections 1 (a) and (b) and of subsections (2), (3), and (4) and, notwithstanding anything in paragraph 13 of this Scheme, subsection (5) of section sixteen of the National Health Insurance Act, 1924, shall apply to compensation under this Scheme in the same way as to compensation under the Workmen's Compensation Acts, 1906 to 1924.

Provided that in the application of subsection (3) of section sixteen as aforesaid a workman who would otherwise be eligible for compensation under this Scheme but refuses or wilfully neglects to take the steps as directed in the Scheme to obtain such compensation shall be deemed to have unreasonably refused or neglected to take proceedings within the meaning of the said subsection.

PART II.—GENERAL COMPENSATION FUND.

15. All compensation due under this Scheme and such other expenses as may be prescribed in the Scheme shall be paid out of a General Compensation Fund which shall be maintained by subscriptions paid by the employers engaged in the industries.

16. The Fund shall be administered by the company registered as "The Refractories Industries Compensation Fund, Ltd." (hereinafter referred to as the Company).

Any expenses incurred from time to time by the Company in the administration of the Fund or otherwise for the purposes of this Scheme may, with the approval of the Secretary of State, be charged to the Fund.

17. It shall be the duty of the Company, subject to and in compliance with any directions given by the Secretary of State in that behalf, to fix, levy and enforce all such subscriptions as are necessary to enable the Fund to meet all its liabilities under the Scheme, to invest or otherwise deal with all moneys received by the Fund, and to secure that no moneys or securities belonging to the Fund are applied directly or indirectly for any purposes other than those authorised under the Scheme. No alteration in the rate of levy shall take effect until approved by the Secretary of State.

The Secretary of State may require the Company to adopt different rates of levy for different risks.

18. Every employer engaged in the industries shall pay to the Fund such subscriptions (whether in the form of annual premiums or otherwise) and give any such guarantees as the Company may, with the approval of the Secretary of State, determine; and any sum due by an employer to the Fund under this Scheme may be recovered by the Company summarily as a civil debt.

Provided that the liability of the Fund to pay compensation in any particular case shall not be affected by any failure on the part of an employer to pay the sums due to the Fund, or by the employer ceasing to be engaged in the industries.

19. Every employer commencing to carry on any process to which this Scheme applies at any works at which any such process has not previously been carried on, shall forthwith notify the Company and the Medical Board accordingly.

20. Every employer shall keep in a proper wages book a correct record of the wages, salary or other remuneration paid to each workman to whom this Scheme applies, and shall allow the officers of the Company to inspect any such book, and shall, when required, furnish the Company with a correct account of such wages, salary or other remuneration for such period as the Company may specify.

21. In the case of the Company transacting other business, the accounts of the Fund shall be kept separate from the accounts of the other business.

22. The Company shall, when required by the Secretary of State, prepare in the prescribed forms a revenue account, balance sheet, and statement of cases dealt with in respect of any prescribed period, and shall cause an investigation of the estimated liabilities of the Fund to be made by an Actuary so far as may be necessary to enable the provisions of these forms to be complied with; and the account, balance sheet, and statement shall be printed, signed and deposited at the Home Office within six months after the close of the period to which the account, balance sheet or statement relates, together with any reports on the affairs of the Fund submitted to the members in respect of that period.

23. The Company shall cause the accounts of the Fund to be audited once at least in every year by a chartered accountant or accountants, and shall forward a copy of the report of the auditor or auditors to the Home Office.

PART III.—JOINT COMMITTEES.

24. There shall be established for the determination of all questions assigned to them under Part I. of this Scheme and for the discharge of any other duties which may be imposed on them by the Scheme or any rules made by the Secretary of State thereunder, Joint Committees, that is to say, Committees representative of both employers and workmen, presided over in each case by an independent chairman, which shall exercise jurisdiction within such areas and in accordance with such procedure as the Secretary of State may prescribe.

The determination by a Joint Committee of any question assigned to it shall be final; except that where either the Company or the workman is aggrieved by any determination of the Joint Committee on the ground that it is based on a misinterpretation of the provisions of the Scheme, and makes representation to the Secretary of State within fourteen days, the Secretary of State may, if he thinks fit, give a ruling on the point raised, and if the Joint Committee's determination is not in accordance with such ruling, the Joint Committee shall be authorised and required to revise their determination so as to bring it into conformity therewith.

Any question arising in an area for which no Joint Committee has been established may be assigned for settlement to such Joint Committee as the Secretary of State may select.

25. The Chairman and other members of the Joint Committees shall be appointed by the Secretary of State and shall hold office for such period as he may fix.

Each Committee shall include an equal number on either side of representatives of the employers and workmen, and before appointing such representatives, the Secretary of State shall take such steps, by consultation with any Employers' Associations and Trade Unions affected or otherwise,

as he may think most suitable for the purpose of ascertaining the views of the employers and workmen concerned.

26. In the absence of the Chairman at any meeting the Chair may be occupied by any member of the Committee chosen by the Committee.

27. Any question arising at any meeting may be decided by a majority of the votes of those personally present at the meeting, excluding the independent Chairman, or, in the case of an equality of votes, by a casting vote of the independent Chairman.

28. Each Joint Committee shall have a Secretary who shall be appointed by the Committee, subject to the approval of the Secretary of State, on such terms and at such remuneration, to be paid out of the Fund, as the Secretary of State may approve.

It shall be the duty of the Secretary to arrange for all necessary meetings of the Committee, to keep a correct record of the proceedings of the Committee, to notify the decisions of the Committee in the prescribed form to the workman or his dependants, as the case may be, and the Company, and to any others concerned, and to perform such other duties as may be assigned to him under the Scheme or any rules made thereunder.

29. The members of the Joint Committee shall be entitled to be reimbursed from the Fund such travelling expenses incurred for the purposes of attending meetings of the Committee as the Secretary of State may approve.

30. Any office or other expenses of the Joint Committees, and any fees or other charges payable in respect of the administration of any moneys held in trust under Part I. of this Scheme, which are certified by the Secretary of State to be necessary, shall be paid out of the Fund.

PART IV.—MEDICAL PROVISIONS.

Medical Board.

31. Two or more duly qualified medical practitioners shall be appointed by the Secretary of State to be a Medical Board for the purpose of making the examinations and giving the certificates required under this Scheme. The members thereof shall hold office on such terms as to remuneration and otherwise as the Secretary of State may approve.

The members of the Medical Board shall carry out their duties in accordance with such procedure as may be prescribed by the Secretary of State.

Periodic Examinations.

32. All workmen employed in the industries shall be examined by one or more officers of the Medical Board at the prescribed intervals, and if on such examination it appears to the Medical Board that the workman is suffering from silicosis or tuberculosis or silicosis accompanied by tuberculosis to such a degree as to make it dangerous for him to continue work in the industries, the Board shall suspend the workman from further employment in the industries, and shall certify accordingly in the prescribed form.

Provided that the foregoing provision shall not apply to any workman employed at the 1st February, 1919, in the industries who had at that date been so employed for more than twenty years and has since then continued to be so employed, except on the written request of the workman.

In each case of suspension due to silicosis or silicosis accompanied by tuberculosis the Medical Board shall certify to what degree, if any, the general physical capacity of the workman for employment is impaired by the silicosis or the silicosis accompanied by tuberculosis.

All such examinations shall, except where the Medical Board otherwise decides, be made at the works.

Initial Examination.

33. Any workman newly engaged by an employer and not excepted under the proviso in paragraph 32 shall, unless he has already been examined under this Scheme within the preceding twelve months, submit himself for

examination by a member of the Medical Board or other duly appointed medical practitioner before the end of the first month of his employment, or in exceptional circumstances within such extended period as the Medical Board may authorise ; and if on such examination the workman is found to be unsuitable for work in the industries by reason of his failure to satisfy the requirements with respect to physique prescribed herein, the member of the Medical Board or duly appointed medical practitioner shall suspend the workman from further employment in the industries, and shall certify accordingly in the prescribed form.

For the purposes of this paragraph the requirements with respect to physique shall be as follows :—

- (i) The chest must be at least of average development with satisfactory expansion and there must be no deformity or obstruction of the upper air passages or elsewhere which interferes with respiration ;
- (ii) There must be no signs of present or past disease of the lungs or heart ; and
- (iii) There must be no signs of present or past tuberculosis of any region.

Examinations under Warrant.

34. Any workman discharged or temporarily suspended by his employer or who has voluntarily left the industries, and any workman employed in the industries who has not been examined under this Scheme within the previous six months, may, if he claims to be suffering from silicosis or silicosis accompanied by tuberculosis to such a degree as to make it dangerous for him to continue work in the industries, apply to the Joint Committee for a warrant authorising him to be examined by the Medical Board, and on the production of such warrant the Medical Board shall examine the workman and deal with the case in accordance with the provisions of paragraph 32.

Provided that, where the workman is no longer employed in the industries, the application must be made within one month from the date on which he ceased to be so employed.

35. Any workman claiming compensation in respect of total disablement may apply to the Joint Committee for a warrant authorising him to be examined by the Medical Board, and on production of such warrant the Medical Board shall examine the workman and, if satisfied that he is totally disabled for work from silicosis or silicosis accompanied by tuberculosis, shall certify accordingly in the prescribed form.

36. Any workman suspended under paragraph 32 on account of tuberculosis, may within six months of the date of such suspension if he claims to be suffering from silicosis or silicosis accompanied by tuberculosis apply to the Joint Committee for a warrant authorising him to be re-examined by the Medical Board and on production of such warrant the Medical Board shall re-examine the workman and, if it appears that he is suffering from silicosis or silicosis accompanied by tuberculosis, shall certify accordingly in the prescribed form.

37. The Joint Committee shall not be entitled to refuse an application made to them for a warrant in accordance with the provisions of paragraphs 34, 35 and 36, but before issuing a warrant they may require the applicant to produce a medical certificate (which shall state whether or not he is fit to travel) in support of his application ; and, if they consider the application a frivolous one, to deposit a prescribed fee to cover the cost of the examination. Any such fee shall, in the event of the Medical Board issuing a certificate, be returned to the applicant, but otherwise shall be paid over to the Fund. If the Joint Committee so desires, applications may be dealt with and warrants issued by the independent Chairman of the Joint Committee on their behalf.

Re-examinations.

38. Every workman receiving weekly payments under the Scheme shall be re-examined, at such intervals as may be specified in the certificate, by

the Medical Board, and on such re-examination the Medical Board shall issue a fresh certificate confirming or amending the previous certificate.

Post-mortem Examinations.

39. In the case of death alleged to be due to silicosis or silicosis accompanied by tuberculosis, the Medical Board shall, on application made by or on behalf of the dependants and on production of the Certificate of Death, arrange for a post-mortem examination and, if satisfied after such examination that the death has been caused by silicosis or silicosis accompanied by tuberculosis, shall certify accordingly in the prescribed form.

Provided that, if the Medical Board considers the application a frivolous one, they may require the applicant to deposit a fee of such amount as will cover the cost of the examination. Any such fee shall, in the event of the Medical Board issuing a certificate, be returned to the applicant, but otherwise shall be paid over to the Fund.

Provided, further, that where the deceased was in receipt of weekly payments under this Scheme, but only in such cases, the Medical Board may, if satisfied that a post-mortem examination is unnecessary, give a certificate without such examination.

Radiographic Examinations.

40. The Medical Board shall have power in any case where they consider necessary to make or cause to be made a radiographic examination of the lungs of the workman and to obtain the opinion of a radiologist on the case.

41. The Medical Board shall forward every certificate to the Secretary to the Joint Committee, and shall also notify the Secretary to the Joint Committee of any refusal to issue a certificate in any case under paragraphs 34, 35, 36 or 39.

They shall keep a record of every examination made and certificate issued under this Scheme.

42. There shall be paid out of the Fund :—

- (1) The remuneration of the members of the Medical Board and any expenses necessarily incurred by them for the purposes of their duties under the Scheme.
- (2) Such remuneration of any duly appointed medical practitioner as the Secretary of State may approve and any expenses necessarily incurred by such medical practitioner for the purposes of his duties under the Scheme.
- (3) Any travelling or other expenses reasonably incurred by a workman (subject to any prescribed scale) in submitting himself for examination by the Medical Board or a duly appointed medical practitioner.

PART V.—DUTIES OF EMPLOYERS AND WORKMEN.

43. It shall be the duty of every employer—

- (a) to furnish facilities for the examinations made at the works under the provisions of paragraph 32, and to comply with any directions given by the Secretary of State for this purpose ;
- (b) to arrange for the examination of any workman newly engaged who requires to be examined under the provisions of paragraph 33 ;
- (c) not to engage or to continue to employ in the industries any workman who has been suspended under this Scheme from further employment therein, or has refused to submit himself to any examination required under this Scheme.

If an employer engages or continues to employ any workman who has been suspended under this Scheme he shall be liable to pay an additional subscription to the Fund of double the amount of the levy payable on the wages of the person or persons illegally engaged or retained in employment

so long as such employment continues, subject, however, to a minimum of ten pounds.

If an employer fails to carry out any other duty expressly imposed on him by this Scheme, he shall be liable to pay such increased subscription to the Fund as may appear to the Secretary of State to be reasonable in the circumstances.

44. It shall be the duty of every workman :—

- (a) to submit himself to the periodic and other examinations provided for under the foregoing provisions, and for that purpose (unless certified by a duly qualified medical practitioner to be unfit to travel) to attend at the place and time specified by the Medical Board or duly appointed medical practitioner ;
- (b) to furnish true information to his present or any future employer as to his employment in the industries with any previous employer or in any of the occupations mentioned in the First Schedule to this Scheme ;
- (c) not to re-engage in the industries after having been suspended under this Scheme.

If a workman refuses or wilfully neglects to submit himself to any such examination or in any way obstructs the same, or if he fails to furnish true information as aforesaid, or if, after having been suspended, he re-engages in the industries, he shall forfeit any right to compensation under the Scheme.

Provided that if the Joint Committee are satisfied that the failure of the workman to comply with the foregoing requirements has been due to a *bonâ-fide* mistake on his part or to causes outside his control, and that the Fund will not thereby be prejudiced, it shall be in the discretion of the Committee to relax this provision on such conditions and to such extent as they may think fit.

45. Every workman (other than a workman casually employed) shall be supplied by his employer with a register in the prescribed form, which shall be renewed when necessary by the employer, and in which shall be entered :—

- (a) The date of commencement of his employment with that employer, and the name of the employer and address of the works (to be entered by the employer) ;
- (b) particulars as supplied by the workman of any previous employment in the industries or in any of the occupations mentioned in the First Schedule to this Scheme (to be entered by the employer and signed by the workman) ;
- (c) the date on which the workman enters any new employment in the industries and the name of the new employer and address of the works (to be entered by the new employer) ;
- (d) the date of any examination by the duly appointed medical practitioner or by the Medical Board in pursuance of this Scheme and result of the examination (to be entered by the person making the examination).

This register shall be kept by the workman and produced when required by the employer or by the duly appointed medical practitioner or Medical Board for the purpose of carrying out any of their duties under this Scheme, and a duplicate of it shall be kept by the employer and forwarded by him when the workman leaves the employment to the Medical Board.

FIRST SCHEDULE.

OCCUPATIONS REFERRED TO IN PARAGRAPHS 4, 44 (b), and 45 (b) OF SCHEME.

Mining and quarrying in flint, chert, ganister, silica (quartz and quartzite) rocks, granite, millstone grit, buhrstone, or sandstone.

Dressing and grinding of wheels of sandstone, millstone grit, or buhrstone.

Grinding articles on wheels of sandstone, millstone grit, or buhrstone.

Dressing and carving of granite, sandstone, millstone grit, or buhrstone.

Any processes in pottery manufacture in which powdered flint or powdered silica rock is used.

Crushing and grinding of ganister or other material containing not less than 80 per cent. total silica (SiO_2) for purposes other than the refractories industries.

SECOND SCHEDULE.

WORKMEN'S COMPENSATION ACTS, 1906 TO 1924.

Scale and Conditions of Compensation.

1906, Sch. I.
(1).

1. The amount of compensation . . . shall be :—
(a) where death results from the injury—

(i) if the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of *two hundred* pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum (*see also para. (c) .*), and, if the period of the workman's employment by the said employer has been less than the said three years then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer (*see also para. (b) (i) .*);

(ii) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as . . . may be determined, . . . to be reasonable and proportionate to the injury to the said dependants (*see also para. (b) (ii) .*); and

(iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding *fifteen* pounds;

1923, s. 24 (3).
1923, s. 2.

- (b) where a workman leaves a widow or other member of his family (not being a child under the age of fifteen) wholly or partially dependent upon his earnings, and, in addition, leaves one or more children under the age of fifteen so dependent, then—

(i) if both the widow or other member of the workman's family and such child or children as aforesaid were all wholly dependent on the workman's earnings, there shall, in respect of each such child, be added to and dealt with as part of the compensation payable under paragraph (a) . . . a sum equal to fifteen per cent of the amount arrived at by multiplying the average weekly earnings of the workman, or where such earnings are less than one pound, then by multiplying one pound, or where such earnings exceed two pounds then by multiplying two pounds, by the number of weeks in the period between the death of the workman and the date when the child will attain the age of fifteen, fractions of a week being disregarded; and

(ii) if the widow or other member of the workman's family or such child or children as aforesaid, or any of them, were partially dependent on the workman's earnings, there shall be paid as part of the compensation under the said paragraph such proportion of the sum which would have been payable under the foregoing paragraph . . . as may . . . be determined . . . to be reasonable.

Provided that the total amount of compensation payable to the dependants shall in no case exceed six hundred pounds.

- (c) no deduction shall be made under paragraph (a) (i), as amended 1923, s. 24 (2), by paragraph (b), in respect of the amount of any weekly payments, so as to reduce the sum payable in respect of the children of the workman under the said paragraph (b), nor so as to reduce the amount payable under the said paragraph (a) below two hundred pounds;
- (d) where total or partial incapacity for work results from the injury, 1906, Sch. I. a weekly payment during the incapacity not exceeding fifty per cent. of the average weekly earnings of the workman during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed *thirty shillings*; 1923, s. 4 (1).
- (e) where the maximum weekly payment payable under paragraph (d) 1923, s. 4 (2). to a workman who is totally incapacitated is less than twenty-five shillings, the workman shall be entitled during such incapacity to a weekly addition equal to one-half of the difference between such maximum weekly payment and the sum of twenty-five shillings or his average weekly earnings, whichever is the less, and such addition shall, for all purposes . . . be treated as if it were part of the weekly payment.

2. (1) In the case of partial incapacity, the weekly payment shall, 1923, s. 4 (3). subject to the provisions of paragraph (4) of this Schedule, be of the following amount:—

- (a) if the maximum weekly payment, had the incapacity been total incapacity, would have amounted to twenty-five shillings a week or upwards, the weekly payment in case of partial incapacity shall be one-half the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident;
- (b) if the maximum weekly payment would, had the incapacity been total incapacity, have amounted with such addition, if any, as is provided by paragraph 1 (e) of this Schedule, to less than twenty-five shillings, the weekly payment in case of partial incapacity shall be a sum bearing the same proportion to the said difference as the said maximum weekly payment with such addition as aforesaid bears to the amount of the average weekly earnings of the workman before the accident.

(2) . . . a person shall not be deemed to be a partial dependant of 1923, s. 22. another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position.

3. For the purposes of the provisions of this Schedule relating to “earn- 1906, Sch. I. ings” and “average weekly earnings” of a workman, the following rules (2). shall be observed:—

- (a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

- (b) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident ;
- (c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause ;
- (d) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment the sum so paid shall not be reckoned as part of the earnings ;

1923, s. 24 (4). (e) upon request of an injured workman to the employer . . . such employer shall furnish in writing a list of the earnings of that workman upon which the amount of average weekly earnings may be calculated for the purpose of determining the amount of any weekly payment under this Act.

1906, Sch. I. 4. In fixing the amount of the weekly payment, regard shall be had to (3). any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity.

1906, Sch. I. 5. Any weekly payment may be reviewed. . . .
(16) and 1923, " Provided that, where the workman was at the date of the accident s. 24 (6). under twenty-one years of age, and the review takes place more than six months after the accident, and before the workman attains the age of twenty-one years, the amount of the weekly payment may be increased to such an amount as would have been awarded if the workman had at the time of the accident been earning the weekly sum which he would probably have been earning at the date of the review if he had remained uninjured."

THIRD SCHEDULE.

PROCEDURE AND COSTS OF REFERENCES UNDER PARAGRAPH 2.

1. The remuneration of the arbitrator shall be such as the Secretary of State shall approve.

2. The arbitrator shall have power to administer oaths or take the affirmation of the parties and witnesses appearing before him and call for the production of books, accounts, and documents within their possession or power.

3. The parties to the reference and all persons claiming through them respectively and the witnesses on the references shall submit to be examined by the arbitrator in relation to the matter in dispute and such examination shall, if the arbitrator thinks fit, be on oath or affirmation, and they shall produce before the arbitrator all books, accounts and documents within their possession or power which may be required or called for and do all other things which during the proceedings on the reference the arbitrator may require.

4. The costs of and incidental to any arbitration under this Scheme shall be in the discretion of the arbitrator who may direct to and by whom such costs shall be paid and may settle the amount of the costs to be so paid.

THE METAL GRINDING INDUSTRIES (SILICOSIS) SCHEME, 1927, DATED APRIL 30TH, 1927, MADE BY THE SECRETARY OF STATE UNDER THE WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 GEO. 5, c. 84).

1. *Title of Scheme.*—This Scheme may be cited as “The Metal Grinding Industries (Silicosis) Scheme, 1927.”

2. *Commencement and Application of Scheme.*—This Scheme shall come into force on the 1st July, 1927, and shall apply to all workmen employed at any time on or after that date in the following processes :—

- (i.) grinding of metals, that is the abrasion, by aid of mechanical power, of any metal, or article of metal, or part of any article of metal, by means of a grindstone, including any hacking or rodding of the grindstone ;
- (ii.) any work incidental to any grinding of metals as aforesaid, and glazing, when such work or glazing is carried on in the same room as such grinding ;
- (iii.) racing of any grindstone for the purpose of grinding of metals as aforesaid ;

Provided that nothing in this Scheme shall apply to the employment of any workman in the processes mentioned in (i.) or (ii.)—

- (a) if such employment was occasional only and for not more than eight hours in any week ; or
- (b) in the manufacture of files where the grinding is done by mechanical means on an enclosed machine and the metal being ground is immersed in water ; or
- (c) for the purpose of manufacture, repair or sharpening of any tools or implements for use in the factory, unless the workman was wholly or mainly employed in the said processes.

Grinding includes “whittening” or “whitening.”

Grindstone means a grindstone composed of natural or manufactured sandstone, but does not include a metal wheel or cylinder into which blocks of natural or manufactured sandstone are fitted.

Hacking means the chipping of the surface of a grindstone by a hack or similar tool.

Rodding, which includes “barring up” or “scaring,” means the dressing of the surface of a revolving grindstone by the application of a rod, bar, or strip of metal to such surface.

Racing means the turning up, cutting or dressing of a revolving grindstone at the factory before the grindstone is brought into use for the first time.

Glazing means the abrading, polishing or finishing, by aid of mechanical power, of metal or of any article wholly or partly of metal, by means of any wheel, buff, mop, bob, dolly, or band to which any abrading or polishing substance is attached or applied, except the process known as “sand buffing” in which articles are polished by means of a mixture of oil and sand applied by hand to a rotating buff.

3. *Definitions.*—In this Scheme, unless the context otherwise requires :—

“Processes” means the processes mentioned in paragraph 2 or any one or more of such processes.

“The Act” means the Workmen's Compensation Act, 1925.

The expressions “employer,” “workman,” and “dependants” have the same meanings as in the Act.

“Certifying Surgeon” means the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which the workman was last employed in the processes or a medical practitioner specially appointed by the Secretary of State to have the powers and duties of a certifying surgeon under this Scheme.

“Medical Referee” means a medical practitioner specially appointed

by the Secretary of State to be a medical referee under the Act in respect of cases arising under this Scheme.

"Prescribed" means prescribed by the Secretary of State.

"Tuberculosis" means tuberculosis of the lungs.

PART I.—RIGHT TO COMPENSATION.

4.—(1) Where the Certifying Surgeon certifies in pursuance of this Scheme that a workman is totally disabled for work from silicosis or from silicosis accompanied by tuberculosis; or

(2) Where the death of a workman is certified by a Medical Referee, as hereinafter provided, to have been caused by silicosis or silicosis accompanied by tuberculosis;

and the disease is due to employment in the processes whether under one or more employers, compensation shall be payable to the workman during such disablement or to his dependants, as the case may be, as if the disease as aforesaid were a personal injury by accident arising out of and in the course of that employment, as provided by the Act, but subject to the modifications hereinafter contained.

Provided that no compensation shall be payable if the workman has not been employed at any time in the processes within the three years previous to the date of total disablement as defined in paragraph 7 of this Scheme.

5. If the workman has been employed in the processes for a period or periods amounting to not less than five years, the disease shall be deemed to be due to employment in the processes unless the employer proves the contrary.

6. If an employer or workman is aggrieved by the action of a Certifying Surgeon in giving or refusing to give a certificate of total disablement for the purposes of this Scheme, the matter shall be referred, in accordance with the Regulations applicable to references under Section 43 (i.) (f) of the Act, to a Medical Referee, and such Regulations shall apply as if silicosis or silicosis accompanied by tuberculosis were a disease included in the Third Schedule to the Act. Provided that the time within which application for a reference under this paragraph may be made, shall, if the applicant is an employer, be within ten days of the receipt of the notice of total disablement, or if a workman, within ten days of the receipt of the certificate of the Surgeon.

The decision of the Medical Referee in the matter referred to him shall be final.

7. For the purposes of this Scheme the date of total disablement shall be such date as the Certifying Surgeon certifies as the date on which the total disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given.

Provided that—

(a) Where the Medical Referee allows an appeal against a refusal by a Certifying Surgeon to give a certificate of total disablement, the date of total disablement shall be such date as the Medical Referee may determine;

(b) Where the workman dies without having obtained such certificate, it shall be the date of death.

8. Where a workman claims to be totally disabled for work from silicosis or silicosis accompanied by tuberculosis, the employer may agree with the workman that he is liable to pay compensation without requiring the workman to obtain the certificate of the Certifying Surgeon, and thereupon the workman shall be entitled to compensation as from the date of the agreement or from such other date as may be agreed.

Any such agreement may be recorded in the manner provided by sect. 23 of the Act, and shall be enforceable against the employer in like manner

and subject to the same provisions as an agreement to pay compensation in case of an injury under the Act.

9. The compensation shall be claimed and recoverable from the employer who last employed the workman in the processes ; but any other employers who employed the workman in the processes during the five years preceding the date of total disablement shall, unless they had at the commencement of this Scheme ceased to carry on the said processes, be liable to make to the employer from whom compensation is recoverable, such contributions as, in default of agreement, may be determined by arbitration under this Scheme.

Provided that no employer shall be liable to make any such contribution in respect of any period of employment more than twelve months previous to the commencement of this Scheme.

PART II.—AMOUNT OF COMPENSATION.

10. The compensation payable under this Scheme shall be fixed in accordance with the provisions contained in the Act under the head *Amount of Compensation* (sects. 8 to 13 inclusive) for fixing the compensation in cases of death and total disablement and the said sections shall apply accordingly, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer from whom compensation is recoverable under this Scheme.

PART III.—CONDITIONS OF COMPENSATION.

11. The provisions as to notice of accident and claim for compensation contained in section 14 of the Act shall apply in cases arising under this Scheme subject to the following modifications :—

- (a) the total disablement shall be treated as the happening of the accident ;
- (b) the employer to whom notice of the death or total disablement is to be given shall be the employer who last employed the workman in the processes ;
- (c) the notice may be given notwithstanding that the workman has voluntarily left his employment.

12. Sections 17, 18 and 19 of the Act (relating to submission to medical examination), and section 20 (relating to suspension of right to compensation), and any regulations and rules of court made thereunder, shall apply in the case of any workman claiming or in receipt of weekly payments of compensation under this Scheme, subject to the condition that no workman in receipt of such weekly payments shall be required to submit himself for examination by a medical practitioner under the said sections more frequently than once in every three months.

13. It shall be the duty of every workman claiming compensation under this Scheme to furnish to the employer from whom compensation is claimed, true information as to his employment with any previous employer who, within the five years preceding the date of total disablement, employed him in the processes or in any of the occupations mentioned in the First Schedule to this Scheme.

If a workman furnishes false information or withholds information as aforesaid, or if, after having been certified to be totally disabled under this Scheme, he re-engages in the processes or in any of the occupations mentioned in the said Schedule, he shall forfeit any right to compensation under the Scheme.

Provided that if the County Court Judge or other arbitrator under this Scheme is satisfied that the failure of the workman to comply with any of the requirements of this paragraph has been due to a *bonâ fide* mistake on his part or other reasonable cause, it shall be in his discretion to relax this provision on such conditions and to such extent as he may think fit.

14.—(1) Where application is made by or on behalf of the dependants of a deceased workman to a Medical Referee for a certificate that the death of the workman has been due to silicosis or silicosis accompanied by tuberculosis, it shall be the duty of the Medical Referee, on payment to him by the applicant of the fees specified below and subject to any regulations of the Secretary of State, after a postmortem examination of the deceased workman, to certify in writing in the prescribed form whether or not the death of the workman has been so caused and to forward such certificate to the applicant. Any such certificate by the Medical Referee shall be conclusive.

Provided that where the deceased was in receipt of weekly payments under this Scheme, but only in such cases, the Medical Referee may, if satisfied that a postmortem examination is unnecessary, give a certificate without such examination.

The postmortem examination shall, if possible, be made by or under the personal supervision of the Medical Referee, but where the Medical Referee cannot himself undertake or be present at the examination, it shall be sufficient if the examination is made by another duly qualified medical practitioner, to the satisfaction of the Medical Referee.

The Medical Referee shall, on payment of a fee of 1s., furnish the employer with a copy of any certificate given by him under this paragraph.

(2) The fees to be paid to the Medical Referee for a report under this paragraph (including the cost of any postmortem examination) shall be three guineas, and where, in order to make the postmortem examination the Medical Referee, or other medical practitioner making such examination, is compelled to travel to a place distant more than two miles from his residence, there shall be paid in addition to the foregoing fee, 5s. for each mile beyond two and up to ten miles distant from such residence, and thereafter 1s. for each mile distant therefrom.

(3) The amount of any fees paid by or on behalf of the dependants under the provisions of this paragraph may, in the event of an award of compensation being made, be allowed as costs in the arbitration.

PART IV.—PROCEDURE FOR SETTLING QUESTIONS.

15. All claims to compensation and, except as otherwise provided in this Scheme, any questions arising under this Scheme shall be determined in accordance with the provisions contained in the Act under the head *Procedure for determining Compensation and settling Questions* (sections 21 to 28 inclusive) and the said provisions and any regulations and rules of court made in pursuance thereof shall apply accordingly.

The power of making rules of Court under the Act shall include a power to make such rules as may be necessary for the purpose of carrying this Scheme into effect.

PART V.—MISCELLANEOUS PROVISIONS.

16. The provisions of sub-section (1) (a) and (b) and of sub-sections (2), (3) and (4) and, notwithstanding anything in section 40 of the Act, sub-section (5) of section 16 of the National Health Insurance Act, 1924, shall apply to compensation under this Scheme in the same way as to compensation under the Act.

Provided that in the application of sub-section (3) of section sixteen as aforesaid a workman who would otherwise be eligible for compensation under this Scheme but refuses or wilfully neglects to take the steps to obtain compensation under this Scheme shall be deemed to have unreasonably refused or neglected to take proceedings within the meaning of the said sub-section.

17. The Regulations as to the duties and fees of Certifying Surgeons under sections 43 and 44 of the Act, with the additions, modifications and

omissions set out in the Second Schedule hereto, shall apply to any examinations made and certificates given by a Certifying Surgeon under this Scheme.

18. The following provisions of the Act shall so far as applicable apply to any case under this Scheme in like manner as in cases under the Act :—

- (a) Section 6.—Liability in case of workmen employed by contractors.
- (b) Section 7.—Provision as to cases of bankruptcy of employer.
- (c) Section 16.—Conditions as to residence.
- (d) Section 40.—Prohibition against charging or assigning weekly payments.
- (e) Section 41.—Repayment of Poor Relief.
- (f) Section 48.—Interpretation.
- (g) Section 49.—Application to Scotland.

19. Every employer who employs any person in the processes shall in every year send to the Secretary of State, at such time and in such form as may be prescribed, a correct return of the number of cases in respect of which compensation has been paid by him under this Scheme during the previous year and the amount of such compensation, together with such other particulars as the Secretary of State may direct, and an employer failing to send such return shall be deemed to be in default in complying with section 42 (1) of the Act.

FIRST SCHEDULE.

OCCUPATIONS REFERRED TO IN PARAGRAPH 13 OF SCHEME.

Mining and quarrying in flint, chert, ganister, silica (quartz and quartzite) rocks, sandstone, gritstone, buhrstone, or granite.

Dressing and grinding of wheels of sandstone, gritstone, or buhrstone.

Dressing and carving of sandstone, gritstone, buhrstone, or granite.

Any processes in pottery manufacture in which powdered flint or powdered silica rock is used.

Any process to which the Refractories Industries (Silicosis) Scheme, 1925 applies, in or in connection with the getting, handling, moving, breaking, crushing, grinding or sieving of material containing not less than 80 per cent. total silica (SiO_2) or in the manipulation of such material in the manufacture of bricks or other articles containing not less than 80 per cent. total silica (SiO_2).

SECOND SCHEDULE.

REGULATIONS AS TO DUTIES AND FEES OF CERTIFYING SURGEONS.

1. Where a workman applies to a Certifying Surgeon for a certificate (hereinafter called a "certificate of total disablement") that he is suffering from silicosis or silicosis accompanied by tuberculosis and is thereby totally disabled for work, the Certifying Surgeon on payment of the prescribed fee and after obtaining the particulars specified in Form 1, and such other information, if any, respecting the case as in the particular circumstances he may deem necessary, shall either proceed at once, if the application is made by the workman in person, to make a medical examination of the workman, or shall appoint forthwith a time and place for making such examination, and give notice thereof to the workman. Such notice, if given in writing, shall follow, as closely as may be, Form 2. Form 1.

2. After personally examining the workman, the Certifying Surgeon shall either give the workman a certificate of total disablement or shall certify that he is not satisfied that the workman is entitled to such certificate, and shall, in either case deliver his certificate to the workman. The certificate given shall be in Form 3 or Form 5 as the case may be. Form 2.

3. A copy of any certificate given by a Certifying Surgeon under the foregoing Regulations shall, together with any other documents relating to the case, be retained and kept by the Surgeon; and copies of any such Forms 3 and 5.

certificate shall, on payment of the prescribed fee, be supplied by the Surgeon to the employer and the workman.

4. The Certifying Surgeon shall be entitled to charge the workman a fee of 5s. for any certificate given under Regulation 2, and where the workman is unable to present himself for examination at the residence of, or other nearer place fixed by, the Certifying Surgeon, for every mile or portion thereof which the Certifying Surgeon is required to travel therefrom for the purpose of examining the workman, an additional fee of 1s.

He shall also be entitled to charge the employer or the workman as the case may be, a fee of 1s. for a copy of any certificate supplied under Regulation 3.

FORM 1.

METAL GRINDING INDUSTRIES (SILICOSIS) SCHEME, 1927.

Particulars to be obtained by Certifying Surgeon upon application by Workman for Certificate of Total Disablement.

1. Name and address of workman.
2. Symptoms complained of.
3. Employment to the nature of which disease is attributed.
4. Name and address of works of employer who last employed workman in such employment.
5. (*Where application is not made by workman in person*) Whether workman is able to travel for purposes of examination.

FORM 2.

METAL GRINDING INDUSTRIES (SILICOSIS) SCHEME, 1927.

Notice to Workman of time and place appointed for his Examination by Certifying Surgeon.

I hereby give you notice, with reference to your application for a certificate of total disablement under the above-mentioned Scheme, that I propose to examine you at on the day of at o'clock, and that you are required to submit yourself for examination accordingly.

(Signed)

Certifying Surgeon.

To (*the Workman.*)

FORM 3.

METAL GRINDING INDUSTRIES (SILICOSIS) SCHEME, 1927.

Certificate of Total Disablement.

1. Full name and address of workman.
2. Name and address of works of employer stated by workman to have last employed him in the processes.
3. Process in which workman states he was last employed in that employment.
4. Leading symptoms of disease.

(a) Strike out portion of description in-applicable.

I, (a) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (or as a medical practitioner specially appointed by the Secretary of State to have the powers and duties of a

certifying surgeon for the purposes of the above-mentioned Scheme), hereby certify that having personally examined the above-named workman on the day of I am satisfied that (b) is suffering (b) "He" from (a) silicosis (or silicosis accompanied by tuberculosis) and is thereby or "she." totally disabled for work ;

And I * certify that the total disablement commenced on the day of

Dated this day of , 19 .
(Signed)

Certifying Surgeon.

* If the surgeon is unable to certify a date on which the total disablement commenced, he should strike out this part of the certificate. In that case the total disablement will be deemed to have commenced on the date on which this certificate is given. See paragraph 7 of Scheme.

FORM 5.

METAL GRINDING INDUSTRIES (SILICOSIS) SCHEME, 1927.

Certificate of Certifying Surgeon Refusing to give Certificate of Total Disablement.

1. Full name and address of workman.

2. Name and address of works of employer stated by workman to have last employed him in the processes.

3. Process in which workman states he was last employed in that employment.

I, (a) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (or as a medical practitioner specially appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of the above-mentioned Scheme), hereby certify that having personally examined the above-named workman who has applied for a Certificate of Total Disablement in respect of (a) silicosis (or silicosis accompanied by tuberculosis) I am *not* satisfied that (b) is suffering from the said disease so as to be totally disabled for work.

(a) Strike out portion of description inapplicable.

(b) "He" or "she."

Dated this day of , 19 .
(Signed)

Certifying Surgeon.

FORM 6.

FORM TO BE USED BY MEDICAL REFEREE FOR A CERTIFICATE UNDER PARAGRAPH 14 OF THE SCHEME.

Certificate of Death from Silicosis or Silicosis accompanied by Tuberculosis.

1. Name and address of person applying for certificate.

2. Full name of deceased workman and residence at the time of death.

3. Name and address of works of employer stated to have last employed workman in the processes covered by above Scheme.*

4. Whether workman was or was not in receipt of weekly payments under the Scheme.

5. Whether a postmortem examination † of body of workman was made and if so, by whom (a).

(a) If made by a medical practitioner other than the Medical Referee, insert name, qualifications, and address of person who conducted the examination.

WORKMEN'S COMPENSATION ACT, 1923.

Section 1.

Note.—This Act is repealed by the Workmen's Compensation Act, 1925, Schedule IV., with the exception of the following sections.

AMENDMENT OF BENEFITS UNDER PRINCIPAL ACT.

1. The Workmen's Compensation (War Addition) Acts, 1917 and 1919, shall cease to have effect after the thirty-first day of December, nineteen hundred and twenty-three, and are hereby repealed :

Repeal of War Addition Acts.
7 & 8 Geo. 5, c. 42.
9 & 10 Geo. 5, c. 83.
6 Edw. 7, c. 58.

Provided that the addition provided for in the said Acts shall continue to apply to a weekly payment payable to a workman under the Workmen's Compensation Act, 1906 (hereinafter referred to as the principal Act), or under any enactment superseded by that Act, in respect of total incapacity arising from an accident which occurred on or before the said thirty-first day of December so long as the workman remains totally incapacitated, and the addition shall, for all purposes, be treated as if it were part of the weekly payment.

Note.—See *Costello v. Brown*, (1925) 94 L. J. K. B. 220, in which it was held that under sect. 38, sub-s. 2 (b) (c) of the Interpretation Act, 1889, the coming into force on January 1st, 1924, of the Workmen's Compensation Act, 1923, did not affect rights previously existing, and that consequently where an employer had previously filed his application under Sched. 1, para. 17 of the Act of 1906 (now sect. 13 of the present Act), to redeem an award of 1l. a week, that was the sum he was entitled to redeem and not that sum plus the war additions.

Held further, that the Interpretation Act operated in favour of the workman as well as the employer, and therefore the right of the totally incapacitated workman to receive his war additions still continued.

N.B.—It must be observed that in this case the workman was actually receiving weekly compensation under the Act of 1906 up to the very time the Act of 1923 came into force and consequently his rights were protected by the Interpretation Act. What would have happened if the compensation had been redeemed a considerable time before the Act of 1923 came into force appears still to be very arguable.

Where, before the repeal of the War Addition Acts a workman was totally incapacitated, but at the date of repeal he was suffering from partial incapacity only, but shortly afterwards again became totally incapacitated as the result of his injury, he was held entitled under the above proviso to the war addition (*Glasgow Iron and Steel Co., Ltd. v. Dickson and Coltness Iron Co., Ltd. Dalgleish*, reported together, (1925) A. C. (H. L.) 790 ; (1926) 95 L. J. K. B. (H. L.) 1).

6.—(1) If it appears to the Registrar of Friendly Societies that any scheme duly certified by him under sub-section (1) of section three of the principal Act no longer complies with the requirements of that section by reason of the foregoing provisions of this Act, he shall make such amendments of the scales of compensation provided by the scheme as may in his opinion be necessary to render them not less favourable to the workmen and their dependants than the corresponding scales contained in the principal Act as amended by this Act.

Provision with respect to certified schemes.

Section 6.

(2) Where the Registrar has amended scales of compensation provided by any such scheme as aforesaid, the scheme shall have effect as if when originally made it had provided for the substitution, as from the date of the commencement of this Act, of the amended scales for the scales originally contained therein, and the amended scales shall continue to apply until the expiry of the certificate in force at the commencement of this Act or of any renewal thereof given by the Registrar under the principal Act.

NOTIFICATION OF ACCIDENTS ; FIRST AID AND AMBULANCE.

Notification
of accidents.
6 Edw. 7,
c. 53.

28.—(1) Section four of the Notice of Accidents Act, 1906, shall have effect as if for sub-section (1) thereof the following sub-section were substituted :—

“ Where any accident occurs in a factory or workshop which either—

(a) causes loss of life to a person employed in the factory or workshop ; or

(b) disables any such person for more than three days from earning full wages at the work at which he was employed ; written notice of the accident, in such form and accompanied by such particulars as the Secretary of State may prescribe, shall forthwith be sent to the inspector of the district.”

(2) Section one of the Notice of Accidents Act, 1906, so far as it relates to metalliferous mines and quarries, shall have effect as if for the words “ and disabled for more than seven days any person employed in or about the mine or quarry from working at his ordinary work,” there were substituted the words “ and disabled for more than three days any person employed in or about the mine or quarry from earning full wages at the work at which he was employed.”

1 & 2 Geo. 5,
c. 50.

(3) Paragraph (b) of sub-section (1) of section eighteen of the Coal Mines Act, 1911, shall have effect as if for the words “ and disabled for more than seven days any person employed in or about the mine from working at his ordinary work,” there were substituted the words “ and disabled for more than three days any person employed in or about the mine from earning full wages at the work at which he was employed.”

(4) This section shall be construed as one with the Notice of Accidents Act, 1906, or the Coal Mines Act, 1911, as the case may require.

First-aid and
ambulance
and safety
orders.

29.—(1) In every factory the following requirements shall have effect :—

(a) There shall be provided and maintained so as to be readily accessible a first-aid box or cupboard of the prescribed standard, and, where more than one hundred and fifty

persons are employed, an additional box or cupboard for every additional one hundred and fifty persons. Section 29.

The number of first-aid boxes or cupboards required under this provision shall be calculated on the largest number of persons employed at any one time, and fractions of one hundred and fifty shall be reckoned as one hundred and fifty. Where the persons employed are employed in shifts, the calculation of the number employed shall be according to the largest number at work at any one time :

- (b) Nothing except appliances or requisites for first-aid shall be kept in a first-aid box or cupboard :
- (c) Each first-aid box or cupboard shall be placed under the charge of a responsible person who shall always be readily available during working hours. A notice shall be affixed in every workroom stating the name of the person in charge of the first-aid box or cupboard provided in respect of that room :
- (d) If an ambulance room is provided at the factory and such arrangements are made as to ensure the immediate treatment there of all injuries occurring in the factory, the Chief Inspector may by certificate exempt the factory from the requirements of this section to such extent and subject to such conditions as he may specify in the certificate ;

and, if in respect of any factory such requirements are not complied with, the factory shall be deemed not to be kept in conformity with the Factory and Workshop Act, 1901.

(2) The powers of the Secretary of State under section seven of 1 Edw. 7 the Police, Factories, &c. (Miscellaneous Provisions) Act, 1916, to c. 22. make orders in relation to first aid and ambulance arrangements 6 & 7 Geo. 5, in factories and workshops, shall be exercisable as respects any c. 31. works or premises to which any of the provisions of the Factory and Workshops Acts, 1901 to 1920, apply, and such building and engineering operations as may be prescribed, in like manner as they are exercisable as respects factories and workshops.

(3) Where it appears to the Secretary of State that, in view of the number and nature of accidents occurring in any factory or class of factories, special provision ought to be made at that factory or at factories of that class to secure the safety of persons employed therein, he may by order require the occupier to make such reasonable provision by arrangements for special supervision in regard to safety, investigation of the circumstances and causes of accidents, and otherwise as may be specified in the order, and, if the occupier of any factory affected by any such order fails

Section 29. to comply with the requirements of the order or any of them, the factory shall be deemed not to be kept in conformity with the Factory and Workshop Act, 1901.

(4) This section, so far as it relates to factories and other places to which the Factory and Workshop Acts, 1901 to 1920, or any of them, apply, shall be construed as one with those Acts.

SUPPLEMENTAL.

Application
of Act.

30. The provisions of sections two to ten of this Act and of the amendments of any scheme made in pursuance thereof shall not apply to any case where the accident happened before the commencement of this Act.

Short title,
construction,
extent, com-
mencement
and repeal.
9 Edw. 7,
c. 16.
8 & 9 Geo. 5,
c. 8.
8 & 9 Geo. 5,
c. 14.

31.—(1) This Act may be cited as the Workmen's Compensation Act, 1923, and the principal Act, the Workmen's Compensation (Anglo-French Convention) Act, 1909, the Workmen's Compensation (Illegal Employment) Act, 1918, the Workmen's Compensation (Silicosis) Act, 1918, and this Act may be cited together as the Workmen's Compensation Acts, 1906 to 1923.

(2) This Act shall, save as otherwise expressly provided, be construed as one with the principal Act, and references in this Act to the principal Act shall be construed as references to that Act as amended by this Act.

(3) This Act shall not, except where otherwise expressly provided, extend to Northern Ireland.

(4) This Act shall come into operation on the first day of January, nineteen hundred and twenty-four.

(5) The enactments mentioned in the Second Schedule to this Act, except so far as they relate to Northern Ireland, are hereby repealed to the extent specified in the third column of that schedule.

WORKMEN'S COMPENSATION (TRANSFER OF FUNDS) ACT, 1927.

[17 & 18 GEO. 5. CH. 15.]

Whereas at an Imperial Conference held in London in the year nineteen hundred and twenty-six, a resolution was adopted recommending that arrangements should be made between the different parts of the Empire whereby sums awarded under the law relating to workmen's compensation in one part of the Empire to beneficiaries resident or becoming resident in another part of the Empire may, at the request of the authority by which the award is made, be transferred to and administered by a competent authority in that part of the Empire in which such beneficiaries reside, and inviting the several Governments of the Empire to take

such steps by way of legislation or otherwise as each may consider necessary and appropriate for the purpose of promoting such arrangements :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. For the purpose of giving effect to the said resolution, the Workmen's Compensation Act, 1925, shall be amended as follows :

Amendment of 15 & 16 Geo. 5, c. 84, as to powers of making rules of court.

Rules of court under the said Act may provide, in the event of any such arrangements as is mentioned in the said resolution being made between Great Britain and any other part of His Majesty's dominions—

(a) for the transfer, in such manner as may be provided by the arrangement, to the part of His Majesty's dominions with which the arrangement is made of any money paid into court under the said Act and rules made thereunder, as applicable for the benefit of any person resident in or about to reside in the part of His Majesty's dominions with which the arrangement has been made ;

(b) for the receipt and administration by a county court of any money which under any such arrangement has been transmitted from the part of His Majesty's dominions with which the arrangement has been made as money applicable for the benefit of any person resident or about to reside in Great Britain.

2.—(1) This Act may be cited as the Workmen's Compensation (Transfer of Funds) Act, 1927, and shall be construed as one with the Workmen's Compensation Act, 1925.

Short title and construction.

(2) For the purposes of this Act, " His Majesty's dominions " includes territories under His Majesty's protection and such, if any, of the territories in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty as His Majesty may by Order in Council direct shall be treated as if they were included in His Majesty's dominions for the purposes of this Act.

RULES.

THE WORKMEN'S COMPENSATION RULES, 1926, DATED
APRIL 28, 1926.

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Rules.

PRELIMINARY.

1.—(1) The following rules shall have effect under the Workmen's Compensation Act, 1925 (in these rules referred to as the Act), with reference to any matter or proceeding for the regulation of which rules of court may be made under the Act, and generally for carrying the Act into effect so far as it affects

Effect, short title, commencement, and construction of Rules, 15 & 16 Geo.V

Rule 1. the county court or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator.

(2) These rules may be cited as the Workmen's Compensation Rules, 1926, and shall come into operation on the first day of May, 1926. They shall not apply to any case where the accident happened before the first day of January, 1924; in any such case the existing rules shall continue to apply.

(3) Subject as aforesaid the existing Workmen's Compensation Rules, are hereby annulled.

(4) Expressions used in these rules shall have the same meaning as the same expressions used in the Act.

52 & 53 Vict.
c. 63.

(5) The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these rules as it applies for the purpose of the interpretation of an Act of Parliament.

(6) These rules shall also be read and construed with the County Court Rules, 1903, and the County Court Rules of subsequent date amending the same; and any order and rule referred to by number in these rules shall mean the order and rule so numbered in the County Court Rules, 1903, or in any County Court Rules of subsequent date, as the case may be.

PARTIES TO ARBITRATION BEFORE JUDGE OR ARBITRATOR APPOINTED BY JUDGE.

Parties to
arbitration.

2.—(1) Where application is made for the settlement by the judge, or by an arbitrator appointed by the judge, of any matter which under the Act is to be settled by arbitration, the party making such application shall be called "the applicant"; and subject to these rules, all other persons whose presence at the arbitration may be necessary to enable the judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved shall be made parties to the application, and shall be called "the respondents."

Order III.,
rule 2.

(2) In any case in which both the principal as defined by the Act and a contractor with him are alleged to be liable to pay compensation under the Act, Order III., rule 2, as to joinder of parties, shall apply.

Joinder of
applicants.
Order III.,
rule 1.

3. More persons than one may be joined as applicants in one arbitration, in any case in which such persons might be joined in one action as plaintiffs under Order III., rule 1; and that rule,

and rules 18 and 19 of Order XLIV., shall, with the necessary modifications, apply to any such arbitration.

Rule 3.

Order
XLIV.,
rules 18, 19.
Application
by depen-
dants.

4.—(1) An application on behalf of the dependants of a deceased workman for the settlement by arbitration of the amount payable as compensation to such dependants may be made by the legal personal representative, if any, of the deceased workman on behalf of such dependants, or by the dependants themselves; and in either case the particulars to be filed as hereinafter mentioned shall contain particulars as to the dependants on whose behalf the application is made.

(2) Provided, that if there is any conflict of interest between the dependants themselves, or if any dependants neglect or refuse to join in an application, the application may be made by or on behalf of some only of such dependants, the other dependants in either case being named as respondents.

There may be circumstances when others cannot be joined, as where a father was either dead or had deserted his wife, who claimed as dependent on a son (*Bevan v. Crawshaw*, (1902) 1 K. B. 25).

(3) In the construction of this rule the term "dependants" shall include persons who claim or may be entitled to claim to be dependants, but as to whose claim to rank as dependants any question arises.

5.—(1) In any case in which the amount payable as compensation to the dependants of a deceased workman has been agreed upon or ascertained, but any question arises as to who are dependants, or as to the amount payable to each dependant, an application for the settlement of such question by arbitration may be made either by the legal personal representative, if any, of the deceased workman on behalf of the dependants or any of them, or by such dependants or any of them, against the other dependants, and the persons claiming or who may be entitled to claim to be dependants, but as to whose claim to rank as such a question arises; or such application may be made by the persons claiming to be dependants, but as to whose claim to rank as such a question arises, or any of them, against the legal personal representative, if any, of the deceased workman, and the dependants, and such of the persons claiming or who may be entitled to claim to be dependants as are not applicants.

Application
by depen-
dants under
Act, s. 21 (2)
where
amount of
compensa-
tion agreed
or ascer-
tained.

(2) In any such case, if the employer has paid the agreed or ascertained amount of compensation, it shall not be necessary to

Rule 5. — make him a respondent, but if such compensation or any part thereof is still in his hands he shall be made a respondent.

(3) The employer, if made a respondent, may pay the amount of compensation in his hands into court, to be dealt with as the judge or arbitrator shall direct, and thereupon further proceedings against him shall be stayed.

This obviates the necessity for letters of administration (*Clatworthy v. Green*, 4 W. C. C. 152).

(4) The registrar shall within twenty-four hours from the time of payment made pursuant to the last preceding paragraph send notice thereof to the applicant and to the other respondents (if any), and the employer shall not be liable to any costs otherwise than in accordance with paragraph 6 (c) of rule 19.

Parties to arbitration as to sum payable for medical attendance and burial. Act, s. 8 (2) (v.)

6.—(1) An application for the settlement by arbitration of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants shall be made by the legal personal representative, if any, of the deceased workman. If there is no such legal personal representative, the application may be made by any person to whom any such expenses are due. In the latter case any other person known to the applicant as a person to whom any such expenses are due shall be joined in the application either as applicant or respondent.

Apportionment of such sum.

(2) In any case in which application is made for the settlement by arbitration of such amount, the amount awarded, if insufficient for the payment of such expenses in full, shall be apportioned between the persons to whom such expenses are due in such manner as the judge or arbitrator shall direct.

Parties under disability and partners; representation of parties having the same interest.

7.—(1) The provisions of rules 7 and 8 of Order III., as to parties suing or defending on behalf of other persons having the same interest, and the provisions of the County Court Rules as to persons under disability and partners suing and being sued, shall, with the necessary modifications, apply to proceedings by way of arbitration under the Act.

Judge may direct infant to appear as if he were of full age.

(2) Provided that the judge may at any time direct that an infant shall appear either as applicant or respondent in the same manner as if he were of full age.

As to appearing by next friend, see Order V. r. 16 and Form 15.

APPLICATION FOR ARBITRATION.

Request for arbitration.

8.—(1) An application for the settlement of any matter by arbitration shall not be made unless and until some question has

arisen between the parties, and such question has not been settled by agreement.

Rule 8.

This rule gives effect to the decision in *Field v. Longden*, (1902) 1 K. B. 47, that arbitration is not to be requested unless a question has arisen, and requires the question to be stated in the request. The question must be a real question (*Jones v. Great Central Rail.*, 4 W. C. C. 23), and an employer must be given a fair opportunity of admitting or disputing liability (*Caledon, etc. Co. v. Kennedy*, (1906) 43 S. L. R. 430, 637). The arbitrator has no power under this rule to strike out a request for arbitration merely on the ground that he thinks further time should be allowed for a settlement to be arrived at, although it is in his discretion to do so, if he be of opinion that the proceedings are premature and unreasonable (*Rooney v. Hurlock*, (1918) W. C. & I. 200). NOTE.—This rule does not apply on proceedings for review (*Tyne Tees Co. v. Whitlock*, (1913) 3 K. B. 642).

(2) Where any question has arisen and has not been settled by agreement, an application for the settlement of the matter by arbitration shall be made by the applicant filing with the registrar a request for arbitration, intituled in the matter of the Act and in the matter of the arbitration, which request shall state concisely the question which has arisen, and shall, with the subsequent proceedings thereon, be recorded in the special register hereinafter mentioned.

The question thus stated is the only question which an arbitrator may consider. Nor should he amend the particulars at the hearing so as to substantially raise a new issue (*Proprietors of Hay's Wharf v. Brown*, 3 B. W. C. C. 84).

(3) Particulars shall be appended or annexed to the request, Particulars.
containing—

- (a) a concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims ;
- (b) the date of service of notice of the accident on the employer, or, if such notice has not been served, the reason for such omission ; and
- (c) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor.

9.—(1) The request and particulars shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require. Forms of request and particulars. Forms 1 to 11.

If not complete, fuller and better ones may be demanded (*Hay's Wharf v. Brown*, 3 B. 92).

Rule 9.

(2) A copy of the notice of the accident shall be appended or annexed to the particulars. If this rule cannot be complied with, the reason for the omission shall be stated in the particulars.

Application
by employer.

10.—(1) Where an employer on whom a claim for compensation has been made desires to make an application for the settlement of any matter by arbitration, he shall file a request for arbitration in accordance with rule 8, to which the workman, or the legal personal representative, if any, and the persons claiming or who may be entitled to claim to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made, shall be respondents.

(2) Particulars shall be appended or annexed to the request, containing—

- (a) a concise statement of the circumstances under which the application is made ;
- (b) a statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability ;
- (c) a statement of the matters which the applicant desires to have settled by arbitration ; and
- (d) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor.

Copies for
judge and
respondents.

11. The applicant shall deliver to the registrar with the request and particulars a copy thereof for the judge or arbitrator, and a copy for each respondent to be served.

Where
applicant is
illiterate.

12. Where the applicant is illiterate and unable to furnish the required information in writing, the request and particulars and copies shall be filled up by the registrar's clerk.

County
Court Rules
as to security
for costs not
to apply.

13. Order V., rules 10 and 11, and Order XII., rule 9, of the County Court Rules, as to security for costs, shall not apply to proceedings under the Act and these Rules.

PROCEEDINGS ON ARBITRATION BEFORE JUDGE.

Fixing Day and Place for Arbitration.

Fixing day
and place for
arbitration.

14.—(1) On the filing of a request for arbitration, the registrar shall transmit a copy of the request and particulars to the judge, who shall as soon as conveniently may be (if he decides to settle the matter himself) appoint a day and hour for proceeding with

the arbitration. Such day shall, subject to the provisions of rule 28, be so fixed as to allow the copies of the request and particulars to be served on the respondents at least twenty clear days before the day so fixed.

Rule 14.

(2) The arbitration shall, subject as hereinafter mentioned, be held at the place at which the court is held.

(3) Provided, that the judge may direct that the arbitration shall be held at any other place within the district of the court, on application in that behalf made by any party to the arbitration, and on such party filing an undertaking to provide at his own expense a place to the satisfaction of the judge in which the arbitration may be held, and to pay the necessary expenses of the judge and officers of the court attending at such place.

(4) If such direction is given before the notices mentioned in the next following rule are issued, the registrar shall insert in such notices the place at which the arbitration has been so directed to be held.

(5) If such direction is given after such notices have been issued, the registrar shall forthwith send notice by post to the parties of the place at which the arbitration has been so directed to be held.

Notice of Day Fixed.

15.—(1) On the day for proceeding with an arbitration being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and shall issue the copies of the request and particulars, under the seal of the court, for service on the respondents, together with notices under the seal of the court, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Notice to parties.

Forms 12, 13.

(2) Where the request is filed by an employer, the notices to be served on the respondents shall be modified by the omission of the words therein relating to the denial or admission of liability to pay compensation.

Notice where employer is applicant.
Form 13.

Service on Respondents.

16.—(1) The copies and notices mentioned in the last preceding rule shall, subject to the provisions of rule 28, be served on the respondents at least twenty clear days before the day fixed for proceeding with the arbitration.

Service on respondents.

This is to allow sufficient time for proceedings between service and hearing, especially third party proceedings.

Rule 16. (2) The copies and notices mentioned in the last preceding rule may be served—

- (a) By a bailiff of a court ;
or, at the request of the applicant or his solicitor,
- (b) By the applicant, or some clerk or servant in his permanent and exclusive employ ; or
- (c) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve such copies and notices, who might be so employed to serve a writ in an action in the High Court.

(3) Service may be effected either in accordance with the rules as to service of default summonses (a), or by registered post in accordance with the provisions of sub-sections 3 and 4 of section 14 of the Act with reference to service of notice in respect of an injury, and the provisions of those sub-sections shall apply to such service.

(a) Order VII. rr. 30—34.

Where service effected otherwise than by bailiff.

(4) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant. The applicant shall also (unless the respondent files an answer) after the time limited for filing an answer, deliver or transmit to the registrar an affidavit of the service of such document, according to Form 37 in the Appendix to the County Court Rules, with such variations as the circumstances of the case may require.

Service by post.

(5) Where a document is served by post it shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such document it shall be sufficient to prove that the same was properly addressed and registered.

Service on respondent in Scotland or Ireland.

(6) Where the accident occurred in England, and any respondent resides in Scotland or Ireland, service on such respondent may be effected in accordance with this rule, and service so effected shall be deemed to be sufficient.

Par. 6 has been framed on the lines of the decision in *Rex v. Owen*, (1902) 2 K. B. 436. It was there held that where an accident occurs in England, but the employer resides in Scotland or Ireland, proceedings may be taken in the county court in England ; and in reply to the argument that

Rule 16
Notes.

there were no provisions for the service out of the jurisdiction, the court held that the rule as to service by registered post met the difficulty. Channell, J., pointed out that this was probably by accident, and that the words were not intended to meet such a case; but it was held that they did in fact meet it. It is now effected by this rule in express terms.

Further, the Court of Appeal has recently held that service by registered post on an employer resident abroad is good service where the claim arises out of a contract of employment made in the United Kingdom (*Hunter v. Stadtsche, &c., Co.*, (1925) 2 K. B. 493; (1926) 95 L. J. K. B. 300; (1925) 133 L. T. 488).

Stay of Proceedings.

17. Where several requests for arbitration are filed by different applicants against the same respondent in the same court in respect of matters arising out of the same circumstances, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by the award in such one of the said arbitrations as may be selected by the judge, apply to the judge under Order VIII., rule 2, for an order to stay proceedings in the arbitrations other than the one so selected until an award is made in such selected arbitration; and rules 2 to 6 of Order VIII. shall, with the necessary modifications, apply accordingly.

Stay of proceedings in other arbitrations to abide decision as to liability in selected arbitration. Order VIII., rules 2—6.

Answer by Respondent.

18.—(1) If any respondent desires to disclaim any interest in the subject matter of an arbitration, or considers that the applicant's particulars are in any respect inaccurate or incomplete, or desires to bring any fact or document to the notice of the judge, or intends to rely on the fact that notice of the accident, or of death, disablement, or suspension, was not given as required by the Act, or that the claim for compensation was not made within the time limited by the Act, or intends to deny (wholly or partially) his liability to pay compensation under the Act, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, or if the time is abridged pursuant to rule 28, then within the time fixed by the order, file with the registrar an answer, stating his name and address, and the name and address of his solicitor (if any), and stating that he disclaims any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which he desires to bring to the notice of the judge, or on which he intends to rely, or the grounds on and extent to which he denies liability

Answer by respondent.

Form 14.

(2) The respondent shall with such answer file copies thereof for the applicant and the judge, and one copy for each of the other respondents; and the registrar shall within twenty-four hours after receiving such copies transmit the same by post to the applicant and the judge and the other respondents respectively.

Rule 18.

(3) Subject to any answer so filed, and to the provisions of the next following paragraph, the applicant's particulars, and, in the case of a claim for compensation, the liability to pay compensation under the Act, shall be taken to be admitted.

(4) Provided, that in case of non-compliance with this rule, and of the applicant's not consenting at the arbitration to permit a respondent to avail himself of any matter of which he should pursuant to this rule have given notice by filing an answer, the judge may, on such terms as he shall think fit, either proceed with the arbitration and allow the respondent to avail himself of such matter, or adjourn the arbitration to enable the respondent to file such answer.

The arbitrator's discretion on such matters is very great (*Silvester v. Cude*, 1 W. C. C. 120); but he should not allow new matter to be sprung on either party without adjourning as a rule, though he has jurisdiction to admit fresh oral evidence even at the third hearing of the case. See *Leivers v. Barber, Walker & Co.*, (1924) 93 L. J. K. B. 933.

The arbitrator has jurisdiction to consider an application to terminate a suspensory award which is made by the answer (*Paulizky v. Wandsworth, Wimbledon & Epsom Gas Co.*, (1916) W. C. & Ins. Rep. 127).

Answer
where
employer is
applicant.

(5) The provisions of this rule shall, with the necessary modifications, apply to a case in which a request for arbitration is filed by an employer; but a respondent who fails to file an answer shall not be taken to admit the truth of any statement in the applicant's particulars in which he denies, wholly or partially, his liability to pay compensation.

*Submission to Award or Payment into Court
by Respondent.*

Submission
to award or
payment into
court with
admission
of liability.
Form 15.

19.—(1) A respondent who admits liability may at any time before the day fixed for proceeding with the arbitration,

(a) Where the application is made by an injured workman,

(i.) file with the registrar a notice that he submits to an award for the payment of a weekly sum, to be specified in such notice; or

(ii.) file with the registrar a notice that he submits to an award for the payment of a lump sum, to be specified in the notice, which he considers to be sufficient to cover his liability in the circumstances of the case, and pay such sum into court; or

This rule is probably *ultra vires* if it is intended to allow a lump sum covering future liability, and not merely arrears of compensation, to be paid into court.

(b) Where the application is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants, file

with the registrar a notice that he admits liability, and pay into court such sum of money as he considers sufficient to cover his liability in the circumstances of the case.

Rule 19.

In any such case the respondent shall file as many copies of the notice as there are parties to whom notice of submission to an award or of payment into court is to be sent.

(2) A respondent who denies liability may at any time before the day fixed for proceeding with the arbitration file a notice of submission to an award or pay money into court in accordance with this rule, accompanied by a notice stating his name and address, and further stating that notwithstanding such submission or payment he denies his liability, together with as many copies of such notice as there are parties to whom notice of such submission or payment is to be sent.

Submission to award or payment into court with denial of liability.

Form 15.

(3) The registrar shall within twenty-four hours from the time of any notice filed or payment made pursuant to either of the two last preceding paragraphs send notice thereof (with a copy of the notice filed by the respondent) to the applicant, and to the other respondents (if any).

Forms 16, 17.

(4) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment or the lump sum specified in the respondent's notice, he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice according to the form in the Appendix, stating such acceptance, within such reasonable time before the day fixed for proceeding with the arbitration as the time of filing of notice of submission by the respondent has permitted.

Acceptance of weekly payment or lump sum by workman.

Form 18.

(5) If the application for arbitration is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and burial as aforesaid, and the applicant is willing to accept the sum paid into court in satisfaction of the compensation payable to the dependants, or in respect of such medical attendance and burial (as the case may be), he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice of such willingness, according to the form in the Appendix, within such reasonable time before the day fixed for proceeding with the arbitration as the time of payment into court by the respondent has permitted.

Acceptance by dependants of sum paid into court.

Form 18.

If there are any other respondents, the applicant shall in like manner give notice of such willingness to such respondents; and if any of such respondents are willing to accept the sum paid into court in satisfaction of such compensation as aforesaid, they shall

Rule 19.

in like manner give notice of such willingness to the registrar and to the applicant and the other respondents.

Procedure if
weekly pay-
ment offered
or sum paid
in is
accepted.

(6) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment submitted to or the lump sum paid into court by the respondent, or if in any other case the applicant and all the respondents give notice of their willingness to accept the sum paid into court, the following provisions shall apply :—

(a) Where the applicant is a workman and accepts the weekly payment submitted to or the lump sum paid into court by the respondent, the judge in his discretion may, on application made to him in or out of court, forthwith make an award directing payment of such weekly sum accordingly, or directing payment of such lump sum to or applying the same for the benefit of the workman ;

(b) Where in the case of death the respondent has paid money into court, the judge may in his discretion, on application in that behalf, made to him in or out of court, award that further proceedings against such respondent be stayed, except as hereinafter mentioned and subject to payment of the prescribed fee on the award ; and

(i.) If the applicant and the other respondents agree as to the apportionment and application of such sum, the judge may in his discretion, on application made to him in or out of court on behalf of or with the consent of all such parties, forthwith make an award for such apportionment and application ;

(ii.) In any other case the arbitration may proceed as between the applicant and the other respondents.

Costs
payable by
respondent.

(c) In any such case the judge may, in his discretion, by his award order the respondent filing notice of submission to an award or paying money into court to pay such costs as the applicant and the other respondents, or any of them, may have properly incurred before the receipt of notice of submission to an award or payment into court, and his or their costs properly incurred in relation to the notice of submission to an award or payment into court, and to the notice of acceptance, including, if the judge on consideration of the facts of the case shall so order, any items which might have been allowed by order of the judge at the hearing of the arbitration.

Form 18.

(d) If the applicant or any respondent intends to apply for any such costs, he shall give notice of his intention in his notice of acceptance, according to the form in the Appendix ; or where the time of filing notice of submission to an award

or the time of payment into court by the respondent does not permit of notice of acceptance being given, the applicant or any respondent may apply for such costs without giving such notice.

Rule 19.

(7) Where any party has not given notice of acceptance in accordance with this rule, he may nevertheless accept the weekly payment which the respondent has submitted to pay, or the sum paid into court, at any time before the arbitration is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the respondent since the date of filing notice of submission or the date of payment into court, and which may be allowed by the judge; and the judge may order any costs so allowed to be paid by the party so accepting, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party.

Acceptance at any time before arbitration opened. Costs.

(8) In default of notice of acceptance by the applicant and all the respondents, the arbitration may proceed; but if no greater weekly payment or compensation is awarded than that which the respondent has submitted to pay or has paid into court, such respondent shall not be liable to pay any further costs than such as he might have been ordered to pay if the weekly payment offered or sum paid into court had been accepted; and the judge may order any costs incurred by such respondent after notice of submission to an award or payment into court to be paid by any party who has not given notice of acceptance of such weekly payment or sum, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. The judge may also order any costs incurred after notice of payment into court by any party who has given notice of acceptance to be paid by any other party who has not given such notice, and to be deducted from any compensation awarded to such last-mentioned party.

Procedure and costs if weekly sum offered or sum paid in is not accepted.

See *Kempley v. H. H. Poole & Co.*, (1923) 1 K. B. 195; 92 L. J. K. B. 247, where the respondents denied liability, but in their answer said they were willing to submit to an award for a small sum in respect of past payments. The judge held this sum was sufficient, but ordered respondents to pay the costs of the arbitration. Held that this was wrong, *Sterndale, M.R.*, expressing doubt as to whether rule allowing a respondent to submit to an award or pay money into court whilst denying liability was *ultra vires*.

(9) The provisions of this rule shall, with the necessary modifications, apply to a case in which an employer has filed a request for arbitration.

Submission to award or payment into court where employer is applicant.

This rule is rearranged and modified to provide for payment into court with a denial of liability.

Rule 20.

Notice to Parties against whom Indemnity claimed under section 6.

Notice of claim to indemnity under Act, sect. 6.

Form 23.

20. Where a respondent claims to be entitled under section 4 of the Act to indemnity against any person not a party to the arbitration, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, or if the time is abridged pursuant to rule 28, then within the time fixed by the order, file a notice of his claim according to the form in the Appendix ; and the registrar shall seal such notice and deliver it to the respondent, who shall serve the same, together with a copy of the applicant's request and particulars, and of the notice served on the respondent under rules 15 and 16, upon the person against whom such claim is made ; and the provisions of paragraphs 2 to 6 of rule 16 shall apply to such service.

Sect. 6 of the Act definitely requires questions arising under such section to be settled by arbitration, and not by action. This rule, and Rules 21—24, apply the county court procedure to such cases. So also Rule 28 gives the court discretion as to time of service.

Appearance by third party.

21. If any person served with a notice under the last preceding rule (hereinafter called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, or his own liability to such respondent, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed ; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise, and his own liability to indemnify the respondent to the extent claimed in the notice served on him by the respondent.

Where notice not served in due time.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs and otherwise, as may be just.

Order XI. r. 2.

Proceedings on default of appearance by third party.

22. If the third party fails to appear on the day mentioned in rule 21, or, if the proceedings are adjourned under that rule, on the day to which the proceedings are adjourned, then if the arbitration results in an award in favour of the applicant, or the arbitration is finally decided in favour of the applicant otherwise

Rule 22.

than by an award, the judge may on the application of the respondent make such award as the nature of the case may require in favour of the respondent against the third party: but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him.

Provided, that the judge may set aside or vary any award made against the third party under this rule upon such terms as may be just.

Order XI. r. 3.

23. The third party or the respondent may apply before or at the arbitration to the judge for directions: and the judge, upon the hearing of the application, may, if satisfied that there is a question proper to be determined as to the liability of the third party to make the indemnity claimed, in whole or in part, order the question of such liability as between the third party and the respondent giving the notice to be determined at or after the arbitration, and if not so satisfied may make such award as the nature of the case may require in favour of the respondent giving the notice against the third party: or the judge may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he may think proper for having the question most conveniently determined, and as to the mode or extent in or to which the third party shall be bound or made liable by the award in the arbitration.

Order XI. r. 4.

24. The judge may decide all questions of costs as between a third party and the other parties to the arbitration, and may order any one or more to pay the costs of any other or others, or give such directions as to costs as the justice of the case may require.

Order XI. r. 5.

Notice to Parties against whom Indemnity claimed under section 30, or otherwise.

25.—(1) Where a respondent claims that if compensation is recovered against him he will be entitled under section 30 of the Act, or otherwise than under section 6, to indemnity against any person not a party to the arbitration, he may, if he desires that such person shall be bound by the proceedings in the arbitration to the extent in this rule provided, file and serve a notice of his claim in accordance with rule 20.

Notice of claim to indemnity under s. 30, or otherwise than under sect. 6.
Form 23.

Rule 25.

If person served make default in appearing, is to be deemed to admit validity of award against respondent.

(2) If any person served with a notice under the last preceding paragraph (hereinafter called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise.

Where notice not served in due time.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs or otherwise, as may be just.

This rule has been slightly modified to bring it into accord with *Nettleingham v. Powell*, (1913) W. C. Rep. 22 (see under sect. 6). In *G. N. Rail. v. Whitehead*, 18 T. L. R. 816, the plaintiff recovered 78*l.* 11*s.* 3*d.*, the amount of the award, and 10*l.* 17*s.* 2*d.* for costs paid to the applicant. The rule precisely states the law and the extent to which such third party is liable.

Application to judge for directions as to conduct of arbitration.

(3) The third party or the respondent may apply before or at the arbitration to the judge for directions; and the judge, upon the hearing of the application, may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he shall think proper.

Costs.

(4) If the third party obtains leave to resist the claim of the applicant against the respondent, the provisions of rule 24 as to costs shall apply.

Judge how far empowered to decide questions as to liability of third party.

(5) Nothing in this rule shall empower the judge to decide (otherwise than by consent) any question as to the liability of the third party to indemnify the respondent, or to make any award in favour of the respondent against the third party, or to make any further or other order than that the third party shall not be entitled in any future proceedings between the respondent and such third party to dispute the validity of the award as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent.

(6) Provided, that with the consent of the respondent and the third party,

(a) If the arbitration results in an award in favour of the

Rule 25.

applicant, or is finally decided in favour of the applicant otherwise than by an award, and the third party admits his liability to indemnify the respondent, the judge may, on application made to him at or after the hearing of the arbitration or the final decision thereof, make such award as the nature of the case may require in favour of the respondent against the third party; but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him; or

- (b) The judge may, on an application for directions, order any question as to the liability of the third party to make the indemnity claimed to be settled, as between the respondent and the third party, by arbitration after the arbitration between the applicant and the respondent, and may on such subsequent arbitration make such award as the nature of the case may require in favour of either party against the other.
- (c) In any such case the judge may decide all questions of costs as between the respondent and the third party, and may order either of such parties to pay the costs of the other (including any costs payable by such party to any other party to the arbitration), or give such directions as to such costs as the justice of the case may require.

Third Party Procedure where Employer is Applicant.

26. The provisions of rules 20 to 25 shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration claims to be entitled to indemnity against any person not a party to the arbitration.

Third party procedure where employer is applicant.

Claim to Indemnity as between Respondents.

27.—(1) Where a respondent claims to be entitled to indemnity against any other respondent, a like notice shall be issued and the like procedure shall thereupon be adopted for the determination of questions between the respondents as might be issued and adopted against such other respondent if such last-mentioned respondent were a third party.

Claim to indemnity as between respondents.

(2) Nothing herein contained shall prejudice the rights of the applicant against any respondent.

When indemnity is claimed by one respondent against another, he must give notice (*Appleby v. Horseley and Lovett*, (1899) 2 Q. B. 521).

Abridgment of Time for Service, &c.

28. The judge or registrar may for good cause shown abridge the time for service of a request for arbitration on any respondent,

Abridgment of time for service, answer, &c.

Rule 28. — or the time for filing an answer or serving a third party notice under these rules ; and if an order is made to that effect a copy of the order shall be annexed to and served with the notice to be served on the respondent.

Procedure on Arbitration.

Procedure on arbitration. **29.**—(1) Subject to the special provisions of these rules, the procedure in an arbitration shall be the same as the procedure in an action commenced in the county court by plaint and summons in the ordinary way, and determined by the judge without a jury, in so far as such procedure is applicable to proceedings by way of arbitration ; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such arbitration accordingly.

Act, Sched. I., par. 6. (2) In particular, the statutory provisions and rules for the time being in force as to—

- (a) further particulars ;
- (b) interrogatories, and discovery and inspection of documents ;
- (c) examination of witnesses and persons ; and
- (d) granting a new trial (with the exception of rule 2 of Order XXXI.),

in an action in the county court shall, with the necessary modifications, apply to any such arbitration.

(3) In the application of such provisions and rules the applicant's request for arbitration shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the arbitration shall be deemed to be the return day, the day on which the arbitration is held shall be deemed to be the day of trial, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

Burden of proof of facts not admitted. (4) Provided, that the burden of proof of any facts which are not admitted shall be the same, whoever the party may be by whom the request for arbitration is filed.

Where termination or diminution is asked for the court has power to make an order for further particulars of the diminution claimed. This power should be used sparingly (*Vickers, Ltd. v. Miners*, (1927) 96 L. J. K. B. 490 ; 20 B.W.C.C. 269).

Although a judge may grant a new trial in a workmen's compensation case, he must do it on the same principles as have been approved generally by the House of Lords for granting new trials, in *Dean v. Brown*, (1910) A. C. 373 ; 79 L. J. K. B. (H. L.) 690. In *Guest v. Ibbotson*, (1922) 91 L. J. K. B. 558, a county court judge had granted a new trial in a workmen's compensation case almost entirely on the statement of counsel that two new witnesses would be produced. The Court of Appeal reversed his decision and held that three conditions are necessary before a new trial should be granted : (1) That there is fresh evidence available ; (2) That that evidence is so material that its absence will cause, or has caused, a miscarriage of justice ; and (3) that it could not with reasonable care and diligence have been brought forward at the first trial, *per Scrutton, L.J.*

See also *Golden v. Swift, of Coventry, Ltd.*, (1924) 93 L. J. K. B. 488 (H. L.).

Rule 29
Notes.

In this case a workman was alleged to have died in consequence of an injury received four months previously. Medical evidence was called on behalf of the employers that it was impossible that the injury could have caused the death, and the judge found as a fact that the accident was not the cause of death.

The House of Lords, affirming the decision of the Court of Appeal, refused to grant the applicant a new trial on the ground that she had been taken by surprise by the evidence called on behalf of the respondents, and had had no opportunity of calling rebutting evidence.

Award.

Award.

Form 24.
Order
XXIII.,
rule 7.

30.—(1) The award of the judge on any arbitration shall be prepared and settled by the registrar, and shall be signed by the judge, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with rule 7 of Order XXIII.; and such award shall be enforceable in the same manner as a judgment or order of the court.

(2) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission.

Save as thus provided, an award once signed cannot be altered. Up to signing, it can (*Moulem v. Dunne*, (1912) 2 K. B. 136; *Brown v. Whitehead*, (1920) W. C. & I. 3).

PROCEEDINGS BEFORE ARBITRATOR APPOINTED BY JUDGE.

Appointment of Arbitrator by Judge.

31. With respect to the appointment of an arbitrator by the judge, the following provisions shall apply:—

Appointment of
arbitrator
by judge.

(a) If with respect to any court the Lord Chancellor, by general order, authorises the settlement by an arbitrator appointed by the judge of matters which, in default of such authorisation, would be settled by the judge, the judge may from time to time, on an application being made for the settlement of any matter, either settle the same himself, or he may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

(b) If with respect to any court the Lord Chancellor makes no such general order as aforesaid, then, on an application being made for the settlement of any matter, the judge may (if from the state of business in the court, or for any other reason, he is unable to settle such matter within a reasonable time) apply to the Lord Chancellor to authorise the settlement of such matter by an arbitrator appointed by the judge.

(c) If the Lord Chancellor does not grant such authority, the judge shall proceed to settle the matter in accordance with the Act and these rules.

(d) If the Lord Chancellor grants such authority, the judge

Rule 31.

may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

- (e) In case of the death or refusal or inability to act of an arbitrator appointed under this rule, the judge may, on the application of any party, appoint a new arbitrator in accordance with this rule.

Fixing Day for Arbitration.

Fixing day
and place for
proceedings
before
arbitrator.

32. Where any matter is to be settled by an arbitrator, the judge shall return the copy of the request for arbitration to the registrar, with the appointment of such arbitrator, to be transmitted to the arbitrator; and the registrar shall transmit the copy of the request and a copy of the appointment to the arbitrator, who shall, as soon as conveniently may be, appoint a day and hour for proceeding with the arbitration, in accordance with rule 14, and the provisions of that rule as to the place where an arbitration shall be held shall apply. Provided, that where the arbitration is to be held at the place where the court is held, the day appointed for the arbitration shall, if possible, be one on which the court or other suitable accommodation in the court-house will be available for the arbitration.

Procedure before Arbitrator.

Procedure
before
arbitrator.

33.—(1) On the day for proceeding with an arbitration being fixed the registrar shall proceed according to rule 15, and thenceforward the arbitration shall proceed in the same manner as an arbitration before the judge; and these rules shall apply and the officers of the court shall act accordingly, with the substitution of the arbitrator for the judge.

(2) Provided that—

- (a) In any case coming within the provisions of paragraph 6 (a) or paragraph 6 (b) (i.) of rule 19, or in any other case in which, after an arbitrator has been appointed, but before the day fixed for proceeding with the arbitration, the parties agree upon an award, the judge may, on application made to him in or out of court on behalf of or with the consent of all parties, settle the matter himself; and thereupon the functions of the arbitrator as to such matter shall cease, and the registrar shall forthwith inform him that the matter has been settled; and
- (b) Any application for the enforcement of or for staying proceedings on an award, which would in the case of an award made by the judge be required to be made to the judge, shall, in the case of an award made by an arbitrator, be in like manner made to the judge.

Submission of Question of Law by Committee or Arbitrator to Judge.

Rule 34.

Submission of question of law by committee or arbitrator to judge.
Act,
Sched. I.,
par. 4.
Statement of case.

34.—(1) Where a committee or an arbitrator (whether agreed on by the parties or appointed by the judge) submits any question of law for the decision of the judge under paragraph 4 of the second schedule to the Act, such submission shall be in the form of a special case.

(2) The case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of the case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

(3) The case shall be signed by the chairman and secretary of the committee or by the arbitrator, and sent to the registrar, who shall transmit the same to the judge, and the judge shall as soon as conveniently may be appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. The day shall be so fixed as to allow notice to be given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day.

Fixing day for hearing.
Form 25.

(4) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Copies of case.

(5) On the hearing of the case the judge may, after deciding the question submitted to him, remit the case with a memorandum of his decision to the committee or arbitrator, for them or him to proceed thereon in accordance with the decision; or if the decision of the judge on the question submitted to him disposes of the whole matter, he may himself make an award in the arbitration in accordance with such decision.

Power of judge on hearing of case.

(6) The judge may remit the case to the committee or arbitrator for re-statement or further statement.

Re-statement.

(7) The judge shall have the same power over the costs of a special case as he has over the costs of an arbitration, or he may direct that such costs shall be dealt with as costs attending the arbitration; and the provisions of the Act and these rules as to such costs shall apply accordingly.

Costs of special case.

Rule 35.

Appearance
of parties.

APPEARANCE OF PARTIES IN ARBITRATION.

35.—(1) A party to any arbitration under the Act, whether before a committee or an agreed arbitrator, or before a judge or an arbitrator appointed by a judge, may appear—

(a) In person :

(b) By any solicitor who would be entitled to appear for such party in an action in the county court :

N.B.—It is within the discretion of the county court judge to refuse to hear an admitted solicitor who is managing clerk to the solicitor on the record (*Rogers v. Metropolitan Borough of Holborn*, (1914) W. C. & Ins. Rep. 262).

(c) By counsel :

Or, by leave of the committee, agreed arbitrator, judge or arbitrator, a party may appear—

(d) By a member of his family :

(e) By a person in the permanent and exclusive employment of such party :

(f) In the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation :

(g) By any officer or member of any society or other body of persons of which such party is a member or with which he is connected, or, where death results from the injury, by any officer or member of any society or other body of persons of which the deceased workman was a member or with which he was connected ; or

(h) Under special circumstances, by any other person.

(2) No person other than a solicitor who appears or acts on behalf of any party in any arbitration under the Act shall be entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses and (in the case of a workman or a member of his family) allowance for time (if any) as may be allowed by the committee, agreed arbitrator, judge or arbitrator : Provided that nothing in these rules contained shall affect the right of counsel to appear or act in any arbitration, or the right of any solicitor to recover costs in respect of his employment of counsel to appear or act as aforesaid.

DUTY OF JUDGE AS TO TAKING NOTES.

Note to be
taken of
question of
law raised,
&c., and copy
furnished.

36. At the hearing of any arbitration or special case the judge shall make a note of any question of law raised, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision in the arbitration or on the hearing of the case :

Rule 36.

and he shall, at the expense of any party to such arbitration or case, furnish a copy of the note so taken to or allow a copy of the same to be taken by or on behalf of such party, and shall sign such copy, whether a notice of motion by way of appeal has been served or not.

The county court judge ought to take a note, for the assistance of the Court of Appeal, of every point which in any reasonable aspect of the case can come before the Court of Appeal, even though his attention is not called by the representatives of either side to the necessity of so doing. The parties ought not to have the burden of taking shorthand notes, the use of which on appeal is discouraged (Practice Note, *Times Newspaper*, Dec. 18th, 1908). But a shorthand writer's note, if certified by the arbitrator, may be substituted for the arbitrator's note. *Earwicker v. London Graving Dock Co., Ltd.*, (1916) W. C. & Ins. Rep. 137. See also *Brine v. Corry*, (1905) 7 W. C. C. 130; *Rayman v. Fields* (No. 1), (1910) 102 L. T. 154; *Wright v. Sneyd Collieries, Ltd.*, (1915) W. C. & Ins. Rep. 354.

A point appealed upon in the Court of Appeal is, of course, all important in such court. Before the arbitrator it may have been one of many, and perhaps the least important. Unless then definitely formulated, it is impossible for the note to be as full and as clear as is desirable when it has to be argued. Hence the innumerable difficulties on appeal as to what the facts material to a decision really are. A defective note may result in a re-hearing being necessary (*Griffiths v. Wynnstay Coll.*, (1909) 2 B. 450; *Gellyceidrim Colliery v. Rogers*, 3 B. 62). On the other hand the mere fact that the note is unsatisfactory will not result in a new trial if there appears to be evidence to support the finding. See *Creighton v. Lowry*, (1915) W. C. & Ins. Rep. 69. In *Leeds and Liverpool Canal Co. v. Hesketh*, (1910) 3 B. 301, the Court of Appeal permitted an affidavit of a doctor and of the solicitor engaged in the arbitration proceedings to be read for the purpose of supplementing the county court judge's notes; and see *Slater v. Machonochie Bros., Ltd.*, (1920) 89 L. J. K. B. 1238.

PROCEEDINGS AGAINST INSURERS UNDER SECTION 7.

37.—(1) Where under section 7 of the Act the rights of an employer against any insurers under a contract entered into by the employer with the insurers in respect of any liability under the Act to any workman are transferred to and vest in the workman, the following provisions shall have effect.

(2) Where a workman who is or claims to be entitled to compensation from an employer to whom section 7 of the Act applies is unable to ascertain whether such employer has entered into a contract with insurers in respect of his liability, he may apply to the court on affidavit intituled in the matter of the Act, and setting forth the facts on which the application is made, for an order for the examination of the employer, and the court may make an order accordingly; and the provisions of Order XXV. rules 71 and 72 shall apply in the same manner as if the employer were a debtor liable under a judgment or order.

(3) Subject to the provisions of the contract between the employer and the insurers as to the settlement of differences or disputes between the employer and the insurers, the provisions of the Act and these rules as to the settlement of matters by

Where rights of bankrupt, &c., employer against insurers vest in workman, Act, s. 7.

Examination of employer as to insurance.

Order XXV., rules 71, 72.

Arbitration between workmen and insurers.

Rule 37.

arbitration shall with the necessary modifications apply to the settlement by arbitration, as between the workman and the insurers, of any question as to the liability of the insurers to the workman or the amount of their liability, and of any other question which would under the Act be the subject of arbitration between the workman and the employer if the rights, remedies, and liability of the employer had not been transferred to the insurers.

Form 11.

A workman has no rights against the insurers but what his employers would have had (*King v. Phoenix Assurance Co.*, (1910) 2 K. B. 666).

MASTERS, SEAMEN, APPRENTICES, AND PILOTS. SECTION 35.

38.—(1) In the application of the Act and these rules in the case of masters, seamen, and apprentices to the sea-service and apprentices in the sea-fishing service, who are workmen within the meaning of the Act, and who are members of the crew of any such ship as in section 35 of the Act mentioned, and to pilots when employed on any such ship, and to any person not being a master seaman or apprentice to the sea-service or the sea-fishing service, employed on board any such ship as in section 35 of the Act mentioned, if he is so employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship who are workmen within the meaning of the Act, the following provisions shall have effect.

Masters,
seamen,
apprentices,
and pilots.

Claim for
compensation
in case
of death.

Where
master, &c.,
lost with
ship.

(2) In the case of the death of a master, seaman, apprentice, or pilot, the claim for compensation shall state the date at which news of the death was received by the claimant.

(3) The claim for compensation on behalf of dependants of a master, seaman, apprentice, or pilot lost with his ship, and the particulars appended or annexed to the request for arbitration, shall state the date at which the ship was lost or is deemed to have been lost.

Forms of
request for
arbitration.
Forms 6, 7.

Description
of owners in
documents
and
proceedings.

(4) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require.

(5) In any document, notice, or proceeding it shall be sufficient to describe the owners of the ship as "the owners of the ship"; and the provisions of the County Court Rules as to disclosure of the names of partners shall with the necessary modifications apply to the disclosure of the names of such owners.

Service of
documents
and
proceedings.

Merchant
Shipping
Act, 1894,
ss. 59, 696.

(6) Subject to the provisions of sub-section (1) (a) of section 35 of the Act as to service of the notice of accident and the claim for compensation, any document, notice, or proceeding to be served on the owners of a ship shall be deemed to be sufficiently served if served on the managing owner or manager for the time being of the ship, or (except where the master is claiming compensation) on the master of the ship; and section 696 of the Merchant

Shipping Act, 1894, sub-section (1), shall apply to service on the master of the ship, and where the master is claiming compensation, and there is no managing owner of the ship, service may be effected in accordance with paragraph (c) of the said sub-section.

Rule 38.

NOTE.—For section 696 (1) of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), see Part V.

PROCEEDINGS AGAINST A CLUB.

38A. Where proceedings are taken by a workman against the managing committee of a club as an employer under paragraph (b) of sub-section (3) of section 5 of the 1923 Act, service or notice of any documents or proceedings shall be valid and sufficient if served on or given to a member of such committee or its secretary and on the club premises in such manner as would be valid and sufficient if he were the sole employer.

Proceedings
against a
club.

DETENTION OF SHIPS. SECTION 39.

39.—(1) An application for an order for the detention of a ship under section 39 of the Act shall be made in accordance with the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905; and those rules, with the necessary modifications, shall apply accordingly.

Application
for detention
of ship.
Act, s. 39.,
5 Edw. VII.
c. 10.

(2) Subject to any such rules as in the last preceding paragraph mentioned, an application for an order for detention shall be made in accordance with the following rules.

(3) The application may (subject to the provisions of paragraph 9 of this rule) be made *ex parte* either in or out of court, according to the form in the Appendix, and shall be supported by affidavit or other evidence showing, to the satisfaction of the judge, the grounds on which the application is made.

Application
and evidence,
Form 26.

(4) The judge may, before granting the application, require the applicant to give or procure an undertaking, to the satisfaction of the judge, to abide by any order as to damages and costs which may be thereafter made, in case any person affected by the order for detention shall sustain any damages by reason of the order which the applicant ought to pay.

Undertaking
as to
damages.
Form 27.

(5) An order for detention shall specify the amount for which security shall be given, and shall be according to the form in the Appendix, and shall be issued in triplicate; one copy shall be delivered to the applicant, and the other two copies to the officer named by the judge; and one of such last-mentioned copies shall be delivered by the officer to the person who is at the time of the execution of the order apparently in charge of the ship, or shall be nailed or affixed on the main mast or on the single mast of the ship; and the other copy shall be retained by the officer.

Order, and
execution
thereof.
Form 28.

(6) The judge may at any time on good cause shown rescind any order for detention made by him.

Rescission of
order.

Rule 39.

Security.
County
Courts Act,
1868, ss. 108,
109.
Order
XXIX.
Form 29.
Release.

(7) The provisions of sections one hundred and eight and one hundred and nine of the County Courts Act, 1888, and of Order XXIX., as to security, shall with the necessary modifications apply to the giving of security; and the approval by the judge of any security shall be signified in writing signed by him. Where security is given by bond such bond shall be according to the form in the Appendix.

Form 30.

(8) If the judge rescinds any order for detention, or is satisfied that satisfaction has been made, or when security has been given and approved, or in any other case if the applicant so requires, the judge shall deliver to the party applying for the same an order according to the form in the Appendix, directed to the officer named in the order for detention, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the ship, to release it forthwith.

Notice of
application
to agent or
solicitor of
owners.

(9) (a) With respect to notices of applications for orders for detention, and to undertakings to give security, the following provisions shall have effect.

(b) Notwithstanding anything in this rule contained, a person intending to apply for an order for detention shall, if the name and address of an agent in England for the owners of the ship, or of a solicitor in England authorised to act for the owners, agent, master, or consignee of the ship, are known to him, give to such agent or solicitor, by post, telegram, or otherwise, such notice of the time and place at which the application for an order for detention is intended to be made as may be practicable in the circumstances of the case.

Undertaking
by solicitor.
Form 30A.

(c) If a solicitor in England represents that he is authorised to act for the owners, agent, master, or consignee of the ship, and signs an undertaking according to the form in the Appendix, to put in or give security for an amount agreed on between the parties or fixed by the judge, then, on such undertaking being filed in court,

- (i.) the judge may in his discretion refuse to make an order for detention; or
- (ii.) if an order for detention has been made, but not executed, the judge may rescind it; or
- (iii.) if an order for detention has been made and executed, the judge may deliver to the party applying for the same an order of release in accordance with paragraph 8 of this rule.

Filing of
undertaking.

(d) An undertaking given in accordance with the last preceding paragraph shall be filed in the court to which the application for an order for detention is made or is intended to be made.

(e) A solicitor who fails to put in or give security in pursuance of his undertaking to do so shall be liable to attachment.

Order XXXIX. rr. 6 and 7.

Rule 39.

Attachment for non-compliance with undertaking.

Particulars to state circumstances under which persons giving security are made respondents. Form 8.

Transmission of documents, &c., where proceedings commenced in court other than that in which order for detention made or applied for. Costs of application for order for detention.

(10) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security, the request for arbitration and particulars shall state concisely the circumstances under which the persons giving security are made respondents.

(11) Where proceedings are commenced in any court in England, Scotland, or Ireland other than that in which the order for detention was made or applied for, the registrar of the court in which the order was made or applied for shall on request transmit by registered post to the registrar of the court in which the proceedings are commenced all original documents filed in the matter, and a certified copy of all records made with reference to the matter, and any bond by way of security given in the matter, and shall transfer to such last-mentioned court any money paid into court by way of security in the matter; and the provisions of Order VIII. rule 9, as to the costs of copies and the costs of transmission shall apply to any transmission under this paragraph.

(12) The costs incurred by any party in relation to an application for an order of detention and any proceedings consequent thereon may in any subsequent proceedings by way of arbitration be allowed as costs of the arbitration.

(13) This rule shall apply to claims against charterers under sub-section (5) of section 39 of the 1923 Act, "charterers" being substituted for "owners" in these cases.

PROCEEDINGS WHERE EMPLOYER WHO HAS PAID COMPENSATION OR FROM WHOM COMPENSATION IS CLAIMED, DESIRES TO OBTAIN ORDER FOR DETENTION OF SHIP. 5 Edw. VII. c. 10.

40. Where an employer who has paid compensation or against whom a claim for compensation has been made under the Act desires to make an application for the detention of a ship under the Shipowners Negligence (Remedies) Act, 1905, the provisions of the last preceding rule shall apply, subject to the rules for the time being in force under the last-mentioned Act, and to the following modifications, viz.:

Application by employer for detention of ship. 5 Edw. VII. c. 10.

(i.) An application for an order for detention, an order for detention, and a bond given by way of security, shall be according to the forms in the Appendix. Forms 31, 32, 33.

(ii.) Where proceedings by way of arbitration for the recovery of compensation are taken against the employer, he may bring in the persons giving security as third parties in Form 23.

Rule 40.

accordance with rule 25, and the provisions of that rule shall apply accordingly.

- (iii.) Where such proceedings are taken against the employer in any court other than that in which the order for detention was made or applied for, and the employer brings in the persons giving security as third parties, the provisions of paragraphs 11 and 12 of the last preceding rule shall apply.
- (iv.) Where the employer has paid compensation in respect of the injury, all questions as to his right to indemnity against the persons giving security, and as to the amount of such indemnity, shall in default of agreement be settled by action, or, by consent of the parties, by arbitration in accordance with the Act and these rules; and if such questions are settled by arbitration, the provisions of paragraphs 10 to 12 of the last preceding rule shall apply.

INDUSTRIAL DISEASES.

Application of Act and rules to cases of industrial diseases.

41.—(1) In the application of the Act and these rules in the case of a workman disabled by or suspended on account of his having contracted any disease mentioned in section 43 of and the third schedule to the Act, or in any order of the Secretary of State made under sub-section 3 of the said section, or disabled by or suspended on account of his having sustained any injury due to the nature of any employment specified in any such order, not being an injury by accident, or in the case of a workman whose death has been caused by any such disease or injury as above mentioned, the following provisions shall have effect.

Notice of disablement.

(2) The notice required by section 14 of the Act shall state the date and cause of the disablement or suspension; and where a certificate of disablement or a certificate of or relating to suspension has been given, a copy thereof shall on demand be furnished to the employer.

Forms of request for arbitration. Forms 9, 10.

(3) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require.

Adding respondent. Act, s. 43 (1) (c) (ii).

(4) (a) If the employer desires to add any other employer as a party to the arbitration, pursuant to proviso (ii.) to paragraph (c) of sub-section (1) of section 43 of the Act, he shall file with the registrar in duplicate a notice according to the form in the Appendix: and thereupon the registrar shall make an order adding such other employer as a respondent, and may if necessary adjourn the hearing of the arbitration for such time as may be necessary to enable such other employer to be duly served.

Forms 19, 20.

Notice of order, and service on added respondent.

(b) Where a respondent is added under the last preceding paragraph, copies of the notice pursuant to which he is so added,

and of the order, shall be sent by post to the applicant and the original respondent; and the like copies, together with a copy of the applicant's request and particulars, and of the notice served on the original respondent under rules 15 and 16, and a notice according to the form in the Appendix as to the place at which and the day and hour on and at which the arbitration will be proceeded with, shall be issued by the registrar for service on the added respondent; and such copies and notices shall be served on the added respondent in accordance with rule 16, with the substitution of the original respondent for the applicant.

Rule 41.

Forms 21, 22.

(c) The provisions of these rules as to respondents shall apply to the added respondent from the date of service on him as if he had been originally made a respondent.

Application of rules to added respondent.

(d) At the hearing of the arbitration the judge or arbitrator shall decide all questions as between the applicant and the original and added respondents, and may make such award as may be necessary effectively and completely to adjudicate upon and settle all the questions involved in the arbitration, and may make such order as to costs as between the applicant and the respondents, and as between the respondents themselves, as may be just.

Procedure at arbitration.

Costs.

(5) Where the employer claims under proviso (iii.) to paragraph (c) of sub-section (1) of section 43 of the Act to be entitled to contribution from any other employer, he may bring in such other employer as a third party in accordance with rules 20 to 24, 26 and 27; and the provisions of those rules shall with the necessary modifications apply to any such claim to contribution in like manner as they apply to claims to indemnity.

Claim to contribution. Act, s. 43 (1) (c) (iii.). Form 23.

(6) The provisions of this rule shall apply to claims to compensation and questions arising under the Metal Grinding Industries (Silicosis) Scheme, 1927, with such modifications as the nature of the case may require.

Note.—This paragraph was added by the Workmen's Compensation (Silicosis) Rules, 1927.

APPOINTMENT OF ARBITRATOR BY JUDGE IN PLACE OF ARBITRATOR AGREED ON BY THE PARTIES UNDER SCHEDULE I. PARAGRAPH 8.

42.—(1) In case of the death or refusal or inability to act of an arbitrator agreed on by the parties, any party to the arbitration who desires to make an application to the judge to appoint a new arbitrator shall apply in writing to the registrar to fix a time and place for the hearing of such application.

Application for appointment. Form 34.

(2) The registrar shall fix the hearing of the application before the judge for any court appointed to be held within fourteen days from the date of the application to the registrar, but so that he

Fixing of hearing by registrar.

- Rule 42.** shall not, except by consent, fix the hearing for a day less than seven days from the date of the application.
- Fixing of hearing by judge.** (3) If there is no available court, the registrar shall send notice of the intended application to the judge, who shall as soon as conveniently may be fix a time and place for the hearing of the application. Such time shall not, except by consent, be less than seven days from the date of the application to the registrar.
- Summons to other party. Form 35.** (4) On the time and place for the hearing of the application being fixed, the registrar shall issue to the applicant a summons under the seal of the court according to the form in the Appendix, addressed to the other party to the arbitration, and requiring him to attend on the hearing of the application.
- Service of summons.** (5) Such summons shall be served by the applicant on the other party in accordance with rule 16 of these rules not less than four clear days before the day fixed for the hearing, unless such party agrees to accept shorter service.
- Hearing of application.** (6) On the day fixed for the hearing the judge shall dispose of the application on hearing the parties, or on hearing the applicant and on proof of service of the summons on the other party, if such other party does not appear.
- Ascertainment of willingness to act. Order.** (7) Before appointing any person to act as arbitrator, the judge shall ascertain that such person is willing to serve if appointed.
- Costs.** (8) The appointment may be made by indorsement on the application, or by a separate order.
- (9) The costs of the application shall be in the discretion of the judge, who may order the same to be paid by one party to the other, or to be dealt with as costs attending the arbitration. Such costs, if allowed, shall be taxed on such scale as the judge shall direct.

MEMORANDUM UNDER SECTIONS 23, 24 AND 44.

- Memorandum to be sent to registrar. Act, ss. 23, 24, 44. Form 36.** **43.**—(1) The memorandum as to any matter decided by a committee or by an arbitrator or by agreement, which is required to be sent, or may be sent to the registrar, under sections 23, 24 or 44 of the Act, shall be according to such one of the forms in the Appendix as is applicable to the circumstances of the case, and shall be left at the office of the registrar, or sent by post by registered letter addressed to the registrar at his office, as soon as may be after the matter has been decided.

(2) Where the matter is decided after a medical referee has been appointed to report on any matter under paragraph 11 of the first schedule to the Act, a copy of the report of the referee shall be annexed to the memorandum and recorded therewith; and if the referee attended any proceeding in the arbitration, it shall be so stated in the memorandum.

(3) In the case of an agreement as to any matter referred to in paragraph 1 of rule 51, a separate statement as required by that paragraph together (in the case where the workman is an insured person) with a copy thereof for the Approved Society or Committee shall be left or sent with the memorandum of the agreement. Rule 43.
Form 37.

This rule, in conjunction with Rule 51, has been the subject of considerable amendment. By the Rules 1908 (No. 2) it ran :—“(3) Where the matter is decided by agreement, there shall be added to the memorandum a paragraph according to the Form 36A in the Appendix, containing a statement of such of the particulars mentioned in that form as are applicable to the circumstances of the case.”

Owing to its wording in this form, the question was raised whether the information required to be supplied by it, and under Form (then) 36A, were to be taken as part of the memorandum, and if not at once challenged, if wrong, to be held binding. This was not intended, but only that the information required by the registrar to enable him to decide whether it should be registered or referred to the judge under Schedule II. par. 9, proviso (d), should be furnished. Hence the further amendment. The origin of the original rule, and the necessity for the present one, was the difficulty experienced by registrars to whom agreements were forwarded for registration under Schedule II. par. 9, in obtaining information to enable them to judge whether such agreements should properly be recorded; and they provide that the memorandum of an agreement shall contain such information.

44.—(1) If the matter is decided by a committee or an arbitrator, the memorandum shall be authenticated by the signatures of the chairman and secretary of the committee, or by the signature of the arbitrator; and it shall be the duty of the committee or arbitrator, as soon as may be after the decision, to draw up such memorandum and to sign the same or cause it to be signed as aforesaid, and to leave or send the same as aforesaid, or to deliver the same to some party interested, to be by him so left or sent. Authentica-
tion of
memorandum
of decision of
committee or
arbitrator.

(2) If the matter is decided by agreement, the memorandum shall be authenticated by the signatures or signature of the parties to the agreement or one of them, or, in the case of employers, by the signature of some official or other person in their employ duly authorised to sign on their behalf, or of an agent duly authorised to sign on their behalf, or, in the case of persons under disability, by the signature of their next friend on their behalf. Authentica-
tion of
memorandum
of agreement.

This paragraph is in this form—

(a) Because the Master of the Rolls in *Rhodes v. Soothill Colliery Co., Ltd.*, (1909) 1 K. B. 191, at p. 195, observed that in his opinion it was improper that agreements should be signed by solicitors for dependants; and

(b) To provide for the authentication of memoranda by the signatures of duly authorised officials on behalf of employers, or of next friends on behalf of persons under disability. See *Ware v. Whitlock*, (1923) 2 K. B. 418; (1923) 92 L. J. K. B. 763.

(3) A memorandum of an agreement may be left with or sent to the registrar by insurers on behalf of the parties interested. Memorandum
may be
lodged by
insurers.

Rule 44.

Copies.

(4) There shall be left or sent with the memorandum a copy thereof for every party interested. In the case of an agreement for the payment of a lump sum, the approved society or committee referred to in sub-section (4) of section 12 of the Act shall be deemed to be a party interested for the purposes of this Rule and of Rules 45 to 51 inclusive.

This par. 4 is framed so that a memorandum may be recorded of a verbal or even an implied agreement (*Mercer v. Hilton*, 3 B. 6).

Production
of original
agreement.

(5) Where the matter is decided by agreement, the registrar may, if the original agreement is in writing, and is not left or sent to be recorded, require such original agreement to be produced ; but he shall not be entitled to retain the same where a memorandum thereof is left or sent to be recorded.

Agreement
on behalf of
person under
disability.

(6) An agreement made by or on behalf of any person under any legal disability shall be conditional only unless and until a memorandum thereof has been recorded in accordance with the Act and these rules.

The meaning of rule 44, par. 6, is that in the case of an infant workman the registrar must consider all those matters which a court has to consider when dealing with the validity of an infant's contract. It does not mean that an infant's contract under the Act is to be of no validity unless and until recorded, or that his death before registration would preclude his representatives from demanding that it should be registered, provided that it satisfies the conditions of a valid infant's contract (*Rex v. Registrar of Bury County Court, Ex parte Prestwick*, (1918) W. C. & I. 315).

These rules are intended to secure uniformity of practice. Some registrars require the original agreement to be produced when a memorandum is filed, and claim to retain it, a practice to which insurance companies object, as the original agreements are often required as vouchers for payment or for purposes of audit ; and to settle the question whether a memorandum of agreement may be lodged by insurers.

The Act only requires a memorandum of an agreement, and not the original agreement, to be recorded, though no doubt the original agreement, which is the best evidence, may be filed. The rule provides that where a memorandum is filed, the registrar may require the original to be produced, to satisfy himself that it has been duly executed ; but that where a memorandum is filed, the registrar shall not be entitled to retain the original agreement. It further provides that memoranda of agreements, which are generally entered into by insurers on behalf of the employers, may be filed by insurers on behalf of the parties interested.

Notice to
parties
interested
of memo-
randum
having been
received.
Form 38.

Form 38A.

45. On the receipt of the memorandum and copies the registrar shall send one of the copies to every party interested, together (in the case of a party other than the approved society or committee) with a notice according to the form in the Appendix, requesting such party to inform him within ten days from the date of the notice whether the memorandum is genuine, or whether he disputes its genuineness, and, if so, on what grounds, and together (in the case of such society or committee, if a party interested) with a copy of the separate statement referred to in paragraph (3) of Rule 43 and paragraph (1) of Rule 51 and a notice according

to the form in the Appendix requesting to be informed whether the registration of the memorandum is objected to, and if so, on what grounds.

Rule 45.

Formerly the only question the registrar could inquire into was the memorandum of a genuine agreement. If so, it had to be registered, even though at the time the workman was not entitled to payment of the stipulated compensation (*Blake v. M. R.*, (1904) 1 K. B. 503), or even if the agreement were at the time determined (*Keeling v. Eastwood*, 116 L. T. J. 595). It was no objection to the registration that the agreement was implied or verbal only (*Webster v. L. & N. W. Rail.*, L. T., June 29th, 1901). Now a spent agreement cannot be registered (see Schedule II., par. 9). This rule was altered in consequence of the extended meaning given to the word "genuineness" in *Popple v. Frodingham Iron Co.*, (1912) 2 K. B. 14, and *Goodsell v. Owners of Barge Lloyds*, (1912) W. N. 302.

The approved society, where there is one, has now to be given notice. Sect. 12 (4) of 1923 Act (now sec. 23 (6)) makes them "parties interested."

46. If no notice to dispute the genuineness of the memorandum or to object to its being recorded is received within such period of ten days, the registrar shall, subject to sub-section (a) of section 25 of the Act, as extended by section 16, sub-section 1 (c), of the National Health Insurance Act, 1924, and to Rules 49A and 51, record the memorandum without further proof.

Recording of memorandum, if genuineness not disputed, 14 & 15 Geo. 5, c. 38, s. 16 (1) (c).

47 (a) If any party interested disputes the genuineness of the memorandum (for example, by alleging in the case of a memorandum of an agreement that no such agreement has in fact been entered into, or that the terms of the agreement are not correctly stated in the memorandum, or that the agreement is no longer subsisting or enforceable, or that it is not enforceable by reason of its having been entered into under a mutual mistake, or obtained by fraud or undue influence or other improper means); or

Where genuineness of memorandum disputed.

(b) if the society or committee objects on any other ground under sub-section (6) of section 23 of the Act to the registration of the agreement; or

Or objection made by society. Act, s. 23 (6).

(c) if, where a workman seeks to record a memorandum of agreement between his employer and himself, the employer alleges that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of the memorandum:

Or objection made by employer. Act, s. 23 (1) proviso (b).

The party so disputing or objecting shall within ten days from the date of the notice mentioned in Rule 45 file with the registrar a notice according to the form in the Appendix stating the grounds on which the genuineness of the memorandum is disputed or the recording thereof is objected to, and shall with such notice file a copy thereof for each of the other parties interested.

Form 39.

48. On receipt of any such notice as in the last preceding rule mentioned, being either a notice disputing the genuineness of the memorandum by any party interested or a notice by the employer objecting to the memorandum being recorded on the ground

Notice of dispute or objection. Form 40.

Rule 48.

specified in paragraph (c) of that rule, the registrar shall send a copy thereof to each of the other parties interested, together with a notice according to the form in the Appendix informing such party that the memorandum will not be recorded except with the consent in writing of the party disputing the genuineness thereof, or of the employer objecting to the same being recorded, or by order of the judge.

Subsequent
proceedings.
14 & 15 Geo. 5,
c. 38, s. 16
(1) (c).

49.—(1) If the consent mentioned in the last preceding rule is obtained, the registrar shall, subject to sub-section (a) of Section 25 of the Act, as extended by section 16, sub-section (1) (c), of the National Health Insurance Act, 1924, and to Rule 51, record the memorandum without further proof.

(2) If such consent cannot be obtained, any party interested may apply to the judge to order the memorandum to be recorded.

Amendment
of memo-
randum by
consent.

(3) Provided that if all parties interested consent in writing to any amendment of the memorandum, and to the recording of the same as so amended, the registrar may amend the memorandum accordingly, and record the same without further proof.

Where
objection
made to
adequacy of
sum payable
or informa-
tion given as
to matters
mentioned in
Act, s. 25 (4),
14 & 15 Geo. 5,
c. 38, s. 16 (1)
(c).

49A.—Where a memorandum of an agreement as to any matter referred to in paragraph 1 of Rule 51 is presented for registration, and no notice is filed pursuant to Rule 47 by any party interested disputing the genuineness of the memorandum, nor any notice by the employer objecting to the memorandum being recorded on the ground specified in paragraph (c) of that rule, but a notice objecting to the memorandum being recorded is filed pursuant to that rule by a party interested on the ground of the inadequacy of the sum or amount payable or on some other ground, or any party interested gives to the registrar any information bearing on the question whether the memorandum may properly be recorded, regard being had to sub-section (a) of section 25 of the Act, as extended by section 16, sub-section 1 (c), of the National Health Insurance Act, 1924, the registrar shall before recording the memorandum proceed to consider the objection or information in accordance with the said sub-section and with Rule 51.

PROCEEDINGS FOR RECORD OF MEMORANDUM OR RECTIFICATION OF REGISTER.

Proceedings
on applica-
tion for
record of
memorandum
or rectifica-
tion of
register.
Form 41.

50. The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the judge to rectify the register pursuant to sections 23 and 25 of the Act.

(a) The application shall be made in court on notice in writing, stating the relief or order which the applicant claims.

Rule 50.

(b) The notice shall be filed with the registrar, and copies thereof shall be served—

(i.) in the case of an application for an order that a memorandum be recorded, on the party disputing the memorandum or objecting to its being recorded, and on all other parties interested ;

(ii.) in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these rules as to the parties to an arbitration :

or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(c) On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.

(d) On the hearing of the application the judge may make such order or give such directions as he may think just, regard being had, in the case of an application for an order that a memorandum of an agreement be recorded, to sub-section (a) of section 25 of the Act, as extended by section 16, sub-section 1 (c) of the National Health Insurance Act, 14 & 15 Geo. 5, 1924, and to sub-sections (3) and (4) of section 23 of c. 38, s. 16 the Act and to Rule 51 and Rule 59. (1) (c).

(e) The provisions of the Act and these rules as to the costs of an arbitration before the judge shall apply to any such application.

REFERENCE OF AGREEMENT PRESENTED FOR REGISTRATION TO THE JUDGE. SUB-SECTION (4) OF SECTION 25, 14 & 15 GEO. 5, C. 38, SECTION 16 (1) (c).

51.—(1) Where a memorandum of an agreement as to the Where redemption of a weekly payment by a lump sum, or as to the memorandum of agreement relates to amount of compensation payable to a person under any legal matter disability, or to dependants, or as to the amount of compensation payable in the form of a weekly payment or of a lump sum to a workman who is an insured person within the meaning of the National Health Insurance Act, 1924, or a memorandum of an agreement which may be sent for registration under sub-section (2) of section 44 of the Act, is presented for registration, there shall be left or sent with the memorandum a separate statement, according to the form in the Appendix, of such of the particulars mentioned in that form as are applicable to the case.

(2) In any such case the registrar shall, before recording the Inquiry by memorandum, in addition to sending the notice mentioned in registrar, and proceed- ings thereon

- Rule 51.** Rule 45, send a notice to every party interested according to the form in the Appendix, requesting such party to inform him by letter, or by personal interview at his office, of any facts relating to the agreement and the circumstances in which it was arrived at which such party may desire to bring to the notice of the registrar, and which may assist him in deciding whether the memorandum may properly be recorded; and the registrar shall make such further inquiries and obtain such further information as he may think necessary in order to satisfy himself that the memorandum may properly be recorded, regard being had to sub-section (a) of section 25 of the Act, as extended by section 16, sub-section (1) (c), of the National Health Insurance Act, 1924, and in particular he may for this purpose in the case of a lump sum agreement exercise, by notice according to the form in the Appendix, the powers of making the specific requirements referred to in sub-section (3) of section 23 of the Act, subject to giving the society or committee, by notice according to the form in the Appendix, an opportunity of appearing before him pursuant to sub-section (6) of that section in the case of the attendance of any of the parties to the agreement having been required by him; and in the case of an agreement sent for registration under section 24 of that Act he shall have regard to the question whether or not liability to pay compensation is doubtful: and it shall be the duty of the parties to the agreement to answer such inquiries and give such information accordingly.
- Form 41A.**
- Form 41B.**
- Form 41C.**
- 14&15 Geo. 5,
c. 38, s. 16
(1) (c).

Separate Statement.—In the event of the statement containing an error, the proper order to make is that it be returned to the party who sent it in for correction; but the judge has no jurisdiction to order the statement to be altered, or to order the memorandum recorded to be altered so as to show a rectification of the mistake in the statement (*Edge v. Green*, (1918) W. C. & I. 330).

In *Roberts v. Blow, Richards & Co.*, (1920) W. C. & I. 29, where the registrar omitted to send out notices as required by this rule, and made a verbal report and not a written one as required by (3), *infra*, and it was objected when the case came before the judge that he had no jurisdiction owing to these irregularities, and the judge did not go into the merits but refused to record the agreement; on appeal the case was remitted to the judge to determine it after the irregularities had been corrected.

(3) Where notice disputing the genuineness of the memorandum is not filed pursuant to Rule 47, but it appears to the registrar on any information which he considers sufficient, that the memorandum ought not to be recorded for any reason mentioned in the said proviso as so extended, or mentioned in sub-section (3) or (4) of section 23 of the Act, he shall make a report to the judge in writing, stating the information he has obtained, and the grounds on which it appears to him that the memorandum ought not to be recorded.

Rule 51.
—

(4) If on consideration of the registrar's report it appears to the judge that the memorandum may properly be recorded, he may so direct, and it shall be recorded accordingly.

(5) If on consideration of the registrar's report it appears to the judge that the memorandum should not be recorded without further inquiry, the registrar shall send notice to the parties interested according to the form in the Appendix, informing them that he has referred the matter to the judge, and requiring them to attend on a day to be named in the notice, when the matter will be heard and inquired into by the judge. Form 42.

(6) The notices shall be sent to the parties interested or their solicitors ten clear days at least before the day fixed for the inquiry, unless the judge directs shorter notice to be given.

(7) At the hearing witnesses may be orally examined in the same manner as on the hearing of an action. The judge may also at or for the purpose of the hearing give such directions as he may think just, and in particular he may in the case of a lump sum agreement exercise the powers conferred upon him by sub-section (3) of section 23 of the Act, whether the same have already been exercised by the registrar or not.

(8) The judge may at or after the hearing either direct the memorandum to be recorded or confirm the refusal of the registrar to record it or make such other order as he may under the circumstances think just.

(9) Where in any case there is a hearing before the judge, the judge may, or where in the case of a lump sum agreement there is a hearing before the registrar or judge or a report from a medical referee is required to be obtained, the registrar or judge, as the case may be, may, in accordance with sub-section (7) of section 23 of the Act award costs; and for this purpose the provisions of the Act and Rules as to the costs of an arbitration before the judge shall apply; and in awarding such costs there may be allowed in particular any costs incurred in consequence of the neglect or refusal of a party to comply with a requirement of the registrar or judge and also the fee (if any) payable under paragraph 9 of the first schedule to the Act in respect of the remuneration and expenses of the medical referee and any other costs of obtaining his report (if any) and any court fees paid.

(10) Further in the event of the parties or either of them failing to comply with any requirement of the registrar under sub-section (3) of section 23 of the Act the registrar may in accordance with such sub-section refuse to record the memorandum and refer the matter to the judge who shall have power to make such order as he may in the circumstances think just.

Rule 51.

(11) The costs to be allowed under sub-section (5) of section 23 of the Act on taxation of the solicitor's bill to be submitted to the registrar if directed by him shall be such costs as shall be considered reasonable according to such scale as he may direct or the scale applicable to the amount of the compensation and the amount of any reduction from the bill shall be applied and dealt with by the judge as provided by that sub-section.

(12) If any party interested desires to receive notice by post of the fact and date when a memorandum of agreement is recorded, he may send to the registrar a prepaid postcard addressed to himself and containing on the back the name of the Court, the name and number of the matter, and the words 'The above matter sent for registration was duly recorded on the

' a blank being left for the date and the Registrar's signature; and if he does so, the registrar shall fill in the date of registration and sign and post the postcard as soon as may be after the memorandum has been recorded.

PROCEEDINGS FOR REMOVAL OF RECORD OF MEMORANDUM OF AGREEMENT FROM REGISTER UNDER SUB-SECTION (5) OF SECTION 25 OF THE ACT.

Application for removal of agreement from register. Act, s. 25 (5). Form 43.

52.—(1) An application to the judge by or on behalf of any party for the removal from the register of the record of a memorandum of agreement under sub-section (5) of section 25 of the Act shall be made in court on notice in writing: and the provisions of Rule 50 shall apply to the proceedings on such application.

Notice where inquiry directed by judge.

(2) If it appears to the judge on a report by a registrar without such application as in the last preceding paragraph mentioned that the record of a memorandum of an agreement should be removed from the register pursuant to the said proviso, the registrar shall send notice to the parties to the agreement according to the form in the Appendix, requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge.

Form 44.

(3) Such notice shall be sent and the inquiry held in accordance with the provisions of the last preceding rule, and the provisions of that rule shall apply to any such inquiry.

PAYMENT INTO COURT AND APPLICATION OF LUMP SUM PAYABLE BY AGREEMENT IN LIEU OF OR FOR REDEMPTION OF WEEKLY PAYMENT PAYABLE TO A PERSON UNDER LEGAL DISABILITY.

Payment into court and investment and ap-

53. Where an agreement is made for the payment of a lump sum in lieu of a weekly payment to a person under any legal

disability, or for the redemption by a lump sum of a weekly payment payable to a person under any legal disability, and a memorandum thereof has been recorded in accordance with the Act and these rules, such sum shall be paid into court, and shall be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the person entitled thereto, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in: and the provisions of section 26 of and the second schedule to the Act and of rule 60 shall apply to the payment into court and the investment and application of such lump sum.

Rule 53.

Application of lump sum payable under agreement in lieu of or for redemption of weekly payment to person under disability. Act, ss. 13 & 26 and the second schedule.

When the judge makes an order dealing partially with the fund the order is one made under the Act, and appeal lies to the Court of Appeal (*Johnston v. Henry Liston & Co.*, (1919) W. C. & I. 277).

CERTIFICATE UNDER SECTION 29, SUB-SECTION 2.

54.—(1) Where an action is brought in the county court to recover damages independently of the Act for injury caused by any accident, and the court proceeds under sub-section (2) of section 29 of the Act, the certificate given by the court shall be according to the form in the Appendix.

Certificate. Act, s. 29 (2).

(2) The registrar shall, on receiving a certificate given by any other court under the said sub-section, record the same in like manner as if such certificate were an award made by the judge.

Form 45.

SUMMONING MEDICAL REFEREE AS ASSESSOR UNDER SCHEDULE I., PARAGRAPH 5.

55.—(1) Any party to an arbitration may eight clear days at least before the day fixed for proceeding with the arbitration file with the registrar an application according to the form in the Appendix, requesting the judge to summon a medical referee to sit with him as an assessor under paragraph 5 of the first schedule to the Act. Such application shall be accompanied by two copies of an extract for the use of the assessor from the particulars annexed to the application for arbitration under the following heads, so far as applicable to the case in question, viz.:—particulars as to (1) the nature of the employment at the date of the accident; (2) the date and place of accident; (3) the nature of the work on which the workman was at the time engaged; (4) the nature of the accident and cause of the injury; (5) the nature of the injury; (6) the incapacity for work whether total or partial and the estimated duration of the incapacity; (7) the date of the death; (8) the nature of the disease; (9) the date of the disablement or suspension.

Application for assessor. Act, Sched. I., par. 5. Form 46.

(2) On receipt of the application and on the applicant giving security to the satisfaction of the registrar by deposit in court or

Rule 55.

solicitor's undertaking for the payment of the prescribed fee, the judge shall, and in any case he may if he thinks fit on his own motion at any time, direct the registrar to summon an assessor.

(3) On receiving such direction the registrar shall proceed forthwith to summon a medical referee as directed by the following paragraph.

Summoning
of assessor if
judge
approves or
so directs.
Form 48.

(4) The registrar shall summon a medical referee by sending to him by post a summons according to the form in the Appendix. The registrar shall annex to the said summons for the use of the assessor one copy of the extract from the particulars received with the application as prescribed by paragraph (1) of this rule. If the judge shall think fit on his own motion to summon a medical referee as assessor, the registrar shall make and annex to the summons for the use of the assessor a copy of such of the particulars referred to in paragraph (1) of this rule as the judge may in his discretion direct.

Where
assessor fails
to attend.

(5) If at the time and place appointed for the arbitration the medical referee summoned does not attend, the judge may either, with the parties' consent, proceed with the arbitration without the assistance of an assessor, or he may adjourn the hearing.

(6) Where the solicitor has given an undertaking for payment of the prescribed fee, proceedings may by direction of the judge be taken against him for the recovery thereof as for the recovery of a judgment debt. The fee although payable by or on behalf of the applicant in the first instance may be allowed to him as costs in the arbitration.

APPOINTMENT OF MEDICAL REFEREE TO REPORT UNDER SCHEDULE I., PARAGRAPH 11.

Appoint-
ment of
medical
referee to
report.
Act, Sched.
I, par. 11.

56.—(1) Subject to and in accordance with the regulations made by the Secretary of State and the Treasury under paragraph 11 of the first schedule to the Act, the judge may submit to a medical referee for report any matter which seems material to any questions arising in an arbitration.

(2) When any matter is submitted as aforesaid, the judge may, subject to and in accordance with such regulations, order the injured workman to submit himself for examination by the medical referee; and it shall be the duty of the workman, on being served with such order, to submit himself for examination accordingly.

APPLICATION FOR REFERENCE TO MEDICAL REFEREE UNDER SECTION 19 OF THE ACT.

Application
for reference
to a medical
referee.
Act, s. 19.

57.—(1) With respect to applications to the registrar pursuant to section 19 of the Act to refer any matter to a medical referee, the following provisions shall have effect.

Rule 57.

(2) An application to the registrar to refer any matter to a medical referee shall be made in writing, and where the application is made by only one of the parties shall be made on not less than four days' notice in writing and shall be subject to the provisions of Order XII. rule 11 so far as applicable, and shall contain a statement of the facts which render the application necessary, according to the form in the Appendix, and shall be accompanied by a copy of the report of every medical practitioner who has examined the workman either on behalf of the employer or on the selection of the workman. The application shall be signed by or on behalf of one or both of the parties, as the case may be ; and the applicant or applicants shall file copies of the application and reports for the use of the medical referee. Form 49.

(3) On the hearing of the application the registrar may, on payment by the applicant or applicants of the fee payable under paragraph 9 of the first schedule to the Act and subject to appeal to the judge, refer the matter to a medical referee ; and shall forward to such medical referee by registered post one of the filed copies of the application and reports, with an order of reference according to the form in the Appendix, provided that where the application is made by only one of the parties the registrar, or on appeal the judge, if he is of opinion that owing to the exceptional difficulty of the case or for any other sufficient reason the matter ought to be settled in default of agreement by arbitration, shall refuse to allow the reference, and may in that case make such order as to the costs of the application as he shall think fit. Form 50.

(4) The registrar shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State. Form 51.

(5) Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel shall so state in the order of reference ; and it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

(6) The registrar shall deliver or send by registered post to each party a copy of the order of reference, and shall send to the workman a copy of the order directing him to submit himself for examination.

(7) The medical referee shall forward his certificate in the matter to the registrar by registered post.

Rule 57.
Form 52.

(8) On the receipt of the certificate of the medical referee the registrar shall inform the parties by post that it has been received, and shall permit any party to inspect the same during office hours, and shall on the application and at the cost of either party furnish him with a copy of the certificate, or allow him to take a copy thereof.

(9) The costs of any application to the registrar, including the fee mentioned in paragraph (3), may be allowed as costs in any subsequent arbitration for the settlement of the weekly payment to be made to the workman, or, where the application is made after the weekly payment has been settled, as costs in any subsequent arbitration as to the review of such weekly payment, or may be allowed by special order of the judge on application in that behalf, such application to be made on not less than four days' notice in writing and in accordance with the provisions of Order XII. rule 11 so far as applicable.

APPLICATION FOR REFERENCE TO MEDICAL REFEREE UNDER SECTION 12 OF THE ACT.

Application
for reference
to medical
referee.
Act, s. 12.

57A. The application under proviso (ii.) to section 12 of the Act, in a case where the effect of the certificate of the medical referee is in dispute, for the determination of the registrar, shall be made on not less than four days' notice in writing and in accordance with the provisions of Order XII. rule 11 so far as applicable; and notice of appeal to the judge must be given in writing within four days from the decision of the registrar unless the time is extended by the judge or by the registrar; and the registrar or judge may make such order as to the costs of the application as he shall think just.

FEES PAID INTO COURT UNDER SCHEDULE I., PARAGRAPH 9 OF THE ACT.

57B. Any fees paid into court under paragraph 9, of the first schedule to the Act and any moneys recovered or received on account thereof shall be dealt with as directed by the Lord Chancellor.

SUSPENSION OF PROCEEDINGS OR WEEKLY PAYMENTS ON REFUSAL TO SUBMIT TO EXAMINATION UNDER SECTIONS 17, 18 OR 19 OF THE ACT.

Application
to stay
proceedings
or suspend
weekly pay-
ments on
refusal of
workman to
submit to

58.—(1) In any case in which a workman has given notice of an accident, or is receiving weekly payments under the Act, and the employer alleges that the workman refuses to submit himself to medical examination in accordance with section 17, 18 or 19 of the Act, or in any way obstructs such examination, the employer may apply for a suspension of the right to

compensation and to take or prosecute any proceedings under the Act in relation to compensation, or of the right to the weekly payments, until such examination has taken place, in accordance with this rule. Rule 58.
examination.
Act, ss. 17, 18
or 19.

(2) Where proceedings are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3) Where the workman has given notice of an accident, but no proceedings are pending, or proceedings are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(4) Where the workman is receiving weekly payments under an award, memorandum, or certificate, then

(a) If proceedings for the review of the weekly payment are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator ;

(b) If no proceedings for review are pending, or if proceedings for review are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(5) Where the application is to be made to the judge, it may be made in or out of court in accordance with rule 50 ; and the provisions of the said rule shall apply to the proceedings on such application, with the following modification :— Form 53.

(a) The notice shall be served on the workman or his solicitor five clear days before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

SUSPENSION OF WEEKLY PAYMENTS PENDING APPLICATION FOR REVIEW.

59.—(1) Where an application is made for an order that a memorandum of an agreement as to a weekly payment be recorded, and the employer alleges that incapacity for work has wholly or partially ceased, the judge may, on the hearing of the application, if he orders the memorandum to be recorded, order the weekly payment to be wholly or partially suspended, or to be wholly or partially paid into court, to abide the order of the court, as from the date on which the employer alleges that incapacity wholly or partially ceased, or from any later date, for such time as he may think fit, to enable the employer to file a request for arbitration with respect to the review of the weekly payment. Suspension of weekly payments pending application for review.

(2) Where an employer intends to apply for an order of suspension or payment into court under the preceding paragraph, he shall file with the registrar notice of his intention, specifying

Rule 59.

the date on which he alleges that incapacity wholly or partially ceased ; and copies thereof shall be served in accordance with rule 50 five clear days at least before the hearing of the application to record, unless the judge or registrar gives leave for shorter notice.

(3) The provisions of this rule shall not prejudice the power of the judge to refuse to order a memorandum of an agreement to be recorded.

(4) Where a request is filed for arbitration with respect to the review of a weekly payment, the judge may at any time before the hearing of the arbitration order the weekly payment to be wholly or partially suspended, or to be wholly or partially paid into court, to abide the order of the court as from the date on which the employer alleges in his request that incapacity wholly or partially ceased, or from any later date, until the hearing of the arbitration.

(5) An application for an order for suspension or payment into court under the last preceding paragraph shall be made in court on notice in writing ; and the provisions of rule 50 shall apply to the proceedings on such application.

(6) An order for suspension or payment into court under this rule shall be without prejudice to the right of the workman to apply to the court, on good cause shown, to discharge the order. Any such application shall be made in court on notice in writing ; and the provisions of rule 50 shall apply to the proceedings on such application.

This rule is valuable as it enables an employer on asking for review to also obtain a stay of execution of so much of the compensation as ought not to be paid (see under sect. 1, sub-s. 3).

PAYMENT INTO COURT AND INVESTMENT AND APPLICATION OF MONEY PAYABLE IN CASE OF DEATH. SECTION 26 AND SCHEDULE II.

Payment into court, investment, and application of payment in case of death. Act, s. 26 and Schedule II.

60.—(1) Where any payment in the case of death is to be paid into the county court pursuant to section 26 of the Act, the following provisions shall have effect.

(2) Where any money is to be paid into court under an award made by the judge or an arbitrator appointed by him, payment shall be made in accordance with the directions contained in the award.

(3) In any other case payment shall be made into the court in which the memorandum of the decision, award, or agreement under which the money is to be paid, or the certificate under which the money is to be paid, has been or is to be recorded.

(4) Where money is to be paid into court under this rule, the employer shall lodge with the registrar a præcipe in duplicate according to the form in the Appendix, and shall annex to one

Rule 60.
—

copy of the præcipe a form of receipt, and the registrar, on receipt of the sum paid in, shall sign the receipt and return the same to the employer; and the employer shall forthwith give notice to the persons interested in the sum paid in of such payment having been made.

(5) On the payment of money into court, the registrar shall forthwith send by post to each of the persons appearing by the award, memorandum, or certificate to be interested in such money a notice of the said payment according to the form in the Appendix. Provided that in the case of infant dependants residing with their mother or guardian it shall be sufficient to send such notice to the mother or guardian only. Form 58 (i.).

(6) If all questions as to who are dependants and the amount payable to each dependant have been settled by arbitration before payment into court, the sum paid into court shall be allotted between the dependants in accordance with the award, and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(7) If all questions as to who are dependants have been settled by agreement before payment into court, the amount payable to each dependant shall be settled by the court, and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with section 26 of and the second schedule to the Act.

(8) If any such questions have not been settled before payment into court, then—

(a) If all the persons interested in the sum paid into court agree to leave the application thereof to the court, or if no question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, but any of the persons interested in the said sum are absent or under disability, the amount paid into court shall, on application by or on behalf of the persons interested therein, be allotted, invested, applied, or otherwise dealt with by the court for the benefit of the persons interested therein in accordance with the second schedule to the Act.

(b) If any question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, such question shall be settled by arbitration in accordance with the Act and these rules; and the amount allotted to each dependant

Rule 60.
—

shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with the second schedule to the Act.

(9) Where any question is settled by the court by arbitration in accordance with the last preceding paragraph, an application for the investment or application of any sum allotted to any person on such arbitration may be made at or immediately after the hearing of the arbitration.

(10) (a) Where application is not so made, or in any other case coming within section 26 of and the second schedule to the Act, an application for the investment or application of the sum paid into court, or of the amount allotted to any person, may be made in court on notice in writing, stating on whose behalf the application is made, and the order which the applicant asks, according to the form in the Appendix.

Form 59.

(b) The notice shall be filed with the registrar, and where the application is made by or on behalf of some only of the persons interested, notice thereof shall be served on all other parties interested, or on their solicitors, five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(c) On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.

(d) On the hearing of the application the judge may, after making or directing such inquiries as to the dependants and on such evidence of title and identity as he may think necessary, make such order under the second schedule to the Act and this rule as he may think fit.

(e) The provisions of the Act and these rules as to the costs of an arbitration shall apply to any such application.

(11) Where any sum paid or to be paid into court is to be invested, applied, or otherwise dealt with by the court, the judge may, at any time before or on the hearing of any application for the investment or application thereof, refer the matter to the registrar for inquiry and report.

(12) An employer paying money into court under this rule shall not be liable to any costs incurred by any person interested in such money after the receipt of notice of payment into court; but the judge may, in his discretion, order such employer to pay the costs of any such person properly incurred before the receipt of such notice.

(13) Every order for the investment or application of money paid into court shall reserve liberty to the parties interested to apply to the court as they may be advised.

(14) Where any sum allotted to any person under the second schedule to the Act or this rule is ordered to be paid out to or applied for the benefit of the person entitled thereto by weekly or other periodical payments, such payments may be made to the person entitled to receive the same either at the office of the registrar, or, on the written request of such person, by crossed cheque or postal order addressed to such person and forwarded by registered post letter, payment by post being in all cases at the cost and risk of the person requesting the same.

Rule 60.

See note to Rule 53. And see Schedule II. (2) of the Act.

In *Gill v. Fortescue*, (1913) W. C. Rep. 471, it was held that dependants may sever their claim.

61.—(1) If there is no dispute as to the liability to pay compensation, but the amount payable has not been ascertained or decided either by a committee or by arbitration or by agreement, the employer may pay the amount which he admits to be payable as compensation into the court to which, if an agreement had been come to in the matter, a memorandum of such agreement would be sent to be recorded. Payment into court where liability admitted, but amount not ascertained.

(2) Where money is to be paid into court under this rule, the employer shall lodge with the registrar a præcipe in duplicate according to the form in the Appendix, containing a statement of the particulars mentioned in that form, and stating in what manner the sum admitted to be payable as compensation has been arrived at. The employer shall annex to one copy of the præcipe a form of receipt, according to the said form, and the registrar, on receipt of the sum paid in, shall sign the receipt and return the same to the employer; and the employer shall forthwith give notice to the persons interested in the sum paid in of such payment having been made. Form 55.

(3) On the payment of money into court under this rule the registrar shall make such inquiries and obtain such information as he may think necessary to satisfy himself whether the amount paid in is adequate in the circumstances of the case; and it shall be the duty of the employer and of the persons interested in the money paid in to answer such inquiries and give such information accordingly.

(4) Where it appears to the registrar that the amount paid in is adequate, he shall forthwith send by post to each of the persons appearing by the præcipe to be interested in such money a notice of the said payment according to the form in the Appendix. Form 53 (ii.). Provided that in the case of infant dependants residing with their mother or guardian it shall be sufficient to send such notice to the mother or guardian only.

(5) Where it appears to the registrar that the amount paid in

Rule 61. is inadequate, he shall make a report to the judge in writing, stating the information he has obtained and the grounds on which it appears to him that the amount paid in is inadequate.

(6) If on consideration of the registrar's report it appears to the judge that the amount paid in is adequate, he may direct the registrar to send to the parties interested notice of payment in accordance with paragraph 4 of this rule.

(7) If on consideration of the registrar's report it appears to the judge that further inquiry should be made, the registrar shall send notice to the employer and to the parties appearing by the *præcipe* to be interested in the money paid into court, according to the form in the Appendix, informing them that he has referred the matter to the judge, and requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge. On such inquiry the judge may make such order (including an order as to the money paid into court) as under the circumstances he may think just; and paragraphs 7, 8, and 10 of rule 51 shall apply.

Form 57.

(8) Where notice of payment into court is sent in accordance with paragraph 4 or paragraph 6 of this rule, then—

(a) If any question arises as to the adequacy of the amount paid into court, the question as to the amount payable as compensation, and all questions as to who are dependants and the amount payable to each dependant, shall be settled by arbitration in accordance with the Act and these rules; and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 1 of the second schedule to the Act and paragraphs 9 to 11, 13 and 14 of the last preceding rule.

(b) If no question arises as to the adequacy of the amount paid into court, the amount paid into court shall be allotted, invested, applied, or otherwise dealt with by the court in accordance with paragraphs 8 to 11, 13 and 14 of the last preceding rule.

(9) An employer paying money into court under this rule shall not (except under paragraph 10 of rule 51, or where a question arises as to the adequacy of the amount paid in, and such question is decided adversely to the employer by arbitration under paragraph 8 of this rule), be liable to any costs incurred by any person interested in such money after receipt of notice of payment into court; but the judge may, in his discretion, order such employer to pay the costs of any such person properly incurred before the receipt of such notice.

These rules provide that where the employer admits his liability to pay compensation, but the amount payable has not been ascertained, he may pay into court the amount which he admits to be payable by him, and so avoid the delay and expense of arbitration.

Where this is done, the procedure will be as follows:—

- (a) The employer will pay into court the amount which he admits to be payable by him.
- (b) It will then be the duty of the registrar to make inquiries, which inquiry does not authorise him to see the doctor's evidence obtained by the employer, it being clearly privileged (*Johnson v. Oceanic S. N. Co.*, 5 B. 322), in order to satisfy himself that the amount paid in is adequate. If he thinks that it is, notice of payment into court will be given to the dependants. If he is not satisfied as to the adequacy of the amount, he will refer the matter to the judge, who, if he thinks the amount is adequate, will direct notice of payment to be given to the dependants, or if he thinks that further inquiry should be made, will give directions for such further inquiry in accordance with Rule 51.
- (c) Where notice of payment into court is given to the dependants, then, if they are not satisfied with the amount so paid, they will be entitled to have the amount payable settled by arbitration.
- (d) If they are satisfied with the amount paid in, they will be able to apply to the court in a summary manner for the apportionment and investment, etc., of the amount paid in.
- (e) The employer will not be liable to costs after notice of the payment into court, otherwise than on an inquiry into the adequacy of the amount (Rule 51, par. 9), or unless the question as to the adequacy of the amount paid into court is decided adversely to him by arbitration.

This rule was introduced and Rule 60 amended in consequence of the decision of the Court of Appeal in *Rhodes v. The Soothill Colliery Co., Ltd.*, (1909) 1 K. B. 191.

Here the Master of the Rolls said that though in the case of a person under disability there could be no absolute agreement, there might be, according to the familiar practice in Chancery, a so-called conditional agreement, which was not operative unless and until it was approved by the court on behalf of the infants. An analogous procedure was provided for under the Workmen's Compensation Act, it being the duty of the registrar to look into the matter on behalf of the infants. If he did not express dissent, he must be taken to be satisfied with the fairness of the agreement, and the only event in which it could be reviewed not having happened, it became binding.

62.—(1) Where a claim for compensation has been made by or on behalf of dependants, and the employer denies liability, but is willing to pay an amount in settlement of the claim, and such of the dependants as are not under disability are willing to accept such amount in settlement, the employer may pay such amount into the court to which, if an agreement had been come to in the matter, a memorandum of such agreement would be sent to be recorded.

(2) Where money is to be paid into court under this rule, the employer shall lodge with the registrar a *præcipe* in duplicate according to the form in the Appendix, containing a statement of the particulars mentioned in that form. The employer shall annex to one copy of the *præcipe* a form of receipt according to the said form, and the registrar on receipt of the sum paid in shall sign the receipt and return the same to the employer; and the

Payment into court where liability denied.

Form 56.

Rule 62.

employer shall forthwith give notice to the persons interested in the sum paid in of such payment having been made.

(3) On the payment of money into court under this rule, the registrar shall proceed according to paragraph 3 of the last preceding rule, and the provisions of that rule shall apply to proceedings subsequent to such payment.

Payment
into court
by solicitor
or agent of
employer.

62A. Where money is to be paid into court under rule 60, rule 61, or rule 62, it may be paid in by the employer or his solicitor, or by an agent of the employer duly authorised on his behalf; and where payment is made by a solicitor or an agent the præcipe shall state that the money is paid in at the request and by the authority of the employer, and the præcipe shall be signed by the solicitor or agent accordingly.

The rule is based upon *Ferrard v. Thompson*, 6 B. 461.

**PAYMENT INTO COURT AND APPLICATION OF WEEKLY PAYMENTS
PAYABLE TO PERSON UNDER LEGAL DISABILITY. SECTION
26, SUB-SECTION 2.**

Application
for payment
into court
of weekly
payment to
person under
legal
disability.
Act, s. 26 (2).

63.—(1) An application under sub-section 2 of section 26 of the Act for an order that a weekly payment payable under the Act to a person under any legal disability shall during the disability be paid into court may be made either by the person liable to make such payment, or by or on behalf of the person entitled to such payment.

(2) If the weekly payment is awarded by the judge, the application may be made at or immediately after the hearing of the arbitration.

Form 60.

(3) In any other case the application may be made in or out of court on notice in writing, which shall be served on the other party or his solicitor five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice; and the provisions of rule 50 shall apply to any such application.

(4) Where any weekly payment is ordered to be paid into court, the sums paid in shall be paid out by the registrar to or otherwise applied for the benefit of the person entitled thereto in such manner as the judge shall direct; and the provisions of rule 60 as to the payment out or application of sums by weekly or other periodical payments shall apply.

**APPLICATION FOR VARIATION OF ORDER UNDER SECTION 22 OF
THE ACT.**

Application
for variation
of order.
Act, s. 22.
Form 61.

64.—(1) An application for the variation of an order of the court under section 22 of the Act may be made by or on behalf of any person interested.

See rule 64A.

(2) The application shall be made in court on notice in writing, stating the circumstances under which the application is made, and the relief or order which the applicant claims. **Rule 64.**

(3) The notice shall be filed with the registrar, and notice thereof shall be served on all persons interested in accordance with rule 50; and the provisions of that rule and of rule 60 shall apply to the proceedings on such application.

64A.—In the event of the death of any person entitled as a dependant to any money paid into court, such money shall be dealt with in accordance with any direction which may have been or may be given as to the disposition thereof for the benefit of other dependants in the event of the death of such person; and in default of and subject to any such direction such money shall be dealt with in accordance with the provisions of *section 26 of the County Courts Act, 1919, and paragraph 2 of the second schedule to the Act.* Application of amount allotted to dependant in case of death. 9 & 10 Geo. 5, c. 73, s. 26.

Note.—Words in italics struck out by Workmen's Compensation (Silicosis) Rules, 1927.

64B.—Where money is in court, being compensation for the benefit of a dependant or dependants of a deceased workman, the registrar may in the absence of the judge at any time or times, and on application in that behalf by any person claiming to be a dependant and on being satisfied that such person is a dependant, direct that so much of the compensation as he considers to be reasonably necessary for the immediate or pressing needs of such dependant or of any other dependants who are being maintained by such dependant shall be paid out to such dependant.

INVESTMENT AND APPLICATION OF LUMP SUM PAID IN REDEMPTION OF WEEKLY PAYMENT. SECTION 13 OF THE ACT.

65. Where pursuant to section 13 of the Act a lump sum payable for the redemption of any weekly payment is ordered by a committee or an arbitrator, or by the judge, to be invested or applied for the benefit of the person entitled thereto, such sum shall be paid into court; and the provisions of the second schedule to the Act and of rule 60 shall apply to the investment and application of such lump sum. Investment and application of sums paid in redemption of weekly payments. Act, s. 13.

INVESTMENT OF MONEY PAID INTO COURT.

65A. Any sum which under the first schedule to the Act and these rules is ordered to be invested may be so invested:— Money paid into court, how to be invested.

(1) In the Post Office Savings Bank or in the purchase of an annuity in accordance with paragraphs 4 and 5 of the said schedule; or

Rule 65a.

- (2) In any of the following Government Stocks, viz. :—Two and a half per cent. Consolidated Stock : Two and three quarters per cent. annuities : Two and a half per cent. annuities : or War Loan Inscribed Stocks : any such investment to be made in the name of the registrar of the court through the Post Office Savings Bank ; or
- (3) With the consent of the Treasury, but not otherwise, in any stocks, funds, or securities (other than mortgages of freehold, copyhold, or leasehold estates) in which cash under the control or subject to the orders of the High Court may be invested, any such investment to be made in the names of the registrar and the Superintendent of County Courts in the Lord Chancellor's Department ;

and no such sum shall be invested otherwise than in accordance with this rule.

PROCEEDINGS WHERE WORKMAN RECEIVING WEEKLY PAYMENT
INTENDS TO CEASE TO RESIDE IN UNITED KINGDOM.
SECTION 16 OF THE ACT.

Where
workman
receiving
weekly pay-
ment intends
to cease to
reside in
United
Kingdom, the
Channel
Islands, or the
Isle of Man.
Act, s. 16.

66.—(1) Where a workman receiving a weekly payment intends to cease to reside in the United Kingdom, the Channel Islands, or the Isle of Man, the following provisions shall have effect under section 16 of the Act.

(2) The workman may apply to the registrar to refer to a medical referee the question whether the incapacity of the workman resulting from the injury is likely to be of a permanent nature.

(3) The application shall be made on notice in writing, according to the form in the Appendix, which shall be filed with the registrar, and shall be accompanied by a report of a medical practitioner selected by the workman, setting out the nature of the incapacity alleged to be the result of the injury ; and a copy of the application and of the report shall be served on the employer or his solicitor in accordance with rule 50 ; and the applicant shall file a copy of the application and of the report for the use of the medical referee.

(4) The employer may, on being served with notice of the application, require the workman to submit himself for examination by a medical practitioner provided and paid by the employer, in accordance with section 18 of the Act ; and if the employer requires the workman to submit himself for such examination he shall before or at the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and file a copy of the report for the use of the medical referee.

Form 62.

(5) The workman and the employer respectively may before or at the hearing of the application submit to the registrar such statements in writing as they may think fit, with copies of such statements for the use of the medical referee. Rule 66.

(6) On the hearing of the application the registrar, on being satisfied that the applicant has a *bonâ fide* intention of ceasing to reside in the United Kingdom, the Channel Islands, or the Isle of Man, shall, on payment by the applicant of the fee payable under paragraph 9 of the first schedule to the Act, make an order referring the question to a medical referee; and if he is not so satisfied, he may refuse to make an order, but in that case he shall, if so requested by the applicant, refer the matter to the judge, who may make such order or give such directions as he may think fit. Form 63.

(7) If the registrar or the judge makes an order referring the question to a medical referee, he shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 3 to 6 of rule 57 shall with the necessary modifications apply. Form 51.

(8) The registrar shall with the order of reference forward to the medical referee copies of any statements submitted to him by either party.

(9) The medical referee shall forward his certificate in the matter to the registrar by registered post, specifying therein the nature of the incapacity of the workman resulting from the injury, and whether such incapacity is likely to be of a permanent nature; and the registrar shall thereupon proceed in accordance with paragraph 8 of rule 57. Form 52.

(10) Where the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature, the registrar shall on application furnish the workman

- (a) with a copy of the certificate of the medical referee, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and
- (b) with a copy of the award, memorandum, or certificate under which the weekly payment is payable, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and
- (c) with a certificate of identity according to the form in the Appendix; and Form 64
- (d) with a notice according to the form in the Appendix, annexing thereto forms of certificate and declaration according to the forms in the Appendix; Forms 65, 66, 67.

and shall procure from the workman a specimen of his signature, and file the same for reference.

Rule 66.

Form 66.

(11) A workman who desires to have the weekly payments payable to him remitted to him while residing out of the United Kingdom, the Channel Islands, or the Isle of Man, shall at intervals of three months from the date to which such payments were last made submit himself to examination by a medical practitioner in the place where he is residing, and shall produce to him the copy of the certificate of the medical referee and the certificate of identity furnished under the last preceding paragraph, and shall obtain from him a certificate in the form in the Appendix that the incapacity of the workman resulting from the injury continues; and such certificate shall be verified by declaration by the medical practitioner, in the presence of the workman, before a person having authority to administer an oath.

Form 67.

(12) The workman shall also make a declaration of identity according to the form in the Appendix before a person having authority to administer an oath, producing to such person the copy and certificate above mentioned, and the certificate of the medical practitioner by whom he has been examined.

Form 68.

(13) The workman shall forward the certificate and declaration in the two last preceding paragraphs mentioned to the registrar, with a request, according to the form in the Appendix, for the transmission to him of the amount of the weekly payments due to him, specifying the place where and the manner in which the amount is to be remitted, which request shall be signed by the workman in his own handwriting.

Form 69.

(14) On receipt of the certificate, declaration, and request the registrar shall examine the same, and may if not satisfied that the same are in order return the same for correction.

(15) If the registrar is satisfied that the certificate, declaration, and request are in order, or when they are returned to him in order he shall send to the employer a notice according to the form in the Appendix, requesting him to forward the amount due; and the employer shall thereupon forward the amount to the registrar, who shall remit the same, less any fees payable to the registrar and the costs of transmission, to the workman at the address and in the manner requested by him, such remittance being in all cases at the cost and risk of the workman.

**PAYMENT OF ARREARS OF WEEKLY PAYMENTS ON DEATH OF
WORKMAN RESIDING OUT OF UNITED KINGDOM.**

Payment of
arrears of
weekly
payments on
death of
workman
residing out
of United
Kingdom,

67.—(1) In the event of the death of a workman in receipt of weekly payments while residing out of the United Kingdom, the Channel Islands, or the Isle of Man, his representatives shall, for the purpose of obtaining payment of the arrears due to the workman, forward to the registrar a certificate of the death of the work-

man, and documents showing that they are entitled to such arrears, verified by declaration before a person having authority to administer an oath, with a request for payment of such arrears, specifying the place where and the manner in which the amount is to be remitted to them. Rule 67.
the Channel Islands, or the Isle of Man.

(2) For the purposes of this rule, the expression "representatives" shall mean—

(a) if the workman leaves a will, the executors of such will; or

(b) if the workman dies intestate, the persons who are according to law entitled to his personal estate, and payment of the arrears may be made to such persons without the production of letters of administration.

(3) On the receipt of the certificate and documents mentioned in this rule the registrar shall examine the same, and may, if not satisfied that the same are in order, return the same for correction.

(4) If the registrar is satisfied that the certificate and documents are in order, or when they are returned to him in order, he shall send to the employer a notice requesting him to forward the amount due, and the employer shall thereupon forward the amount to the registrar, who shall remit the same, less any fees payable to the registrar and the costs of transmission, to the representatives of the workman at the address and in the manner requested by them, such remittance being in all cases at the cost and risk of such representatives.

CONVENTIONS WITH FOREIGN STATES AND ORDER IN COUNCIL, THE 22ND DAY OF NOVEMBER, 1909.

68. Where a request for arbitration is filed by or on behalf of a workman who is a French citizen, or by or on behalf of the dependants of a deceased workman who was a French citizen, the following provisions shall apply. Special provisions as to French citizens.
9 Edw. VII.
c. 16.

69. The request and particulars shall state that the workman is or the deceased workman was a French citizen. Order in Council,
22 Nov.,
1909.

70. The court in which proceedings are to be taken shall be determined in accordance with rule 88 of these rules.

71. A respondent who intends to rely as a defence on paragraph (1) of the Order in Council dated the 22nd day of November, 1909, (a) made under the Workmen's Compensation (Anglo-French Convention) Act, 1909 (in these rules referred to as "the Order in Council"), shall state the facts on which he intends to rely in his answer in accordance with rule 18. Answer where respondent relies on Order in Council, par. (1).

For text of Order in Council, see Appendix EE, *post*, p. 1596.

72. Any lump sum payable in redemption of a weekly payment payable to a workman who is a French citizen, which is to be Investment in Post

Rule 72.

Office
annuity of
lump sum
payable in
redemption
of weekly
payment.
Order in
Council,
par. (3).

Post Office
Regulations,
1888 and
1895.

Transmis-
sion to
France of
lump sum
payable in
redemption
of weekly
payment to
French
citizen who
returns to
reside in
France.
Order in
Council,
par. (4).
Form 70.

Transmis-
sion to
France of
sum payable
as compensa-
tion to
dependants
of French
citizen who
reside in or
return to
France.
Order in
Council,
par. (4).
Where
workman in
receipt of
weekly pay-

paid into court pursuant to paragraph 3 of the Order in Council, shall when so paid be invested by the registrar in the purchase of two immediate annuities of equal value on the life of and in the name of the workman from the National Debt Commissioners through the Post Office Savings Bank, the first half-yearly instalment of the first of such annuities to be payable on the second quarterly day of payment next following the day of purchase, and the first half-yearly instalment of the second of such annuities to be payable on the third quarterly day of payment next following the day of purchase.

When applying to the Post Office Savings Bank for the purchase of any such annuities the registrar shall inform the department that the case is one under the Order in Council ; and the workman shall sign such documents and furnish such evidence as may be required by the Post Office Annuity and Insurance Regulations, 1888 to 1913, to enable such annuities to be so purchased.

73. Where a lump sum payable in redemption of a weekly payment to a workman who is a French citizen has been paid into court, then, if the workman returns to reside in France, such sum (unless the same has been invested in pursuance of the last preceding rule) shall, on the application of the workman, be paid over by the registrar to the " Caisse Nationale Francaise des Retraites pour la Vieillesse " (in these rules referred to as " the Caisse ").

Any such sum shall be transmitted by the registrar to the Caisse by registered post letter, inclosing a crossed cheque for the total sum due to the workman, and shall be accompanied by a certificate according to the form in the Appendix, and the registrar shall on the application of the workman forward to him a copy of the certificate.

74. Where a sum payable as compensation to the dependants of a deceased workman who was a French citizen has been paid into court, then, if the dependants resided in France at the time of the death of the workman, or subsequently return to reside in France, such sum shall, on the application of the dependants, be paid over to the Caisse.

(2) Any such sum shall be transmitted in accordance with the last preceding rule, and the registrar shall, on the application of the dependants, forward to them a copy of the certificate.

75.—(1) Where a workman who is a French citizen is in receipt of a weekly payment, and such workman intends to return to reside in France, the following provisions shall have effect under paragraph 5 of the Order in Council.

(2) The payments of the amount of compensation due to the workman shall be made at intervals of three months. Rule 75.

(3) The workman may apply to the registrar for a certificate of a medical referee as to the nature of the incapacity resulting from the injury. ments intends to return to reside in France. Order in Council, par. (5). Form 71.

(4) The application shall be made on notice in writing, according to the form in the Appendix, which shall be filed with the registrar; and a copy of the application shall be served on the employer in accordance with rule 50; and the applicant shall file a copy of the application for the use of the medical referee.

(5) The employer may, on being served with notice of the application, require the workman to submit himself for examination by a medical practitioner provided and paid by the employer, in accordance with section 18 of the Act; and if the employer requires the workman to submit himself for such examination he shall before or at the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and file a copy of the report for the use of the medical referee.

(6) The workman and the employer respectively may before or at the hearing of the application submit to the registrar such statements in writing as they may think fit, with copies of such statements for the use of the medical referee.

(7) On the hearing of the application the registrar shall make an order referring the question to a medical referee. The order of reference shall be according to the form in the Appendix, and shall state the injury in respect of which the award was made, so far as it appears on the records of the court: and the registrar shall forward the order to the medical referee by registered post, accompanied by a copy of the application and of any reports and statements submitted to him by either party. Form 72.

(8) The registrar shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 5 and 6 of rule 57 shall apply. Form 51.

(9) The medical referee shall forward his certificate in the matter to the registrar by registered post, specifying fully therein the nature of the incapacity (if any) of the workman resulting from the injury; and the registrar shall thereupon proceed in accordance with paragraph 8 of rule 57. Form 52.

(10) Where the medical referee certifies that the workman is suffering from incapacity resulting from the injury, the registrar shall, on the application of the workman, made on notice in writing and served on the employer two clear days at least before

- Rule 75. the hearing of the application, fix the intervals at which the workman shall be bound to produce, in support of his demand for payment of the amount of compensation due to him, a medical certificate that the incapacity resulting from the injury continues. These certificates shall be required at such intervals, not being less than 3 months nor more than 12 months from the date to which payment was last made, as the registrar may determine, having regard to the nature of the incapacity.
- Forms 73, 74. (11) On the intervals being fixed, the registrar shall send a copy of the order to the workman and to the employer, and shall on application furnish the workman with
- (a) a copy of the certificate of the medical referee, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy ; and
 - (b) a copy of the award under which the weekly payment is payable, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy ; and
 - (c) a certificate of identity according to the form in the Appendix ; and
 - (d) a notice according to the form in the Appendix ;
- Form 64. and shall procure from the workman a specimen of his signature, and file the same for reference.
- Form 75. (12) For the purpose of obtaining payment of the compensation due to him, an injured workman who is a French citizen, and has returned to reside in France, shall at intervals of three months from the date to which such payment was last made produce to the mayor of the commune in which he resides the certificate of identity furnished under the last preceding paragraph, and shall obtain from the mayor a certificate that such workman was alive on the day when the certificate of identity was produced. He shall also, at the intervals fixed by the registrar, obtain from a medical practitioner employed in an official capacity in the department in which the workman resides a certificate that the incapacity specified in the certificate of the medical referee as resulting from the injury still continues.
- (13) The certificate of the mayor mentioned in the last preceding paragraph, and, where a certificate of a medical practitioner is required under that paragraph, such certificate (which certificate or certificates must be authenticated by a *visé* of the Prefecture of the department attesting the official status of the mayor and medical practitioner respectively), shall be forwarded, with a request for payment of the amount of the weekly payments due to the workman. to the French consular authority for the district in which the court is situated, to be by him transmitted to the registrar.

Rule 75.
—

(14) In the event of the death of a workman in receipt of weekly payments who is a French citizen residing in France, his representatives shall, for the purpose of obtaining payment of the arrears due to the workman, forward a certificate of the death of the workman and documents showing that they are entitled to such arrears, with a request for payment of such arrears, to the consular authority, to be by him transmitted to the registrar.

(15) On receipt of the documents mentioned in paragraph 13 or paragraph 14 the registrar shall send to the employer a notice according to the form in the Appendix, requesting him to forward Form 69. the amount due; and the employer shall thereupon forward the amount to the registrar, who shall remit the same without charge to the consular authority, to be remitted to the workman or his representatives.

ANGLO-DANISH WORKMEN'S COMPENSATION CONVENTION DATED
18TH NOVEMBER, 1925, AND ORDER IN COUNCIL, DATED
1ST JUNE, 1926.

75a. For the purpose of and in proceedings under the Act by or on behalf of a Danish workman or by or on behalf of the dependants of a deceased Danish workman, the following additional or special provisions shall apply:—

(1) The judge shall act as arbitrator, and any question as to liability to pay compensation or as to the amount or duration of such compensation, including any question as to the amount payable in respect of the redemption of weekly payments, and in cases of death the amount payable to each dependant, shall be dealt with and determined by the judge.

(2) The request for arbitration and particulars shall state that the workman is or the deceased workman was a Danish subject.

(3) The court in which proceedings are to be taken shall be determined in accordance with rule 88.

(4) Where the dependants or any of them are resident in Denmark, the judge may, on application in that behalf supported by such evidence as he may require, order the issue of a letter of request for the examination of witnesses residing in Denmark. The letter of request shall be accompanied by a copy of the request for arbitration with the particulars appended or annexed thereto. The forms in the Appendix shall be used for the order and the Form 80. request respectively, with such variation as circumstances may Form 81. require.

The party obtaining the order shall file in the court an undertaking according to the form in the Appendix, which form may Form 82.

Rule 75A. be varied as may be necessary to meet the circumstances of the particular case in which it is to be used.

(5) The undertaking shall be accompanied by—

(a) the request, and a Danish translation thereof ;

(b) a copy of the interrogatories (if any) to accompany the request and a Danish translation thereof ;

(c) a copy of the cross-interrogatories (if any) and a Danish translation thereof.

(6) The request shall be sealed by the court and signed by the judge, and shall then be sent to the Under-Secretary of State, Home Office, for transmission to the Danish Workmen's Insurance Council to be transmitted by them to the appropriate court or tribunal.

(7) Where money (other than a weekly payment under rule 66 or arrears of weekly payments under rule 67) is paid into court as compensation under the Act for the benefit of any British or Danish workman or dependants of such workman resident in Denmark, the judge shall on the application of the workman or dependants order the money to be remitted to the Danish Workmen's Insurance Council to be paid to or administered for the benefit of the workman or dependants in such manner as the said Council may think fit, and in accordance with the directions (if any) of the judge.

(8) Where an order has been made under the last preceding paragraph for the remission of money to Denmark, the registrar shall send a sealed copy of the order and a crossed cheque payable to the Danish Workmen's Insurance Council (Arbejderforsikringsraadet) in an envelope, addressed to that Council at 3-5, Kongens Nytorv, Copenhagen.

(9) For the purpose of paragraphs (11) to (15) of rule 66 relating to weekly payments, the certificate, declaration and request shall be a certificate, declaration and request issued and made by the Danish Workmen's Insurance Council in accordance with the practice prevailing in Denmark.

(10) For the purpose of rule 67, the death certificate and other documents referred to in that rule and the request for payment shall be issued and obtained or made by the said council in accordance with the practice prevailing in Denmark.

75b. In relation to proceedings in Denmark for compensation under the Danish Accident Insurance Law the following provisions shall apply :—

(1) Where proceedings for compensation under the Danish

Rule 75B.

Accident Insurance Law are being brought in Denmark by or on behalf of a British workman or his dependants who or any of whom are resident in England, and it is made to appear to the judge of a county court that the court or tribunal in Denmark before which these proceedings are pending is desirous of obtaining the testimony of witnesses residing within the jurisdiction of the county court, the powers conferred on a county court by Order XVIII. rules 18 and 20 to 28 of taking depositions of witnesses may be exercised under the direction of the judge for this purpose as to any of the witnesses residing within its jurisdiction, and the depositions together with any documents therein referred to shall be sealed with the seal of the court and shall be sent to the Under-Secretary of State, Home Office, for transmission to the Danish Workmen's Insurance Council to be transmitted by them to the court or tribunal before which the proceedings are pending.

(2) The application for such examination shall be made to the judge and shall be supported by such evidence as the judge may require, and the powers shall be exercised and the examination conducted as far as may be in conformity with the requirements (if any) of the Danish Court or Tribunal, and the examination shall take place before the judge or registrar.

(3) Where money is remitted to a county court from Denmark being compensation under the Danish Accident Insurance Law for the benefit of a British or Danish workman or dependants of such workman residing within the jurisdiction of that court, the money shall be paid to or administered for the benefit of the workman or dependants, subject to any directions received from the Danish authority.

(4) On receipt of the money the registrar shall send notice in writing thereof to the workman or dependants, and shall require him or them to attend at the court in order that he or they may give the registrar such information as he shall require and receive any money payable to him or them.

Note.—Rules 75A and 75B above were added by the Workmen's Compensation (Danish Convention) Rules, 1927, dated 5th May, 1927.

For text of Convention and Order in Council, see *post*, Appendix FF.

COSTS.

76.—(1) Any costs of and incidental to an arbitration and proceedings connected therewith directed by a committee or by an arbitrator (whether agreed on by the parties or appointed by the judge), or by the judge, to be paid by one party to another shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs

Costs.
Act,
Sched. I.,
par. 7.

Rule 76.

Order LIII.
rules 7, 8.

Allowances
where costs
taxed under
Column A.

applicable to actions in the county court as the committee, arbitrator, or judge shall direct; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the county court: and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections to and review of taxation by the registrar, shall apply accordingly. Proceedings in an arbitration shall be within Order LIII. rules 7 and 8, and the word "judge" in those rules shall include a committee and an arbitrator.

(2) Where costs are directed to be taxed under Column A, a fee for advising on evidence may be allowed by the committee, arbitrator, or judge, or registrar on taxation subject to review by the judge, in like manner as if costs had been directed to be taxed under Column B; and allowances may be made for expert and scientific witnesses, or members of the medical profession, and for plans, etc., in accordance with Order LIII. rules 43 and 44; and the word "judge" in those rules shall (except as to the review of taxation) include a committee and an arbitrator.

(3) Where the subject matter of an arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of costs, shall be considered to be the amount of the subject matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge.

(4) Where proceedings are taken for which no provision is made by these rules or by the scales of costs, reasonable costs may be allowed in respect of such proceedings by the registrar, subject to review by the judge, or by special order of the judge, not exceeding those which may under the scales be allowed in respect of proceedings of a like nature.

(5) The committee, arbitrator, or judge, in dealing with the question of costs, may take into consideration any offer of compensation proved to have been made on behalf of the employer.

(6) Where any workman is examined by a medical referee on a reference under section 19 of the Act, and the certificate of the referee is used in any subsequent arbitration, any reasonable travelling and other expenses incurred by the workman in obtaining such certificate (if not otherwise provided for) may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration.

(7) Where a workman is ordered to submit himself for examination by a medical referee appointed to report under paragraph 11 first schedule to the Act, any reasonable expenses incurred

by such workman in travelling to attend on such referee for examination may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration. Rule 76.

77. Where any costs are awarded by a committee or an arbitrator agreed on by the parties, it shall be the duty of the registrar of the court in which a memorandum of the decision of the committee or arbitration is recorded pursuant to section 23 of the Act, on application made to him, to tax such costs, and to enter in the register the amount of such costs allowed on taxation; and such entry shall be deemed to be part of such memorandum, and shall be enforceable accordingly. Taxation of costs awarded by committee or arbitrator agreed on by parties.

REVIEW OF TAXATION BY JUDGE.

78.—(1) An application to the judge to review any taxation of costs shall be made on notice in writing, which shall be served on the opposite party two clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice. Review of taxation.

(2) Such application shall be heard and determined upon the evidence which has been brought in before the registrar, and no further evidence shall be received on the hearing thereof unless the judge otherwise directs.

(3) The costs of and incident to the application shall be in the discretion of the judge.

(4) The result of such review shall be entered in the register.

See Order LIII. r. 47; Order XII. r. 11 (1), (4).

AUTHORITY OF SOLICITOR TO RECEIVE SUM PAID IN RESPECT OF COSTS.

79. Where any party to whom costs are awarded acts by a solicitor, such solicitor shall have the same authority to take out of court or receive any sum paid into court or payable in respect of such costs by the party against whom such costs are awarded as he would have if such costs were awarded in an action. As to authority of solicitor to receive costs payable by adverse party.

COSTS OF SOLICITOR OR AGENT UNDER SCHEDULE I. PARAGRAPH 10.

80.—(1) The following provisions shall apply to an application under paragraph 10 of the first schedule to the Act for the determination of the amount of costs to be paid to the solicitor or agent of a person claiming compensation under the Act. Application to determine costs payable to solicitor or agent.

(2) Where the sum awarded as compensation has been awarded by a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator. Act, Sched. I. par. 10.

(3) Where the sum awarded as compensation has been awarded

Rule 80.

by the judge or by an arbitrator appointed by him, the application may be made—

(a) to the judge or arbitrator at or immediately after the hearing of the arbitration : or

(b) at a subsequent date, but in that case it shall be made only to the judge.

(4) Where a sum has been agreed on as compensation, the application shall be made to the judge.

(5) An application made to the judge, other than an application under paragraph 3 (a) of this rule, shall be made in court on notice in writing in accordance with rule 50.

Form 76.

(6) Such notice shall be served on the person for whom the solicitor or agent acted in accordance with the said rule, and the provisions of the said rule shall apply to the proceedings on such application.

(7) On the hearing of any application under this rule, the committee, arbitrator, or judge may award costs to the solicitor or agent, and may make an order declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, or may make such order or give such directions as may be just.

(8) Any costs awarded to a solicitor or agent on any such application shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the county court as the committee, arbitrator, or judge shall direct ; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the county court ; and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections to and review of taxation by the registrar, shall apply accordingly ; and any taxation shall be subject to review by the judge according to rule 78.

(9) Where the subject matter of the arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of such costs, shall be considered to be the amount of the subject matter of the arbitration ; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge.

81. Where an order is made by a committee, arbitrator, or judge awarding costs to a solicitor or agent, and declaring such solicitor or agent to be entitled to recover such costs from the person for

Provisions
as to order
declaring
lien, &c.

whom he acted, or to be entitled to a lien for such costs on any sum awarded or agreed as compensation, or to be entitled to deduct such costs from any such sum, the following provisions shall apply :—

Rule 81.
—

- (a) The registrar shall, on application made to him, tax such costs.
- (b) A copy of the order, and, when the amount to which such solicitor or agent is entitled has been ascertained by taxation, a memorandum of such amount, shall, at the request and cost of the solicitor or agent, be issued by the registrar for service on the party liable to pay the sum awarded or agreed as compensation ; and service thereof may be effected on such party in accordance with rule 16.
- (c) A memorandum of such order, and when such amount has been ascertained a memorandum of such amount, shall be recorded in the register in which the memorandum or award under which the sum awarded as compensation is payable is recorded, and such last mentioned memorandum or award shall have effect subject to such order and memorandum.
- (d) The party liable to pay such compensation shall on demand pay to the solicitor or agent the amount to which he is entitled, but so that such party shall not be liable to pay any amount in excess of that which he is liable to pay for compensation, or to pay such amount by any other instalments than those by which he is liable to pay such compensation.
- (e) If the party liable to pay such compensation fails on demand to pay any amount which he is liable to pay to such solicitor or agent, the judge may, on application made to him on notice to such party in accordance with rule 50, and on proof of the order having been served on and demand for payment made to such party, order such party to pay such sum ; and in default of payment the judge may order execution to issue to levy such amount.
- (f) Payment made by or execution levied on the party liable to pay such compensation shall be a valid discharge to him, as against the party entitled to such compensation, to the amount paid or levied.
- (g) Where the sum awarded as compensation has been paid into court, the amount to which the solicitor or agent is entitled shall be paid to him out of such sum.

EXECUTION.

82.—(1) Where a party liable to pay compensation or costs Execution. under any award, memorandum, or certificate has made default in Form 77.

Rule 82.

payment of the amount awarded, or where payment is to be made by instalments, of any instalment, the party entitled to such compensation or costs may apply to the court for leave to issue execution against the goods of the party in default.

(2) An application for leave to issue execution shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

(3) Where the application is made to the registrar he may, if no cause is shown to the contrary, and on proof of the amount in payment of which default has been made, give leave for execution to issue.

(4) If cause is shown to the contrary, or if the registrar is in doubt as to the proper order to be made, he may refer the matter to the judge, who may make such order or give such directions as may be just.

(5) In particular, if in the case of a weekly payment the party liable to execution alleges that incapacity has wholly or partially ceased, the judge may, on such terms as to payment into court or otherwise as may be just, adjourn the application for such time as he may think fit, to enable the party liable to execution to file a request for arbitration with respect to the review of the weekly payment. Any such adjournment shall be without prejudice to the right of the party applying for leave to issue execution to renew his application on good cause shown.

Order XXV.
rule 11.

(6) Where the parties liable to pay compensation or costs are a firm, the provisions of Order XXV. rule 11, shall with the necessary modifications apply to execution under this rule.

Rule 82 (4) : The registrar, or on appeal the judge, can, on an application under this rule, determine the amount of compensation payable (*Moakes v. Blackwell Coll. Co., Ltd.*, (1917) W. C. & I. 46).

PROCEEDINGS UNDER DEBTORS ACT, 1869, SECTION 5.

Proceedings
under
Debtors
Act, 1869.
32 & 33 Vict.
c. 62, s. 5.

83.—(1) Where proceedings by way of judgment summons under section 5 of the Debtors Act, 1869, are taken against a party liable to pay compensation or costs under any award, memorandum, or certificate, who has made default in payment of the amount awarded, or, where payment is to be made by instalments, of any instalment, the County Court Rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to such proceedings; Provided, that the court shall not alter the terms or mode of payment of any sum to become payable in future under any award, memorandum, or certificate, otherwise than by consent, or under section 11 of the Act.

(2) Where the amount in payment of which default has been made is not payable into court, the party applying for a judgment

summons shall satisfy the court, by affidavit or otherwise, as to the amount in payment of which default has been made.

Rule 83.

(3) A judgment summons issued under this rule shall be according to the form in the Appendix.

Form 78.

(4) Where the parties liable to pay compensation or costs are a firm, the provisions of the County Court Rules as to judgment summonses on a judgment or order against a firm shall, with the necessary modifications, apply to proceedings by way of judgment summons under this rule.

OTHER PROCEEDINGS FOR ENFORCEMENT OF AWARD, MEMORANDUM, OR CERTIFICATE.

84. The County Court Rules for the time being in force as to proceedings for the enforcement of or the recovery of money due under judgments or orders of the county court otherwise than by execution or committal shall, with the necessary modifications, apply to proceedings for the enforcement of or the recovery of money due under any award, memorandum, or certificate.

Other proceedings for enforcement of award, &c.

SETTING ASIDE AWARD OR ORDER IMPROPERLY OBTAINED.

85.—(1) An application for a new trial may be made and a new trial may be granted in an arbitration in accordance with the provisions of rule 29.

Application for new trial in arbitration.

The power to make rules authorising the judge to grant a new trial in a workmen's compensation arbitration is derived from the County Courts Act, 1919, s. 25 (now schedule I. (6) of the Act of 1925).

(2) Where the judge is satisfied—

- (a) that any award, or any order as to the application of any amount awarded or agreed upon as compensation, made by the judge or by an arbitrator appointed by him, has been obtained by fraud or other improper means; or
- (b) that any person has been included in any award or order as a dependant who is not in fact a dependant as defined by the Act; or

When award or order may be set aside or varied.

- (c) that any person who is in fact a dependant as defined by the Act has been omitted from any award or order,

the judge may set aside or vary the award or order, and may make such order (including an order as to any sum already paid under the award or order) as under the circumstances he may think just.

A county court judge has no power under the above sub-section to set aside or vary any award, except one made by himself or by an arbitrator appointed by him. He cannot set aside or vary an award made by a committee (*Blakey v. Samuelson & Co., Ltd.*, (1920) 3 K. B. 505).

(3) An application to set aside or vary an award or order under this rule shall be made in court on notice in writing, and the provisions of rule 50 shall apply to the proceedings on such application.

Rule 85.

(4) An application to set aside or vary an award or order under this rule shall not be made after the expiration of six months from the date of the award or order, except by leave of the judge; and such leave shall not be granted unless the judge is satisfied that the failure to make the application within such period was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

APPEALS.

Appeals.
Act, Sched. I.
par. 4.

86. Appeals under paragraph 4 of the first schedule to the Act shall be had in accordance with the provisions of the Rules of the Supreme Court relating thereto.

Order LVIII.
rule 20.

The High Court Rules, Order LVIII. r. 20, governing such appeals, are as follows:—

The following provisions shall apply to appeals to the Court of Appeal from decisions of judges of the county courts on questions of law under the Workmen's Compensation Act, 1906:—

- (a) Every such appeal shall be by notice of motion in accordance with Order LIX. Rule 10; and such notice of motion shall be served, and the appeal set down under Order LVIII. Rule 8, within the time limited by Order LIX. Rule 12.
- (b) It shall be the duty of the party appealing to apply to the judge of the county court for a signed copy of the note made by him of any question of law raised before him, and of the facts in evidence in relation thereto and of his decision thereon, and of his decision on the question or matter submitted to him, and to furnish such copy for the use of the Court of Appeal; and such copy shall be used and received at the hearing of the appeal. If such notes are not produced, the Court of Appeal shall have power to hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the county court, which the Court of Appeal may deem sufficient.
- (c) Order LIX. Rules 14 and 16, shall apply to any such appeal, with substitution of the Court of Appeal for the High Court.
- (d) Subject to the foregoing provisions, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal, shall, so far as practicable, apply to and govern appeals under the said Act to the Court of Appeal.

Parties should note there are three judges in the court, each of whom needs a copy of all material documents (*Birks v. Stafford Coal and Iron Co.*, (1913) W. C. & Ins. Rep. 755).

The obtaining and filing of a copy of the judge's note is not a condition precedent to the entering of an appeal (*Aston Coal Co., Ltd. v. Stancil* (No. 1), (1927) 96 L. J. K. B. 254; 20 B. W. C. C. 198).

Order LIX.
rule 10.

Every such appeal shall be by notice of motion, and no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice, and shall be served on every party directly affected by the appeal entered.

Order LVIII.
rule 8.

The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall other-

wise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

**Rule 83
Notes.**

The notice of motion shall be served, and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of: such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given. And in case of appeals under the Act from the actual signing of the award (*Clayton v Jones*, (1908) W. N. 253). Where there were two sets of proceedings really in the same matter employers were held entitled to appeal against both, being within twenty-one days of the later decision (*Fox v. Battersea*, etc., 4 B. 261).

**Order LIX.
rule 12.**

The appeal shall not operate as a stay of proceedings under the decision appealed from unless the inferior court shall so order, or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction of such inferior court for a sum to be fixed by the said court, not exceeding the amount of the money or the value of the property affected by the judgment, order, or finding appealed from.

**Order LIX.
rule 14.**

**Order LIX.
rule 16.**

The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the court shall think just, to ensure the determination on the merits of the real questions in controversy between the parties.

The fee on entering an appeal is 2*l*.

The general rule of the High Court declared in Order XIX. r. 7 that the judgment of an inferior court is not set aside unless substantial wrong or miscarriage resulted applies to compensation appeals (*Walthew v. Muirhead*, 19 B. W. C. C. 25).

87.—(1) When the Court of Appeal has given judgment on any appeal the successful party in such appeal shall deposit the order of the Court of Appeal, or an office copy thereof, with the registrar: and the registrar shall file such order or copy, and shall transmit a copy thereof to the judge: and such order shall have the same effect as if it had been a decision of the judge.

Deposit of
order of
Court of
Appeal with
registrar,
and
procedure
thereon.

(2) If such order has the effect of an award, decision, or order in the matter in favour of any party, such order shall be served and recorded, and may be proceeded on, in the same manner as if it had been an award, decision, or order of the judge.

(3) If such order be to the effect that an award be made or a decision given or order made in favour of any party, the judge shall make such award or give such decision or make such order accordingly.

(4) If such order directs or involves a re-hearing or further hearing of an arbitration or special case or other matter, the judge shall as soon as conveniently may be appoint a day and hour for such re-hearing or further hearing, and shall instruct the registrar to give notice thereof forthwith to the parties.

(5) Generally the judge shall make such award or give such decision or make such order and give such directions and take or direct to be taken such proceedings in the matter, as may be necessary to give effect to the order of the Court of Appeal.

Rule 83.

IN WHAT COURT PROCEEDINGS MAY BE TAKEN.

In what
court pro-
ceedings may
be taken.
Act, s. 27.

88. Any matter which under the Act or these rules is to be done in a county court, or by to or before the judge or registrar of a county court, may be done in the county court or by to or before the judge or registrar of the county court hereinafter mentioned, viz. :—

(1) (i.) the court in the district of which all the parties concerned reside or carry on business : or

(ii.) if the parties concerned reside or carry on business in different districts,

(a) the court in the district of which the accident out of which the matter arises occurred, or, in the case of any such workman as in paragraph 1 of rule 41 mentioned, the court in the district of which the workman was last employed in the employment to the nature of which the disease was due : or

(b) the court in the district of which the party or one of the parties against whom relief is sought resides or carries on business at the time when the matter is to be done : or

(c) where one of the parties concerned resides or carries on business in the district of any of the courts mentioned in section 84 of the County Courts Act, 1888, and the other party concerned resides or carries on business in the district of any other of such courts, the court in the district of which either of such parties resides or carries on business.

(2) If the accident out of which the matter arises occurred at sea, any such matter as in paragraph 1 of this rule mentioned may, without prejudice to the preceding provisions of this rule, be done in the county court, or by to or before the judge or registrar of the county court,

(i.) of the district in which the ship shall be when the matter is to be done : or

(ii.) of the district comprising the port of registry of the ship : or

(iii.) of the district in which the workman or the dependants of the workman by whom or on whose behalf the matter is to be done, or some or one of them, resides or reside.

(3) In the case of accidents to workmen employed as pilots, commanders, navigators or members of the crew of an aircraft when outside Great Britain entitled to or claiming compensation under the Workmen's Compensation (Aircraft) Order, 1924, any such matter as in paragraph 1 of this rule mentioned may, without prejudice to the preceding provisions of this rule, be done

in the county court, or by to or before the judge or registrar of the county court, of the district in which the workman or the dependants of the workman by whom or on whose behalf the matter is to be done, or some or one of them, resides or reside.

Rule 88.

(4) An application for an order for the detention of a ship may, subject to the provisions of the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905, be made to the judge of any court.

Detention of ships.
5 Edw. VII
c. 10.
Act, sect. 39

(5) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security pursuant to the Shipowners' Negligence (Remedies) Act, 1905, or section 39 of the Act and rules 39 and 40, such proceedings may be commenced,

Proceedings against persons giving security.
5 Edw. VII.
c. 10.
Act, sect. 39.

(i.) in any court in which proceedings may be commenced pursuant to sub-paragraphs (i.) and (ii.) of paragraph 1 of this rule: or
(ii.) if the accident occurred at sea,

(a) in the court in the district of which the vessel is or was detained, or in which the order for detention was made or applied for: or

(b) in the court of the district in which the workman or the dependants of the workman, or some or one of them, resides or reside.

(6) The provisions of this rule shall be without prejudice to any transfer in manner provided by these rules.

PROCEEDINGS IN ONE COURT AS TO SUBJECT-MATTER OF AWARD, MEMORANDUM, OR CERTIFICATE RECORDED IN ANOTHER COURT, SECTION 23.

89. Where an award, or a memorandum under section 23 of the Act, or a certificate under sub-section 2 of section 29 of the Act, has been recorded in any court, and any party desires to take any subsequent proceedings with reference to the subject-matter of such award, memorandum, or certificate in any other court, he shall before taking such proceedings obtain from the registrar of the first-mentioned court a certified copy of such award, memorandum, or certificate, and shall file the same in the court in which he desires to take proceedings, and the registrar of such last-mentioned court shall record the same as if it had been an award made in the court.

Filing of certified copy of memorandum, &c. recorded in one court under Act, s. 23, before taking subsequent proceedings in another court.

TRANSFER OF PROCEEDINGS.

90. If the judge is satisfied by any party to any matter under the Act pending in his court that such matter can be more conveniently proceeded with in any other court in England, Scotland, or Ireland, he may order such matter to be transferred to such other court; and thereupon the registrar shall forthwith

Transfer

Rule 90.

transmit by registered post to the registrar of the court to which such matter is transferred all original documents filed in such matter, and a certified copy of all records made with reference to such matter, and shall transfer to such last-mentioned court any money invested in his name as registrar: and thenceforth such matter shall be proceeded with in the court to which it is transferred in the same manner as if it had originally been commenced therein. The provisions of Order VIII. rule 9, shall apply to any such transfer or application for a transfer.

**Order VIII.
rule 9.****TRANSFER OF MONEY PAID INTO COURT.****Transfer of
money paid
into court.
Act, Sched. II.
par. 3.**

91.—(1) The provisions of the last preceding rule shall apply to the transfer of money paid into court from one court to another pursuant to paragraph 3 of the second schedule to the Act or otherwise, and to proceedings with respect to the application of such money.

(2) Where any money ordered to be transferred from one court to another is invested in the Post Office Savings Bank in the name of the registrar, such money shall be transferred into the name of the registrar of the court to which the money is ordered to be transferred in accordance with regulations to be made by the Postmaster-General with the consent of the Treasury: and where any money ordered to be transferred is not so invested it shall forthwith be so invested, and shall when invested be transferred in accordance with this rule.

**Transfer of
investments.**

(3) Where any money invested otherwise than in the Post Office Savings Bank is ordered to be transferred from one court to another, the investments representing the same shall be transferred from the name or names in which they stand into the name of the registrar of such other court through the Post Office Savings Bank, or into the names of such registrar and the Superintendent of County Courts in the Lord Chancellor's Department, as the case may be.

FILING AND SERVICE OF DOCUMENTS AND NOTICES.

92.—(1) Where any document is to be filed with the registrar under these rules, that document may be so filed by delivering it at the office of the registrar, or by sending it by post addressed to the registrar at his office.

(2) Where any document is to be so filed, there shall be filed with the original document as many copies of the document as there are persons to whom copies of the document or any part thereof are to be sent by the registrar, and in addition a copy for the use of the judge or arbitrator.

(3) Where any document is under these rules to be sent to any person by the registrar, that document may be sent by post.

(4) Any proceeding, document, or notice which is under these rules to be served on any party may be served on such party by the opposite party or his solicitor; and where no special provision as to the mode of service is made by these rules, any such proceeding, document, or notice may be served on such party, or where he acts by a solicitor, on his solicitor, in manner provided by sub-sections 3 and 4 of section 14 of the Act with reference to service of notice in respect of an injury; and the provisions of Order LIV., rule 2, shall apply to the service of any such proceeding, document, or notice.

Rule 92.

Act, s. 14,
sub-ss. 3, 4.Order LIV.
rule 2.

PROCEDURE GENERALLY.

93. The provisions of Order XXIII., rule 6, Order LIV., rules 1 and 3 to 6, and Order VII., rule 40, as to parties acting by solicitors, and as to substituted service and notice in lieu of service, shall apply to proceedings under the Act.

Provisions as
to parties act-
ing by solic-
itors, and as to
substituted
service and
notice in lieu
of service.

94. Rules 7 and 35 shall apply to all proceedings under the Act and these rules in the like manner as to proceedings by way of arbitration.

This rule simply applies the procedure before arbitration to questions arising after. Thus infant children can appear at a later stage with the judge's consent as though they were of full age.

95.—(1) In any proceedings under the Act or these rules arising out of an injury to a workman employed by or under the Crown, in which, if the employer were a private person, such employer would be a necessary party, the head of the department by in or under which the workman was employed, or, where the department is administered by a Board or by Commissioners, such Board or Commissioners, shall be made a party under his or their official title as representing the Crown.

Proceedings
where Crown
a party.

(2) In any such case any proceeding, document, or notice to be served on the head of the department, or on the Board or Commissioners, may be served on the permanent secretary to the department, subject to the provisions of these rules as to service on parties acting by solicitors.

Service of
documents,
&c.

96. Where any matter or thing is not specially provided for under these rules, the same procedure shall be followed and the same provisions shall apply, as far as practicable, as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act, in so far as such procedure and provisions are applicable to proceedings by way of arbitration.

Procedure,
where not
otherwise
provided for.

RECORD OF PROCEEDINGS.—SPECIAL REGISTER.

97. Proceedings under the Act before the judge or an arbitrator appointed by him shall be recorded in the books of the court in the manner in which other proceedings in the court are recorded;

Record of
proceedings
before judge
or arbitrator.

Rule 97.

Special
register.
Form 79.

and the registrar shall also keep a special register for the purposes of the Act, in which he shall record—

- (1) A memorandum of every application made to the judge for the settlement of any matter by arbitration ;
- (2) A memorandum of every appointment of an arbitrator to settle any such matter made by the judge ;
- (3) A memorandum of every proceeding taken in any arbitration before the judge or an arbitrator appointed by him prior to the award ;
- (4) A memorandum of every appointment of a medical referee by the judge or arbitrator, and of his report, and if a medical referee is summoned or requested to attend any proceeding in the arbitration, of such summons or request and attendance ;
- (5) A memorandum of every award made by the judge, or by an arbitrator appointed by him ;
- (6) A memorandum of every special case submitted to the judge, and of the proceedings and order thereon ;
- (7) A memorandum of every judgment given by the Court of Appeal on any appeal ;
- (8) A memorandum of every application to the court for the examination of an employer pursuant to rule 37, paragraph 2, and of the order and proceedings thereon ;
- (9) A memorandum of every application to the court for the detention of a ship pursuant to section 39 of the Act and rules 39 and 40, and of the order and subsequent proceedings thereon ;
- (10) A memorandum of every application to the judge for the appointment of an arbitrator in case of the death or refusal or inability to act of an arbitrator agreed on by the parties, and of the proceedings and order thereon ;
- (11) A copy of every memorandum sent to the registrar pursuant to section 23 of the Act, and of the report (if any) of the medical referee annexed thereto, with a note stating whether such memorandum was recorded without further proof, or after inquiry, or by order of the judge ;
- (12) If such memorandum is recorded after inquiry, a memorandum of the inquiries made and of the result thereof ;
- (13) If such memorandum is recorded by order of the judge, a memorandum of the application to the judge, and of the order made thereon ;
- (14) If in the case of a memorandum of an agreement the registrar refers the matter to the judge, a memorandum of such reference, and of the directions of the judge, and the subsequent proceedings and order thereon ;

Rule 97.

- (15) A memorandum of the result of every taxation or review of taxation of costs under any such memorandum, or under any award or order ;
- (16) A memorandum of every application to rectify the register in respect of any memorandum, and of the proceedings and order thereon ;
- (17) A memorandum of every application or report with reference to the removal of the record of a memorandum of an agreement from the register, and of the subsequent proceedings and order thereon :
- (18) A memorandum of every application to the judge or arbitrator, under paragraph 10 of the first schedule to the Act, to determine the amount of costs to be paid to a solicitor or agent, and of the proceedings and order thereon, and of the result of any taxation or review of taxation under such order ;
- (19) A copy of every certificate under sub-section 2 of section 29 of the Act given by the court or sent to the registrar from any other court ;
- (20) A memorandum of every proceeding taken in the court for the enforcement of any award, order, memorandum, or certificate, and of the result of such proceeding ;
- (21) A memorandum of every application to refer a matter to a medical referee pursuant to section 19 of the Act, and of the order and subsequent proceedings thereon ;
- (22) A memorandum of every application to the court for the suspension of the right to compensation or to take or prosecute any proceedings under the Act in relation to compensation, or of the right to weekly payments, and of the proceedings and order thereon ;
- (23) A memorandum of every sum paid into court pursuant to section 26 of the Act, or under any award, memorandum, or certificate ;
- (24) A memorandum of every application made to the court with reference to any such sum, and of every order made on such application, and of the manner in which such sum is invested, applied, or disposed of ;
- (25) A memorandum of every application for the payment of any weekly payment into court, and of the proceedings and order thereon, and of the directions given as to the payment out or application of any such weekly payment ;
- (26) A memorandum of every application for variation of an order of the court as to the apportionment, investment, or application of any sum paid as compensation, and of the proceedings and order thereon ;

Rule 97.

- (27) A memorandum of every application to refer a matter to a medical referee pursuant to section 16 of the Act in the case of a workman intending to cease to reside in the United Kingdom, the Channel Islands, or the Isle of Man, and of the order and the proceedings thereon; and of every certificate and declaration of identity and request for payment received from such workman, and of the proceedings thereon;
- (28) A similar memorandum as to the investment or transmission to France of any sum payable in redemption of a weekly payment to a workman who is a French citizen, or of any sum payable as compensation to the dependants of a deceased workman who was a French citizen, or of the proceedings where a workman who is a French citizen is in receipt of a weekly payment and intends to return to France;
- (29) A memorandum of every application to set aside or vary an award or order under rule 85, and of the proceedings and order thereon;
- (30) A memorandum of every certified copy given pursuant to rule 89, or a copy of every certified copy filed pursuant to that rule;
- (31) A memorandum of every application for transfer, and of the order thereon, and the proceedings under such order;
- (32) A memorandum of the transmission of documents and certified copies pursuant to paragraph 11 of rule 39 or paragraphs (iii.) or (iv.) of rule 40;
- (33) A memorandum of the transfer of any money paid into court to any other court;
- (34) The like memorandum as to every matter transferred, or document or certified copy transmitted or money transferred to the court, as would have been recorded as to such matter, document, or money if it had been originally commenced and prosecuted in or transmitted to or paid into the court;
- (35) A memorandum of any other matter which the judge shall order to be recorded with reference to any matter brought into or proceeding taken in the court under the Act.

SUMMONING OF AND REFERENCES TO MEDICAL REFEREES.

98.—(1) Where a medical referee is summoned as an assessor, or any matter is referred to a medical referee, the medical referee to be summoned or to whom the matter is to be referred shall in the absence of special circumstances be one of those appointed by the Secretary of State for the area comprising the district of the court in which the arbitration is pending or the case arises.

Summoning
of and
references to
medical
referees.

Provided that if any medical referee has been specially appointed, whether for that area or otherwise, for the purpose of dealing with any specified case or class of cases, the registrar in any such case shall summon, or the matter shall be referred to, the medical referee so appointed.

Rule 93.
—

Provided also, that where a medical referee has been previously summoned as an assessor, or there has been a previous reference in any case, any subsequent summons or reference in the same case shall, if possible, be sent or made to the same referee, and shall in any case be accompanied by the previous report of certificate (if any) of the medical referee, or by a copy thereof.

(2) Where a medical referee is summoned as an assessor, or any matter is referred to a medical referee, such referee shall be summoned or the matter shall be referred subject to and in accordance with any regulations made by the Secretary of State and the Treasury; and any such regulations shall, so far as they affect the county court or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, have effect as Rules of Court.

(3) In particular, if such regulations as in the preceding paragraph mentioned provide that an employer or a workman who desires any matter to be referred to a medical referee under paragraph (f) of sub-section 1 of section 43 of the Act shall apply to the registrar of a county court for the matter to be so referred, it shall be the duty of the registrar to refer the same in accordance with such regulations.

(4) The registrar shall keep a record in the form prescribed by regulations made by the Secretary of State of all cases in which medical referees are summoned as assessors or matters are referred to medical referees, and shall forward a copy of the same to the Secretary of State at such times as may be prescribed by such regulations.

MATTERS, HOW DISTINGUISHED.

99. Every matter brought into the court under the Act shall be intituled in the matter of the Act, and shall be distinguished by a separate number; and all documents filed and subsequent proceedings taken in the court with reference to such matter shall be intituled in like manner, and shall be distinguished by the same number; and the entries made in the special register with respect to each such matter shall be entered together, and shall be kept separate from the entries with respect to any other matter.

FORMS.

100. The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such

Matters, how distinguished.
Forms in Appendix or like forms may be used.

Rule 100. variations as the circumstances may require, may be used in proceedings under the Act.

SUPPLY AND FILLING UP OF FORMS.

Supply of forms.

101.—(1) The registrar of any court may apply to the Lord Chancellor for any of the forms required to be used by parties to proceedings in court under the Act notwithstanding that such forms are marked on the Appendix as “not to be printed,” and if such application is granted may obtain such forms and supply them without charge for the use of parties to such proceedings.

Filling up of forms.

(2) Where any party to any proceeding is illiterate, and unable to fill up any form required to be used, it shall be the duty of the registrar or his clerk to fill up such form.

APPENDIX.

FORM 1.

Application for Arbitration by Injured Workman with respect to the Compensation payable to him.

In the County Court of _____ holden at _____
In the matter of the Workmen's Compensation Act, 1925.
No. of Matter _____

In the matter of an arbitration between

A. B.

of (address)
(description)

and

Applicant,

C. D. & Co., Limited,

of (address)
(description)

Respondent.

1. On the _____ day of _____ personal injury by accident arising out of and in the course of his employment was caused to A. B. _____ a workman employed by C. D. & Co., Limited, [or by _____, a contractor with C. D. & Co., Limited, for the execution of work undertaken by them].

2. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen, e.g.]—

(a.) as to whether the said A. B. _____ is a workman to whom the above-mentioned Act applies; or

(b.) as to the liability of the said C. D. & Co., Limited, _____ to pay compensation under the above-mentioned Act in respect of the said injury; or

(c.) as to the amount [or duration] of the compensation payable by the said C. D. & Co., Limited, _____ to the said A. B. _____ under the above-mentioned Act in respect of the said injury.

[or as the case may be.]

3. An arbitration under the above-mentioned Act is hereby requested between the said A. B. _____ and the said C. D. & Co., Limited, for the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and address of applicant.

2. Name, place of business, and nature of business of respondent.

3. Nature of employment of applicant at time of accident, and whether employed under respondent or under a contractor with him. [If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.]

4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident, and cause of injury.

5. Nature of injury.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the employer by whom he was immediately employed, or if not, during any less period during which he has been so employed.

8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.

9. Payment, allowance or benefit received from employer during the period of incapacity.

10. Amount claimed as compensation.

11. Date of service of statutory notice of accident on respondent, and whether given before workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor,

The name and address of the respondent to be served with this application are :

Dated this day of

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 2.

Rule 9.

Application for Arbitration by or on behalf [of Dependants of Deceased Workman, with respect to the Compensation payable in respect of the Injury to such Dependants, where Death has resulted from an Injury to the Workman, and the Settlement of questions as to who are Dependants, and the Apportionment and Application of such Compensation.

In the County Court of , holden at

In the matter of the Workmen's Compensation Act, 1925.

No. of Matter

In the matter of an arbitration between

E. F.

of (address)

(description)

and

Applicant,

C. D. & Co., Limited,

of (address)

(description)

and

G. H.

of (address)

(description)

Respondents.

[or as the case may be; see Rule 4.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. late

of _____, deceased, a workman employed by C. D. & Co., Limited
 [or by _____ a contractor with C. D. & Co., Limited, _____ for the exe-
 cution of work undertaken by them,] and on the _____ day of _____ the
 death of the said A. B. _____ resulted from the injury.

2. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen; e.g.]—

- (a.) as to whether the said A. B. _____ was a workman to whom the
 above-mentioned Act applied; or
- (b.) as to the liability of the said C. D. & Co., Limited, _____ to pay
 compensation under the above-mentioned Act to the dependants of
 the said A. B. _____ in respect of the injury caused to them by
 the death of the said A. B. _____; or
- (c.) as to the amount of compensation payable by the said C. D. & Co.,
 Limited, _____ to the dependants of the said A. B. _____ under
 the above-mentioned Act in respect of the injury caused to them by
 the death of the said A. B. _____; or
- (d.) as to who are dependants of the said A. B. _____ within the mean-
 ing of the above-mentioned Act; or
- (e.) as to the apportionment and application of the compensation payable
 by the said C. D. & Co., Limited, _____ to the dependants of the
 said A. B. _____ in respect of the injury caused to them by the
 death of the said A. B. _____

[or as the case may be.]

3. An arbitration under the above-mentioned Act is hereby requested
 between E. F. _____, the legal personal representative of the said A. B.
 _____, acting on behalf of the dependants of the said A. B. _____ [or
 between E. F. _____, a dependant of the said A. B. _____] and the said
 C. D. & Co., Limited, _____, and G. H. _____, who claims or may be
 entitled to claim to be a dependant of the said A. B. _____

[or as the case may be; see Rule 4.]

or the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed]

PARTICULARS.

1. Name and late address of deceased
 workman.

2. Name, place of business, and nature
 of business of respondent from whom
 compensation is claimed.

3. Nature of employment of deceased
 at time of accident, and whether employed
 under respondent or under a contractor
 with him. [If employed under a con-
 tractor who is not a respondent, name and
 place of business of contractor to be
 stated.]

4. Date and place of accident, nature of
 work on which deceased was then en-
 gaged, and nature of accident and cause
 of injury.

5. Nature of injury to deceased, and
 date of death.

6. Earnings of deceased during the
 three years next preceding the injury, if
 he had been so long in the employment
 of the employer by whom he was imme-
 diately employed, or if the period of his
 employment had been less than the said

three years, particulars of his average weekly earnings during the period of his actual employment under the said employer.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

13. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor,

The names and addresses of the respondents to be served with this application are :

C. D. & Co., Limited.

G. H.,

Dated this day of
(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 3.

Rule 9.

Application for Arbitration as to who are Dependants, or as to the Amount payable to each Dependant, where the total amount Payable as Compensation to the Dependants of a Deceased Workman has been agreed or ascertained.

In the County Court of _____ holden at _____
In the matter of the Workmen's Compensation Act, 1925.
No. of Matter _____

In the matter of an arbitration between

E. F. _____
of (address) _____
(description) _____ Applicant,
and _____

C D. & Co., Limited,
of (address) _____
(description) _____
and _____

H.,
of (address) _____
(description) _____

J. K.,
of (address) _____
(description) _____
and _____

L. M.,
of (address) _____
(description) _____

Respondents

[or as the case may be ; see Rule 5.]

1. On the _____ day of _____ personal injury by accident arising out of and in the course of his employment was caused to A. B. _____, late of _____ deceased, a workman employed by C. D. & Co., Limited, [or by a contractor with C. D. & Co., Limited, for the execution of work undertaken by them,] and on the _____ day of _____ the death of the said A. B. _____ resulted from the injury.

2. The amount of compensation payable by the said C. D. & Co., Limited, to the dependants of the said A. B. _____ under the above-mentioned Act in respect of the injury caused to them by the death of the said A. B. _____ has been agreed [or ascertained], but a question has [or questions have] arisen

[here state the questions, specifying only those which have arisen ; e.g.]—

(a.) as to who are dependants of the said A. B. _____ within the meaning of the above-mentioned Act ; or

(b.) as to the apportionment and application of the compensation payable to the dependants of the said A. B. _____

[or as the case may be.]

3. An arbitration under the above-mentioned Act is hereby requested between E. F., _____, the legal personal representative of the said A. B. _____, acting on behalf of N. O. _____ P. R. _____ &c., dependants of the said A. B. _____ [or between E. F. _____ N. O. _____ P. R. _____ &c., dependants of the said A. B. _____], and the said C. D. & Co., Limited, and G. H. _____ J. K. _____ and L. M. _____, who are or claim or may be entitled to claim to be dependants of the said A. B. _____

[or as the case may be ; see Rule 5.]

for the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed]

PARTICULARS.

1. Name and late address of deceased workman.

2. Name and place of business of employers by whom compensation has been paid or is payable.

3. Date of accident to deceased and date of death.

4. Agreed or ascertained amount of compensation to be paid to dependants of deceased.

5. Particulars as to whether the compensation money is still payable by the employer, or has been paid by him, and if so, to whom, and in whose hands it now is.

6. Character in which the applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

7. Particulars as to the dependants or persons claiming to be dependants by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were or claim to have been wholly or partially dependent on the earnings of the deceased at the time of his death.

8. The like particulars as to any dependants who are made respondents.

[NOTE.—If there is a Legal Personal Representative, and he is not the Applicant, he must be made a Respondent.]

9. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, descriptions, and occupations (if any).

10. Particulars of the manner in which the applicant claims to have the amount of compensation apportioned and applied.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor.

The names and addresses of the respondents to be served with this application are :

C. D. & Co., Limited.

G. H.

I. K.

L. M.

[or as the case may be].

Dated this

day of

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 4.

Rule 9.

Application for Arbitration with respect to the Compensation payable in respect of Expenses of Medical Attendance and Burial, where Deceased Workman leaves no Dependants.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1925.

No. of Matter ,

In the matter of an arbitration between

E. F.,
of (address)
(description) Applicant,
and
C. D. & Co., Limited,
of (address)
(description)
and
G. H.,
of (address)
(description) Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , late of , deceased, a workman employed by C. D. & Co., Limited, [or by , a contractor with C. D. & Co., Limited, , for the execution of work undertaken by them,] and on the day of the death of the said A. B. resulted from the injury.

2. The said A. B. left no dependants within the meaning of the above-mentioned Act.

3. A question has [or questions have] arisen [here state the questions, specifying only those which have arisen ; e.g.]—

- (a.) as to whether the said A. B. was a workman to whom the above-mentioned Act applied ; or
- (b.) as to the liability of the said C. D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A. B. ; or
- (c.) as to the amount of compensation payable by the said C. D. & Co. Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A. B. ; or
- (d.) as to the apportionment and application of the compensation payable by the said C. D. & Co., Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A. B.

[or as the case may be.]

4. An arbitration under the above-mentioned Act is hereby requested between E. F. and the said C. D. & Co., Limited, , and G. H. for the settlement of the said question [or questions].

5. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and late address of deceased workman.
2. Name, place of business, and nature of business of respondent from whom compensation is claimed.
3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]
4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident, and cause of injury.
5. Nature of injury to deceased, and date of death.
6. Name and address of applicant for arbitration.
7. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased, or as a person to whom expenses in respect of which compensation is payable are due; and if the latter, particulars must be given of the circumstances under which the expenses are claimed to be due to the applicant.
8. Particulars as to any other persons who claim that expenses in respect of which compensation is payable are due to them, and who are therefore made respondents, with their names and addresses.
9. Particulars of amount claimed as compensation, and of the manner in which the applicant desires such amount to be apportioned and applied.
10. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]
11. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor,

The names and addresses of the respondents to be served with this application are :

C. D. & Co., Limited.

G. H.

Dated this day of

(Signed)

Applicant

[Or

Applicant's Solicitor.]

FORM 5.

Rule 9.

Application for Arbitration with respect to the Review, Termination, Diminution, Increase, or Redemption of a Weekly Payment.

In the County Court of _____, holden at

In the matter of the Workmen's Compensation Act, 1925.

No. of Matter _____.

In the matter of an arbitration between

C. D. & Co., Limited,

of (address)

(description)

Applicants,

and

A. B.,

of (address)

(description)

[or as the case may be; see Act, Sections 11, 13.]

An arbitration under the Workmen's Compensation Act, 1925, is hereby requested between C. D. & Co., Limited, _____ and A. B.

[or as the case may be; see Act, Sections 11, 13.]

with respect to the review and termination [or diminution, increase, or redemption, as the case may be] of the weekly payment payable to the said A. B.

_____ under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.

Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and address of injured workman.

2. Name and place of business of employer by whom compensation is payable.

3. Date and nature of accident.

4. Date of agreement, decision, award, or certificate fixing weekly payment, amount of such payment, and date from which it commenced.

5. Relief sought by applicant, whether termination, diminution, increase, or redemption.

6. Grounds on which termination, diminution, or increase is claimed.

The names and addresses of the applicants and their solicitors are:

Of the applicants,

Of their solicitor,

The name and address of the respondent to be served with this application are:

Dated this _____ day of _____

(Signed)

Applicants.

[Or

Applicants' Solicitor.]

FORM 6.

Application for Arbitration by an Injured Master, Seaman, Apprentice or Pilot, with respect to the Compensation payable to him. Rules 9, 33.

In the County Court of _____ holden at _____
In the matter of the Workmen's Compensation Act, 1925.
No. of Matter _____

In the matter of an arbitration between

A. B.

of (address)
(description)

Applicant,

and

The owners of the Ship " _____ "

Respondents.

1. On the _____ day of _____ personal injury by accident arising out of and in the course of his employment was caused to A. B. _____, the master of the ship " _____ " [or a seaman [or an apprentice to the sea service or an apprentice in the sea fishing service] and a member of the crew of the ship " _____ "] [or a pilot employed on the ship " _____ "].

2. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen, e.g.]—

(a.) as to whether the said A. B. _____ is a workman within the meaning of the above-mentioned Act; or

(b.) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act, in respect of the said injury; or

(c.) as to the amount [or duration] of the compensation payable by the owners of the said ship to the said A. B. _____ under the above-mentioned Act in respect of the said injury.

[or as the case may be.]

3. An arbitration under the above-mentioned Act is hereby requested between the said A. B. _____ and the owners of the said ship for the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and address of applicant.

2. Name of ship of which applicant was master [or of the crew of which applicant was a member or on which applicant was employed as pilot] at time of accident, and port of registry.

3. Nature of employment at time of accident.

4. Date and place of accident, nature of work on which applicant was then engaged, and nature of accident and cause of injury.

5. Nature of injury.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the same owners, or if not, during any less period during which he has been so employed.

8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.

9. Payment, allowance or benefit received from employer during the period of incapacity.

10. Amount claimed as compensation.

11. Date of service of statutory notice of accident, and whether given before applicant voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor, _____

The name and address of the person to be served with this application as representing the owners of the ship are :

[*State name and address of managing owner or manager, or of master of ship*
See Rule 38 (6).]

Dated this _____

day of _____
(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 7.

Rules 9, 38.

Application for Arbitration by or on behalf of Dependants of Deceased Master, Seaman, Apprentice or Pilot.

In the County Court of _____ holden at _____

In the matter of the Workmen's Compensation Act, 1925.

No. of Matter _____

In the matter of an arbitration between

E. F.

of (address) _____

(description) _____

and _____

Applicant,

The owners of the ship " _____ "

and _____

G. B.

of (address) _____

(description) _____

Respondents.

[*or as the case may be; see Rule 4.*]

1. On the _____ day of _____ personal injury by accident arising out of and in the course of his employment was caused to A. B. _____, late of _____, deceased, the master of the ship " _____ " [*or a seaman [or an apprentice to the sea service or an apprentice in the sea-fishing service] and a member of the crew of the ship]* " _____ " [*or a pilot employed on the ship " _____ ", and on the _____ day of _____ the death of the said A. B. resulted from the injury.*

[*or 1. The ship " _____ " which left the port of _____ on or about the _____ day of _____, was lost with all hands on or about the _____ day of _____ [or was last heard of on or about the _____ day of _____ and is believed to have been lost with all hands].*

When the said ship left the said port A. B. , late of , was the master thereof [or a seaman [or an apprentice to the sea service or an apprentice in the sea-fishing service] and a member of the crew of the said ship] [or a pilot employed on the said ship].

2. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen; e.g.]—

(a.) as to whether the said A. B. was a workman within the meaning of the above-mentioned Act; or

(b.) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B. ; or

(c.) as to the amount of compensation payable by the owners of the said ship to the dependants of the said A. B. under the above-mentioned Act, in respect of the injury caused to them by the death of the said A. B. ; or

(d.) as to who are dependants of the said A. B. within the meaning of the above-mentioned Act; or

(e.) as to the apportionment and application of the compensation payable by the owners of the said ship to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B.

[or as the case may be.]

3. An arbitration under the above-mentioned Act is hereby requested between E. F. , the legal personal representative of the said A. B.

[or between E. F. , a dependant of the said A. B.] and the owners of the said ship, and G. B. , who claims or may be entitled to claim to be a dependant of the said A. B.

[or as the case may be; see Rule 4.] for the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and late address of master, seaman, apprentice, or pilot.

2. Name of ship of which deceased was master [or of the crew of which deceased was a member or on which deceased was employed as pilot] at time of accident or loss of ship, and port of registry.

3. Nature of employment at time of accident or loss of ship.

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury [or date and place when and where ship was lost or is deemed to have been lost].

5. Nature of injury to deceased and date of death [or date when ship was lost or is deemed to have been lost].

6. Earnings of deceased during the three years next preceding the injury or date of loss, if he had been so long employed under the same owners, or if the period of his employment had been less than the said three years, particulars of his average weekly earnings during the



period of actual employment under the said owners.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to the dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

13. Date of service of statutory notice of accident, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor,

The names and addresses of the respondents to be served with this application are :

As representing the owners of the ship

[*State name and address of managing owner or manager, or of master of ship. See Rule 38 (6).*]

and G. B.,

Dated this

day of

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 8.

Application for Arbitration where Security has been given on behalf of the Rules 9, 30.
Owners of a Ship under Section 39.

In the County Court of holden at
In the matter of the Workmen's Compensation Act, 1925.
No. of Matter .
In the matter of an arbitration between
B. Applicant.
of (address)
(description)
and
(names and addresses
of persons giving
security) Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , of , and the said A. B. claims that the owners of the ship " " are liable under the Workmen's Compensation Act, 1925, to pay compensation in respect of the said injury.

2. The respondents have given security to abide the event of any proceedings that may be instituted in respect of the said injury, and to pay such compensation and costs as may be awarded thereon.

3. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen, e.g.]—

- (a.) as to whether the said A. B. is a workman to whom the above-mentioned Act applies; or
- (b.) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act in respect of the said injury; or
- (c.) as to the amount [or duration] of the compensation payable to the said A. B. under the above-mentioned Act in respect of the said injury.

[or as the case may be.]

4. An arbitration under the above-mentioned Act is hereby requested between the said A. B. and the respondents for the settlement of the said question [or questions].

5. Particulars are hereto appended [or annexed].

PARTICULARS.

[Here insert particulars of circumstances under which the application is made, and of the relief or order which the applicant claims, adapting the particulars in the preceding forms to the circumstances of the case.]

The names and addresses, &c. [as in Form 1].

NOTE.—This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and the persons giving security.

FORM 9.

ules 9, 41.

Application for Arbitration by Workman disabled by or suspended on account of having contracted Industrial Disease coming within Section 43.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1925.

No. of Matter .

In the matter of an arbitration between

A. B.

of (address)
(description)

and

Applicant,

C. D. & Co., Limited,

of (address)
(description)

Respondent.

1. On the day of Mr. , the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of [or Mr. , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1925,] certified that A. B. of was suffering from , a disease coming within section 43 of the Workmen's Compensation Act, 1925, and was thereby disabled from earning full wages at the work at which he was employed.

[Or 1. On the day of A. B. of was in pursuance of special rules [or regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 43 of the Workmen's Compensation Act, 1925.]

2. The said A. B. alleges that the above-mentioned disease is due to the nature of his employment in [describe employment], and that he was last employed in such employment within the twelve months previous to the date of disablement or suspension by C. D. & Co., Limited.

3. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen, e.g.]—

- (a.) as to whether the said A. B. is a workman to whom the Workmen's Compensation Act, 1925, applies; or
- (b.) as to the liability of the said C. D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1925, in respect of the said disease [or suspension]; or
- (c.) as to whether the said disease was in fact contracted whilst the said A. B. was in the employment of the said C. D. & Co., Limited, ; or
- (d.) as to whether the said disease is due to the nature of the employment of the said A. B. under the said C. D. & Co., Limited ; or
- (e.) as to the amount [or duration] of the compensation payable by the said C. D. & Co., Limited, to the said A. B. under the Workmen's Compensation Act, 1925, in respect of the said disease.

[or as the case may be.]

4. An arbitration under the above-mentioned Act is hereby requested between the said A. B. and the said C. D. & Co., Limited, for the settlement of the said question [or questions].

Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and address of applicant.
2. Name, place of business, and nature of business of respondents.
3. Nature of employment of applicant under respondents to which the disease was due.
4. Nature of disease.
5. Date of disablement or suspension.
6. Names and addresses of all other employers by whom applicant was employed in the same employment during the 12 months previous to date of disablement or suspension.
7. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.
8. Average weekly earnings during the 12 months previous to date of disablement or suspension, if the applicant has been so long employed under respondents, or if not, during any less period during which he has been so employed.
9. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business.
10. Payment, allowance, or benefit received from employer during period of incapacity.
11. Amount claimed as compensation.
12. Date of service of statutory notice of disablement or suspension on respondents. [*A copy of the notice to be annexed.*]
13. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form 1*].

FORM 10.

Application for Arbitration by or on behalf of Dependants of Deceased Workman whose death has been caused by Industrial Disease. Rules 9, 41.

In the County Court of _____ holden at _____
In the matter of the Workmen's Compensation Act, 1925.
No. of Matter _____

In the matter of an arbitration between
E. F. _____

of (address)
(description)

Applicant,

and

J. D. & Co., Limited,
of (address)
(description)
and

H.
of (address)
(description)

Respondents.

[*or as the case may be: see Rule 4.*]

1. On the _____ day of _____ Mr. _____, the certifying surgeon under

the Factory and Workshop Act, 1901, for the district of [or Mr. one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1925,] certified that A. B. of was suffering from, a disease coming within section 43 of the Workmen's Compensation Act, 1925, and was thereby disabled from earning full wages at the work at which he was employed; and on the day of the said A. B. died, his death being caused by the said disease.

[Or 1. On the day of A. B. of was in pursuance of special rules [or regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted, a disease coming within section 43 of the Workmen's Compensation Act, 1925, and on the day of the said A. B. died, his death being caused by the said disease.]

[Or 1. On the day of A. B. late of died, his death being caused by, a disease coming within section 43 of the Workmen's Compensation Act, 1925.]

2. The applicant alleges that the above-mentioned disease was due to the nature of the employment of the said A. B. in (*describe employment*), and that he was last employed in such employment within the twelve months previous to his disablement or suspension [or, if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly payment on account of disablement, within the twelve months previous to his death] by C. D. & Co., Limited, of

3. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen, e.g.]—

- (a.) as to whether the said A. B. was a workman to whom the Workmen's Compensation Act, 1925, applies; or
- (b.) as to the liability of the said C. D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1925, to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B.; or
- (c.) as to whether the said disease was in fact contracted whilst the said A. B. was in the employment of the said C. D. & Co., Limited; or
- (d.) as to whether the said disease was due to the nature of the employment of the said A. B. under the said C. D. & Co., Limited; or
- (e.) as to whether the death of the said A. B. was in fact caused by the said disease; or
- (f.) as to the amount of compensation payable by the said C. D. & Co., Limited, to the dependants of the said A. B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A. B.; or
- (g.) as to who are dependants of the said A. B. within the meaning of the above-mentioned Act; or
- (h.) as to the apportionment and application of the compensation payable by the said C. D. & Co., Limited, to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B.

[or as the case may be.]

4. An arbitration under the above-mentioned Act is hereby requested between E. F., the legal personal representative of the said A. B., acting on behalf of the dependants of the said A. B. [or between E. F., a dependant of the said A. B.,] and the said C. D. & Co., Limited, and G. H., who claims or may be entitled to claim to be a dependant of the said A. B.

[or as the case may be; see Rule 4.]

for the settlement of the said question [or questions].

5. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and late address of deceased workman.
2. Name, place of business, and nature of business of respondents from whom compensation is claimed.
3. Nature of employment of deceased under respondents to which the disease was due.
4. Nature of disease.
5. Date of disablement, and date of death.
6. Earnings of deceased during the three years next preceding disablement, if he had been so long in the employment of the respondents, or if the period of his employment had been less than the said three years, particulars of his average weekly earnings during the period of his actual employment under the respondents.
7. Names and addresses of all other employers by whom deceased was employed in the same employment during the twelve months previous to the date of disablement.
8. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.
9. Name and address of applicant for arbitration.
10. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.
11. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.
12. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).
13. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.
14. Date of service of statutory notice of disablement. [*A copy of the notice to be annexed.*]
15. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form 2*]

FORM 11.

Rules 9, 37.

Application for Arbitration where Rights of Employer against Insurers are transferred to Workman under Section 7.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1925.

No. of matter .

In the matter of an arbitration between

A. B.

of (address)
(description)

Applicant,

and

(name and address of
Insurers)

Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A. B. , a workman employed by of (name and address of employer) [or by of , a contractor with (name and address of employer) for the execution of work undertaken by him], and the said A. B. claims that the said (employer) thereupon became liable to pay compensation under the Workmen's Compensation Act, 1925, to the said A. B. in respect of such injury.

[Or, where weekly payment has been settled,

1. Under an agreement [or a decision or an award or a certificate] recorded in this court on the day of a weekly payment of is payable by of (name and address of employer) to the above-mentioned A. B. as compensation for personal injury caused to the said A. B. by accident arising out of and in the course of his employment as a workman employed by the said (employer) [or by of , a contractor with the said (employer) for the execution of work undertaken by him].]

2. The respondents are insurers of the said (employer) in respect of his [or their] liability to pay such compensation.

3. The said (employer) has become a bankrupt [or made a composition or arrangement with his creditors] [or, if the employer is a company, the said has commenced to be wound up]; and the rights of the said (employer) against the respondents as such insurers in respect of his [or their] liability to the said A. B. have by virtue of section 7 of the said Act been transferred to and vested in the said A. B.

4. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen, e.g.]—

(a.) as to whether the said A. B. is a workman to whom the above-mentioned Act applies; or

(b.) as to the liability of the said (employer) to pay compensation under the above-mentioned Act in respect of the said injury; or

(c.) as to the liability of the respondents as such insurers as aforesaid to the said A. B. ; or

(d.) as to the amount [or duration] of the liability of the respondents as such insurers as aforesaid to the said A. B.

[or as the case may be.]

5. An arbitration under the above-mentioned Act is hereby requested between the said A. B. and the respondents for the settlement of the said question [or questions].

6. Particulars are hereto appended [or annexed]

PARTICULARS.

(Here insert particulars containing a concise statement of the circumstances under which the application is made, and of all matters necessary to be stated in order to bring the questions to be settled properly before the judge or arbitrator, and of the relief or order which the applicant claims, adapting the particulars given in the preceding forms to the circumstances of the case.)

The names and addresses of the applicant and his solicitor are :

Of the applicant,

Of his solicitor,

The name and address of the respondents to be served with this application are :

Dated this

day of

(Signed)

Applicant.

[Or

Applicant's solicitor.]

NOTE.—This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and insurers.

FORM 12.

Notice to Applicant of Day upon which Arbitration will be proceeded with. Rule 15.

[Heading as in Request for Arbitration.]

Take notice that the judge of this court [or Mr. , the arbitrator appointed by the judge of this court] will proceed with the arbitration in this matter at on the day of at the hour of o'clock in the noon.

Dated this day of

To

Of

Registrar.

FORM 13.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[Heading as in Request for Arbitration.]

Take notice that the judge of this court [or Mr. , the arbitrator appointed by the judge of this court] will proceed with the arbitration applied for in the request and particulars a sealed copy of which is served herewith at on the day of at the hour of o'clock in the noon : and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge [or arbitrator] may think just and expedient.

And further take notice that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [or arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [or arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [or arbitrator]

and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of ..

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of ,
To
Of

Registrar.

FORM 14.

Rule 13.

Answer by Respondents.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

Take notice—

That the respondent, G. H., disclaims any interest in the subject matter of the above arbitration.

Or

That the respondents, C. D. & Co., Limited, state that the applicant's particulars filed in this matter are inaccurate or incomplete in the particulars hereto annexed.

Or

That the respondents, C. D. & Co., Limited, desire to bring to the notice of the judge [*or arbitrator*] the facts stated in the particulars hereto annexed.

Or

That the respondents, C. D. & Co., Limited, intend at the hearing of the arbitration to give evidence and rely on the facts stated in the particulars hereto annexed.

Or

That the respondents, C. D. & Co., Limited, deny their liability to pay compensation under the Act in respect of the injury to A. B. mentioned in the applicant's particulars, on the grounds stated in the particulars hereto annexed.

PARTICULARS.

1. *Particulars in which the particulars filed by the Applicant are inaccurate or incomplete.*
2. *Facts which the Respondents desire to bring to the notice of the Judge [*or Arbitrator*].*

That the applicant A. B. refuses to submit himself to medical examination as required by [*or obstructs the medical examination required by*] the respondents, C. D. & Co., Limited, in accordance with section 18 of the Act [*or refuses to submit himself for examination by a medical referee as ordered*] [*or obstructs the examination by a medical referee ordered*] in accordance with section 19 of the Act.
[*or as the case may be.*]

3. *Facts which Respondents, C. D. & Co., Limited, intend to give in evidence and rely on at the hearing of the Arbitration.*

That notice of the alleged accident [*or of death, disablement or suspension*] was not given to the respondents as required by the Act ; *or*

That the claim for compensation was not made on the respondents within the time limited by the Act ; *or*

That a scheme of compensation [*benefit or insurance*] for the workmen of

the respondents, C. D. & Co., Limited, has been duly certified by the Registrar of Friendly Societies, and such certificate was in force at the date of the alleged accident, and the said C. D. & Co., Limited, contracted with the applicant A. B. [or with the deceased workman] by a contract which was in force at the date of the alleged accident, that the provisions of the said scheme should be substituted for the provisions of the Act, and the said C. D. & Co., Limited, are consequently liable only in accordance with the said scheme :

[or as the case may be.]

4. *Grounds on which the Respondents deny their Liability to pay Compensation.*

- (i.) That the applicant A. B. is [or the deceased workman was] not a workman to whom the Act applies ; or
- (ii.) That the injury to the applicant [or to the deceased workman] was not caused by accident arising out of and in the course of his employment ; or
- (iii.) That the injury to the applicant [or to the deceased workman] was attributable to the serious and wilful misconduct of the applicant [or of the deceased workman], and did not result in death or serious and permanent disablement ; or
- (iv.) That at the time of the alleged accident the applicant [or the deceased workman] was not immediately employed by the respondents, but was employed by of , a contractor with the respondents for the execution by or under such contractor of work undertaken by the respondents, and the accident occurred elsewhere than on, in, or about premises on which the respondents had undertaken to execute the work or which were otherwise under the control or management of the respondents ; or
- (v.) That the injury to the applicant [or to the deceased workman] was caused under circumstances creating a legal liability in a person other than the respondents, to wit, [name and address of such person] to pay damages in respect thereof, and the applicant [or the deceased workman] has taken proceedings against the said and has recovered damages from him ; or
in case of industrial disease,
- (vi.) That the applicant [or the deceased workman] at the time of entering the employment of the respondents wilfully and falsely represented himself in writing as not having previously suffered from the disease mentioned in the applicant's particulars ; or
- (vii.) That the disease mentioned in the applicant's particulars was not contracted whilst the applicant [or the deceased workman] was in the employment of the respondents ; or
- (viii.) That the disease mentioned in the applicant's particulars was not due to the nature of the employment in which the applicant [or the deceased workman] was employed by the respondents :

[or as the case may be.]

And further take notice, that the names and addresses of the said respondents and their solicitors are :

Of the respondents,
C. D. & Co., Limited,

Of their solicitors,

Dated this day of .

(Signed)

Solicitors for the Respondents,
C. D. & Co., Limited.

To the Registrar of the Court, and
To the applicant, A. B., and
To the respondents
(if any, naming them).

FORM 15.

Rule 19.

Notice by Respondent admitting Liability, and submitting to an Award or paying Money into Court, or submitting to an Award or paying Money into Court with a denial of Liability.

[Not to be printed, but to be used as a Precedent.]

[Heading as in Request for Arbitration.]

Take notice—

That the respondents, C. D. & Co., Limited; admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to an award for payment by them to the applicant, A. B., of the weekly sum of , such weekly payment to commence as from the day of and to continue during the total or partial incapacity of the said A. B., for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

And for payment by them to the applicant forthwith after the award of the amount of such weekly payments calculated from the day of until the first Saturday *[or other usual pay day]* after the date of the award, and for the payment thereafter of the said sum of to the applicant on Saturday *[or other usual pay day]* in every week.

[Or, and the said C. D. & Co., Limited, herewith pay into court the sum of £ in satisfaction of such liability.]

[Or, where liability is denied,

Take notice—

That the respondents, C. D. & Co., Limited, hereby submit *(follow from above, down to the words in every week).*

[Or, That the respondents, C. D. & Co., Limited, herewith pay into court the sum of £ in satisfaction of the applicant's claim in the above-mentioned matter.]

And further take notice, that, notwithstanding such submission *[or payment]*, the respondents deny their liability.

And further take notice, that the address of the said respondents is as follows: *(state the address).*

Dated this day of

(Signed)

Solicitors for the Respondents,
C. D. & Co., Limited.

To the Registrar of the Court, and

To the applicant, A. B., and

To the respondents

[if any, naming them].

FORM 16:

Rule 19.

Notice of Filing of Submission to an Award, or of Payment into Court, in the case of an injured Workman.

[Heading as in Request for Arbitration.]

Take notice—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and submit to an award for payment by them to you of the weekly sum of *[or and have paid into court the sum of £ in satisfaction of such liability].*

[Or

Take notice—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they deny their liability

to pay compensation in the above-mentioned matter, but that they submit to an award for payment by them to you of the weekly sum of [or but that they have paid into court the sum of £ in satisfaction of your claim].]

If you elect to accept such weekly sum [or the sum so paid into court] in satisfaction of your claim, you must send to the registrar of this court, and to the said C. D. & Co., Limited, a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C. D. & Co., Limited.

If you send such notice, the judge of this court will, on application made to him, make an award directing payment of such weekly sum to you [or directing payment of the said sum of £ to you, or applying the said sum of £ for your benefit], and you will be liable to no further costs.

In default of such notice, the arbitration will be proceeded with; and if no greater payment is awarded to you, you will be liable to be ordered to pay the costs incurred by the respondents subsequent to the receipt by you of this notice.

Dated this day of .

Registrar.

To the applicant, A. B.

FORM 17.

Notice of Payment into Court in the case of Death.

Rule 19.

[*Heading as in Request for Arbitration.*]

Take notice—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and have paid into court the sum of £ in satisfaction of such liability.

[Or

Take notice—

That the respondents, C. D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they deny their liability to pay compensation in the above-mentioned matter, but that they have paid into court the sum of £ in satisfaction of the claim made herein.]

If you are willing to accept the sum so paid into court in satisfaction of the compensation payable in the above-mentioned matter, you must send to the registrar of this court, and to the said C. D. & Co., Limited, and to the other respondents [or, where this notice is sent to a respondent, to the applicant and the other respondents], a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C. D. & Co., Limited, and at the residence or place of business of each of the other respondents [or of the applicant and each of the other respondents].

If you and all the other respondents [or, If you and the applicant and all the other respondents] send such notice, and agree as to the apportionment and application of the said sum of £, the judge of this court will, on application made to him, make an award for such apportionment and application, and you will be liable to no further costs.

If you and all the other respondents [or, If you and the applicant and all the other respondents] send such notice, but do not agree as to the apportionment and application of the said sum of £, the arbitration will be proceeded with as between you and such other respondents [or, as between the applicant and yourself and such other respondents].

In default of such notice being sent by you and all the other respondents [or, by the applicant and yourself and all the other respondents], the arbitration will be proceeded with: and if no greater amount than the said sum of £ is awarded as compensation, the parties who do not send

such notice will be liable to be ordered to pay the costs incurred by the respondents, C. D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of Registrar.

To the applicant, A. B.,
[or To the respondent, G. H.]
[or as the case may be].

FORM 18.

Rule 19.

Notice of Acceptance of Weekly Sum offered, or of Willingness to accept Sum paid into Court.

[Not to be printed, but to be used as a Precedent.]

[Heading as in Request for Arbitration.]

Take notice—

That the applicant A. B. accepts the weekly sum offered by the respondents, C. D. & Co., Limited, [or the sum of £ paid into court] in satisfaction of his claim in the above-mentioned matter [or, that the applicant, E. F., or, the respondent, G. H., is willing to accept the sum of £ paid into court by the respondents, C. D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter].

But the applicant [or the said respondent, G. H.,] will apply to the judge to include in his award an order directing the said respondents, C. D. & Co., Limited, to pay the costs properly incurred by the applicant [or the said respondent, G. H.,] before the receipt of notice of the offer of the said weekly sum [or of notice of payment of the said sum of £ into court] and his costs properly incurred in relation to the notice of the offer of the said weekly sum [or the notice of payment of the said sum of £ into court] and to this notice, and in attending at the court to obtain an award.

Dated this day of (Signed)

Applicant.

[Or

Respondent.]

To the Registrar of the Court, and
To the respondents, C. D. & Co., Limited, and
To the applicant, A. B., and
To the respondents
[naming them].

FORM 19.

Rule 41.

Application for Addition of Employer as Respondent under Section 43, Sub-section (1), Paragraph (c), Proviso (ii).

[Not to be printed, but to be used as a Precedent.]

[Heading as in Request for Arbitration.]

Take notice—

That the respondents, C. D. & Co., Limited, allege that the disease mentioned in the applicant's particulars filed in this matter was in fact contracted while the applicant [or the deceased workman] was in the employment of of and not whilst in the employment of the said C. D. & Co., Limited.

And the said C. D. & Co., Limited, hereby apply for an order that the said be joined as respondents in the above arbitration, and if necessary for an adjournment of the hearing of the arbitration.

Dated this day of .

(Signed)

By

C. D. & Co., Limited.

Secretary.

[Or

Solicitors for the Respondents,
C. D. & Co., Limited.]

To the Registrar of the Court.

FORM 20.

Order adding Respondents.

Rule 41.

[Heading as in Request for Arbitration.]

It is this day ordered on the application of the respondents, C. D. & Co., Limited, that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon.]

Dated this day of .

Registrar.

FORM 21.

Notice to Applicant and Original Respondents of Addition of Respondents. Rule 41.

[Heading as in Request for Arbitration.]

Take notice—

That by order dated the day of it was ordered on the application of the respondents, C. D. & Co., Limited, (a copy whereof is hereto annexed), that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon].

Dated this day of .

Registrar.

To the Applicant
and

The Respondents,
C. D. & Co., Limited.

FORM 22.

Notice to Parties who are added as Respondents.

Rule 41.

[Heading as in Request for Arbitration.]

To Messrs. of
[address and description.]

Take notice—

That by an order of this court, dated the day of a copy of which order is hereunto annexed, together with a copy of the request and particulars filed by the applicant in this matter, and a copy of the application on which the said order was made, you were ordered to be added as a respondent in the above arbitration.

And further take notice, that the hearing of the above arbitration has been appointed for the day of at o'clock in the noon, and that if you do not attend, either in person or by your solicitor, at the court-house at upon the day and at the hour above-mentioned, such order will be made and proceedings taken as the judge [or arbitrator] may think just and expedient.

And further take notice, that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars

are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or arbitrator*], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or arbitrator*], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or arbitrator*], and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of

To
Of

Registrar.

FORM 23.

Rules 20, 25.

Notice by Respondent to Third Parties.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

To Mr. , of (*address and description*).

Take notice—

That A. B., of, &c., has filed a request for arbitration (a copy whereof is hereto annexed) as to the amount of compensation payable by the respondents, C. D. & Co., Limited, to the said A. B., in respect of personal injury caused to the said A. B., by accident arising out of and in the course of his employment.

[*Or* That E. F. of has filed a request for arbitration (a copy whereof is hereto annexed) with respect to the compensation payable to the dependants of A. B. deceased, in respect of the injury caused to the said dependants by the death of the said A. B. which resulted from injury caused to the said A. B. by accident arising out of and in the course of his employment.]

[*or as the case may be; see forms of request for arbitration.*]

The respondents, C. D. & Co., Limited, claim to be indemnified by you against their liability to pay such compensation, on the ground that at the time of the injury in respect of which compensation is claimed the said A. B., was not immediately employed by the said C. D. & Co., Limited, but was employed by you in the execution of work undertaken by the said C. D. & Co., Limited, in respect of which the said C. D. & Co., Limited, had contracted with you for the execution thereof by or under you.

[*Or* on the ground that the injury for which compensation is claimed was caused under circumstances creating a legal liability on your part [*add, if so, as the persons who have given security in respect of the liability of the owners of the ship " " to pay damages in respect thereof.*]

[*or as the case may be.*]

[*Or, in case of industrial disease, The respondents, C. D. & Co., Limited, claim to be entitled to contribution from you in respect of the*

(1) First Saturday or other usual pay day after date of award.
(2) Or other usual pay day.

amount thereof, to be taxed by the registrar under column of the scales of costs in use in the county courts, and to be paid by the said C. D. & Co., to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this day of Judge [or Arbitrator].

(ii.) *In case of Application by Dependants.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

[*Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

1. I order that the respondents, C. D. & Co., Limited, do pay the sum of £ to the dependants of A. B., late of , deceased, as compensation for the injury resulting to such dependants from the death of the said A. B., , which took place on the day of from injury caused to the said A. B., on the day of by accident arising out of and in the course of his employment as a workman employed by the said respondents.

2. And I declare that the persons hereinafter named are entitled to share in such compensation as dependants of the said A. B., , that is to say J. B., the widow of the said A. B. and (1)

(1) Name the other persons.

3. [*Add, if so found.*] And I declare that the respondent G. H. the of the said A. B. , is not entitled to share in such compensation as a dependant of the said A. B.

4. And I order that the said sum of £ be apportioned between the said J. B. and (1) in the proportions following, that is to say:—

I apportion the sum of £ to or for the benefit of the said J. B., and the sum of £ to or for the benefit of the said (2)

5. And I order that the said C. D. & Co., Limited, do pay the said sum of £ to the registrar of this court within 14 days from the date of this award.

6. And I order that on payment to the registrar of the said sum of £ , the registrar do forthwith pay to the said J. B. the sum of £ hereby apportioned to her, [*or* the sum of £ out of the sum of £ hereby apportioned to her, and that the balance of the last-mentioned sum (less the fee for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said J. B., and that out of the sum so invested and the accruing interest thereof the registrar do from time to time until further order pay to the said J. B. the weekly [*or fortnightly*] sum of payment to be made on the day of ,]

7. And I order that on payment to the registrar of the said sum of £ the sums of £ and £ hereby apportioned to or for the benefit of the said

(2) Specify the persons entitled and the sums apportioned to them.

respectively (less the fees for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said and respectively, and that interest arising from such investments be from time to time, until further order, paid to the said J. B. to be by her applied for the maintenance, education, or benefit of the said and respectively.

8. And I order that the said J. B. and the said or any of them be at liberty to apply to the judge from time to time as they may be advised for any further or other order as to the application of any of the said sums so ordered to be invested and the accruing interest thereof.

9. And I order that the said C. D. & Co., Limited, do pay to the registrar of this court, for the use of the applicants, their costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the county courts, and to be paid by the said C. D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

[Add directions (if any given) as to costs occasioned by claim of person claiming as a dependant whose claim is disallowed.]

Dated this day of .

Judge [or Arbitrator].

(iii.) *In case of Application by Person to whom Expenses of Medical Attendance or Burial are due.*

[Heading as in Request for Arbitration.]

Having duly considered the matters submitted to me, I do hereby make my award as follows :—

[Leave space for any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.]

1. I order that the respondents, C. D. & Co., Limited, do pay the sum of £ for or towards the expenses of medical attendance on and the burial of A. B., late of , deceased, who died on the day of from injury caused on the day of by accident arising out of and in the course of the employment of the said A. B. as a workman employed by the said C. D. & Co., Limited.

2. And I declare that the persons hereinafter named are entitled to share in such compensation, that is to say ;

The applicant, E. F. , in respect of charges amounting to £ due to [or payable by] him for medical attendance on the said A. B. and the respondent, G. H. , in respect of charges amounting to £ due to him for the burial of the said A. B.

3. And I order that the respondents, C. D. & Co., Limited, do pay the said sum of £ to the registrar of this court within 14 days from the date of this award, and that the said sum of £ be apportioned between and paid to the said E. F. and G. H. in proportion to the amounts due to them respectively as aforesaid.

4. And I order that the said C. D. & Co., Limited, do pay to the registrar of this court for the use of the applicant, E. F., and the respondent, G. H., their respective costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in

the county courts, and to be paid by the said C. D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxations.

Dated this day of .

Judge [*or* Arbitrator].

[NOTE.—*The above forms will serve as guides for framing awards in other cases of arbitration.*]

NOTE.—See *Round v. Wathen & Son*, (1916) 86 L. J. K. B. 1011, and *Shaddick v. Palmers Shipbuilding Co.*, (1917) 86 L. J. K. B. 1017, which distinguish *Payne v. Fortescue & Sons*, (1912) 3 K. B. 346; 81 L. J. K. B. 1191, and decide that where there was an admission of liability, but the basis on which that liability was admitted raised or left open a question between the parties, there was a matter in dispute to be settled by arbitration.

FORM 25.

Rule 34

Notice of Day upon which Special Case will be Heard.

In the County Court of , holden at .

[*Heading as in Special Case.*]

Take notice that the judge of this court will hear the special case stated in the above-named matter, at a court to be holden at , on the day of at the hour of in the noon: and that if you do not attend in person or by your solicitor at the place and time above-mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office and upon prepayment of the costs of such copy.

Dated this day of .

Registrar.

To [*the applicant and respondents*].

FORM 26.

Rule 39 (3).

Application for Order for Detention of Ship.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1925. Section 39.

The Ship " "

Application is hereby made on behalf of of who alleges that the owners of the ship " " which has been found in the port [*or river*] [*or within three miles of the coast of England*], are liable as such owners to pay compensation under the Workmen's Compensation Act, 1925, in respect of personal injury by accident arising out of and in the course of his employment caused to of on the day of in the port [*or harbour*] of and who claims compensation in respect of such injury, and alleges that none of the owners of the said ship reside in the United Kingdom, for an order directed to an officer of customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of _____ filed herewith [*or will be given in evidence on the hearing of the application*].

Dated this _____ day of _____

(Signed)

[*Name and Address of Applicant or Applicant's Solicitor.*]

FORM 27.

Undertaking as to Damages.

Rule 59 (4).

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of _____, holden at _____

The Workmen's Compensation Act, 1925. Section 39.

The Ship "_____"

I, the undersigned, _____, of _____, hereby undertake to abide by any order which may hereafter be made as to damages, in case any person affected by the order to be made on my application for the detention of the ship "_____" shall sustain any damages by reason of such order which I ought to pay.

Dated this _____ day of _____

(Signed)

[*Signature and Address of Applicant.*]

[*To be altered as required, if the undertaking is given by any person other than the applicant.*]

FORM 28.

Order for Detention of Ship.

Rule 39 (

In the County Court of _____, holden at _____

The Workmen's Compensation Act, 1925.

The Ship "_____"

Whereas it is alleged that the owners of the ship "_____" are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to _____ of _____ in the port [*or harbour*] of _____;

And that the said ship has been found in the port [*or river*] of _____ [*or within three miles of the coast of England*];

And whereas it has been shown to me, on the application of _____ of _____, who claims compensation in respect of such injury, that the owners of the said ship are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom:

[And whereas the said _____ has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said _____ ought to pay:]

Now I do hereby issue this order directed to you, the Chief Officer of Customs at _____ [*or other officer named by the judge*], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £_____, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this _____ day of _____

Judge.

To the Chief Officer of Customs at _____
[*or other officer named by the judge.*]

FORM 29.

Rule 39 (7).

Bond by way of Security.*[Not to be printed, but to be used as a Precedent.]*

In the County Court of holden at .

The Workmen's Compensation Act, 1925.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or harbour*] of .

And whereas the judge of this court has issued an order directed to the Chief Officer of Customs at [*or other officer named by the judge*], requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this court, or of any other competent court in England or Ireland in which any proceedings may be instituted in respect of the said injury, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[Signature of Sureties.]

This bail bond was signed by the said and , the sureties, the day of , 19 .

Before me,

Registrar.

[or Clerk to the Registrar nominated to take affidavits.]

FORM 30.

Rule 39 (8).

Order of Release.

In the County Court of holden at .

The Workmen's Compensation Act, 1925.

The Ship " ."

You are hereby authorised and directed to release the ship " " now under detention by virtue of an order made on the day of , upon the payment of all costs, charges and expenses attending the custody thereof.

Dated this day of .

Judge.

To the Chief Officer of Customs at .
or other officer named in the order for detention.]

FORM 30A.

Solicitor's Undertaking to give Security.

Rule 39 (9).

[Not to be printed, but to be used as a Precedent.]

In the County Court of holden at
 The Workmen's Compensation Act, 1925.
 The Ship "....."

Whereas it is alleged that the owners of the ship "....." are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [or harbour] of :

Now, therefore, I, *L.M.*, of (address), solicitor for the owners [agent, master or consignee] of the said ship, hereby undertake within days from the date hereof to put in or give security in the sum of £, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon.

Dated this day of

(Signed) *L.M.*

FORM 31.

Application for Order for Detention of Ship by Employer claiming Indemnity.

Rule 40.

[Not to be printed, but to be used as a Precedent.]

In the County Court of holden at
 The Shipowners' Negligence (Remedies) Act, 1905.
 The Workmen's Compensation Act, 1925.
 The Ship "....."

Application is hereby made on behalf of of, who alleges:—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [or harbour] of : and
2. That the applicant, as the employer of the said, has paid compensation [or has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1925 : and
3. That the applicant is [or will become] entitled to be indemnified under that act by the owners of the ship "....." on the ground that the said injury was caused by the said ship [or sustained on in or about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment : and
4. That the said ship has been found in the port [or river] of [or within three miles of the coast of England] : and
5. That none of the owners of the said ship reside in the United Kingdom;

for an order directed to an officer of Customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the applicant or paid compensation in respect of the said injury, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury or to recover such indemnity, and to

pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of filed herewith [or will be given in evidence on the hearing of the application].

Dated this day of .

(Signed)

[Name and address of applicant or applicant's solicitor.]

FORM 32.

Rule 40.

Order for Detention of Ship on Application of Employer claiming Indemnity.

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1925.

The Ship " " .

Whereas it is alleged by of .

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [or harbour] of : and

2. That the said as the employer of the said has paid compensation [or has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1925 : and

3. That the said is [or will become] entitled to be indemnified under that Act by the owners of the ship " ," on the ground that the said injury was caused by the said ship [or sustained on in or about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment : and

4. That the said ship has been found in the port [or river] of [or within three miles of the coast of England] :

And whereas it has been shown to me, on the application of the said that the applicant probably is [or will become] entitled to be indemnified under the said Act, and that none of the owners of the said ship reside in the United Kingdom :

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay] :

Now I do hereby issue this order directed to you, the Chief Officer of Customs of [or other officer named by the judge], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said or paid compensation in respect of the said injury, or have given security in the sum of £ to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this day of .

To the Chief Officer of Customs at .
[or other officer named by the judge].

Judge.

FORM 33.

Bail Bond by way of Security where Order of Detention made on Application of Employer claiming Indemnity. Rule 40.

[Not to be printed, but to be used as a Precedent.]

In the County Court of holden at

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1925.

The Ship " ."

Whereas it is alleged :—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of ; and

2. That of as the employer of the said , has paid compensation [*or* has had a claim for compensation made on him] in respect of the said injury under the Workmen's Compensation Act, 1925 ; and

3. That the said is [*or* will become] entitled to be indemnified under that Act by the owners of the ship " ," on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship] in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment :

And whereas the judge of this court has issued an order directed to the Chief Officer of Customs at [*or other officer named by the judge*] requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said or paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law :

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this court, or of any other competent court in England or Ireland in which any proceedings may be instituted in respect of the said injury, or to recover such indemnity, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation, indemnity, and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[Signatures of Sureties.]

This bail bond was signed by the said and

the sureties, the day of ,
19 .

Before me,

Registrar.

*[or Clerk to the Registrar nominated
to take affidavits.]*

FORM 34.

Rule 42.

Application for Appointment of new Arbitrator, Schedule I., Paragraph 8.*[Not to be printed, but to be used as a Precedent.]*

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1925.

In the matter of an arbitration between

A. B.

of (address)

(description)

and

Applicant.

C. D. & Co., Limited,

of (address)

(description)

Respondents.

Application is hereby made to the judge on behalf of the above-named to appoint a new arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [or refusal [or inability] to act] of the said Mr.

And the applicant hereby requests that a time and place may be fixed for the hearing of the application.

Dated this day of

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 35.

Rule 42.

Summons on Application for Appointment of new Arbitrator.*[Title as in Application.]*

You are hereby summoned to attend before the judge in chambers at on the day of at the hour of in the noon, on the hearing of an application on the part of for the appointment by the judge of a new arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [or refusal [or inability] to act] of the said Mr.

And take notice, that in default of your attendance at the time and place above-mentioned, the judge will, on proof of the service of this summons, proceed to hear and dispose of the said application.

Dated this day of

To

and to his [or their]
Solicitor.

Registrar.

FORM 36.

Form of Memorandum under Sections 23, 24 and 25.

Rule 43.

(i.) *In case of Injury to Workman by Accident.*

To the registrar of the county court of holden at
In the matter of the Workmen's Compensation Act, 1925,
and

In the matter of an arbitration between

of Applicant,

Name.
Address.
Description.

of Respondents.

Name.
Address.
Description.

[Or, where the matter has been decided by agreement without arbitration,
In the matter of an agreement between

of Name.
Address.
Description.

and

of Name.
Address.
Description.

Be it remembered, that on the day of , 19 , personal
injury was caused at [state place of accident] to the above-named ,
a workman under no legal disability, [or an infant of the age of
years,] by accident arising out of and in the course of his employment.

And that on the day of , 19 , the following agreement
was come to by and between the said and the said , that is
to say :

[Or And that on the day of , 19 , the following decision
was given by a committee representative of the said and their work-
men, having power to settle matters under the above-mentioned Act in the
case of the said and their workmen, that is to say :]

[Or And that on the day of , 19 , the following award was
made and given by me, the undersigned , being an arbitrator agreed
on by the said and the said , that is to say :]

[Here set out copy of agreement, decision, or award.]

[If a medical referee has been appointed to report, add :—

A copy of the report of Mr. , a medical referee appointed to report
in the above-mentioned matter, is hereunto annexed.

[Add, if so, The said Mr. attended the arbitration on the
day of , 19 .]

You are hereby requested to record this memorandum, pursuant to
section 23 of the above-mentioned Act.

Dated this day of , 19 .

To be signed
in accord-
ance with
Rule 44,
para. 1, 2.

NOTE—This form to be adapted to the circumstances of the case and the
matter decided.

(ii.) *In case of Injury to Workman by Industrial Disease.*

To the registrar of the county court of holden at
In the matter of the Workmen's Compensation Act, 1925,
and

In the matter of an arbitration between

of Applicant,

Name.
Address.
Description.

of Respondents.

Name.
Address.
Description.

[Or, where the matter has been decided by agreement without arbitration,
In the matter of an agreement between

of Name.
Address.
Description.

and

of Name.
Address.
Description.

Be it remembered,
That on the day of , Mr. , the certifying
surgeon appointed under the Factory and Workshop Act, 1901, for the

Name
Address.
Description.

district of [or Mr. , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1925,] certified that A. B. of , a workman under no legal disability, [or an infant of the age of years,] was suffering from , a disease coming within section 43 of the Workmen's Compensation Act, 1925, and was thereby disabled from earning full wages at the work at which he was employed.

[or That on the day of , A. B. of , a workman under no legal disability, [or an infant of the age of years,] was in pursuance of special rules [or regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 43 of the Workmen's Compensation Act, 1925;

And that the said A. B. alleged that the above mentioned disease was due to the nature of his employment in [describe employment] and that he was last employed in such employment within the twelve months previous to the date of disablement or suspension by C. D. & Co., Limited, of .]

And that on the day of , 19 , the following agreement was come to by and between the said and the said , that is to say :

[or And that on the day of , 19 , the following decision was given by a committee representative of the said and their workmen, having power to settle matters under the above-mentioned Act in the case of the said and their workmen, that is to say :]

[or And that on the day of , 19 , the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said and the said , that is to say :]

[Here set out copy of agreement, decision, or award.]

[If a medical referee has been appointed to report, add:—

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is hereunto annexed.

[Add, if so, The said Mr. attended the arbitration on the day of , 19 .]

You are hereby requested to record this memorandum, pursuant to section 23 of the above-mentioned Act.

Dated this day of , 19 .

NOTE—This form to be adapted to the circumstances of the case and the matter decided.

(iii.) Where Death resulted from the Injury.

To the registrar of the county court of holden at
In the matter of the Workmen's Compensation Act, 1925,
and

In the matter of an arbitration between

Name.
Address.
Description.

of Applicant,
and
of Respondents.

[Or, where the matter has been decided by agreement without arbitration,

In the matter of an agreement between

Name.
Address.
Description.

of and
of .]

Name.
Address.
Description.

Be it remembered that on the day of , 19 , personal injury was caused at [state place of accident] to late of deceased, by accident arising out of and in the course of his employment

To be signed
in accordance
with
Rule 44,
pars. 1, 2.

and that on the day of , 19 , the said died as the result of such injury.

And that on the day of , 19 , the following agreement was come to by and between the dependants of the said within the meaning of the above-mentioned Act, and the said that is to say :

[Or And that on the day of , 19 , the following decision was given by a committee representative of the said and their workmen, having power to settle matters under the above-mentioned Act in the case of the said and their workmen, that is to say :]

[Or And that on the day of , 19 , the following award was made and given by me, the undersigned being an arbitrator agreed on by the dependants of the said within the meaning of the above-mentioned Act, and the said , that is to say :]

[Here set out copy of agreement, decision, or award.]

[If a medical referee has been appointed to report, add :

A copy of the report of Mr. a medical referee appointed to report in the above-mentioned matter is hereunto annexed.

[Add, if so, the said Mr. attended the arbitration on the day of 19 .]

You are hereby requested to record this memorandum, pursuant to section 23 of the above-mentioned Act.

Dated this day of 19 .

NOTE.—This form to be adapted to the circumstances of the case and the matter decided.

To be signed
in accordance with
Rule 44,
pars. 1, 2.

(iv.) Where Death resulted from Industrial Disease.

To the registrar of the county court of holden at
In the matter of the Workmen's Compensation Act, 1925,
and
In the matter of an arbitration between

of

and

Applicant,

Name.
Address.
Description.

of

Respondents.

Name.
Address.
Description.

[Or, where the matter has been decided by agreement without arbitration,
In the matter of an agreement between

of

and

of

Name.
Address.
Description.
Name.
Address.
Description.

Be it remembered, that on the day of , Mr. the certifying surgeon under the Factory and Workshop Act, 1901, for the district of [or Mr. one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1925], certified that A. B. of was suffering from , a disease coming within section 43 of the Workmen's Compensation Act, 1925, and was thereby disabled from earning full wages at the work at which he was employed ; and on the day of the said A. B. died, his death being caused by the said disease ;

[Or, That on the day of A. B. of was in pursuance of special rules [or regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 43 of the Workmen's Compensation Act, 1925, and on the day of the said A. B. died, his death being caused by the said disease :]

[Or, That on the day of A. B. late of died

his death being caused by , a disease coming within section 43 of the Workmen's Compensation Act, 1925 ;

And that the dependants of the said A. B. alleged that the above-mentioned disease was due to the nature of the employment of the said A. B. in (describe employment), and that he was last employed in such employment within the twelve months previous to his disablement or suspension [or, if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly payment on account of disablement, within the twelve months previous to his death] by C. D. & Co., Limited, of .

And that on the day of , 19 , the following agreement was come to by and between , the dependants of the said , that within the meaning of the above-mentioned Act, and the said , that is to say :

[Or and that on the day of , 19 , the following decision was given by a committee representative of the said and their workmen, having power to settle matters under the above-mentioned Act in the case of the said and their workmen, that is to say :]

[Or And that on the day of , 19 , the following award was made and given by me, the undersigned being an arbitrator agreed on by the dependants of the said , within the meaning of the above-mentioned Act, and the said , that is to say :]

[Here set out copy of agreement, decision, or award.]

[If a medical referee has been appointed to report, add :—

A copy of the report of Mr. a medical referee appointed to report in the above-mentioned matter, is hereunto annexed.

[Add, if so, The said Mr. attended the arbitration on the day of 19 .]

You are hereby requested to record this memorandum, pursuant to section 23 of the above-mentioned Act.

Dated this day of 19 .

NOTE.—This form to be adapted to the circumstances of the case and the matter decided.

To be signed
in accordance with
Rule 44,
pars. 1, 2.

FORM 37.

Rules 43 (3),
51.

Information to be supplied where a Memorandum of Agreement as to any matter referred to in paragraph (1) of Rule 51 is presented for registration.

A. In case of agreement with injured workman.

[Heading as in Memorandum.]

(a.) A. B. named in the memorandum of agreement presented for registration in this matter was at the date of the accident [or disablement or suspension] years of age.

(b.) He was employed as , and his average weekly earnings computed in accordance with the above-mentioned Act were

(c.) He was injured by , and the nature of his injury was as follows :

(d.) He was totally incapacitated for work for a period of , but recovered and was fit to resume his ordinary work on the day of 19 :

[or He was and is at present totally incapacitated for work, but is expected to recover and to be fit to resume his ordinary work in about .]

[or He was totally incapacitated for work for a period of , and is now partially incapacitated, but such partial incapacity is not likely to be permanent, and he is expected to recover and to be fit to resume his ordinary work in about :]

[or He was and is totally incapacitated for work, and such incapacity is likely to be permanent:]

[or He was totally incapacitated for work for a period of , and is still partially incapacitated, and such partial incapacity is likely to be permanent, but he is able to do light work, and it is estimated that he is able to earn an average weekly amount of in some suitable employment or business:]

[or as the case may be.]

(e.) The said received the following payments, allowances, or benefits from his employers previous to the date of the agreement, viz. :—
[Here state payments made, and where a weekly payment has been made, the amount of such payment, and the period for which it was paid.]

(f.) The said is [or is not] an insured person within the meaning of the National Health Insurance Act, 1924. Rule 51 (1).

[Add, if he is an insured person :

Name of his Approved Society (and of Branch, if any)

Address of Head Office of Society.

His membership number therein.]

[Or if he is not a member of an Approved Society :

Name of the Insurance Committee for the area in which he resides.

Address of Insurance Committee

His membership number in the Deposit Contributor's Fund.]

[State name and address.]

Dated this day of 19.

B. Where death resulted from the injury or industrial disease.

[Heading as in Memorandum.]

(a.) A.B. named in the memorandum of agreement presented for registration in this matter, was at the date of the accident [or disablement or suspension or death] years of age.

(b.) He was employed as , and his earnings in the employment of during the three years next preceding the injury in the said memorandum mentioned [or his average weekly earnings during the period of his employment under] were

(c.) He left the following dependants wholly dependent upon his earnings, and the following dependants partially dependent, viz. :—

[Here state dependants, with their relationship to the deceased, their ages, and particulars showing how and to what extent they were dependent.]

[Or He left no dependants wholly dependent upon his earnings, but left the following dependants partially dependent, viz. :—

[Here state dependants, with their relationship to the deceased, their ages, and particulars showing how and to what extent they were dependent.]

(d.) The said received the following payments, allowances or benefits from his employers after the accident [or disablement or suspension], viz. :—

Dated this day of 19.

To be signed
in accordance with
Rule 44,
par. 2.

To be signed
in accordance with
Rule 44,
par. 2.

FORM 38.

Rule 45.

Notice of Memorandum having been received.

In the County Court of _____ holden at _____.

[Heading as in Memorandum.]

Take notice that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum appears to affect you.

I have therefore to request you to inform me within ten days from this date whether you admit the genuineness of the memorandum, or whether you dispute it, and, if so, on what grounds.

If you do not inform me in due course that you dispute the genuineness of the memorandum or object to its being recorded, it may be recorded without further inquiry, and will be enforceable accordingly.

If you dispute its genuineness, it will not be recorded, except with your consent in writing, or by order of the judge of this Court.

Dated this _____ day of _____.

Registrar.

To (all parties interested).

FORM 38A.

Rule 45.

Notice to Approved Society or Committee of Memorandum having been received.

In the County Court of _____ holden at _____.

[Heading as in Memorandum.]

Take notice that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum may affect you as the Approved Society or Committee by which sickness or disablement benefit under the National Insurance Act, 1924, payable to the workman is administered.

I have therefore to request you to inform me within ten days from this date whether you object to its registration, and if so, on what grounds.

The workman's membership number is _____.

Dated this _____ day of _____.

Registrar.

To (the approved society or committee interested).

FORM 39.

Rule 47.

Notice Disputing Genuineness of Memorandum, or Notice by Employer objecting to Memorandum being recorded.*[Not to be printed, but to be used as a Precedent.]*

In the County Court of _____ holden at _____.

*[Heading as in Memorandum.]**(1) Notice disputing Genuineness of Memorandum.*

Take notice that _____ (state name of party disputing), a party [or parties] interested, disputes [or dispute] the genuineness of the memoran-

Memorandum sent to you for registration in the above-mentioned matter on the following grounds :—

[Here state grounds, as e.g.]

- (a) That no such agreement has in fact been entered into : or
- (b) That the terms of the agreement are not correctly stated in the memorandum : or
- (c) That the agreement is no longer subsisting or enforceable : or
- (d) That the agreement is not enforceable by reason of its having been entered into under a mutual mistake [or having been obtained by fraud] [or undue influence] [or improper means].]

Dated this day of .

[To be signed by the party disputing
or his solicitor, or in case of employers
by their duly authorised official,
employee, or agent.]

To the Registrar.

(2) Notice by Employer objecting to Memorandum being recorded.

Take notice, that (state name of employer) objects [or object] to the memorandum sent to you for registration in the above-mentioned matter being recorded on the ground that the above-mentioned (workman) has in fact returned to work and is earning the same wages as he did before the accident.

Dated this day of .

[To be signed by the employer or his
solicitor, or duly authorised official,
employee, or agent.]

To the Registrar.

FORM 40.

Notice that Genuineness of Memorandum is Disputed, or of Objection by Rule 48.
Employer to Memorandum being recorded.

[Heading as in Memorandum.]

Take notice that of , a party [or parties] interested in the memorandum left with [or sent to] me for registration in the above-mentioned matter, has [or have] filed with me a notice, copy of which is sent herewith, that he disputes [or they dispute] the genuineness of the said memorandum on the grounds stated in the said notice.

[or Take notice, that of [the employer] has [or have] filed with me a notice, copy of which is sent herewith, that he objects [or they object] to the memorandum left with [or sent to] me for registration in the above-mentioned matter being recorded on the grounds stated in the said notice.]

The memorandum will therefore not be recorded, except with the consent in writing of the said , or by order of the judge of this Court.

Dated this day of .
Registrar.

To (all parties interested).

FORM 41.

Rule 50.

Notice of Application for Registration of Memorandum or for Rectification of Register.*[Not to be printed, but to be used as a Precedent.]*

In the County Court of _____ holden at _____

[Heading as in Memorandum.]

Take notice that I intend to apply to the judge at _____ on
 the _____ day of _____ at the hour of _____ o'clock in the _____ noon
*[in case of notice by solicitor, on behalf of _____ of _____ for an order
 for the registration of the memorandum sent to the registrar in the above-
 mentioned matter [or for an order for the rectification of the memorandum
 recorded in the above-mentioned matter] by [state particulars of rectifica-
 tion applied for], _____ and for consequential directions, and for costs.*

Dated this _____ day of _____

Applicant.
[Or Applicant's Solicitor.]

To the Registrar of the Court
 and to
 and to *(all parties interested)*.

FORM 41A.

Rule 51 (2).

Request for Information under Rule 51, paragraph 2.

In the County Court of _____ holden at _____
 In the matter of the Workmen's Compensation Act, 1925,
 and _____

In the matter of an agreement between _____ of _____ and
 of _____

With reference to the memorandum of agreement in the above-mentioned
 matter which has been sent to me for registration, I have to request you to
 inform me by letter or by personal interview at my office situate at _____,
 of any facts relating to the agreement and the circumstances in which it
 was arrived at which you may desire to bring to my notice, and which may
 assist me in deciding whether the agreement may properly be recorded.

Dated this _____ day of _____

To *(all parties interested)*. _____ Registrar.

FORM 41B.

Rule 51 (2).

Notice requiring Information or Attendance under Section 23 (3) of the Workmen's Compensation Act, 1925.

In the County Court of _____ holden at _____

[Heading as in Memorandum.]

With reference to the memorandum of agreement in the above-mentioned
 matter which has been sent to me for registration,

Take notice that I require you to furnish me in writing *[or orally]* within
 _____ days from this date, with the following information :—

[Here state information required.]

[or Take notice that I require your attendance before me at on
the day of at the hour of o'clock in the
noon.]

If you fail to comply with the above requirement, I may refuse to record the memorandum and refer the matter to the judge, who will in that event have power to make such order as he may think just.

Dated this day of .

Registrar.

To (a party to the agreement).

FORM 41c.

Notice to Approved Society or Committee of Attendance of Party to Agreement under Section 23 (3) of the Workmen's Compensation Act, 1925. Rule 51 (2).

In the County Court of holden at .

[Heading as in Memorandum.]

With reference to the memorandum of agreement in the above-mentioned matter which has been sent to me for registration,

Take notice that I have required the attendance of [one of] the above-named parties to the agreement before me at on the day of at the hour of o'clock in the noon.

If you wish to appear before me on that occasion, you are entitled to do so in accordance with sub section 6 of section 23 of the above-mentioned Act.

Dated this day of .

Registrar.

To (the approved society or committee interested).

FORM 42.

Notice to Parties where Registrar refers the Question of recording a Memorandum of an Agreement to the Judge under Section 25 (4). Rule 51

In the County Court of , holden at .

[Heading as in Memorandum.]

Take notice, that I have refused to record the memorandum sent to me in this matter for registration, and have referred the matter to the judge, pursuant to sub-section 4 of section 25 of the Act, it appearing to me that the said memorandum ought not to be registered by reason of—

- (a) the inadequacy of the lump sum agreed to be paid in redemption of the weekly payment referred to in the memorandum; or
- (b) the inadequacy of the weekly payment [or the lump sum] agreed to be paid as compensation to ; in the memorandum mentioned, who is an insured person within the meaning of the National Insurance Act, 1924; or
- (c) the inadequacy of the amount of compensation agreed to be paid to , a person under legal disability; or
- (d) the inadequacy of the amount of compensation agreed to be paid to and , dependants; or
- (e) the agreement having been obtained by fraud [or undue influence or improper means].

AND FURTHER TAKE NOTICE, that by order of the judge you are hereby summoned to attend before the judge at a Court to be holden at _____ on the _____ day of _____ at the hour of _____ in the _____ noon, when the matter will be inquired into by the judge ;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this _____ day of _____

Registrar.

To (*all parties interested*).

FORM 43.

Rule 52 (1).

Application for Removal of Record of Memorandum of Agreement from Register under Section 25 (5).

In the County Court of _____ holden at _____

[*Heading as in Memorandum.*]

Take notice that I intend to apply to the judge at _____ on _____ the _____ day of _____ at the hour of _____ in the _____ noon, for an order for the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the _____ day of _____ pursuant to sub-section 5 of section 25 of the above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or undue influence or improper means*], and for consequential directions, and for costs.

Dated this _____ day of _____

Applicant.

[*Or Applicant's Solicitor.*]

To the Registrar of the Court
(*all parties interested*).

FORM 44.

Rule 52 (2).

Notice to Parties where Judge directs Inquiry as to Removal of Record of Memorandum of Agreement from Register under Section 25 (5).

In the County Court of _____, holden at _____

[*Heading as in Memorandum.*]

Whereas it has been made to appear to the judge that an inquiry should be held as to the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the _____ day of _____, pursuant to sub-section 5 of section 25 of the above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or undue influence or improper means*];

Take notice, that you are hereby summoned to attend before the judge at a Court to be holden at _____ on _____ the _____ day of _____ at the hour of _____ in the _____ noon, when the matter will be inquired into by the judge ;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this _____ day of _____

Registrar.

To (*all parties interested*).

FORM 45.

Form of Certificate under Section 29, sub-section 2.

Rule 54 (1).

In the County Court of _____, holden at _____
No. of Plaintiff.

Between

A. B.

of (address)

(description)

Plaintiff,

and

C. D. & Co., Limited,

of (address)

(description)

Defendants.

And in the matter of the Workmen's Compensation Act, 1925.

I hereby certify that on the _____ day of _____ the above-named plaintiff
commenced the above-named action against the above-named defendants
claiming

[Here state claim of plaintiff in action.]

And that on the trial of the said action on the _____ day of _____ it was
determined that the injury in respect of which the plaintiff claimed damages
in the said action was one for which the defendants were not liable in the
said action, but that such defendants would have been liable to pay compen-
sation in respect of such injury under the above-mentioned Act;

And that thereupon the said action was dismissed, but the Court, on the
request of the plaintiff, proceeded to assess the compensation which the
defendants would have been liable to pay under the said Act.

And that the Court assessed such compensation at the sum of £ _____
and directed (state directions given as to payment of compensation, and
directions, if any given, as to costs, and as to the deduction from the compen-
sation of any costs which in the judgment of the Court were caused by the
plaintiff bringing the action instead of proceeding under the Act).

Dated this _____ day of _____,

Registrar.

FORM 46.

Application for Summons of Medical Referee as Assessor.

Rule 55 (1).

[Not to be printed, but to be used as a Precedent.]

[Heading as in Request for Arbitration.]

The applicant [or respondent] applies to the judge to summon a medical
referee to sit with him as an assessor, on the ground that questions are
likely to arise in the arbitration as to the condition of the applicant or his
fitness for employment [or as the case may be], and that it is desirable
that the judge should have the assistance of a medical referee in the
determination of such questions.

Dated this _____ day of _____.

To the Registrar

(Signed) A. B.

of the Court.

Applicant,

Or

Solicitor for the Applicant.

[or as the case may be]

I direct a medical referee to be summoned to sit with me as an assessor.
Judge.

FORM 48.

Rule 55 (4).

Summons to Medical Referee to sit as Assessor.*[Title as in Request for Arbitration.]*

The day of

Sir,

You are hereby summoned to attend and sit with the Judge as an assessor at the court-house situate at _____ on _____ the _____ day of _____, at the hour of _____ in the _____ noon. I enclose for your use as assessor an extract from the particulars annexed to the application for the arbitration.

I am, sir,

Your obedient servant,

To _____ Registrar:
[The Medical Referee.]

N.B.—Annex copy extract from particulars as required by Rule 55 (1) and (4).

FORM 49.

Rule 57 (2).

Application for Reference to Medical Referee under Section 19 (2).

[Not to be printed, but to be used as a Precedent. Where only one party is the applicant, it is to be used with the necessary modifications.]

In the County Court of _____ holden at _____

In the matter of the Workmen's Compensation Act, 1925.

In the matter of a claim for compensation made by A. B. _____ of _____, against C. D. & Co., Limited _____, of _____

[or, where an arbitration is pending,

In the matter of an arbitration between A. B.

of (address)

(description) _____ Applicant,

and

C. D. & Co., Limited _____,

of (address)

(description) _____ Respondents.

[or, where application is made after weekly payment has been settled,

In the matter of an agreement *[or a decision or an award or a certificate]* recorded in the above-mentioned Court as to the weekly payment payable to A. B. _____, of _____, by C. D. & Co., Limited _____ of _____

Application is hereby made to the Court on behalf of the above-named A. B. and C. D. & Co., Limited, for a reference in the above-mentioned matter to a medical referee pursuant to sub-section 2 of section 19 of the above-mentioned Act under the following circumstances:—

I. On _____ the _____ day of _____ notice was given by *[or on behalf of]* the above-mentioned A. B. _____ to the above-mentioned C. D. & Co., Limited _____, of personal injury caused to the said A. B.

by accident arising out of and in the course of his employment, in respect of which injury the said A. B. claims compensation from the said C. D. & Co., Limited, under the said Act.

[*or, where arbitration is pending,*

1. An arbitration under the said Act is pending between the above-mentioned A. B. and the above-mentioned C. D. & Co., Limited, as to the amount of compensation payable to the said A. B. under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.]

[*or, where weekly payment has been settled,*

1. Under an agreement [*or a decision or an award or a certificate*] in the above-mentioned matter, recorded in this Court on the _____ day of _____ a weekly payment is payable to the above-mentioned A. B. by the above-mentioned C. D. & Co., Limited, as compensation in respect of personal injury caused to the said A. B. by accident arising out of and in the course of his employment.]

2. The weekly payment claimed by [*or payable to*] the said A. B. is _____.

3. A question has [*or questions have*] arisen between the said A. B. and the said C. D. & Co., Limited, as to the condition [*or fitness for employment*] of the said A. B. [*or as to whether [or to what extent] the incapacity of the said A. B. is due to the accident*] [*or as to the condition [or fitness for employment] of the said A. B. and as to whether [or to what extent] the incapacity of the said A. B. is due to the accident*], and no agreement can be come to between the said C. D. & Co., Limited, and the said A. B. with reference to such question [*or questions*].

4. The said A. B. has submitted himself for examination by a medical practitioner provided by the said C. D. & Co., Limited, [*or has been examined by a medical practitioner selected by himself*] [*or, if so, the said A. B. has submitted himself for examination by a medical practitioner provided by the said C. D. & Co., Limited, and has also been examined by a medical practitioner selected by himself*], and a copy of the report of the said practitioner is [*or copies of the reports of the said practitioners are*] annexed to this application.

The applicants request that an order may be made referring the matter to a medical referee for his certificate as to the condition of the said A. B.

and his fitness for employment, specifying if necessary the kind of employment for which he is fit [*or for his certificate whether [or to what extent] the incapacity of the said A. B. is due to the accident*] [*or for his certificate as to the condition of the said A. B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [or to what extent] the incapacity of the said A. B. is due to the accident*].

Dated this _____ day of _____.

(Signed)

Applicant.

[*or Applicant's Solicitor.*]

C. D. & Co., Limited.

by _____ Secretary.

[*or* _____ Solicitors for C. D. & Co., Limited.]

To the Registrar.

FORM 50.

Rule 57 (3).

Order of Reference, Section 19.

[Where only one party is the applicant it is to be used with the necessary modifications.]

In the County Court of _____ holden at _____.

[Heading as in Application.]

On the application of A. B. _____ of _____ and C. D. & Co., Limited of _____ (a copy of which is hereto annexed), I hereby appoint Mr. _____ of _____ one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1925, to examine the said _____ (name of workman), and to give his certificate as to the condition of the said _____ and his fitness for employment, specifying if necessary the kind of employment for which he is fit [or his certificate whether [or to what extent] the incapacity of the said _____ is due to the accident] [or his certificate as to the condition of the said _____ and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [or to what extent] the incapacity of the said _____ is due to the accident].

Copies of the reports of the medical practitioners by whom the said _____ has been examined are hereto annexed.

The said _____, who is now at _____, has been directed to submit himself for examination by the referee.

I am satisfied that the said _____ is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee. [or The said _____ does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court Office situate at _____ on or before the _____ day of _____.

Dated this _____ day of _____.

Registrar.

FORM 51.

Rules 57 (4),
66 (7), 75 (8).

Order on Injured Workman to submit himself for Examination by Medical Referee.

In the County Court of _____ holden at _____.

[Heading as in Application.]

To A. B. _____, of _____ [address and description].

Take notice, that I have appointed Mr. _____ of _____, one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1925, to examine you in accordance with the application in the above-mentioned matter for a reference to a medical referee.

You are hereby required to submit yourself for examination by the referee [and, where workman is in a fit condition to travel, and to attend for that purpose at such time and place as may be fixed by him].

Dated this _____ day of _____.

Registrar.

FORM 52.

Notice to Parties of Certificate of Medical Referee.

Rule 57 (8),
66 (9), 75 (9).

In the County Court of _____ holden at _____

[*Heading as in Application.*]

Take notice, that I have received the certificate of the medical referee appointed in this matter, and that you may inspect the same during office hours at my office situate at _____, and may on request and at your own cost be furnished with or take a copy thereof.

Dated this _____ day of _____

Registrar.

To
and

FORM 53.

Notice of Application for Suspension of Right to Compensation or to take or prosecute Proceedings in relation to Compensation, or of Right to Weekly Payments, under Sections 17, 18 or 19, and Rule 58. Rule 58 (5)

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of _____, holden at _____

In the matter of the Workmen's Compensation Act, 1925.

In the matter of a claim for compensation made by A. B. _____ of
against C. D. & Co., Limited, of _____

[*or, where an arbitration is pending,*

In the matter of an arbitration between _____

A. B.

of (address)
(description)

Applicant,

and

C. D. & Co., Limited,

of (address)
(description)

Respondents.]

[*or, where application is made after weekly payment has been settled,*

In the matter of an agreement [*or a decision or an award or a certificate*] recorded in the above-mentioned court as to the weekly payment payable to A. B. _____ of _____ by C. D. & Co., Limited, _____ of _____.

Take notice that I intend to apply to the judge at _____ on _____ the _____ day of _____ at the hour of _____ in the _____ noon [on behalf of Messrs. C. D. & Co., Limited, of, &c., _____] for an order suspending your right to compensation in the above-mentioned matter and to take or prosecute any proceedings under the above-mentioned Act in relation to compensation [*or suspending your right to weekly payments in the above-mentioned matter*], on the ground that you refuse to submit yourself to medical examination as required by me [*or by the said C. D. & Co., Limited*], in accordance with section 17 [*or section 18*] of the Act [*or that you obstruct the medical examination required by me*] [*or by the said C. D. & Co., Limited*] in accordance with section 17 [*or section 18*] of the Act, [*or on the ground that you refuse to submit yourself for examination by a medical referee as ordered under section 19 of the Act, or that you*

obstruct the examination by a medical referee ordered under section 19 of the Act], and for consequential directions, and for costs.

Dated this day of

(Signed) C. D. & Co., Limited
by Secretary.

To A. B., of
and to Messrs.
(his Solicitors).

[or
Solicitors for C. D. & Co., Limited.]

FORM 54.

Rule 60 (4).

Præcipe for Payment into Court under Section 26, and Rule 60.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1925,
and

In the matter of an arbitration between

A. B. of, &c. Applicant.

and

C. D. & Co., Limited,
of, &c.

Respondents.

or

[In the matter of an agreement between

A. B.
of, &c.

and

C. D. & Co., Limited,
of, &c.

or

[In the matter of a certificate given in an action in (*state court*).]

Between

A. B.
of, &c.

Plaintiff.

and

C. D. & Co., Limited,
of, &c.,

Defendants.]

[*or as the case may be.*]

Take notice, that C. D. & Co., Limited, of [or Messrs
solicitors for C. D. & Co., Limited, of] do pay in
court [when paid by solicitors, add at the request and by the
authority of the said C. D. & Co., Limited,], the sum of (*state sum*
in letters) being the sum awarded [or agreed or directed] to be paid
by the said C. D. & Co., Limited, as compensation in the above
mentioned matter.

Dated this day of

(Signed) C. D. & Co., Limited
by Secretary.

[or
Solicitors for C. D. & Co., Limited]

To the Registrar.

Received the above-mentioned sum of

Registrar.

[Date]

FORM 55.

Receipt for Payment into Court under Section 26, and Rule 61, where Rule 61 (2).
 there is no Dispute as to the Liability to pay Compensation,
 but the Amount payable has not been ascertained or decided by
 Arbitration or Agreement.

In the County Court of

holden at

No. of matter

In the matter of the Workmen's Compensation Act, 1925,
 and

In the matter of an injury by accident to A. B., late of
 which resulted in the death of the said A. B.

Take notice,

1. That on the day of personal injury by accident arising
 out of and in the course of his employment was caused at (state place of
 accident) to A. B., late of deceased, a workman
 employed by [or by a contractor with for the
 execution of work undertaken by them], and on the day of
 the death of the said A. B. resulted from the injury.

[Or in case of industrial disease,

Take notice,

1. That on the day of Mr. , the certifying
 surgeon under the Factory and Workshop Act, 1901, for the district
 of [or Mr. , one of the medical referees appointed by the
 Secretary of State for the purposes of the Workmen's Compensation Act,
 1925,] certified that A. B. , of , was suffering from
 a disease coming within section 43 of the Workmen's Compensation Act,
 1925, and was thereby disabled from earning full wages at the work at
 which he was employed; and on the day of the said A. B.
 died, his death being caused by the said disease.]

[Or, That on the day of A. B. , of , was
 in pursuance of special rules [or regulations] made under the Factory and
 Workshop Act, 1901, suspended from his usual employment on account of
 his having contracted a disease coming within section 43 of the
 Workmen's Compensation Act, 1925, and on the day of the
 said A. B. died, his death being caused by the said disease.]

[Or That on the day of A. B. , late , died,
 his death being caused by a disease coming within section 43 of the
 Workmen's Compensation Act, 1925;

And that the dependants of the said A. B. allege that the above-
 mentioned disease was due to the nature of the employment of the said A. B.
 in (describe employment), and that he was last employed
 in such employment within the twelve months previous to his disablement
 or suspension [or, if the workman died without having obtained a certificate
 of disablement, or was not at the time of his death in receipt of a weekly
 payment on account of disablement, within the twelve months previous to
 his death] by C. D. & Co., Limited, of .]

2. There is no dispute as to the liability of the said to pay com-
 pensation under the above-mentioned Act to the dependants of the said
 A. B. in respect of the injury caused to them by the death of the
 said A. B. , but the amount payable as compensation has not been
 ascertained or decided either by a committee or by arbitration or by
 agreement.

3. The said of [or Messrs. , solicitors for the said
 of] do therefore pay into court [when paid by solicitors, add
 at the request of the said] the sum of (state sum in letters),
 being the amount admitted by the said to be payable by them as
 compensation in the above-mentioned matter.

4. (a) The said A. B. was at the date of the accident [or disable-
 ment or suspension or death] years of age.

(b) He was employed as _____, and his earnings in the employment of the said _____ during the three years next preceding the injury [or disablement or suspension or death] [or his average weekly earnings during the period of this employment under the said _____] were _____

5. To the best of the knowledge and belief of the said _____ the persons interested in the said sum as dependants of the said A. B. are _____

[State dependants, with their ages and relationship to deceased workman, and places of residence, as far as known.]

6. The amount admitted by the said _____ to be payable as compensation has been arrived at as follows, viz. :—

Dated this _____ day of _____
(Signed) _____
[or _____

Solicitors for _____.]

To the Registrar.

Received the above-mentioned sum of _____, subject to inquiry as to adequacy.

Registrar.
[Date.]

FORM 56.

Rule 62 (2).

Præcipe for Payment into Court under Section 26, and Rule 62, where Liability to pay Compensation is denied, but the Employer is willing to pay a Sum in Settlement.

In the County Court of _____, holden at _____

In the matter of the Workmen's Compensation Act, 1925,
and _____

In the matter of a claim for compensation made by the dependants of A. B. _____, late of _____, deceased, against C. D. _____, of _____, of _____, deceased, against C. D. _____, of _____, for compensation in respect of the injury caused to such dependants by the death of the said A. B. _____, who died on the _____ day of _____, 19____.

Take notice,

1. That a claim has been made under the above-mentioned Act by [or on behalf of] the dependants of A. B. _____, late of _____, deceased, against C. D. _____, of _____, for compensation in respect of the injury caused to such dependants by the death of the said A. B. _____, who died on the _____ day of _____, 19____.

2. The said dependants allege that the death of the said A. B. _____ resulted from personal injury by accident arising out of and in the course of his employment caused to the said A. B. _____ on the _____ day of _____ at _____ (state place of accident) while he was employed as a workman by the said C. D. _____ [or by E. F. _____, a contractor with the said C. D. _____, for the execution of work undertaken by them].

[Or, in case of industrial disease,

2. The said dependants allege that the death of the said A. B. _____ was caused by _____, a disease coming within section 43 of the Workmen's Compensation Act, 1925, and that the above-mentioned disease was due to the nature of the employment of the said A. B. _____ in _____ (describe employment), and that he was last employed in such employment within the twelve months previous to his disablement [or suspension from his usual employment], or if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly

payment on account of disablement, within the twelve months previous to his death] by the said C. D. .]

3. The said C. D. deny their liability to pay compensation under the above-mentioned Act to the dependants of the said A. B. , but to avoid litigation are willing to pay the sum of £ in full settlement of all claims to such compensation, and such of the dependants of the said A. B. as are not under disability are willing to accept such sum in settlement.

4. The said C. D. , of , [or Messrs. , solicitors for the said C. D. , of ,], do therefore pay into court [when paid in by solicitors add at the request of the said C. D.] the sum of [state sum in letters] being the amount which they are willing to pay in full settlement of all claims to compensation in the above-mentioned matter.

5. (a.) The said A. B. was at the date of the accident [or disablement or suspension or death] years of age.

(b.) He was employed as , and his earnings in the employment of the said C. D. during the three years next preceding the injury [or disablement or suspension or death] [or his average weekly earnings during the period of his employment under the said C. D.] were

(c.) To the best of the knowledge and belief of the said C. D. the persons interested as dependants of the said A. B. are [state dependants, with their ages and relationship to deceased, so far as known].

6. The grounds on which the said C. D. deny their liability to pay compensation are as follows, viz. :—

Dated this day of , 19 .

(Signed)

[or

Solicitors for

]

To the Registrar,

County Court.

Received the above-mentioned sum of , subject to inquiry as to adequacy.

Registrar.

[Date.]

FORM 57.

Notice to parties where Registrar refers the question of adequacy of Rules 61 (7), amount paid into Court under Rule 61 or Rule 62 to the Judge. 62 (3).

In the County Court of holden at

[Heading as in Præcipe for Payment into Court.]

Take notice, that I have referred the question of the adequacy of the amount paid into court in this matter to the judge.

And further take notice, that by order of the judge you are hereby summoned to attend before the judge at a court to be holden at on the day of at the hour of in the

noon, when the matter will be inquired into by the judge;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of

Registrar.

To [the employer and the persons appearing by the præcipe to be interested in the amount paid in].

FORM 58.

Rule 60 (5).

Notice by Registrar of Payment into Court under Section 26.

(i.)

(i.) *Where amount payable has been ascertained or decided, and payment into Court is made under Rule 60.*

In the County Court of . . . holden at . . .

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that the sum of . . . has been paid into court as compensation in the above-mentioned matter.

Any person interested in the said sum may apply to the court for an order for the investment and application of the said sum for the benefit of the persons entitled thereto in accordance with section 26 of the Workmen's Compensation Act, 1925, and the rules of court made under the said Act.

Dated this . . . day of . . .

Registrar.

To . . .

(ii.)

Rules 61 (4),
62 (3).

(ii.) *Where amount payable has not been ascertained or decided, and payment into Court is made under Rule 61 or Rule 62.*

In the County Court of . . . holden at . . .

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that the sum of £ . . . has been paid into court as compensation in the above-mentioned matter.

If any question arises as to the adequacy of the amount paid into court, such question, and all questions as to who are dependants, and the amount payable to each dependant, must be settled by arbitration in accordance with the above-mentioned Act and the Rules of Court made under the said Act.

If no question arises as to the adequacy of the amount paid into court, any person interested in the said sum may apply to the court for an order for the investment and application of the said sum for the benefit of the persons entitled thereto in accordance with section 26 of Workmen's Compensation Act, 1925, and the Rules of Court made under the said Act.

Dated this . . . day of . . .

Registrar.

To . . .

FORM 59.

Rules 60 (10a),
61 (8), 62 (3).

Application for Investment or Application of Money paid into Court under Section 26, and Rules 60, 61, 62.

[*Not to be printed, but to be used as a Precedent.*]

(1) *Application for Investment and Application of the Sum paid into Court.*

In the County Court of . . . holden at . . .

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that I [name and address of applicant] . . . intend to apply to the judge at . . . , on . . . the . . . day of . . . , at the hour of . . . in the . . . noon, on behalf of myself and of [specify the persons on whose behalf the application is made], as dependants of the above-named A. B., for an order for the investment and application of the sum paid into court in the above-mentioned matter, and

for the allotment of the same between the dependants of the said A. B.

To the best of my knowledge and belief the persons interested in the said sum as dependants of the said A. B. are

[*State dependants, with their ages and relationship to deceased workman, and places of residence.*]

I intend to apply for an order for the investment and application of the said sum, and for the allotment of the same between the dependants of the said A. B. as follows, viz. :—

[*State how applicant wishes the sum to be dealt with.*]

or in such other manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under the above-mentioned Act, and for consequential directions.

Dated this day of

(Signed)

To the Registrar and (to any other parties interested, where the application is made on behalf of some only of the parties interested).

(2) *Application for Investment and Application of the Amount allotted to any Person.*

In the County Court of holden at

[*Heading as in Præcipe for Payment into Court.*]

Take notice, that I [name and address of applicant] intend to apply to the judge at on the day of at the hour of in the noon, on behalf of myself [or of] for an order for the investment and application of the sum paid into court in the above-mentioned matter and allotted to me [or to the said].

I intend to apply for an order for the investment and application of the said sum as follows, viz. :—

[*State how applicant wishes the sum to be dealt with.*]

or in such other manner as the court in its discretion thinks fit for my benefit [or for the benefit of the said], and for consequential directions.

Dated this day of

(Signed)

To the Registrar.

FORM 60.

Application for Order for Payment into Court of Weekly Payment payable Rule 63. to Person under Disability. Section 26 (2), and Rule 63.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at

[*Heading as in Award, Memorandum, or Certificate.*]

Take notice, that I [name and address of applicant] intend to apply to the judge at on the day of at the hour of in the noon, for an order that the weekly payment payable in the above-mentioned matter to a person under legal disability [or to me] be during his [or my] disability paid into court, and for consequential directions.

Dated this day of

(Signed)

To the Registrar
and (to the parties
interested).

FORM 61.

Rule 64.

Application for Variation of Order under Section 22, and Rule 64.*[Not to be printed, but to be used as a Precedent.]**[Heading as in Award, Memorandum or Certificate.]*

Take notice, that I [name and address of applicant] intend to apply to the judge at _____ on the _____ day of _____, at the hour of _____ in the _____ noon, for an order that the order of the court [or the award] made in the above-mentioned matter on the _____ day of _____ as to the apportionment of the sum paid as compensation among the dependants of A. B. deceased [or as to the manner in which the sum payable to _____ a dependant of A. B. deceased, should be invested, applied or otherwise dealt with] may be varied by directing [here state variation claimed by applicant] and for consequential directions.

And further take notice that the circumstances in which this application is made are

(State particulars.)

Dated this

day of _____

(Signed)

Applicant.

[Or _____
Applicant's Solicitor.]

To the Registrar,
and to (all persons
interested).

FORM 62.

Rule 66 (2).

Application by Workman intending to cease to reside in the United Kingdom for Reference to Medical Referee under Section 16.*[Not to be printed, but to be used as a Precedent.]*

In the County Court of _____ holden at _____

In the matter of the Workmen's Compensation Act, 1925,
and

In the matter of an agreement [or a decision or an award or a certificate] recorded in the above-mentioned Court as to the weekly payment payable to A. B. of _____ by C. D. & Co., Limited,
of _____

Take notice, that A. B. of _____, to whom under an agreement [or a decision or an award or a certificate] in the above-mentioned matter recorded in this Court on the _____ day of _____ a weekly payment of _____ is payable by the above-mentioned C. D. & Co., Limited, as compensation for personal injury caused to the said A. B. by accident arising out of and in the course of his employment, intends to cease to reside in the United Kingdom;

And that the said A. B. intends to apply to the registrar at _____, on _____ the _____ day of _____, at the hour of _____ in the _____ noon, for an order referring to a medical referee the question whether the incapacity of the said A. B. resulting from the injury is likely to be of a permanent nature,

A report of a medical practitioner, setting out the nature of the incapacity of the said A. B. resulting from the injury, is hereto annexed.

Dated this

day of _____

(Signed)

Applicant.

[Or _____

Applicant's Solicitor.]

To the Registrar of the Court
and to (the employer).

FORM 63.

Order of Reference, Section 16.

Rule 66 (6).

In the County Court of _____ holden at _____
 On the application of _____ of _____ (a copy of which is hereto
 annexed),
 I hereby appoint Mr. _____ of _____ one of the medical referees
 appointed by the Secretary of State for the purposes of the Workmen's
 Compensation Act, 1925, to examine the said (name of workman)
 and to give his certificate as to whether the incapacity of the said (name of
 workman) resulting from the injury is likely to be of a permanent
 nature.

A copy [or copies] of the report [or reports] of the medical practitioner
 [or practitioners] by whom the said _____ has been examined is [or are]
 hereto annexed. [Add, if so, Copies of the statements submitted to me by
 the parties are also hereto annexed.]

The said _____, who is now at _____, has been directed to submit
 himself for examination by the referee.

I am satisfied that the said _____ is in a fit condition to travel for the
 purpose of being examined, and he has been directed to attend on the referee
 for examination at such time and place as may be fixed by the referee.

[or The said _____ does not appear to be in a fit condition to travel for
 the purpose of being examined.]

The referee is requested to forward his certificate to the registrar at the
 County Court Office situate at _____ on or before the _____ day of _____
 , specifying therein the nature of the incapacity of the said
 _____, resulting from the injury, and whether such incapacity is likely
 to be of a permanent nature.

Dated this _____ day of _____
 _____ Judge [or Registrar].

FORM 64.

[To be printed on thick blue foolscap.]

Certificate of Identity.

Rules 66 (10c),
 75 (11).

[TO BE CAREFULLY PRESERVED.]

NOTICE.—THIS CERTIFICATE IS NO SECURITY WHATEVER FOR A DEBT.

No. of Certificate _____

In the County Court of _____ holden at _____

[Heading as in Award, Memorandum, or Certificate.]

This is to certify that A. B. _____ late of [address and description]
 is entitled to a weekly payment of _____ from [name and address of
 employer].
 as compensation payable to the said A. B. _____ in respect of personal
 injury caused to him by accident arising out of and in the course of his
 employment, such weekly payment to continue during the total or partial
 incapacity of the said A. B. _____ for work;
 And that the description of the said A. B. _____ and his incapacity for
 work, as certified by the medical referee appointed in this matter, are as
 follows:—

Age,
 Height,
 Hair, Eyes,
 Nature of incapacity,

[Describe nature of incapacity, as in certificate of medical referee.]

Dated this _____ day of _____

Registrar.

FORM 65.

Rule 66 (10).

Notice to be given to Workman intending to cease to reside in the United Kingdom.*[Heading as in Award, Memorandum, or Certificate.]*

Take notice, that if you desire to obtain payment of the weekly payments payable to you under the award [memorandum or certificate] hereto annexed while you are residing out of the United Kingdom, you must, at intervals of three months from the date up to which such payments have been made, submit yourself to examination by a medical practitioner in the place where you are residing, and produce to him the copy of the certificate of the medical referee and the certificate of identity hereto annexed; and you must obtain from such medical practitioner a certificate in the form hereto annexed that he has examined you, and that your incapacity resulting from the injury specified in the certificate of the medical referee continues: and such certificate must be verified by the medical practitioner by declaration in your presence before some such person as hereinafter mentioned.

You must also attend before some such person as hereinafter mentioned, and make a declaration in the form hereto annexed that you are the same person as mentioned in the copy of the certificate of the medical referee and in the certificate of identity hereto annexed, and in the certificate of the medical practitioner by whom you have been examined, producing to such person the copy and certificates above mentioned.

You must then transmit to me, at my office, situate at _____, the certificate of the medical practitioner by whom you have been examined, and your declaration, together with a request for transmission to you of the amount of the weekly payments due to you, specifying the place where and the manner in which the amount is to be transmitted, according to the form hereto annexed, which request must be signed in your own handwriting.

In the event of your death while residing out of the United Kingdom, your representatives must, in order to obtain payment of the arrears due to you, transmit to me at my office, situate at _____, a certificate of your death, and documents showing that they are entitled to such arrears, verified by declaration before a person having authority to administer an oath, with a request for transmission to them of the amount of such arrears, specifying the place where and the manner in which such amount is to be transmitted to them.

The expression "your representatives" means—

- (a) if you leave a will, the executors of such will; or
- (b) if you die intestate, the persons who are according to law entitled to your personal estate; and payment of the arrears may be made to such persons without the production of letters of administration.

The persons before whom a certificate may be verified or a declaration made are:—

1. Any person having authority to administer an oath in the place in which you reside.
2. Any British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation, exercising his functions in any foreign place in which you reside, or any British consul-general, consul, vice-consul, acting-consul, pro-consul, or consular agent exercising his functions in any foreign place in which you reside.

Dated this _____ day of _____.

T. A. B.
of (address and description).

Registrar.

FORM 66.

Form of Medical Certificate to be obtained by Workman residing out of the United Kingdom. Rule 66 (10, 11).

[Heading as in Award, Memorandum, or Certificate.]

I (name, address, and medical qualification of medical practitioner) hereby certify that I have this day examined A. B. of , whom I conscientiously believe to be the same person as A. B. of , described in the copy certificate of the medical referee in the above-mentioned matter, dated the day of , and in the certificate of identity dated the day of produced to me by the said A. B. ; and that in my opinion the incapacity of the said A. B. resulting from the injury described in the said certificate of the medical referee still continues.

Dated this day of (Signature)

Declared at this day of , in the presence of the said A. B. , the copy of the certificate of the medical referee and the certificate of identity above mentioned being at the same time produced,

Before me—

[Signature and description of person before whom the declaration is made.]

FORM 67.

Declaration of Identity by Workman residing out of the United Kingdom. Rule 6 (10, 12).

[Heading as in Award, Memorandum, or Certificate.]

I, A. B. of hereby declare that I am the same person as A. B. of described in the copy of the certificate of the medical referee in the above-mentioned matter, dated the day of , now produced by me, and in the certificate of identity, dated the day of , now produced by me, and the same person as A. B. of described in the certificate of declared by the said in my presence on the day of , and now produced by me.

(Signed)

Declared at this day of , the certificates above mentioned being at the same time produced,

Before me—

[Signature and description of person before whom the declaration is made.]

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FORM 68.

Rule 66 (15). Request for Transmission of Amount of Weekly Payments by Workman residing out of United Kingdom.

[Heading as in Award, Memorandum, or Certificate.]

Sir,

I herewith enclose medical certificate and affidavit of identity, and request that the amount of the weekly payments due to me in the above-mentioned matter may be transmitted to me at

(give full address)

(state how transmission to be made, as) —

by Post Office Order payable at

(name of Post Office)

or by bankers draft on the

(name and address of Bank).

I am, Sir,

Your obedient Servant,

A. B.

[To be signed by the workman in his own handwriting.]

To the Registrar

of the County Court of

holden at

[add address of Registrar's Office.]

FORM 69.

Rules 66 (15), 75 (15). Notice by Registrar to Employer of Receipt of Medical Certificate and Declaration of Identity.

[Heading as in Award, Memorandum, or Certificate.]

TAKE NOTICE, that I have received proof of identity and of continuance of incapacity in the above-mentioned matter.

And I have to request you to transmit the sum of _____, being the amount of the weekly payments payable to A. B. _____ under the above-mentioned award [memorandum or certificate] from (the date to which they were last paid _____) to _____ (13 weeks from that date) to me, to be by me remitted to the said A. B.

Dated this _____ day of _____

To (name and address of employer).

Registrar.

FORM 70.

Rules 73, 74.

Certificate of Registrar where lump Sum payable in Redemption of weekly Payments to French Citizen or Sum payable to Dependents of French Citizen is to be transmitted to France. Rules 73, 74.

In the matter of the Workmen's Compensation Act, 1925, and the Anglo-French Convention, 1909.

In the matter of an arbitration between A. B. of _____, Applicant.

No. of Matter _____

C. D. of _____, Respondents.

I hereby certify—

1. That on the _____ day of _____ an award was made by the Judge of this Court in the above-mentioned matter, whereby the above-mentioned

C. D. were ordered to pay to the above-mentioned A. B., a French citizen, the weekly sum of _____ as compensation for personal injury caused to the said A. B. on the _____ day of _____ by accident arising out of and in the course of his employment as a workman employed by the said C. D.

2. And that on the _____ day of _____ a further award was made by the Judge of this Court in the above-mentioned matter whereby the above-mentioned C. D. were ordered to pay to the said A. B. the lump sum of £ _____ in redemption of the said weekly payment;

3. And that the said A. B. has signified to me his intention of returning to reside in France.

[Or, in case of deceased workman,

I hereby certify—

1. That on the _____ day of _____ an award was made by the Judge of this Court in the above-mentioned matter, whereby the above-mentioned C. D. were ordered to pay to [here insert names of dependants, as appearing in the award],

the dependants of A. B., late of _____ deceased, a French citizen, the sum of £ _____ as compensation for the injury resulting to such dependants from the death of the said A. B. which took place on the _____ day of _____ from injury caused to the said A. B. on the _____ day of _____ by accident arising out of and in the course of his employment as a workman employed by the said C. D.

2. And that the dependants of the said A. B. have signified to me their intention of returning to reside in France [or resided in France at the time of the death of the said A. B.].

I do therefore, pursuant to the Workmen's Compensation Act, 1925, the Anglo-French Convention, 1909, and the Order in Council made in that behalf, herewith pay over to the Caisse Nationale des Retraites pour la Vieillesse the sum of £ _____ sterling, being the total sum due to the said A. B.

[or to the dependants of the said A. B.] under the said award, to be applied in accordance with the said Convention.

Dated this _____ day of _____

Registrar.

To the Controller

Caisse Nationale Française des Retraites pour la Vieillesse,
Paris, France.

FORM 71.

Application by Workman in Receipt of weekly Payment, who is a French Citizen and intends to return to reside in France, for Reference to Medical Referee under Rule 75 (4). Rule 75 (4).

In the County Court of _____ holden at _____

In the matter of the Workmen's Compensation Act, 1925,
and _____

In the matter of an award recorded in the above-mentioned Court as to the weekly payment payable to A. B., of _____, by C. D. & Co., Limited, of _____

Take notice, that A. B., of _____, a French citizen, to whom under an award in the above-mentioned matter recorded in this Court on the _____ day of _____ a weekly payment of _____ is payable by the above-mentioned C. D. & Co., Limited, as compensation for personal injury caused to the said A. B. by accident arising out of and in the course of his employment, intends to return to reside in France;

And that the said A. B. intends to apply to the registrar at _____ on the _____ day of _____ at the hour of _____ in the _____

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noon, for a certificate of a medical referee as to the nature of the incapacity of the said A. B. resulting from the injury.

Dated this day of

(Signed)

Applicant.

[Or, Applicant's Solicitor.]

To the Registrar of the Court
and to [the employer].

FORM 72.

Rule 75 (7).

Order of Reference, Rule 75 (7).

In the County Court of holden at

[Heading as in Application, Form 71.]

On the application of of (a copy of which is hereto annexed),

I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1925, to examine the said [name of workman], and to give his certificate as to the nature of the incapacity of the said [name of workman] resulting from the injury.

The nature of the injury in respect of which the award was made, so far as it appears on the records of the Court, was as follows [state it.]

A copy [or copies] of the report [or reports] of the medical practitioner [or practitioners] by whom the said has been examined is [or are] hereto annexed. [Add, if so, Copies of the statements submitted to me by the parties are also hereto annexed.]

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[or The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court office situate at on or before the day of , specifying fully therein the nature of the incapacity (if any) of the said resulting from the injury.

Dated this day of ,

Judge [or Registrar].

FORM 73.

Rule 75 (10).

Application by French Citizen intending to return to reside in France to fix Intervals at which Certificates of Continuance of Incapacity are to be furnished by him. Rule 75 (10).

[Heading as in Form 71.]

TAKE NOTICE, that I intend to apply to the registrar at on the day of , at the hour of in the noon, for an order fixing the intervals at which certificates of the continuance of the incapacity specified in the certificate of the medical referee given in this matter are to be furnished by me on my returning to reside in France.

Dated this day of

(Signed)

Applicant.

To the Registrar of the Court
and to (the employer).

FORM 74.

Order as to Intervals at which Certificates of Continuance of Incapacity are to be furnished by French Citizen residing in France. Rule 75 (10).

[Heading as in Form 71.]

On the application of I order that certificates of the continuance of the incapacity specified in the certificate of the medical referee given in this matter are to be furnished by the said , who intends to return to reside in France, at intervals of months, the first of such certificates to be furnished on the day of

Dated this day of 19

Registrar.

To [the applicant and
the employer].

FORM 75.

Notice to be given to Workman who is a French Citizen and intends to return to reside in France. Rule 75 (11).

[Heading as in Award.]

TAKE NOTICE, that if you desire to have the weekly payments payable to you under the award hereto annexed remitted to you while you are residing in France, you must at intervals of three months from the date up to which such payments have been made produce to the Mayor of the Commune in which you reside the certificate of identity hereto annexed, and obtain from him a certificate that you were alive on the day when the certificate of identity was produced. You must also at intervals of* months from the date up to which such payments have been made obtain from a medical practitioner employed in an official capacity in the Department in which you reside a certificate that he has examined you and that your incapacity resulting from the injury, as specified in the certificate of the medical referee hereto annexed, still continues. * As fixed by the Registrar.

You must then forward the certificate of the Mayor, and, where a certificate of a medical practitioner is required, such certificate (which certificate or certificates must be authenticated by a *visé* of the Prefecture of the Department attesting the official status of the Mayor and medical practitioner respectively), with a request for payment of the weekly payments due to you, to the French consular authority for the district in which the Court is situated, to be by him transmitted to me.

In the event of your death while in the receipt of weekly payments, your representatives must, in order to obtain payment of the arrears due to you, forward a certificate of your death and documents showing that they are entitled to such arrears, with a request for payment of such arrears, to the consular authority, to be by him transmitted to me.

Dated this day of

Registrar.

To A. B.
[Address and description.]

LIABILITY OF EMPLOYERS FOR INJURIES TO WORKMEN.

FORM 76.

Rule 80 (5).

Notice of Application for Determination of Amount of Costs under
Schedule I, Paragraph 10, and Rule 80.

[Not to be printed, but to be used as a Precedent.]

In the County Court of _____ holden at _____

[Heading as in Award or Memorandum.]

TAKE NOTICE, that I intend to apply to the judge at _____ on
the _____ day of _____ at the hour of _____ in the _____ noon,
to determine the amount of costs to be paid to me as solicitor [or agent] for
you A. B. _____ in the above-mentioned matter; _____ and for an order
declaring that I am entitled to a lien for such amount on or to deduct such
amount from the sum awarded as compensation to you the said A. B.
in the above-mentioned matter, _____ and for consequential directions.

Dated this _____ day of _____

To the Registrar of the Court, _____ and to _____ Applicant.
of _____ A.B.

FORM 77.

Rule 82.

Execution on Award or Memorandum or Certificate.

In the County Court of _____, holden at _____

[Heading as in Award, Memorandum, or Certificate.]

Whereas on the _____ day of _____ an award was made in the above-
mentioned matter by the judge [or by Mr. _____, an arbitrator appointed
by the judge] whereby it was ordered [state operative parts of award]

[or Whereas on the _____ day of _____ a memorandum was recorded
in this Court of an agreement [or a decision or an award] come to [or given or
made] in the above-mentioned matter, whereby it was agreed [or ordered]
[state operative parts of agreement, decision or award]:

[or Whereas on the _____ day of _____ a memorandum was recorded in
this Court of a certificate given by the County Court of _____ holden at _____
to the effect that [state operative parts of certificate]:

And whereas default has been made in payment of the sum of £ _____
payable by the said _____ into Court _____ [or to the said A. B.
_____] according to the said award [or memorandum or certificate];

These are therefore to require and order you forthwith to make and levy
by distress and sale of the goods and chattels of _____ [name the party]

against whose goods execution is issued] wheresoever they may be found within the district of this Court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due under the said award [or memorandum or certificate], together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the Registrar of this Court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this 11 day of March 19 11
By the Court
To the High Bailiff of the said Court, Registrar,
and others the Bailiffs thereof.

	£	s.	d.
Amount in payment whereof default has been made ...			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said

Application was made to the Registrar for this warrant at 11 minutes past the hour of noon in the 11 day of March 19 11

SEE BACK.

[To be indorsed on every warrant of execution.]

51 & 52 Vict.
c. 42, s. 155.

FEES FOR THE EXECUTION OF THIS WARRANT.

The fees for keeping possession of the goods seized (including expenses of removal, storage of goods, and all other expenses) is SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10s. per day although the value may exceed 20 $\frac{1}{2}$ l., and, in addition, for feeding animals, the actual cost thereof.

If the debtor pays the amount to be levied, as stated on the other side, within half an hour of the entry of the bailiff, he will not be required to pay to him any further sum.

If possession is kept after the seventh day at the written request of both parties, the fees and costs of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If the goods are removed, the debtor will have to pay the appraisement fee as undermentioned.

If the goods are sold, the following fees are chargeable for the appraisement and sale, and no others:—

For the appraisement, SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

Order XXV.
Rule 17.

For the sale, including advertisements, catalogues, sale and commission and delivery of the goods, ONE SHILLING AND SIXPENCE IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisalment, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, the value to be fixed by appraisalment in case of dispute, and in addition any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

If the goods are removed, the bailiff is required to give the debtor a sufficient inventory of the goods so removed, and to give him notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If the goods are sold, the bailiff is required to furnish the debtor, on request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

[This form to be adapted to the circumstances of the case where execution is ordered to issue under Rule 81, paragraph (e), for costs.]

FORM 78.

Rule 83 (3).

Judgment Summons on Award, Memorandum, or Certificate.

In the County Court of *holden at*

[Heading as in Award, Memorandum, or Certificate.]

Whereas on the *day of* an award was made in the above-mentioned matter by the judge *[or by Mr. , an arbitrator appointed by the judge]*, whereby it was ordered *[state operative parts of award]*:

[or Whereas on the day of a memorandum was recorded in this court of an agreement [or a decision or an award] come to [or given or made] in the above-mentioned matter, whereby it was agreed [or ordered] [state operative parts of agreement, decision, or award] :

[or Whereas on the day of a memorandum was recorded in this court of a certificate given by the County Court of holden at to the effect that [state operative parts of certificate] :

And whereas default has been made in payment of the sum of £ payable by you the above-named into court *[or to the said A. B.]* according to the said award *[or memorandum or certificate]* :

You the said are therefore hereby summoned to appear personally in this court at *[place where court holden]* on the day of 19 at the hour of in the noon, to be examined on oath by

the court touching the means you have or have had since the date of the award [or memorandum or certificate] to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default, or why a receiving order should not be made against you pursuant to sub-section 5 of section 107 of the Bankruptcy Act, 1914.

Dated this ... day of ... 19 ..

Registrar.

To ...

[name and address of the party against

whom the summons is issued.]

	£	s.	d.
Amount in payment of which default has been made ...			
Cost of this summons			
Total sum due			

NOTE.—This form to be adapted to the circumstances of the case where a summons is issued under the County Court Rules, Order XXV., Rule 27, against a person alleged to be a partner in or sole member of a firm, or to be carrying on business in any name other than his own; see Form 184 in the Appendix to the County Court Rules. If an order of commitment is made it should be according to Form 189 or Form 191 in the said Appendix, such form being adapted to the case of default in payment of an amount due under an award, memorandum, or certificate.

FORM 79.

Register.

The Workmen's Compensation Act, 1925.

1e 97.

Register.

No. of Matter.	Title.	Date of Proceedings.	Nature.
1.	In the matter of the arbitration between A. B., of &c., Applicant, and C. D. & Co., Limited, of, &c., Respondents.	July 11, 1913	Request for arbitration filed, and copy sent to judge.
		July 20, 1913	Appointment of Mr. as arbitrator.
		July 24, 1913	Copy request sent to arbitrator.
		July 29, 1913	Day for arbitration fixed.
		July 29, 1913	Notice of day fixed sent to applicant, and notice with copy request sent to respondents by registered post.

REGISTER—*continued.*

No. of Matter.	Title.	Date of Proceedings.	Nature.
2.	In the matter of an agreement between A. B., of and E. F. & Co., Limited, of, &c.	Aug. 5, 1913	Respondents' answer filed; copies sent to arbitrator and applicant.
		Aug. 19, 1913	Five subpoenas issued on application of applicant's solicitor.
		Aug. 23, 1913	Arbitration held; Mr. appointed as medical referee to report; further hearing adjourned.
		Sept. 5, 1913	Report of medical referee received and forwarded to arbitrator; notice given to the parties.
		Oct. 16, 1913	Further hearing. Award made as follows (enter minute of award).
		Oct. 23, 1913	Costs of applicant taxed at £
		Nov. 5, 1913	£ for costs paid into court by respondents.
		Nov. 11, 1913	£ for costs paid to applicant's solicitor.
		Oct. 7, 1913	Memorandum of agreement as to compensation, signed by A. B., left to be recorded.
		Oct. 8, 1913	Notice and copy memorandum sent by post to E. F. & Co., Limited.
		Oct. 10, 1913	Notice received from E. F. & Co., Limited, disputing memorandum.
		Oct. 10, 1913	Notice sent to A. B. that memorandum is disputed, and will not be recorded without consent in writing of E. F. & Co., Limited, or order of judge.

REGISTER—continued.

No. of Matter.	Title.	Date of Proceedings.	Nature.
		Oct. 15, 1913	Application on behalf of A. B. that memorandum be recorded.
		Oct. 22, 1913	Application heard, and order made that memorandum be recorded with alterations.
		Oct. 24, 1913	Memorandum recorded as follows [<i>set out memorandum</i>];
		Oct. 31, 1913	Costs of A. B. taxed and allowed at £
		Nov. 18, 1913	Execution issued for costs, &c., &c., &c.

NOTE.—Similar entries to be made as to all matters required to be recorded.

FORM 80.

Order for Request to Examine Witnesses in Denmark.

[Heading as in Award.]

It is ordered that a letter of request do issue directed to the proper tribunal Rule 75A (4). for the examination of the following witnesses, that is to say: E.F. of , G.H. of , and I.J. of . And it is ordered that the depositions taken pursuant thereto, when received, be filed in this Court, and be given in evidence on the hearing of this arbitration, saving all just exceptions.

FORM 81.

Letter of Request to Examine Witnesses in Denmark.

To the Competent Judicial Authority of in the Kingdom of Rule 75A (4). Denmark.

Whereas an arbitration under the Workmen's Compensation Act is now pending in the County Court of , holden at , in England, in which is applicant, and is the respondent, and a copy of the request for arbitration with the particulars appended or annexed thereto accompanies this letter of request.

And whereas it has been represented to the said Court that it is necessary for the purpose of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say : , of and , of .

And it appearing that such witnesses are resident within your jurisdiction.

Now I, , Judge of the said County Court in England, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you will be pleased to summon the said

witnesses (and such other witnesses as the agents of the said applicant and respondent shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined [upon the interrogatories which accompany this Letter of Request] *viva voce* touching the said matters in question in the presence of the agents of the applicant and respondent or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will permit the agents of both the said applicant and respondent or such of them as shall be present to be at liberty to examine [upon interrogatories and *viva voce* upon the subject matter thereof or arising out of the answers thereto] such witnesses as may, after due notice in writing, be produced on their behalf, and give liberty to the other party to cross-examine the said witnesses [upon cross interrogatories and *viva voce*] and the parties producing the witnesses for examination the liberty to re-examine him *viva voce*.

And I further have the honour to request that you will be pleased to cause [the answers of the said witnesses and all additional *viva voce* questions, whether on examination, cross-examination, or re-examination] the evidence of such witnesses to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your Tribunal or in such other way as is in accordance with your procedure and to return the same together with [the interrogatories and cross-interrogatories, and] a note of the charges and expenses (if any) payable in respect of the execution of this request, through the Workers' Insurance Council (Arbejderforsikringsraadet, 3-5 Kongens Nytorv, Copenhagen), for transmission through the Under-Secretary of State, Home Office, Whitehall, London, to the said County Court.

And I further beg to request that you will cause me, or the agents of the parties, if appointed, to be informed of the date and place where the examination is to take place.

Dated the day of , 19 .

FORM 82.

Undertaking as to Expenses in respect of Letter of Request.

Rule 75A (4).

In the County Court of sholden at 19 No. .
In the Matter of the Workmen's Compensation Act, 1925,
and

In the matter of an Arbitration between Applicant and
Respondent.

I (or We) hereby undertake to be responsible for all expenses incurred by His Majesty's Secretary of State for Home Affairs in respect of the Letter of Request issued herein on the and on receiving due notification of the amount of such expenses, undertake to pay the same as directed by the Judge of the said County Court.

The following have been appointed as agents for the parties in connection with the execution of the above Letter of Request :—

Applicant's agent of .

Respondent's agent of .

Dated the day of , 19 .

Solicitors for .

Note.—Forms 80, 81 and 82 above were added by the Workmen's Compensation (Danish Convention) Rules, 1927, dated 5th May, 1927.

APPENDICES.

APPENDIX AA.

NATIONAL HEALTH INSURANCE ACT, 1924.

(14 & 15 GEO. 5, c. 38, s. 16.)

(As amended by National Health Insurance Act, 1928 (18 & 19 Geo. 5, s. 14).)

Provisions of the National Health Insurance Act, 1924, as to right to insurance pay where compensation is being paid or is recoverable.

(NOTE.—Sect. 11 of the Act of 1911 as amended by sect. 19 of the Act of 1918, and sect. 17 of the Act of 1920 have been repealed, and are consolidated in sect. 16 of the present Act.)

16.—(1) Where an insured person has received or recovered or **Special provisions applicable to contributors entitled to compensation or damages.** is entitled to receive or recover, whether from his employer or any other person, any compensation or damages under the Workmen's Compensation Act, 1906 (*a*), as amended by any subsequent enactment, or under any scheme certified thereunder, or under the Employers' Liability Act, 1880 (*a*), or at common law, in respect of any injury or disease, the following provisions shall have effect:—

(*a*) No sickness benefit or disablement benefit shall be paid to the insured person in respect of that injury or disease in any case where any weekly sum or the weekly value of any lump sum paid or payable by way of compensation or damages is equal to or greater than the benefit otherwise payable to that person unless and except so far as such weekly or lump sum is irrecoverable, and where any such weekly sum or the weekly value of any such lump sum is less than the benefit in question, such part only of the benefit shall be paid as, together with the weekly sum or the weekly value of the lump sum if and so far as such weekly or lump sum is recoverable, will be equal to the benefit:

(*b*) The weekly value of any such lump sum as aforesaid may, subject to the provisions of this Act relating to the decision of disputes between insured persons and approved societies or insurance committees, be determined by the society or

(*a*) 6 Edw. 7, c. 58, and 43 & 44 Vict. c. 42, Chit. Stat., tit. "*Master and Servant*."

Section 16.

committee by which the sickness and disablement benefits payable to the insured person are administered :

(c) Repealed by National Health Insurance Act, 1928.

Payments
taken into
account in
computing
benefit.

(2) Where an insured person has recovered compensation in respect of any injury or disease and in fixing the amount of the weekly payment regard was had to any such payment, allowance or benefit as is mentioned in paragraph (3) of the First Schedule to the Workmen's Compensation Act, 1906 (b), or where an insured person who is entitled to receive or recover, but has not received or recovered, any such compensation is in receipt of any such payment, allowance or benefit, as aforesaid, the weekly value of that payment, allowance or benefit, as determined by the society or committee, or in the case of a dispute as determined in manner provided by this Act, shall, in computing under the foregoing subsection of this section what part of the benefit is to be paid to the insured person, be added to the weekly sum payable by way of compensation or be treated as being a weekly sum payable by way of compensation, as the case may be, and taken into account accordingly :

Provided that no account shall be taken of any such payment, allowance or benefit so far as the weekly value thereof together with the weekly sum, if any, or the weekly value of the lump sum, if any, paid or payable by way of compensation, exceeds the amount of the weekly payment which the insured person would, if there had been no such payment, allowance or benefit, have been entitled to receive or recover by way of compensation under the said Act.

Consequences
of neglect to
enforce claim.

(3) Where an insured person appears to be entitled to any such compensation or damages as aforesaid and unreasonably refuses or neglects to take proceedings to enforce his claim, it shall be lawful for the society or committee concerned, either—

(a) at its own expense, to take such proceedings in the name and on behalf of the insured person, in which case any compensation or damages recovered shall be held by the society or committee as trustee for the insured person ; or

(b) to withhold payment of any benefit to which but for this section the insured person would be entitled.

In the event of the society or committee concerned taking proceedings as aforesaid and failing in the proceedings, it shall be responsible for the costs of the proceedings as if it were claiming on its own account.

(4) Nothing in this section shall prevent the society or committee from paying benefit to an insured person by way of advance pending the settlement of his claim for compensation or damages, and any advance so made shall, without prejudice to any other method of recovery, be recoverable by deductions from or suspension of any benefits which may subsequently become payable to the insured person.

Section 16.

Benefit payable in advance.

(5) Where any society or committee in pursuance of the last preceding subsection has made or intends to make advances to an insured person the society or committee may give notice thereof in the prescribed form to the person liable to pay the Compensation or damages, and if such notice is given the person so liable shall, notwithstanding anything in the Workmen's Compensation Act, 1906 (c), on demand and on being furnished with the prescribed proof of the amount of the advances made, repay to the society or committee, up to the amount which he is liable to pay as compensation or damages, less such part, if any, of that amount as he has already duly paid at the time of receiving the notice aforesaid, the amount advanced, and the receipt of the society or committee shall up to the amount of the repayment, be a full and valid discharge to him in respect of the compensation or damages payable by him to the insured person :

Repayment by person liable for compensation.

Provided that, if the person so liable to pay compensation or damages gives to the society or committee by which such notice as aforesaid is given notice in the prescribed form that he intends to pay or that he has paid compensation or damages, he shall not be under any obligation to make any repayment in respect of any advance made after the date of the payment of the compensation or damages or after the time at which the notice so given by him is received by the society or committee, whichever is the later.

For the purposes of this subsection a person against whom a claim for damages or compensation has been made shall be deemed to be a person liable to pay compensation or damages if he has agreed to pay a sum in composition of the claim, notwithstanding that he does not admit liability, and the sum payable under the agreement shall be deemed to be compensation or damages.

Note.—Last paragraph added by National Health Insurance Act, 1928.

(6) Where any pension, grant or allowance has been granted to any insured person in pursuance of the Injuries in War (Compensation) Act, 1914 (d), or the Injuries in War Compensation Act, 1914 (Session 2) (e), or the Injuries in War (Compensation) Act, 1915 (f),

Pensions, grants, &c., treated as compensation.

(c) 6 Edw. 7, c. 58, Chit. Stat., tit. "*Master and Servant*."

(d) 4 & 5 Geo. 5, c. 30, Chit. Stat., vol. xviii., p. 29.

(e) 5 & 6 Geo. 5, c. 18, Chit. Stat., vol. xviii., p. 30.

(f) 5 & 6 Geo. 5, c. 24 Chit. Stat., vol. xviii., p. 648.

Section 16. or any similar Act with respect to which regulations made with the consent of the Treasury provide that this sub-section shall apply, or in pursuance of any scheme for compensation in respect of persons injured on any merchant ship or fishing vessel in connection with which any Government obligations within the meaning of the Government War Obligations Act, 1915 (*g*), are incurred, then as from the prescribed date that pension, grant or allowance shall, for the purposes of this section, be treated as if it were compensation under the Workmen's Compensation Act, 1906.

See as to repayment of poor relief, p. 1364.

Proceedings by Society.—The society can only take proceedings to enforce the claim of a workman to compensation when the workman unreasonably refuses or neglects to do so, but the society in such case may withhold payment of insurance benefit (sect. 16 (3)). See as to this *Rushton v. Skey*, (1914) 3 K. B. 706; 7 B. W. C. C. 508; *Burnham v. Hardy*, (1915) 84 L. J. K. B. 714; 8 B. W. C. C. 57; *Allen v. Francis*, (1914) 3 K. B. 1065; 7 B. W. C. C. 779; *Doughty v. Altham Colliery Co.*, (1916) 9 B. W. C. C. 268; *Skelton v. Baxter*, (1916) 1 K. B. 321; 9 B. W. C. C. 97.

Trades Union.—A trades union may assist a workman in taking proceedings but may not take proceedings in his name (*Bobbey v. W. M. Crosbie & Co., Ltd.*, (1915) 8 B. W. C. C. 236).

APPENDIX BB.

REGULATIONS, DATED JUNE 21, 1907, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE DUTIES AND FEES OF CERTIFYING AND OTHER SURGEONS, AND AS TO REFERENCES TO AND REMUNERATION AND EXPENSES OF MEDICAL REFEREES, IN ENGLAND AND WALES, UNDER SECTION 8 OF THE ACT OF 1906.

(Amended December 2nd, 1908, May 10th, 1910, and December 17th, 1923.)

DEFINITIONS.

1. In these regulations—
 - (i.) "Act" means the Workmen's Compensation Act, 1906.
 - (ii.) "Workman" means a workman as defined in section 13 of the Act.
 - (iii.) "Certifying surgeon" means either the certifying surgeon mentioned in sub-section (1) (i.) of section 8 of the Act, or a medical practitioner appointed by the Secretary of State under sub-section (5) of section 8 to have the powers and duties of a certifying surgeon under the said section.
 - (iv.) "Appointed surgeon" means a surgeon having power, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, to suspend a workman from employment in the process or processes specified in such rules or regulations.
 - (v.) "Medical referee" means a medical practitioner appointed

(*g*) 5 & 6 Geo. 5, c. 96, Chit. Stat., vol. xviii., p. 924.

by the Secretary of State to act as medical referee for the purposes of section 8 of the Act.

- (vi.) The words "disease to which the Act applies" mean a disease mentioned in the third schedule to the Act or a disease or injury (not being an injury by accident) to which the provisions of section 8 of the Act have been extended by an Order made by the Secretary of State under sub-section (6) of that section.

2. Where a workman applies to a certifying surgeon for a certificate (hereinafter called "a certificate of disablement") that he is suffering from a disease to which the Act applies, and is thereby disabled from earning full wages at the work at which he was employed, the certifying surgeon, on payment of the prescribed fee, and after obtaining the particulars specified in the schedule to these regulations and such further information, if any, respecting the case as in the particular circumstances he may deem necessary, shall either proceed at once, if the application is made by the workman in person, to make a medical examination of the workman, or shall appoint forthwith a time and place for making such examination, and give notice thereof to the workman. Such notice, if given in writing, shall follow, as closely as may be, the form prescribed in the schedule. Form 1.

3. After personally examining the workman, the certifying surgeon shall either give the workman a certificate of disablement or shall certify that he is not satisfied that the workman is entitled to such certificate, and shall in either case deliver his certificate to the workman. The certificate given shall be in the form prescribed in the schedule to these regulations. Forms 3 and 5.

Not satisfied: See notes to section 8, *ante*.

4. Where, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, the certifying or appointed surgeon, after having personally examined a workman, suspends him from his usual employment on account of his having contracted any disease to which the Act applies, or where in the case of a workman applying to be suspended on account of his having contracted any such disease, the surgeon as aforesaid, after having personally examined such workman, refuses to order his suspension, he shall, on the application either of the employer or of the workman, and on payment of the prescribed fee, certify such suspension or refusal to suspend in accordance with the form prescribed in the schedule to these regulations, and shall deliver such certificate to the applicant. Forms 6 and 8.

5. Where a certificate of disablement is given or a workman is suspended, and the case is one in which, under the provisions of sub-section (2) of section 8 of the Act as extended by any order of the Secretary of State made under sub-section (6) of the said section, the disease contracted by the workman will be deemed, unless the employer proves, or the certifying surgeon certifies, to the contrary, to have been due to the nature of the employment in the process in which at or immediately before the date of the disablement or suspension the workman was employed, the certifying surgeon, if he is of opinion that the disease contracted by the workman was not due to the nature of such employment,

See Forms 4
and 7.

shall certify accordingly. Such certificate shall, where possible, be given simultaneously with, and included in, the certificate of disablement or the certificate (if any) of suspension, but may also be given separately on application by the employer and on payment of the prescribed fee; and in either case shall follow the form prescribed in the schedule to these regulations.

For the purposes of this regulation an appointed surgeon shall have the same powers and duties as a certifying surgeon.

6. A copy of any certificate given by a certifying or appointed surgeon under the foregoing regulations shall, together with any other documents relating to the case, be retained and kept by the surgeon; and copies of any such certificate shall, on payment of the prescribed fee, be supplied by the surgeon to the employer and the workman.

7. The fees which the certifying and appointed surgeons shall be entitled to charge in respect of duties performed under section 8 of the Act shall be as follows:—

FEES PAYABLE BY THE WORKMAN.

(i.) For any certificate given under regulation 3—

(a) in cases where the medical examination of the workman is made by the surgeon in the performance of his duties under the Factory and Workshop Act, 1901, a fee of 1s.;

(b) In all other cases, a fee of 5s., and where the workman is unable to present himself for examination at the residence of, or other nearer place fixed by, the certifying surgeon, for every mile or portion thereof which the certifying surgeon is required to travel therefrom for the purpose of examining the workman, an additional fee of 1s.

(ii.) For any certificate of suspension or refusal to suspend, under regulation 4, when the medical examination of the workman is made in pursuance of any special rules or regulations under the Factory and Workshop Act, 1901, a fee of 1s.

(iii.) For a copy of any certificate obtained under regulation 6, a fee of 1s.

A Post Office medical officer giving a certificate in respect of telegraphist's cramp is entitled to this fee. Regulation dated December 2nd, 1908.

FEES PAYABLE BY THE EMPLOYER.

(iv.) For any certificate of suspension or refusal to suspend, obtained by the employer under regulation 4, a fee of 1s.

(v.) Where the employer applies under regulation 5 for a certificate that the disease contracted is not due to the nature of the employment, in respect of every such application (to include the certificate, if given), a fee of 2s. 6d.

(vi.) For a copy of any certificate obtained under regulation 6, a fee of 1s.

REFERENCES TO MEDICAL REFEREES.

8. Where the employer or workman is aggrieved by the action of a certifying or appointed surgeon in giving or refusing to give

a certificate of disablement or in suspending or refusing to suspend a workman, he may—

- (a) if he is an employer, within ten (a) days of the receipt of the notice of disablement or suspension required to be given under the Act, or, in a case of disablement, if the notice is not accompanied by the certificate of the surgeon, or a copy thereof, and the employer forthwith requires the workman to furnish him with a copy, within ten (a) days of the receipt of such copy, or
- (b) if he is a workman, within ten (a) days of the date on which the surgeon has refused to give him a certificate of disablement or suspension,

apply to the registrar of the county court for the district in which the workman was employed at the time of his examination by the surgeon, for the matter to be referred to a medical referee; provided that it shall be within the discretion of the registrar, on good cause shown, to extend in any case by not more than seven days the period within which an application is required to be made.

See *Turton v. East Barnsley Colliery, Ltd.*, (1921) 1 K. B. 369.

9.—(a) Any application under the foregoing regulation shall be made in writing, and shall state the grounds on which the reference is asked for, in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be. Forms 9 and 10.

(b) The application shall be accompanied by the certificate or a copy of the certificate obtained from the surgeon by whose action the applicant is aggrieved, and by any available report or reports of any medical practitioner by whom the workman has been examined; and if the applicant is an employer, by the notice of disablement or suspension served on him by the workman, and by an undertaking to pay any reasonable travelling expenses incurred by the workman in attending for examination by the medical referee.

(c) The applicant shall also file with the registrar such copies of the application and other documents as aforesaid as may be necessary for the use of the medical referee and of the employer or workman, as the case may be, hereinafter referred to as the respondent, who together with the applicant is directly interested in the application.

(d) In the event of any dispute as to the amount of the travelling expenses payable to the workman by the employer, the matter may be referred to the registrar, whose decision shall be final.

10. It shall be the duty of the registrar on receiving an application to satisfy himself that it is duly made in accordance with the foregoing regulations, and if it is not, to return it for amendment. If and when the application is in accordance with the regulations, he shall refer the matter forthwith to a medical referee, and shall forward to such medical referee by registered post one of the copies of the application and the other documents filed therewith, with an order of reference according to the form prescribed in the schedule. Form 11.

11. The registrar shall also make an order directing the workman to submit himself for examination by the medical referee. Before making such order the registrar shall inquire whether the workman

(a) Extended from seven to ten days by Regulations, 1922 (1).

is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such place as the referee may fix, and if satisfied that he is not in a fit condition to travel, shall so state in the order of reference; and it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

12. The registrar shall deliver or send by registered post to both parties a copy of the order of reference, and shall also send to the respondent copies of the other documents forwarded to the medical referee, and shall send to the workman a copy of the order directing him to submit himself for examination.

13. In the case of any reference under these Regulations the medical referee shall, except as hereinafter provided, be one of those appointed by the Secretary of State for the district in which the case arises. Provided that—

- (a) if a medical referee has been specially appointed by the Secretary of State for the purpose of deciding in any specified case or class of cases arising in the district in which a reference may be made under these Regulations, the reference in any such case shall be made to the medical referee so appointed;
- (b) the judge may, in any particular case where for special reasons he thinks fit, direct that the reference shall be sent to any referee appointed for any other district within the county court circuit whom he may select;
- (c) if the surgeon by whose action the applicant is aggrieved has been appointed a medical referee, the reference shall not be made to him but to such other medical referee as may be authorised to act. [1923, *Reg. 2.*]

14. The medical referee shall, on receipt of an order of reference duly signed by the registrar of a county court, together with copies of the documents required to be sent therewith, fix a time and a place for a personal examination of the workman, and shall send notice to the employer and workman accordingly. It shall be the duty of the workman, and, if the employer is the applicant, of the employer or a person duly authorised by him, to attend at the time and place fixed by the medical referee, and in the event of failure on the part of the workman or employer or both to appear as required by this regulation, the medical referee shall decide on the matter referred to him forthwith upon such information as shall be available and with or without a personal examination. Provided that where the absence of the employer or his representative or of the workman is shown to the satisfaction of the medical referee to be unavoidable, or where the medical referee considers it necessary to apply for expert assistance as hereinafter provided, it shall be open to him to adjourn the inquiry on the reference and to resume it at such time and place as he may fix, after giving due notice to all parties concerned.

See *Chuter v. Ford & Sons*, (1915) 2 K. B. 113; 8 B. W. C. C. 160.

15. Except as otherwise provided by regulation 14, the medical referee shall, before deciding on the matter referred to him, make a personal examination of the workman, and shall consider any statements made or submitted by either party.

16. The medical referee shall, in such one of the forms prescribed in the schedule hereto as may be appropriate, notify in writing his decision to the registrar of the county court, to the applicant, and to the respondent, and give a certificate (as required by section 11 (2) of the Workmen's Compensation Act, 1923) as to the condition of the workman at the time of his examination.
17. The medical referee shall send to the Home Office at the end of each quarter a statement (accompanied by any vouchers necessary) in the form prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations. Form 16.
18. The following fees and allowances are authorised to be paid to medical referees under these regulations:—
- (i.) For deciding the matter referred to him in any reference and for all duties performed in connection therewith, 2 guineas.
 - (ii.) Where in order to examine the workman the medical referee is compelled to travel to a place distant more than 2 miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fee, 5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1s. for each mile distant therefrom.
 - (iii.) In cases involving special difficulty the medical referee may apply for special expert assistance which may be granted by the Secretary of State if he thinks fit, on such terms as to remuneration or otherwise as he may with the sanction of the Treasury determine.
19. In cases where a claim is made under regulation 18 (ii.) in respect of an examination of a workman, the medical referee, in submitting his quarterly statement under regulation 17, shall certify the distance of the place where the examination was made from his residence or other prescribed centre.
20. The registrar of a county court shall keep a record, in the form prescribed in the schedule, of all references made by him under these regulations, and shall send the same to the Secretary of State at the end of each quarter. Form 17.
21. These regulations shall come into force on the 1st day of July, 1907, and shall apply to England and Wales.

SCHEDULE.

FORM 1.

Particulars to be obtained by Certifying Surgeon upon application by Workman for Certificate of Disablement.

1. Name and address of workman
2. Disease in respect of which certificate is applied for
3. Symptoms complained of
4. Employment to the nature of which disease is attributed

5. Name and place of business of employer }
 who last employed workman in }
 such employment }
 6. (*Where application is not made by* }
workman in person) whether work- }
 man is able to travel for purposes }
 of examination }

FORM 2.

Notice to Workman of Time and Place appointed for his Examination by Surgeon.

Workmen's Compensation Act, 1906.

I hereby give you notice, with reference to your application for a certificate of disablement under section 8, sub-section (1), of the above-named Act, that I propose to examine you at on the day of at o'clock, and that you are required to submit yourself for examination accordingly.

To (*the Workman*)

(Signed)

FORM 3.

Certificate of Disablement.

Workmen's Compensation Act, 1906.

(a) Strike out portion of description inapplicable.
 (b) Name of workman.
 (c) "He" or "she."
 (d) Name disease according to the terms in which it is described in the third schedule to the Act or order of the Secretary of State adding it to the schedule.

I, (a) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (*or as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the Act*), hereby certify that having personally examined (b) on the day of I am satisfied that (c) is suffering from (d) being one of the diseases to which the Workmen's Compensation Act applies, and is thereby disabled from earning full wages at the work at which (c) has been employed; and I* certify that the disablement commenced on the day of

1. Full name and address of workman
2. Process in which workman states he }
 was employed at or immediately }
 before the date of disablement . }
3. Name and place of business of employer stated by workman to have last employed him in process above-mentioned

4. Leading symptoms of disease
- Dated this day of

(Signed)

FORM 4.

Certificate (supplementary to a Certificate of Disablement) to be given by Certifying Surgeon in circumstances mentioned in Regulation 5.

1. *When the certificate is included in the certificate of disablement, it should run as follows:—*

(a) Name process.

(b) "Mentioned in" or "added by an order of the Secretary of State to."

But whereas the said workman appears to have been employed at or immediately before the date of disablement in (a) being a process (b)

* If the surgeon is unable to certify a date on which the disablement commenced, he should strike out this part of the certificate. In that case the disablement will be deemed to have commenced on the date on which this certificate is given. See section 3 (4) of the Act.

the second column of the third schedule to the Act, and the disease contracted by him, viz. (c) is a disease which (d) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease is not due to the nature of such employment.

Dated this day of
(Signed)

2. When the certificate is given separately on a subsequent application of the employer, it should be in the following form:—

Workmen's Compensation Act, 1906.

Whereas I, (e) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (or as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon, for the purposes of section 8 of the above-named Act), on the day of certified that (f) was suffering from (g) being a disease to which the Workmen's Compensation Act applies, and was thereby disabled from earning full wages at the work at which he was employed; and whereas the said (f) appears to have been employed at or immediately before the date of disablement in (h) being a process (i) the second column of the third schedule to the Act, and the disease above-named is a disease which (h) is set opposite the above-mentioned process, I hereby certify that, in my opinion, the said disease was not due to the nature of such employment.

Dated this day of
(Signed)

FORM 5.

Certificate of Certifying Surgeon refusing to give Certificate of Disablement.

Workmen's Compensation Act, 1906.

I, (a) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (or as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the above Act), hereby certify that having personally examined (b) who has applied for a Certificate of Disablement in respect of (c) being a disease to which the Workmen's Compensation Act applies, I am not satisfied that (d) is suffering from the said disease so as to be disabled from earning full wages at the work at which (d) has been employed.

1. Full name and address of workman
2. Employment to nature of which disease complained of was attributed
3. Name and place of business of employer stated by workman to have last employed him in such employment

Dated this day of
(Signed)

(c) Name of disease.

(d) "In the first column of that schedule" or "under the provisions of the said order."

(e) Strike out portion of description inapplicable.

(f) Name of workman.

(g) Name of disease.

(h) Name of process.

(i) "Mentioned in" or "added by an order of the Secretary of State to."

(k) "In the first column of that schedule" or "under the provisions of the said order."

(a) Strike out portion of description inapplicable.

(b) Name of workman.

(c) Describe disease.

(d) "He" or "she."

FORM 6.

Certificate of Suspension by Certifying or Appointed Surgeon.

Workmen's Compensation Act, 1906.

(a) "Certifying" or "appointed." I the (a) surgeon for (b) hereby certify that after personally examining (c) , I have on the day of in pursuance of the (d) made under the Factory and Workshop Act, 1901, suspended the said (c) from (e) usual employment on account of (c) having contracted (f) being a disease to which the Workmen's Compensation Act applies.

(b) Name works at which workman is employed.

(c) Name workman.

(d) Name the special rules or regulations governing the employment.

(e) "His" or "her."

(f) Describe disease.

1. Full name and address of workman
2. Employment from which workman is suspended
3. Name and place of business of employer
4. Leading symptoms of disease

Dated this day of .

(Signed)

FORM 7.

Certificate to be given by Surgeon in cases of suspension in circumstances mentioned in Regulation 5.

1. When the certificate is included in a certificate of suspension, it should run as follows:—

But whereas the said workman appears to have been employed at or immediately before the date of suspension in (a) being a process (b) the second column of the third schedule to the Act, and the disease contracted by him, viz., (c) is a disease which (d) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease is not due to the nature of such employment.

Dated this day of .

(Signed)

2. When the certificate is given separately on an application by the employer, it should be in the following form:—

Workmen's Compensation Act, 1906.

Whereas I, the (a) surgeon for (b) on the day of in pursuance of the (c) made under the Factory and Workshop Act, 1901, suspended (d) from (e) usual employment on account of (c) having contracted (f) being a disease to which the Workmen's Compensation Act applies, and whereas the said (d) appears to have been employed at or immediately before the date of suspension in (g) being a process (h) the second column of the third schedule to the Act, and the disease above-named is a disease which (i) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease was not due to the nature of such employment.

Dated this day of .

(Signed)

(f) Describe disease. (g) Name process. (h) "Mentioned in" or "added by an order of the Secretary of State to." (i) "In the first column of that schedule" or "under the provisions of the said order."

(a) "Certifying" or "appointed." (b) Name works at which workman is employed. (c) Name special rules or regulations governing the employment. (d) Name of workman. (e) "His" or "her."

FORM 8.

Certificate by Certifying or Appointed Surgeon of Refusal to Suspend.

Workmen's Compensation Act, 1906.

I, the (a) surgeon for (b) hereby certify that (c) having applied to me to be suspended from his usual employment in pursuance of (d) made under the Factory and Workshop Act, 1901, on account of (e) having contracted (f) being a disease to which the Workmen's Compensation Act applies, I have after personally examining the said (e) refused to suspend (g)

(a) "Certifying" or "appointed."
(b) Name of workman employed.
(c) Name of workman.
(d) Name of the code of special rule or regulations governing the employment.
(e) "His" or "her."
(f) Describe disease.
(g) "Him" or "her."

1. Full name and address of workman
2. Name and place of business of employer
3. Grounds for refusal to suspend

Dated this day of (Signed)

FORM 9.

Application by Employer for Reference to Medical Referee.

In the county court of holden at
In the matter of the Workmen's Compensation Act, 1906, and

In the matter of a Certificate of Disablement (or Suspension) granted in the case of (name and address of workman) in pursuance of the provisions of section 8 of the above-mentioned Act and the regulations made thereunder by the Secretary of State.

Application for a reference in the above-mentioned matter to a medical referee, pursuant to section 8, sub-section (1) (f), of the Act and to the above-mentioned regulations, is hereby made on behalf of (name and place of business of applicant) who states:—

1. That on the day of notice of disablement (or suspension) was given to the applicant by the above-mentioned under the provisions of the said Act.
2. That the said notice was consequent on a certificate of disablement given (or order of suspension made), on the day of in pursuance of the said Act and regulations, by Mr. residing at (full address), the certifying surgeon under the Factory and Workshop Act, 1901, for the district of (or a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon under section 8 of the said Act, (or a surgeon appointed in pursuance of (describe special rules or regulations under the Factory Act) at (name of factory or other place of employment)).
3. That the applicant is aggrieved by the action of the above-mentioned Mr. in giving the said certificate (or in making the said order of suspension) and claims that the said had not contracted the disease in respect of which the said certificate was given (or in respect of which the said order was made) (or, in the case of a certificate of disablement, was not suffering from the disease therein specified so as to be disabled from earning full wages at the work at which he was employed), in support of which claim he mentions the following circumstances:—(*)

* State grounds for claim, e.g., report any doctor employed by applicant.

And the applicant hereby undertakes, if the matter is referred to a medical referee, to repay the said (workman) any reasonable travelling expenses he may incur in attending for examination by such referee.

Two copies of this application are annexed hereto, together with a copy of the notice and certificate of disablement (or suspension). (The above-

mentioned report of the medical practitioner employed by me, and two copies thereof, are also annexed.)

Dated this day of .
(Signed)

Applicant.

To the Registrar.

FORM 10.

Application by Workman for Reference to Medical Referee.

In the county court of holden at .
In the matter of the Workmen's Compensation Act, 1906,
and

In the matter of a Refusal of a certifying (*or* appointed) surgeon to give a Certificate of Disablement to (*or* to suspend) (*name and address of applicant*) in pursuance of the provisions of section 8 of the above-mentioned Act and the regulations made thereunder by the Secretary of State.

Application for a reference in the above-mentioned matter to a medical referee, pursuant to section 8, sub-section (1) (f), of the said Act and to the above-mentioned regulations, is hereby made on behalf of the said who states:—

1. That on the day of applicant applied to Mr. residing at (*full address*) the certifying surgeon under the Factory and Workshop Act, 1901, for the district of (*or* a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the said Act, *or* a surgeon appointed in pursuance of (*describe special rules or regulations under Factory Act*) at (*name of factory, or other place of employment*)), for a certificate of disablement (*or* to be suspended) in respect of a disease to which the provisions of section 8 of the Workmen's Compensation Act, apply.

2. That the said Mr. refused to give the applicant a certificate of disablement (*or* to suspend the applicant) and certified to such refusal by a certificate, dated the day of , which is annexed to this application.

3. That the applicant is aggrieved by the action of the said Mr. in refusing to give him a certificate of disablement (*or* to suspend him) and claims that he was suffering from the said disease, and was thereby disabled from earning full wages at the work at which he was employed (*or in the case of a refusal to suspend, that he had contracted the said disease and was thereby entitled, in accordance with the special rules (or regulations) made under the Factory and Workshop Act, 1901, for the process in which he was employed, to be suspended*), in support of which claim he mentions the following circumstances:—(*)

* State grounds for claim, e.g., report, if any, of doctor employed by applicant.

4. That the employer on whom the applicant, if the matter is referred to a medical referee and decided in favour of the applicant, would serve the statutory notice of disablement (*or* suspension) is (*name and place of business of employer*).

Two copies of the application and the certificate of the surgeon (together with the above-mentioned report of the medical practitioner employed by applicant and two copies thereof) are annexed hereto.

Dated this day of .
(Signed)

To the Registrar.

Applicant.

FORM 11.

Order of Reference to Medical Referee.

In the county court of holden at

[*Heading as in application.*]

On the application of (a copy of which is hereto annexed), I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to decide on the matter arising on the said application.

Copies of the notice and certificate of disablement (*or* suspension), (and of a report of a medical practitioner by whom the workman referred to in the application has been examined), are hereto annexed.

Or, if the workman is the applicant,

A copy of the certificate of the surgeon referred to in the application (together with a copy of a report of a medical practitioner by whom applicant has been examined), is hereto annexed.

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*Or the said does not appear to be in a fit condition to travel for the purpose of being examined.*]

Dated this day of .

Registrar.

FORM 12.

Order on Workman to submit himself for Examination by Medical Referee.

In the county court of holden at .

[*Heading as in Application.*]

To A. B. , of (*address and description*).

Take Notice, that I have appointed Mr. , of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to decide on the matter arising on the above application.

You are hereby required to submit yourself for examination by the referee [*add where workman is in a fit condition to travel*, and to attend for that purpose at such time and place as may be fixed by him].

Dated this day of .

Registrar.

FORM 13.

Notice by Medical Referee to Workman.

Workmen's Compensation Act, 1906.

I hereby give you notice that I have received from the registrar of the county court at , an order of reference appointing me to decide on your appeal against the action of Mr. (*name of surgeon*) in refusing to give you a certificate of disablement (*or* to suspend you).

Or, if the employer is the appellant,

on the appeal made by (*name of employer*) against the action of Mr. (*name of surgeon*) in giving you a certificate of disablement (*or* in suspending you);

And that you are required to attend (*or, if the workman has been ascertained not to be in a fit condition to travel, to submit yourself*) for examination at
on the day of at o'clock.

Any statement made or submitted by you shall be considered.

(Signed)

Medical Referee.

To

FORM 14.

Notice by Medical Referee to Employer.

Workmen's Compensation Act, 1906.

I hereby give you notice that I have received from the registrar of the county court at , an order of reference appointing me to decide in your appeal against the action of Mr. (*name of surgeon*) in giving a certificate of disablement to (*or in suspending*) (*name of workman*).

Or, if the workman is the appellant,
on the appeal made by (*name of workman*) against the action of Mr. (*name of surgeon*) in refusing to give him a certificate of disablement (*or to suspend him*);

And that I propose to examine (*name of workman*) at
on the day of at o'clock.

Any statement made or submitted by you shall be considered.

Add if the employer is the appellant.

You, or some person duly authorised by you, are hereby required to attend at the above time and place.

Dated this day of

(Signed)

Medical Referee.

To

FORM 15 (i.).

Decision of Medical Referee under Section 8 (1) (f) of the Workmen's Compensation Act, 1906, dismissing an Appeal against the Action of the Certifying or other Surgeon in giving or refusing to give a Certificate of Disablement, together with Certificate of Medical Referee under Section 11 (2) of the Workmen's Compensation Act, 1923, as to the present Condition of the Workman.

Decision under Section 8 (1) (f) of the Workmen's Compensation Act, 1906.

[*Heading as in the application for the Reference.*]

I hereby give you notice that having duly inquired into the above-mentioned matter in accordance with the Regulations of the Secretary of State, I decide as follows:—

I dismiss the appeal of (*name of employer*) against the certificate of disablement given to (*name of workman*) on the day of

or

I dismiss the appeal of (*name of workman*) against the refusal of (*name of surgeon*) to give him a certificate of disablement in respect of (*name of disease*).

Certificate under Section 11 (2) of the Workmen's Compensation Act, 1923
as to workman's present condition.

And I hereby certify that the present condition of the workman as ascertained by my examination is as follows :—(*)

Dated this day of .
(Signed)

Medical Referee.

To
[New form, 1923.]

FORM 15 (ii.).

Decision of Medical Referee under Section 8 (1) (f) of the Workmen's Compensation Act 1906, allowing an Appeal against the action of the Certifying or other Surgeon in giving or refusing to give a Certificate of Disablement, together with Certificate of Medical Referee under Section 11 (2) of the Workmen's Compensation Act, 1923, as to the present Condition of the Workman.

* Here state whether the workman is or is not suffering from the disease, and if he is so suffering, whether he is thereby disabled from earning full wages at the work at which he was employed.

Decision under Section 8 (1) (f) of the Workmen's Compensation Act, 1906.
[Heading as in the application for the Reference.]

I hereby give you notice that having duly inquired into the above-mentioned matter in accordance with the Regulations of the Secretary of State, I decide as follows :—

I find that the said (name of workman) was not, at the time of his examination by the Certifying Surgeon, suffering from (name of disease).

or

I find that the said (name of workman) was, at the time of his examination by the Certifying Surgeon, suffering from (name of disease), but that he was not thereby disabled from earning full wages at the work at which he was employed.

or

I find that the said (name of workman) was, at the time of his examination by the Certifying Surgeon, suffering from (name of disease), and was thereby disabled from earning full wages at the work at which he was employed. And I fix the day of as the date on which the disablement from the said disease commenced.

Certificate under Section 11 (2) of the Workmen's Compensation Act, 1923,
as to workman's present condition.

And I hereby certify that the present condition of the workman as ascertained by my examination is as follows :—(*)

Dated this day of .
(Signed)

Medical Referee.

To
[New form, 1923.]

* Here state whether the workman is or is not suffering from the disease, and if he is so suffering, whether he is thereby disabled from earning full wages at the work at which he was employed.

FORM 15 (iii.).

Decision of Medical Referee under Section 8 (1) (f) of the Workmen's Compensation Act, 1906, dismissing or allowing an Appeal against the action of the Certifying or other Surgeon in suspending or refusing to suspend the Workman, together with Certificate of Medical Referee under Section 11 (2) of the Workmen's Compensation Act, 1923, as to the present Condition of the Workman.

Decision under Section 8 (1) (f) of the Workmen's Compensation Act, 1906.

[Heading as in the application for the Reference.]

I hereby give you notice that having duly inquired into the above-mentioned matter in accordance with the Regulations of the Secretary of State, I decide as follows :—

I dismiss (or allow) the appeal of (name of employer) against the suspension of (name of workman) on the day of

or

I dismiss (or allow) the appeal of (name of workman) against the refusal of (name of surgeon) to suspend him on the day of

Certificate under Section 11 (2) of the Workmen's Compensation Act, 1923, as to workman's present condition.

And I hereby certify that the present condition of the workman as ascertained by my examination is as follows :—(*)

* Here state whether the workman is or is not suffering from the disease, and if he is so suffering whether he is thereby disabled from earning full wages at the work at which he was employed.

Dated this day of

(Signed)

Medical Referee.

To

[New form, 1923.]

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**Medical Referee's Statement of Fees in respect of References under
Section 8 of the Workmen's Compensation Act, 1906.**

* A reference should be given to the Home Office Number of the letter authorising the expenditure, and each payment should be supported by a voucher.

FORM 17.

County Court Circuit No. . Court holden at . Name of Registrar.
For the Quarter ended .

* Describe in terms of the third schedule to the Act or of the Secretary of State's Orders dated May 22nd, 1907, and December 2nd, 1908.

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APPENDIX CC.

THE WORKMEN'S COMPENSATION (MEDICAL REFEREES) ORDER, 1924.

In pursuance of the powers conferred on me by sub-section (3) of Section 11 and sub-section (1) of Section 25 of the Workmen's Compensation Act, 1923, I hereby make the following Order:—

1. For the removal of doubts it is hereby prescribed that the fees to be paid by applicants in respect of the services and expenses of the Medical Referee in cases where a reference is made to a Medical Referee under paragraph fifteen or paragraph eighteen of the First Schedule to the Workmen's Compensation Act, 1906, as amended by the Workmen's Compensation Act, 1923, or a Medical Referee is summoned on the application of one of the parties to sit with the County Court Judge as Assessor, or a report of a Medical Referee is obtained under Section 12 (1)(b) of the Workmen's Compensation Act, 1923, shall be the corresponding fees directed to be paid to the Medical Referee under Regulations 13, 18, 19, and 35 respectively of the Workmen's Compensation (Medical Referees in England and Wales) Regulations, 1923, dated December 17, 1923, and the Workmen's Compensation (Medical Referees in Scotland) Regulations, 1923, dated December 17, 1923.

2. This Order may be cited as the Workmen's Compensation (Medical Referees) Order, 1924.

W. Joynson-Hicks,
One of His Majesty's Principal
Secretaries of State.

Home Office,
Whitehall.
3rd December, 1924.

REGULATIONS. WORKMEN'S COMPENSATION (MEDICAL REFEREES IN ENGLAND AND WALES) REGULATIONS, AS TO THE DUTIES AND REMUNERATION OF MEDICAL REFEREES, DATED DECEMBER 17TH, 1923.

PART I.

DEFINITIONS AND GENERAL REGULATIONS.

1. In these regulations—

- (i.) Where the expression "the Act" is used, it shall be read where appropriate as including the Workmen's Compensation Act, 1923, as well as the Workmen's Compensation Act, 1906, and otherwise as meaning the latter Act.
- (ii.) "Medical referee" means a medical practitioner appointed by the Secretary of State to act as medical referee for the purposes of the Act.
- (iii.) "Reference" means—
 - (a) in regulations in Part II., the appointment of a medical referee to give a certificate, in accordance with the provisions of paragraph (15) of the first schedule to the Act, as to the condition of the workman and his fitness for employment or as to whether or to what extent the incapacity of the workman is due to the accident.

(b) in regulations in Part III., the appointment of a medical referee to give a certificate, in accordance with the provisions of paragraph (18) of the first schedule to the Act, as to whether the incapacity resulting from the injury is likely to be of a permanent nature.

(c) in regulations in Part V., the appointment of a medical referee by a committee, arbitrator or judge to report on any matter material to any question arising in an arbitration under the Act.

(d) in regulations in Part VI., the appointment of a medical referee to report as to the workman's condition as provided in section 12 (1) (b) of the Workmen's Compensation Act, 1923.

- (iv.) "Committee" means a committee representative of an employer and his workmen, with power to settle matters under the Act in the case of the employer and workmen.
- (v.) "Agreed arbitrator" means a single arbitrator agreed on by the parties to settle any matter which under the Act is to be settled by arbitration.
- (vi.) "Appointed arbitrator" means a single arbitrator appointed by the judge.
- (vii.) "Judge" means county court judge.
- (viii.) The words "district in which the case arises" mean the county court district in which all the parties concerned reside, or, if they reside in different districts, the district prescribed by rules of court, subject to any transfer made under those rules.

2. In the case of any reference under these regulations, the medical referee shall, except as hereinafter provided, be one of those appointed by the Secretary of State for the district in which the case arises provided that—

- (a) if a medical referee has been specially appointed by the Secretary of State for the purpose of deciding in any specified case or class of cases arising in the district, the reference in any such case shall be made to the medical referee so appointed;
- (b) the judge may in any particular case where, for special reasons, he thinks fit direct that the reference shall be sent to any referee appointed for any other district within the county court circuit whom he may select;
- (c) where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be made to the same referee and be accompanied by the previous report or certificate, or copy thereof, of the medical referee.

3. The medical referee shall not accept any reference under these regulations unless signed or counter-signed by the registrar of a county court and sealed with the seal of the county court.

4. The medical referee shall send to the Home Office at the end of each quarter statements, in the forms prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations. Forms K. L. and M.

5. In cases where a claim is made under the regulations in respect of travelling expenses, the medical referee, in submitting

his quarterly statements under regulation 4, shall certify the distance of the place to which he was required to travel from his residence or other prescribed centre.

6. In cases involving special difficulty the medical referee may apply to the Secretary of State for special expert assistance which may be granted by the Secretary of State, if he thinks fit, on such terms as to remuneration or otherwise as he may with the sanction of the Treasury determine.

Form N.

7. The registrar of every county court shall keep a record, in the form prescribed in the schedule, of all references made under these regulations, and of all cases in which a medical referee is summoned to sit as assessor, and shall send a copy thereof to the Secretary of State at the end of each quarter.

8. These regulations shall come into force on the 1st day of January, 1924, and shall apply to England and Wales, and may be cited as the Workmen's Compensation (Medical Referees in England and Wales) Regulations, 1923.

PART II.

REGULATIONS AS TO REFERENCES UNDER SCHEDULE I.

PARAGRAPH (15).

Forms A.
and B.

9. The medical referee shall forthwith, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to the workman and to the employer.

The day fixed for the examination shall be as early as practicable and in any case not later (except in unavoidable circumstances) than the seventh day after the receipt of the reference.

10. Before giving the certificate required by the reference, the medical referee shall personally examine the workman and shall consider any statements that may be made or submitted by either party.

Form C.

11. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations.

12. The medical referee shall forward his certificate to the registrar from whom he received the reference.

13. The fee to be paid to a medical referee in respect of a reference (to include all the duties performed in connection therewith) under this part of the regulations shall be two guineas; and where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, he shall be entitled, in addition to the above fee, to 5s. for each mile beyond two, and up to ten miles distant from such residence or centre, and thereafter to 1s. for each mile distant therefrom.

PART III.

REGULATIONS AS TO REFERENCES UNDER SCHEDULE I.

PARAGRAPH (18).

Form D.

14. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to the workman.

15. Before giving the certificate required by the reference the medical referee shall make a personal examination of the workman.

16. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations. Form E.

17. The medical referee shall forward his certificate to the registrar from whom he received the reference.

18. The fee to be paid to a medical referee in respect of a reference (to include all the duties performed in connection therewith) under this part of these regulations shall be one guinea.

PART IV.

REGULATION AS TO REMUNERATION OF MEDICAL REFEREE FOR SITTING AS ASSESSOR UNDER THE ACT.

19.—(1) Where in pursuance of a summons under the Act a medical referee attends at a county court for the purpose of sitting with the judge as an assessor, he shall be entitled for such attendance (to include his services as assessor) to a fee of three guineas ;

Provided that where he has been summoned to sit in more than one case on the same day, he shall be entitled, in addition to a fee of three guineas for his attendance including his services in one case, to the following fees in respect of each of the other cases :—

(i.) if he sits as assessor in the case, a fee of 3 guineas ;

(ii.) if the case is not heard on that day, a fee of 1 guinea.

Where in order so to attend at the court the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, he shall be entitled, in addition to the above fees, to 5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter to 1s. for each mile distant therefrom.

(2) Where a medical referee is summoned to attend at the court for the purpose of sitting as assessor, but the hearing is adjourned or cancelled and notice thereof is not received by the referee till within two days of the date for which the hearing has been fixed, the referee shall be entitled in respect of each such case to a fee of one guinea.

PART V.

REGULATIONS AS TO REFERENCES UNDER SCHEDULE II. PARAGRAPH (15).

CONDITIONS OF REFERENCE.

20. Before making any reference, the committee, arbitrator, or judge shall be satisfied, after hearing all medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the arbitration, and that it is desirable to obtain a report from a medical referee on such matter.

FORM AND MODE OF REFERENCE.

21. Every reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and

Form F.

the question arising in the arbitration to which such matters seems to be material. Such reference shall be in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be.

The reference shall be accompanied by a general statement of the medical evidence given on behalf of the parties; and if such evidence has been given before a committee or an agreed arbitrator, each medical witness shall sign the statement of his evidence, and may add any necessary explanation or correction.

Form G.

22. On making the reference to the medical referee, the committee, arbitrator or judge shall make an order in the form prescribed in the schedule, directing the injured workman to submit himself for examination by the medical referee. Before making such order they shall inquire whether he is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition, they shall by the same order direct him to attend at such time and place as the referee may fix.

It shall be the duty of the injured workman to obey any such order.

If the committee, arbitrator or judge is satisfied that the workman is not in a fit condition to travel, they shall so state in the reference.

23. The reference shall be signed, if made by a committee, by the chairman and secretary of the committee; if made by an agreed arbitrator, by the arbitrator; if made by a judge or an appointed arbitrator, by the judge or arbitrator, or by the registrar of the county court in which the arbitration is pending.

24. A committee or an agreed arbitrator, making a reference, shall, without naming a medical referee, address the reference in general terms to "one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906," and shall forward it to the registrar of the county court of the district in which the case arises.

DUTIES OF REGISTRAR.

25.—(1) In the case of a reference by a committee or agreed arbitrator the registrar on receiving the reference—

- (a) Shall see that the reference is in accordance with these regulations, and if it is not, shall return it for amendment;
- (b) Shall insert the name of the medical referee proper to be appointed;
- (c) Shall, when the reference is in accordance with these regulations, countersign and seal it, and forward it forthwith to the medical referee.

(2) In the case of a reference by a judge or an appointed arbitrator, the registrar of the court in which the arbitration is pending shall sign (or countersign) and seal it, and forward it forthwith to the medical referee.

26. The registrar, on receiving a report from a medical referee under regulation 28, shall forthwith file a copy at the court and transmit the report to the committee, arbitrator or judge by whom the reference was made.

If the committee, arbitrator, or judge shall direct that the

parties be at liberty to inspect the report, the registrar shall on receiving notice of such direction permit such inspection to be made during office hours, and shall on the application and at the cost of any party furnish him with a copy of the report or allow him to take a copy thereof.

REPORT OF MEDICAL REFEREE.

27. The medical referee shall, on receipt of a reference duly signed and sealed, appoint a time and place for the examination of the workman, and shall send him notice accordingly. **Form H.**

28. The medical referee shall give his report in writing, and shall forward it to the registrar from whom he received the reference.

29. The committee, arbitrator or judge may, by request signed and forwarded in the same manner as the reference, remit the report to the medical referee for a further statement on any matter not covered by the original reference.

FEEs.

30. The following shall be the scale of fees to be paid to the medical referees in respect of references under this part of the regulations:—

- (i.) For a first reference, to include examination of the injured workman and written report 2 guineas.
- (ii.) For a further statement under regulation 29 on any matter not covered by the original reference 1 guinea.
- (iii.) Where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1s. for each mile distant therefrom.

PART VI.

REGULATIONS AS TO REFERENCES UNDER SECTION 12 (1) (b) OF THE WORKMEN'S COMPENSATION ACT, 1923.

31. Where a report as to the workman's condition is required to be obtained from a medical referee in pursuance of Section 12 (1) (b) of the Workmen's Compensation Act, 1923, the report shall be obtained through the registrar of the county court who shall, on payment of the fee hereinafter prescribed, forward to the medical referee an Order of Reference according to the form prescribed in the schedule, together with a copy of any medical report which may have been submitted by either party and any other information that may appear relevant. **Form I.**

32. The registrar shall also make an order directing the workman to submit himself for examination by the medical referee. Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel, shall so state in the Order of Reference. **Form G.**

The registrar shall send to the workman a copy of the order directing him to submit himself for examination; and it shall be the duty of the workman on being served with the order to submit himself for examination accordingly.

Form J.

33. The medical referee shall on receipt of a reference duly signed and sealed fix a time and a place for a personal examination of the workman and shall send him notice accordingly.

34. The medical referee shall make his report in writing and shall forward it to the registrar from whom he received the reference.

35. The fee to be paid to a medical referee in respect of a reference (to include all the duties performed in connection therewith) under this part of these regulations, shall be two guineas; and where, in order to examine an injured workman, the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, he shall be entitled, in addition to the above fee, to 5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter to 1s. for each mile distant therefrom.

SCHEDULE.

FORM A.

Notice by Medical Referee to Workman or Solicitor acting on Workman's behalf (Schedule I. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the reference made to me in your case (*or, if notice is addressed to the solicitor*), in the case of (*name and address of workman*), by the registrar of the county court of . . . holden at . . . , under Schedule I. paragraph (15), of the above-named Act, I propose to examine you (*or the said* . . .) at . . . on the . . . day of . . . at . . . o'clock.

And you are required to submit yourself (*or the said* . . . is required to submit himself) for examination accordingly.

Any statements made or submitted by you (*or, if notice is addressed to the solicitor*, by the workman) will be considered.

Dated this . . . day of . . .

(Signed)

Medical Referee.

FORM B.

Notice by Medical Referee to Employer or Solicitor acting on Employer's behalf (Schedule I. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the reference made to me by the registrar of the county court of . . . holden at . . . under Schedule I. paragraph (15), of the above-named Act, in the case of (*name and address of workman*). I propose to examine the said . . . at . . . on the . . . day of . . . at . . . o'clock.

Any statements made or submitted by you (*or, if notice is addressed to the solicitor*, by the employer), will be considered.

Dated this . . . day of . . .

(Signed)

Medical Referee.

FORM C.

Certificate of Medical Referee as to condition of Workman and fitness for employment, or as to whether or to what extent incapacity of Workman is due to the accident (Schedule I. (15)).

Workmen's Compensation Act, 1906.

In accordance with the reference made to me by the registrar of the county court of _____ holden at _____ upon the application of (names and addresses of parties) I have on the _____ day of _____ examined the said (name of workman) and I hereby certify as follows :—

1. The said _____ is *

and his condition is such that he is †

2. The incapacity of the said _____ is ‡

NOTE.—Either paragraph 1 or paragraph 2 to be filled up, or both to be filled up, according to the terms of the reference.

Dated this _____ day of _____

(Signed)

Medical Referee.

* Describe state of health.

† State whether workman is fit for his ordinary or other work, specifying where necessary the kind of work, or whether he is unfit for work of any kind.

‡ State whether or to what extent the incapacity is due to the accident (or, in cases coming within section 8 of the Act, to the disease).

FORM D.

Notice by Medical Referee to Workman (Schedule I. (18)).

Workmen's Compensation Act, 1906.

To _____
I hereby give you notice that in accordance with the reference made to me in your case by the registrar of the county court of _____ holden at _____ under Schedule I. paragraph (18), of the above-named Act, I propose to examine you at _____ on the _____ day of _____ at _____ o'clock, and you are required to submit yourself for examination accordingly.

Dated this _____ day of _____

(Signed)

Medical Referee.

FORM E.

Certificate of Medical Referee (Schedule I. (18)).

Workmen's Compensation Act, 1906.

In accordance with the reference made to me by the registrar of the county court of _____ holden at _____ under Schedule I. paragraph (18), of the above-named Act, I have on the _____ day of _____ examined _____ of (name and address of workman) and I hereby certify that his incapacity is [or is not] likely to be of a permanent nature.

Dated this _____ day of _____

(Signed)

Medical Referee.

FORM F.

Reference to a Medical Referee (Schedule II. (15)).

In the matter of the Workmen's Compensation Act, 1906,
and

In the matter of an Arbitration between—

A.B.

Address
Description

and

Applicant,

C.D.

Address
Description

Respondent.

As the case may be { (a) We, a committee representative of and his workmen, and empowered to arbitrate in the matter arising under the Workmen's Compensation Act, between A.B. and C.D.,
(b) I, an arbitrator agreed upon by A.B. and C.D. to arbitrate in the matter arising between them under the Workmen's Compensation Act, 1906,
(c) I, judge of county courts,
(d) I, arbitrator appointed by a judge of county courts,

having heard the evidence tendered by both parties, hereby certify that in our (*or* my) opinion the medical evidence given before us (*or* me) is conflicting (*or* insufficient) on a matter which seems to us (*or* me) to be material to a question arising in the above-mentioned arbitration, and that it is desirable to obtain a report from a medical referee on such matter, as follows:—

(A) On the day of personal injury was (*or* is alleged to have been) caused to * by accident arising out of and in the course of his employment, under the following circumstances:—

* Insert name of injured workman.

† Here state the facts of the accident as ascertained from the evidence.

‡ Name disease.

Or, in a case of industrial disease to which the Act applies—

(A) On the day of the said * was, under section 8 of the above-named Act, certified to be disabled by, or suspended from his usual employment on account of his having contracted, a disease to which the said section applies, namely, ‡

(B) The matter on which we are (*or* I am) satisfied that it is desirable to obtain a report is—

(C) Such matter seems to be material to the following question arising in the arbitration, viz. :—

§ The name must, if the reference is made by a committee or agreed arbitrator, be left in blank to be inserted by the registrar.

We (*or* I) therefore appoint § one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said on the matter specified above, and to report to us (*or* me).

A statement of the medical evidence given before us (*or* me) is appended. We are (*or* I am) satisfied that the said who is now at , is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and

place as shall be fixed by the referee; or does not appear to be in a fit condition to travel for the purpose of being examined.

The referee is requested to forward his report to—

The Registrar,

County Court Office,

on or before the day of

Dated this day of

(Signed)

or On behalf of the Committee

Chairman } of Committee.
Secretary }

* For signature of judge or arbitrator.

Signature of Registrar and
Seal of Court.

A previous reference was made to a medical referee in this case on the 19 , and a copy of the report then given is attached.

FORM G.

Order on injured Workman to Submit himself for examination by
Medical Referee.

To (Title as in Reference.)

of Address.
Description.

TAKE NOTICE—

That Mr. , one of the medical referees under the Workmen's Compensation Act, 1906, has been appointed to examine you for the purposes of the above-mentioned arbitration or agreement, and to report.

You are hereby required to submit yourself for examination by such referee,† and to attend for that purpose at such time and place as may be fixed by him.

Dated this day of

(To be signed in the same manner as reference.)

† Strike out from "and to attend" when injured workman does not appear to be in a fit condition to travel.

FORM H.

Notice by Medical Referee to injured Workman (Schedule II. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that I have been appointed to examine and report on your case under Schedule II. paragraph (15), of the above-named Act, and that I propose to make such examination at on the day of at o'clock.

(Signed)

Medical Referee.

LIABILITY OF EMPLOYERS FOR INJURIES TO WORKMEN.

FORM I.

Reference to a Medical Referee for report as to Workman's condition in connection with application for Registration of Memorandum of Agreement (Section 12 (1) (b) of the Workmen's Compensation Act, 1923).

Workmen's Compensation Act, 1923.

In the County Court of holden at

In the matter of the Workmen's Compensation Acts, 1906 to 1923,
and

In the matter of an agreement between
of _____ and
of _____

Whereas a memorandum of the above-mentioned agreement for the payment of a lump sum has been sent to me for registration, and whereas the information as to the workman's condition appears to be insufficient (*or conflicting*), and it is deemed desirable that a report as to the workman's condition should be obtained from a medical referee, on the following matter, namely:—

I therefore appoint Mr. _____ of _____, one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Acts, 1906 to 1923, to examine the said _____ (name of workman) and to report to me on the matter specified above.

Copies of medical reports submitted by the parties are hereto annexed.

I am satisfied that the said _____ who is now at _____ is in a fit condition to travel for the purpose of being examined _____
or does not appear to be in a fit condition to travel for the purpose of being examined.

The referee is requested to forward his report to the registrar at the county court office situate at _____ on or before the _____ day of _____

Dated this day of

*Signature of Registrar
and Seal of Court.*

To the above-mentioned
and

FORM J.

Notice by Medical Referee to injured Workman (Section 12 (1) (b) of the Workmen's Compensation Act, 1923).

To Workmen's Compensation Act, 1923.

I hereby give you notice that I have been required to examine and report as to your condition under section 12, sub-section (1) (b), of the above-named Act, and that I propose to make such examination at _____ on the _____ day of _____ at _____ o'clock.

(Signed)

Medical Referee.

FORM K.

Medical Referee's Statement of Fees in respect of References under Schedules I. (15) and II. (15) of the Workmen's Compensation Act, 1906, and Section 12 (1) (b) of the Workmen's Compensation Act, 1923.

Court Number of Matter.							Amount of Fees under each of the headings in Regulation 13 or Regulation 30 (as the case may be).			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Names of Parties.	Date on which Reference received from Registrar.	Registrar from whom received.	Date of Examination.	Place of Examination.	Date on which Certificate or Report sent to Registrar.	Examination and Certificate or Report. (£2 2s. 0d.)	Further Statement under Reg. 29. (£1 1s. 0d.)	Mileage Allowance (See Certificate of Distance and Scale of Fees on back.)	Expert Assistance.* [Payments under Regulation 6.]
							£ s. d.	£ s. d.	£ s. d.	£ s. d.
Total										
							Total £			

* A reference should be given to the Home Office Number of the letter authorising the expenditure and each payment should be supported by a voucher.

I hereby certify that I examined the workman _____ on _____ at _____
which is distant _____ miles from my residence (or prescribed _____
centre). _____
(Signed) _____
made on _____
back of _____
statement.

FORM N.

Record of References and Summonses to be kept by Registrar.

County Court Circuit No. . Court holden at . Name of Registrar .
For the quarter ended .

Court Number of Matter.									
(1) (2)		(3) (4)		(5) (6)		(7) (8)		(9) (10)	
Names of Parties.		Workman's Employment.		References under Sched. I. (15), I. (18) or II. (15) of the Workmen's Compensation Act, 1906, and section 12 (1) (b) of the Workmen's Compensation Act, 1923.*		Summons to sit as Assessor (section 11 (3) of the Workmen's Compensation Act, 1923.)*		Date of	
		Date on which Reference forwarded to Referee.		Provision in the Act under which Reference is made, and if under Sch. II. (15), by whom made.†		Whether workman directed to attend on Referee or not.		Date of	
								Each separate attendance of Referee in case.†	
								Whether Referee sat as Assessor on each date.§	
								Name of Medical Referee appointed.	
								Date and number of previous Reference, if any, in same case.	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

* Any case where, the summons having been issued on the requisition of one of the parties, the prescribed fee was payable by such party should be underlined.

† Here say whether committee, agreed arbitrator, county court judge, or appointed arbitrator.

‡ Each attendance should be entered on a separate line.

§ If the Medical Referee did not sit, a brief statement of the reasons should be appended.

APPENDIX DD.

REGULATIONS OF THE SECRETARY OF STATE, DATED
JUNE 28, 1907, AS TO EXAMINATIONS OF A WORKMAN BY A
MEDICAL PRACTITIONER PROVIDED AND PAID BY THE EM-
PLOYER UNDER THE PROVISIONS OF THE FIRST SCHEDULE TO
THE WORKMEN'S COMPENSATION ACT, 1906.

In pursuance of the powers vested in me by paragraph (15) of the first schedule to the Workmen's Compensation Act, 1906, I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, do hereby make the following regulations :—

1. Where a workman has given notice of an accident or is in receipt of weekly payments under the Act, he shall not be required to submit himself, against his will, for examination by a medical practitioner provided by the employer except at reasonable hours.

2. A workman in receipt of weekly payments shall not be required, after a period of one month has elapsed from the date on which the first payment of compensation was made, or if the first payment is made in obedience to the award of a committee or arbitrator, from the date of the award, to submit himself, against his will, for examination by a medical practitioner provided by the employer except at the following intervals: Once a week during the second, and once a month during the third, fourth, fifth, and sixth months, after the date of the first payment or the award, as the case may be, and thereafter once in every two months.

Provided that where after the second month an application has been made to the county (in Scotland, the sheriff) court or to a committee for a review of the weekly payment, the workman may be required, pending and for the purposes of the settlement of the application, to submit himself to one additional examination.

H. J. GLADSTONE,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
28th June, 1907.

APPENDIX EE.

ORDER IN COUNCIL GIVING EFFECT TO THE CONVENTION BETWEEN HIS MAJESTY AND THE PRESIDENT OF THE FRENCH REPUBLIC BY MODIFYING THE WORKMEN'S COMPENSATION ACT, 1906 (6 EDW. VII., c. 58), IN ITS APPLICATION TO WORKMEN WHO ARE FRENCH CITIZENS.

(Dated November 22nd, 1909.)

Note.—A general power to make Orders in Council for giving effect to conventions with foreign States is now given by sect. 37 of the Workmen's Compensation Act, 1925. As a result of this power the Workmen's Compensation (Anglo-French Convention) Act, 1909, became useless and was repealed by Sched. IV. of the Workmen's Compensation Act, 1925, but the Order in Council made thereunder is still in force (see sect. 50 (2)).

A convention between the United Kingdom and Denmark has been concluded, and has been given effect by an Order in Council under sect. 37.

The text of the Convention and the Order in Council are set out in Appendix FF.

Whereas His Majesty the King and the President of the French Republic have concluded a Convention, to the effect that their respective subjects and citizens shall enjoy reciprocally the benefits of the legislation in force in the United Kingdom of Great Britain and Ireland, and France respectively, in regard to compensation for accidents arising out of their employment:

And whereas by section 1 of the Workmen's Compensation (Anglo-French Convention) Act, 1909, it is provided that His Majesty may, by Order in Council, make such modifications in the Workmen's Compensation Act, 1906, in its application to workmen who are French citizens, as appear to Him to be necessary to give effect to the said Convention:

Now, therefore, in pursuance of the powers vested in Him by the above-mentioned provisions of the Workmen's Compensation (Anglo-French Convention) Act, 1909, His Majesty is pleased, by and with the advice of His Privy Council, to order and prescribe as follows :—

The Workmen's Compensation Act, 1906, hereinafter referred to as the Act, shall in the case of workmen who are French citizens apply subject to the following modifications :—

(1) An employer having his principal place of business in France shall not be liable to pay compensation under the Act for injury to a workman who is a French citizen by accident arising out of and in the course of the employment—

- (i.) if the workman has been temporarily detached for employment in the United Kingdom, and such employment has at the time of the accident lasted less than six months ;
- (ii.) if the workman is engaged in transport service and is employed at intervals whether regular or not in the United Kingdom.

(2) In all cases the question as to the liability to pay compensation under the Act to a French citizen and as to the amount or duration of such compensation, including the question of the redemption of weekly payments, and in cases of death the question as to who is a dependant and as to the amount payable to each dependant, shall be settled by the judge of the county court and in no other manner.

(3) Where a weekly payment payable to a French citizen has been redeemed by the payment of a lump sum of such amount as would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman of upwards of four pounds, the lump sum shall be paid into the county court and invested in the purchase of an annuity for the benefit of the workman.

(4) Where a lump sum payable either in the redemption of a weekly payment or as compensation to the dependants of a deceased workman has been paid into the county court, then :—

- (a) if the workman returns to reside in France ; or
- (b) if the dependants resided in France at the time of the death of the workman, or subsequently return to reside in France,

the total sum due to the injured workman or his dependants shall be transferred to the "Caisse Nationale Française des Retraites pour la Vieillesse."

(5) Where a workman receiving a weekly payment returns to reside in France, the amount due by way of weekly payments shall, notwithstanding anything in paragraph 18 of the first schedule to the Act, be remitted to him through the county court at such intervals and in such manner as may be agreed upon between the Secretary of State and such persons as the President of the French Republic may authorise for the purpose.

(6) No court fee or other charge shall be payable in the case of a workman who is a French citizen in respect of any proceedings

under the Act in the county court, whether under paragraph (15) of the first schedule to that Act, or subsequent to the award, or otherwise.

(7) The registrar of every county court shall, not later than the 31st January in each year, send to the Secretary of State for the Home Department, in a form prescribed by him, a record of all judicial decisions given in the course of the preceding year under the Act in the case of French citizens, and the said Secretary of State shall cause such record to be communicated to the "Département du Travail et de la Prévoyance Sociale."

(8) The power of making rules under the Act shall include a power to make such rules as may be necessary for the purpose of carrying this Order into effect.

(9) In Scotland references to the sheriff court shall be substituted for references to the county court, reference to the sheriff for reference to the judge of the county court, and reference to the sheriff clerk for reference to the registrar of the county court.

(10) This Order shall apply to all accidents happening on and after the date on which the Convention takes effect, and shall cease to have effect on the expiration of one year from the date on which the Convention shall have been denounced by one or other of the two contracting parties.

See W. C. Rules framed to give effect to this Convention, rules 68—75.

APPENDIX FF.

CONVENTION BETWEEN THE UNITED KINGDOM AND DENMARK RESPECTING COMPENSATION TO WORKMEN FOR ACCIDENTS ARISING OUT OF THEIR EMPLOYMENT.

(Signed at London, November 18, 1925, and ratified April 5, 1927.)

1. Workmen being British subjects who meet with accidents arising out of their employment in Denmark, and any persons, being British subjects who are entitled to claim through or have rights derivable from such workmen, shall enjoy the benefits of the compensation and guarantees secured to Danish subjects by the legislation in force in Denmark in regard to the liability of employers and their insurers in respect of such accidents, supplemented as specified in article 4.

Reciprocally, workmen being Danish subjects who meet with accidents arising out of their employment in Great Britain or Northern Ireland, and any persons being Danish subjects who are entitled to claim through or have rights derivable from such workmen, shall enjoy the benefits of the compensation and guarantees secured to British subjects by the legislation in force in Great Britain and Northern Ireland in regard to compensation for such accidents, supplemented as specified in article 4.

2. The British and Danish authorities will reciprocally lend

their good offices to facilitate the administration of their respective laws as aforesaid.

3. The present convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

It shall be applicable in Denmark and in Great Britain and Northern Ireland to all accidents happening after one month from the time of its publication in the two countries in the manner prescribed by their respective laws, and it shall remain binding until the expiration of one year from the date on which it shall have been denounced by one or other of the two contracting parties.

4. Nevertheless, the ratification mentioned in the preceding article shall not take place till the legislation at present in force in Great Britain and Northern Ireland in regard to workmen's compensation has been supplemented, so far as concerns accidents to Danish subjects arising out of their employment as workmen, by arrangements to the following effect :—

- (a) That the compensation payable shall in every case be fixed by an award of the county court.
- (b) That the county courts shall, for the purpose of proceedings by or on behalf of dependants of Danish workmen under "The Workmen's Compensation Act, 1906," and amending Acts, such dependants being resident in Denmark, have power to issue letters of request for the examination of witnesses resident in Denmark, and that the statements of such witnesses made and authenticated as hereinafter provided in answer to any such letter of request shall be admissible in evidence in lieu of oral testimony by such witnesses.
- (c) That the county courts shall, for the purposes of claims to compensation by the dependants of British workmen under the Danish Accident Insurance Law, have power to examine on oath witnesses within the jurisdiction of such courts and to reduce to writing and duly authenticate for transmission to Denmark the statements of witnesses so examined.
- (d) That in respect of acts done by the county court in pursuance of the legislation in regard to workmen's compensation as well as the execution of the present convention, workmen who are Danish subjects, or their dependants, shall be exempt from court fees in respect of all proceedings under the Workmen's Compensation Acts by way of arbitration or otherwise in connection with the settlement of any claim or other matter arising under those Acts.
- (e) That at the beginning of each year His Britannic Majesty's Principal Secretary of State for the Home Department will send to the Ministry of Social Affairs in Denmark a record of all judicial decisions given in the course of the preceding year under the legislation in regard to workmen's compensation in the case of Danish subjects injured by accident in Great Britain or Northern Ireland.

And reciprocally, before such ratification as aforesaid,

the Danish Government will, so far as concerns accidents to British subjects within the Danish Accident Insurance Law, make all such arrangements as are necessary to ensure :

- (f) That in proceedings for compensation under the Danish Accident Insurance Law by or on behalf of dependants of British workmen, such dependants being resident in Great Britain or Northern Ireland, statements of witnesses resident in Great Britain or Northern Ireland made on oath and reduced to writing in the county court shall in Denmark be admissible as evidence of the facts therein contained.
- (g) That letters of request issued by a county court in Great Britain or Northern Ireland shall be received by the Danish Workers' Insurance Council and by them transmitted to the appropriate court of first instance, by which tribunal the necessary examination of witnesses will be made on oath, and the statements of such witnesses will be authenticated for transmission to the county court by which the letter of request was issued.
- (h) That in respect of all acts done by the Danish Workers' Insurance Council in pursuance of the legislation in regard to accident insurance, as well as in the execution of the present convention, workmen who are British subjects, or their dependants, shall be exempt from fees in respect of the examination of cases by the aforesaid council and the submission of any such cases to the Ministry of Social Affairs.
- (i) That at the beginning of each year the Danish Government will cause to be sent to His Britannic Majesty's Principal Secretary of State for the Home Department a record of all cases dealt with during the course of the preceding year, under the legislation in regard to accident insurance in the case of British subjects injured by accident in Denmark.

5. The present convention shall not be applicable in respect of laws that are, or may at any future time be, in force in Great Britain and Northern Ireland and Denmark, relating to increased compensation for seamen in cases of accidents resulting from a state of war.

ORDER IN COUNCIL UNDER SECTION 37 OF THE WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 GEO. 5, C. 84.)

(Dated June 1st, 1926.)

Whereas His Majesty the King and His Majesty the King of Denmark and Iceland have concluded a convention to provide for and facilitate the reciprocal enjoyment by their respective subjects and citizens of the benefits of the legislation in force in Great Britain and Northern Ireland, and in Denmark respectively, in

regard to compensation for accidents rising out of their employment :

And whereas effect cannot be given to the said convention unless and until certain arrangements have been made by His Majesty's Government and by the Danish Government, which arrangements involve certain modifications of the law at present in force in Great Britain and Northern Ireland in regard to workmen's compensation :

And whereas it is provided by sect. 37 of the Workmen's Compensation Act, 1925, that for the purpose of giving effect to any convention with a foreign State providing for reciprocity in matters relating to compensation to workmen for injuries by accident, His Majesty may, by Order in Council, make provision—

- (a) for modifying that Act, and the enactments regulating the payment of compensation to workmen for injuries by accident for the time being in force in Northern Ireland, in their application to cases affected by the said convention, so, however, as not to alter the amount of compensation in any case to which those Acts may apply ;
- (b) for determining, in cases where rights to compensation accrue both under the Acts referred to in paragraph (a) hereof and under the law of the State with which the convention is made, under the law of which country the workman shall be entitled to recover compensation ;
- (c) for conferring on county courts powers for the admission of evidence taken abroad and the procuring and taking of evidence for use abroad, or otherwise for the purpose of facilitating proceedings for the recovery of compensation under the respective laws of the two countries.

Now, therefore, in pursuance of the powers vested in him by the above-mentioned provisions of the Workmen's Compensation Act, 1925, and of any other powers vested in him in that behalf, His Majesty is pleased, by and with the advice of his Privy Council, to order and prescribe as follows :—

1. The Workmen's Compensation Act, 1925, and the enactments regulating the payment of compensation to workmen for injuries by accident at present in force in Northern Ireland, hereinafter referred to as the Acts, shall in the case of workmen who are Danish subjects apply subject to the following modifications :—

- (i.) In all cases any question as to liability to pay compensation under the Acts to a Danish subject or as to the amount or duration of such compensation, including any question as to the amount payable in respect of the redemption of weekly payments, and in cases of death the amount payable to each dependant, shall be settled by an award of the county court and in no other manner.
- (ii.) No court fee shall be payable by a workman who is a Danish subject or by the dependants of such workman

in respect of any proceedings under the Acts in the county court by way of arbitration or otherwise in connection with the settlement of any claim or other matter arising under the Acts.

- (iii.) The registrar of every county court shall, not later than the 31st January in each year, send to the Secretary of State for the Home Department, in a form prescribed by him, a record of all judicial decisions given in the course of the preceding year under the Acts in the case of Danish subjects and the said Secretary of State shall cause such record to be communicated to the Ministry of Social Affairs in Denmark.
- (iv.) The power of making rules under the Acts shall include a power to make such rules as may be necessary for the purpose of carrying the said convention or this Order into effect. Such rules may include provisions authorising a county court (a) to order the transfer to the appropriate Danish authority of any compensation due under the Acts for the benefit of any British or Danish workman or dependants of such workman resident in Denmark, and (b) to receive and administer any compensation awarded under the Danish Accident Insurance Law for the benefit of any British or Danish workman or dependants of such workman resident in Great Britain or Northern Ireland.

2. For the purpose of proceedings under the Acts by or on behalf of dependants of Danish workmen, such dependants being resident in Denmark, county courts shall, notwithstanding anything in sect. 17 of the County Courts Act, 1919, have power to issue letters of request for the examination of witnesses resident in Denmark and the duly authenticated statements of such witnesses in answer to any such letter of request shall be admissible in evidence in lieu of oral testimony by such witnesses.

3. For the purpose of claims to compensation by the dependants of workmen who are British subjects under the Danish Accident Insurance Law, county courts shall have power to examine on oath witnesses within the jurisdiction of such courts and to reduce to writing and duly authenticate for transmission to Denmark the statements of witnesses so examined.

4. In the application of this Order to Scotland "county court" shall mean "sheriff court," and "registrar of the county court" shall mean "sheriff clerk," and "rules" shall mean "Act of sederunt."

APPENDIX GG.

THE WORKMEN'S COMPENSATION (SCHEMES) REGULATIONS, 1913, DATED MARCH 1, 1913, MADE BY THE CHIEF REGISTRAR OF FRIENDLY SOCIETIES UNDER THE WORKMEN'S COMPENSATION ACT, 1906 (6 EDW. 7, c. 58).

In pursuance of the powers vested in me by the above-mentioned statute, I, George Stuart Robertson, Chief Registrar of Friendly Societies, hereby make the following regulations:—

1. The regulations made under the above-mentioned statute on July 1, 1907, are hereby rescinded.

2. Every application for certificate to a scheme under section 3 of the Workmen's Compensation Act, 1906 (in these regulations termed "the Act"), shall be in Form A annexed to these regulations, and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

3. Every application for renewal of certificate to a scheme shall be in Form C, and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

4. Every complaint by or on behalf of workmen shall be as nearly as may be in Form D.

5. Whenever a scheme has been certified or the certificate to a scheme has been renewed, the employer shall furnish to the registrar every year during the currency of the certificate accounts and information in regard to such scheme in such form as the Chief Registrar may from time to time prescribe.

6. These regulations may be cited as the Workmen's Compensation (Schemes) Regulations, 1913.

G. STUART ROBERTSON,
Chief Registrar of Friendly Societies.

1 March, 1913.

FORM A.

Workmen's Compensation Act, 1906.

Application for Certificate to Scheme.

TO THE REGISTRAR OF FRIENDLY SOCIETIES.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen,

C.F.F.

If the scheme includes other employers and their workmen, a separate application must be made by each employer and provision for administration, etc., should be made in the scheme.

The total number of workmen in the employment is , and at a ballot, taken on , 19 , of such workmen voted in favour of the scheme, an abstract of which—with a notification that any workman objecting to the same was at liberty to communicate his views to the Registrar of Friendly Societies, Abingdon Street, London, S.W. [or, for Scotland, 3A, Howe Street, Edinburgh, or, for Ireland, 12, South Frederick Street, Dublin]—was posted in a conspicuous position at all the works for a period of at least fourteen days immediately preceding the date of such ballot.

The scheme includes (or does not include) other employers and their workmen.

The following is a comparison of the provisions of the scales of compensation in the scheme with the corresponding scales in the Act :—

	SCALE OF COMPENSATION.	
	In the Act.	In the Scheme.
Where death results from the injury—		
(a) If the workman leaves any dependants wholly dependent upon his earnings.	Sched. I. (1) (a) (i), (2)	
(b) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	Sched. I. (1) (a) (ii), (2)	
(c) If the workman leaves no dependants.	Sched. I. (1) (a) (iii)	
Where total or partial incapacity for work results from the injury.	Sched. I. (1) (b), (2), (3)	

The contributions by the workmen to the scheme are :—

The following are the benefits conferred by the scheme in addition to the benefits to which the workmen would have been entitled under the Act, such additional benefits being at least equivalent to the workmen's contributions :—

The scheme does not contain any obligation upon the workmen to join the scheme as a condition of their hiring, and contains provisions enabling a workman to withdraw from the scheme.

With this application are sent—

- (a) Two printed copies of the scheme each stitched in covers and signed by the applicants ;
- (b) An actuarial report on the scheme by Mr. ;
- (c) A statutory declaration in Form B verifying the result of the ballot, etc. ;

- (d) A statement showing (1) the views of the employer; (2) the views of the workmen, and how such views were ascertained.

Employer.

Workmen.

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

Date 19

FORM B.

Workmen's Compensation Act, 1906.

Declaration verifying result of Ballot, etc.

Full name of employer

I, , of , do solemnly and sincerely declare that at a ballot taken on , 19 , after fourteen days' notice thereof had been given, out of the total number of workmen in the employment of voted in favour of the scheme, application for* which is attached to this declaration, and that on the date of the said ballot the total number of workmen in the said employment was .

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

This declaration is to be made either by employer, by the manager of the works or by some other responsible person.

* Insert "certificate to," or "re-certification of."

Signature of declarant.

† Taken and received before me, one
of His Majesty's Justices of
the Peace for the County of
, at
in the said County, this
day of , 19 .

† This is to be altered as the case requires where any declaration is made before a Borough Magistrate or Commissioner for Oaths.

FORM C.

Workmen's Compensation Act, 1906.

Application for renewal of Certificate to Scheme.

TO THE REGISTRAR OF FRIENDLY SOCIETIES.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

The total number of workmen in the employment is , and the

number included in the scheme is .

The scheme includes (*or* does not include) other employers and their workmen.

[If any modification of the scheme is now proposed, the following comparative statement should be filled in]—

The following is a comparison of the scales of compensation in the scheme now submitted with those in the scheme as certified and with the corresponding scales in the Act:—

If the scheme includes other employers and their workmen a separate application must be made by each employer and provision for administration, etc., should be made in the scheme.

	SCALES OF COMPENSATION.		
	In the Act.	In the Scheme.	
		As certified.	As now submitted.
Where death results from the injury—			
(a) If the workman leaves any dependants wholly dependent upon his earnings.	Sched. I (1) (a) (i), (2)		
(b) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	Sched. I. (1) (a) (ii), (2)		
(c) If the workman leaves no dependants.	Sched. I. (1) (a) (iii)		
Where total or partial incapacity for work results from the injury.	Sched. I. (1) (b), (2), (3)		
Contributions of workmen			
Benefits additional to those to which the workmen would have been entitled under the Act.			

With this application are sent—

- (a) Two printed copies of the scheme, each stitched in covers and signed by the applicants;
- (6) An actuarial report on the working of the scheme during the currency of the certificate, and on the effect of any modifications proposed therein by Mr. .

[If the scheme has been so modified as to amount substantially to a new scheme]—

- (c) A statutory declaration in Form B verifying the result of the ballot, etc. ;
 (d) A statement showing (1) the views of the employer ; (2) the views of the workmen, and how such views were ascertained.

Employer.

Workmen.

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

Date , 19 .

FORM D.

Workmen's Compensation Act, 1906.

Form of Complaint by or on behalf of Workmen.

Scheme No. :

TO THE REGISTRAR OF FRIENDLY SOCIETIES,
 ABINGDON STREET, LONDON, S.W.

[or for Scotland, 3A, Howe Street, Edinburgh, or, for Ireland, 12, South Frederick Street, Dublin.]

Complaint is hereby made by [or on behalf of] the workmen of
 (the employer under the above-mentioned scheme) :—

1. That the benefits conferred by the scheme no longer conform to the conditions stated in sub-section (1) of section 3 of the above-mentioned Act in the following respects :—

or,

2. That the provisions of the scheme are being violated in the following respects :—

or,

3. That the scheme is not being fairly administered in the following respects :—

or,

4. That the following reasons exist for revoking the certificate to the scheme :—

You are requested to examine into this complaint, and, if satisfied that good cause exists for it, to revoke the certificate to the scheme unless the cause of complaint is removed.

Workmen.

[Or, The undersigned have been authorised in the following manner to make the complaint on behalf of themselves and the other workmen of the said employer :—

Workmen.]

Date , 19 .

APPENDIX HH.

MERCHANT SHIPPING.

EXERCISE OF CONSULAR POWERS IN BRITISH PROTECTORATES.

ORDER IN COUNCIL PROVIDING FOR THE EXERCISE IN VARIOUS
BRITISH PROTECTORATES OF THE POWERS OF A BRITISH
CONSULAR OFFICER UNDER SECTION 7 OF THE WORKMEN'S
COMPENSATION ACT, 1906.

At the Court at Buckingham Palace, the 4th day of July, 1908.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas by section 7 of the Workmen's Compensation Act, 1906, it is amongst other things provided that where an injured master seaman or apprentice (being a member of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner or, if there is more than one owner, the managing owner or manager resides, or has his principal place of business in the United Kingdom) is discharged or left behind in a British possession, or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim for compensation be admissible in evidence as provided by sections 691 and 695 of the Merchant Shipping Act, 1894, and those sections shall apply accordingly:

And whereas by section 691 of the Merchant Shipping Act, 1894, it is amongst other things provided that whenever in the course of any legal proceeding instituted in any part of His Majesty's dominions before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of that proceeding, then upon due proof, if the proceeding is instituted in the United Kingdom, that the witness cannot be found in that kingdom, or if in any British possession, that he cannot be found in that possession, any deposition that the witness may have previously made on oath in relation to the same subject matter before any justice or magistrate in His Majesty's dominions or any British consular officer elsewhere shall be admissible in evidence:

And whereas by section 737 of the said last recited Act it is provided that where under that Act anything is authorised to be done by, to or before a British consular officer, and in any place outside His Majesty's dominions in which His Majesty has jurisdiction there is no such officer, such things may be done in that place by, to or before such officer as His Majesty in council may direct:

And whereas the places specified in the first column of the schedule hereto are places outside His Majesty's dominions in

which His Majesty has jurisdiction, but in which there is no British consular officer :

And whereas it has been made to appear to His Majesty that it is expedient that the officers named in the second column of the schedule hereto, should exercise and perform in the said places respectively the hereinbefore mentioned power and duties of a British consular officer to take depositions as aforesaid :

Now, therefore, His Majesty, by virtue and in exercise of the power on that behalf by section 737 of the Merchant Shipping Act, 1894, in His Majesty vested, is pleased, by and with the advice of his Privy Council, to direct that the taking of depositions which is under the hereinbefore recited Acts authorised to be done by or before a British consular officer may be done in the places specified in the first column of the schedule hereto, by or before any officer for the time being acting in the office or offices respectively named in the second column of the schedule hereto and set opposite to such places specified as aforesaid.

A. W. FITZROY.

SCHEDULE.

1. Northern Nigeria	The Cantonment Magistrate at Lokoja.
2. The Protectorate of Southern Nigeria.	At Calabar and Warri the Police Magistrate, and at other ports of the Protectorate the District Commissioner of the District.
3. The East Africa Protectorate	The Chief of Customs.
4. Uganda	The Principal Judge.
5. Somaliland	The District Officer at Berbera.
6. Nyasaland	The Comptroller of Customs.
7. Weiheiwei	The Magistrate.
8. Cyprus	The President of the District Court of Nikosia.

APPENDIX JJ.

SHIPOWNERS' NEGLIGENCE (REMEDIES) ACT, 1905.

5 Edw. 7, c. 10.

1.—(1) If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries including fatal injuries caused by the ship, or sustained on, in, or about the ship in any port or harbour in the United Kingdom in consequence of the wrongful act, neglect, or default of the owners of the ship, or the master or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with rules of court that the owners are probably

Enlargement of remedy by action for injuries caused by negligence of a shipowner.

liable to pay damages in respect of such injuries, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have made satisfaction in respect of the injuries, or have given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding in relation to such injuries as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship which has caused the injuries, or on, in, or about which the injuries were sustained, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

57 & 58 Vict.
c. 60.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and the expressions "port" and "harbour" have the same meaning as in that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this Act be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

60 & 61 Vict.
c. 37.

(4) The words "person applying" in this section shall include an employer who has paid compensation or against whom a claim for compensation has been made under the Workmen's Compensation Act, 1897, as amended by any subsequent enactment, if he shows the judge that he probably is or will become entitled to be indemnified under that Act, and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.

Short title.

2. This Act may be cited as the Shipowners' Negligence (Remedies) Act, 1905.

APPENDIX KK.

ORDER DEALING WITH AIRCRAFT MADE BY THE SECRETARY OF STATE UNDER SECTION 27 OF THE WORKMEN'S COMPENSATION ACT, 1923.

THE WORKMEN'S COMPENSATION (AIRCRAFT) ORDER, 1924, DATED DECEMBER 19TH, 1924, MADE BY THE SECRETARY OF STATE, EXTENDING THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACTS TO EMPLOYMENT ON AIRCRAFT WHEN OUTSIDE GREAT BRITAIN.

In pursuance of the powers conferred on me by Section 27 of the Workmen's Compensation Act, 1923, I hereby make the following Order :—

1. For the purposes of this Order the term " aircraft " means any balloon, airship or flying machine registered in Great Britain and Northern Ireland, the owner of which resides or has his principal place of business in Great Britain.

2. The Workmen's Compensation Act, 1906, as amended by the Workmen's Compensation Act, 1923, shall apply to such persons employed as pilot, commander, navigator or member of the crew of any aircraft when outside Great Britain, as are workmen within the meaning of the said Acts, subject to the following modifications and exceptions :—

(a) Where the accident causing the injury did not occur during or in connection with the flight, taking off or landing of the aircraft, compensation shall not be payable.

(b) In the case of a fatal accident, the claim for compensation shall be made within six months after news of the death has been received by the claimant.

(c) Where an injured pilot, commander, navigator or member of the crew of any aircraft is discharged or left behind in a British possession or foreign country, depositions respecting the circumstances and nature of the injury may be taken and made available as evidence in the manner provided by subsection (1) (c) of Section 7 of the Workmen's Compensation Act, 1906, in the case of seamen, and that subsection shall apply accordingly.

Provided that any depositions taken under this Article shall be transmitted to the Air Council instead of the Board of Trade.

3. This Order shall not apply in any case where the accident happened before the date when the Order comes into force.

4. This Order may be cited as the Workmen's Compensation (Aircraft) Order, 1924, and shall come into force on such date as I may hereafter fix by notice published in the *London* and *Edinburgh Gazettes*, not being earlier than the date of the expiry of the period during which this Order is, by the said section twenty-seven, required to be laid before Parliament.

W. JOYNSON-HICKS,
One of His Majesty's Principal
Secretaries of State.

HOME OFFICE,
WHITEHALL.
9th December, 1924.

APPENDIX LL.

CONTRIBUTORY PENSIONS.

WORKMEN'S COMPENSATION VALUATION REGULATIONS, 1927 (*a*).
(Dated October 10, 1927.)

The National Health Insurance Joint Committee, the Minister of Health and the Scottish Board of Health, acting jointly in conjunction with the Treasury, in pursuance of the powers conferred on them by the proviso to Section 25 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, and of all other powers enabling them in that behalf, hereby make the following regulations:—

1.—(1) These regulations may be cited as the Contributory Pensions Workmen's Compensation (Valuation) Regulations, 1927.

(2) The Interpretation Act, 1889 (52 & 53 Vict. c. 63), applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(3) The Contributory Pensions Workmen's Compensation (Valuation) Regulations, 1926, made on the 2nd day of January, 1926, are hereby revoked without prejudice to anything done thereunder.

2. These regulations shall be deemed to have had effect as from the 4th day of January, 1926.

3. Subject as hereinafter provided, for the purposes of the proviso to Section 25 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, the weekly value of the sum awarded or agreed shall be ascertained by multiplying the amount shown in column 2 of the table set out in the schedule to these regulations, appropriate to the age of the child concerned, by the result produced by dividing the number of pounds in the amount awarded, or agreed, by ten pounds:

Provided that any fractional part of sixpence in the sum so ascertained if equal to or greater than half shall be treated as equal to sixpence and any fractional part which is less than half shall be disregarded.

(*a*) These Regulations supersede the Provisional Regulations which were made, and came into force, on January 2, 1926.

4. In the case of a scheme certified under sub-section (1) of Section 31 of the Workmen's Compensation Act, 1925, the terms of which provide for weekly payments at a specified rate in respect of children under the age of 15 years, the weekly amount payable in respect of any child shall be deemed for the purposes of the proviso to Section 25 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, to be the weekly value of the sum awarded or agreed in respect of that child.

SCHEDULE.

Age of child* at date of insured person's death.	Weekly value of a lump sum of £10 awarded or agreed as compensation.
Under 6 months	<i>s.</i> <i>d.</i> 0 4.1
6 months to 1 year.	0 4.2
1 year to 1½ years	0 4.3
1½ years to 2 years	0 4.4
2 " " 2½ " "	0 4.6
2½ " " 3 " "	0 4.7
3 " " 3½ " "	0 4.9
3½ " " 4 " "	0 5.0
4 " " 4½ " "	0 5.2
4½ " " 5 " "	0 5.5
5 " " 5½ " "	0 5.7
5½ " " 6 " "	0 6.0
6 " " 6½ " "	0 6.2
6½ " " 7 " "	0 6.5
7 " " 7½ " "	0 6.9
7½ " " 8 " "	0 7.3
8 " " 8½ " "	0 7.8
8½ " " 9 " "	0 8.4
9 " " 9½ " "	0 9.0
9½ " " 10 " "	0 9.7
10 " " 10¼ " "	0 10.3
10¼ " " 10½ " "	0 10.8
10½ " " 10¾ " "	0 11.4
10¾ " " 11 " "	1 0.0
11 " " 11¼ " "	1 0.7
11¼ " " 11½ " "	1 1.6
11½ " " 11¾ " "	1 2.5
11¾ " " 12 " "	1 3.6
12 " " 12¼ " "	1 4.9
12¼ " " 12½ " "	1 6.4
12½ " " 12¾ " "	1 8.3
12¾ " " 13 " "	1 10.6
13 " " 13¼ " "	2 1.6
13¼ " " 13½ " "	2 5.4
13½ " " 13¾ " "	2 10.6
13¾ " " 14 " "	3 6.3
14 " " and over	3 10.9

* For the purposes of this Schedule a posthumous child shall be deemed to be a child under the age of six months at the date of the insured person's death.

PART V.

JURISDICTION UNDER STATUTES.

INTRODUCTORY CHAPTER.

GENERAL OBSERVATIONS ON THE SPECIAL JURISDICTION GIVEN TO THE COUNTY COURT BY SPECIAL STATUTES.

NUMEROUS statutes, other than those which deal exclusively with county courts or their jurisdiction, have from time to time been passed since 1846 which confer some jurisdiction, or impose some duty, on county courts or their judges or their registrars. These jurisdictions and duties have been conferred without regard to any recognised system, hence it is most difficult to classify or arrange the Acts which confer them in any satisfactory manner. The obligations created or dealt with by these special statutes are of a most varied kind, giving to county courts a jurisdiction sometimes limited and sometimes unlimited, sometimes exclusive of and sometimes concurrent with the High Court. In previous years the attempt was made to set out all, or almost all, of these statutes in full, but they have increased during late years, both in number and bulk, to such a degree that this is no longer possible within the limits of a single volume.

Since the edition of 1923 a number of the Acts formerly set out in full have been curtailed, and some which were obsolete, or very rarely used, have been omitted, or their title and county court sections referred to by name only.

On the other hand, there are now in this volume some statutes of general application, such as the Sale of Goods Act, 1893, which are referred to daily in county courts, and the inclusion of which it is hoped will render the volume of still greater use to the practitioner. The Emergency Statutes, so far as they now exist, will be found in Part VI.

In editions of the practice prior to that of 1914 it had been considered that a question of first importance for a practitioner was to know the nature and extent of the jurisdiction; consequently, so far as any classification could be attempted, jurisdiction was made the basis of that classification. But this classification, though instructive to the student who desired to

make himself master of the subject of county court jurisdiction, was found not to be convenient for those practitioners who in the press of business desired to ascertain as quickly as possible the jurisdiction and practice of the county court on any one particular statute.

It was therefore decided in all future editions to alter the arrangement of the practice and to deal with each subject in alphabetical order, bringing the notes, the Acts and the rules as far as possible together, setting out in notes to each statute the limit (if any) to the jurisdiction given to the county court, in which court proceedings ought to be brought, and whether these proceedings should be by action or petition, whether an appeal lay to the High Court, and how that appeal ought to be presented. As the classification of the statutes according to the jurisdiction they respectively confer is interesting and instructive, a list of the statutes thus classified is added at the end of these observations.

Appeal.]—The question of whether an appeal could be prosecuted was at one time a matter of considerable difficulty, but is much simplified since *The Delano* (C. A.), (1895) P. 40 ; 64 L. J. P. 8, in which case the Court of Appeal decided that wherever the words of sect. 120 of the County Courts Act, 1888, were wide enough to include a case under a special Act, the right of appeal was given by that section in every action or matter which could come before a county court. As, by sect. 186 of the County Courts Act, 1888, “action” includes suit and means every proceeding which may be commenced by plaint, and “matter” means every proceeding which may be commenced otherwise than by plaint, it will be at once realised how wide a field is covered by the *Delano* decision (see *Williams v. Wallis & Cox*, (1914) 2 K. B. 478 ; 83 L. J. K. B. 1296). Where the special Act does give an appeal it is now settled that the appeal must be by motion (*Kirkheaton Local Board v. Ainley* (C. A.), (1892) 2 Q. B. 274 ; 61 L. J. Q. B. 812).

Prohibition.]—The general power which the High Court possesses to restrain all inferior courts from exceeding their jurisdiction no doubt enables it to restrain by prohibition any excess of jurisdiction under any special Act, whether the jurisdiction be concurrent or exclusive (*Hull v. McFarlane*, (1857) 2 C. B. N. S. 796 ; 27 L. J. (N. S.) C. P. 41, where it seems to have been assumed that prohibition may be ordered in the mode prescribed by sect. 128 of the County Courts Act, 1888, instead of in the more cumbrous method still prevailing for other cases ; *Smith v. Pryse*, (1857) 7 E. & B. 339 ; 26 L. J. (N. S.) Q. B. 95).

Order in lieu of Mandamus.]—Whether a judge can be compelled by order in lieu of by *mandamus* to do an act to the performance of which a suitor is entitled is not clear, but it seems to have been so considered in a case under the Bills of Exchange Act (*Holborow v. Jones*, (1868) L. R. 4 C. P. 14 ; 38 L. J. (N. S.) C. P. 22) ; whilst where a county court judge refused to hear disputes which he was bound to hear under the terms of a local Act, it was held that *mandamus* and not an order was the proper remedy (*Re Brighton Sewers Act*, (1882) 9 Q. B. D. 723).

In what Court Proceedings commenced.]—Where the special Act is silent as to the court in which proceedings under it may be brought, the safest course is to proceed under sect. 74 of the County Courts Act, 1888, in the court of the district in which the defendant dwells or carries on business. In *The Hero*, (1891) P. 294 ; 60 L. J. P. 99, it was held that the general provisions of the said sect. 74 gave jurisdiction in admiralty to the court in which the defendant carried on business, although the Admiralty Jurisdiction Acts contain express provisions inconsistent with such general provisions.

When by Action and when by Petition.]—The general practice of the court prescribed by the rules applies to all proceedings authorised by any Act to be commenced or taken in a county court, except in so far as such practice may be inconsistent with the provisions of any such Act or of any particular rules made as to the procedure under any such Act (Order L. r. 36). It is also provided that where by any Act, for which particular rules have not been prescribed, proceedings are authorised or directed to be taken in a county court, the proceedings must be commenced by action where the object of the proceedings is to obtain relief against any person, or to compel any person to do or abstain from doing any act. Where there is no person against whom an action can be brought, proceedings must be taken either by petition or in accordance with the rules for the time being in force as to interlocutory applications, and must be supported by affidavit ; the judge has power, in any case in which an interlocutory application is made, to direct an application to be filed (Order L. r. 35).

The Act and rules help one step further by providing that the word “action” means every proceeding which may be commenced by plaint (51 & 52 Vict. c. 43, s. 186). It may therefore shortly be said that wherever there is any one who can be made defendant the proceeding should be by action commenced by plaint in the ordinary way. Where there is no such person then the proceeding should be as provided by Order L. r. 35 (above).

Classification.]—The following is a list of the statutes giving special jurisdiction to county courts or those with which they are often called upon to deal:—

(NOTE.—An alphabetical list of these statutes appears in the “Contents,” p. vii.)

ACTS IMPOSING SPECIAL DUTIES ON THE COURT OR ON JUDGES OR REGISTRARS, OR WHICH INDIRECTLY AFFECT THE COURT OR THE OFFICERS.

	PAGE
Army Act, 1881	1754
Bills of Sale Act, 1882	1766
Checkweighing in Various Industries Act, 1919	1796
Clergy Discipline Act, 1892	1796
Coal Mines Acts, 1911, 1914	1797
Deeds of Arrangement Act, 1914	1984
Distress, Law of, and Amendment Acts, 1888, 1895, and 1908	1991
Distress for Rent Rules, 1920	1996
Explosives Act, 1875	2009
Inebriates Acts, 1879, 1888, 1898	2066
Inferior Courts Judgments Extension Act, 1882	2067
Licensing (Consolidation) Act, 1910	2143
Local Government (England and Wales) Act, 1888	2293
London Building Acts, 1894 and 1905	2142
Lunacy Act, 1890	210
Mental Deficiency Act, 1913	2150
National Health Insurance Act, 1924	2284
Petroleum (Consolidation) Act, 1928	2209
Railway Regulation Amendment Act, 1871	2330
Telegraph Act, 1878	2435
Trade Union Act, 1913	2475

ACTS GIVING SOME JURISDICTION.

Agricultural Holdings Act, 1923	1671
Alkali Works Regulation Act, 1906	1727
Allotments Acts, 1922 and 1925	1736
Allotments Extension Act, 1882	1752
Ballot Act, 1872	1756
Bankruptcy Act, 1883, sect. 145	1757
Bankruptcy Act, 1890, sect. 12	1757
Bankruptcy and Deeds of Arrangement Act, 1913, sect. 15	1758
Bankruptcy Act, 1914, and Rules, 1915	1758
Brine Pumping Act, 1891	1769
Celluloid and Cinematograph Film Act, 1922	1782
Ecclesiastical Dilapidations Measure, 1923	2001
Employers' Liability Act, 1880	Part IV. 1258
Employers' and Workmen's Act, 1875	2007
Factory and Workshop Act, 1901	2009
Highways and Locomotives Amendment Act, 1878	2043
Hosiery Manufacture (Wages) Act, 1874	2051
Housing Act, 1925	2053
Housing (Rural Workers) Act, 1926	2059
London (City) Small Debts Extension Act, 1852	2147
Parliamentary Elections (Returning Officers) Act, 1875, and Amendment Act, 1886	2293
Pharmacy Acts, 1852, 1868, 1869; Poisons and Pharmacy Act, 1908	2302
Representation of the People Act, 1918	2334
Riot (Damages) Act, 1886 (up to 1904.)	2364
Rivers Pollution Prevention Acts, 1876, 1893, 1898	2374
Roads Improvement Act, 1925	2383

	PAGE
Sale of Exhausted Parish Lands Act, 1876 (up to 50L.)	2344
Small Dwellings Acquisition Act, 1899	2416
Small Holdings and Allotments Act, 1926	2419
Solicitors Act, 1860, Penalty	2419
Solicitors Act, 1870 (as to work done in county court)	2420
Stannaries Court (Abolition) Act, 1896 (as to mines in Cornwall)	2425
Tithe Act, 1891	2438
Tithe Commutation, &c., Act, 1868	2475
Workmen's Compensation Act, 1925, and Rules	Part IV. 1273

ACTS GIVING LIMITED EXCLUSIVE JURISDICTION CONFINED
TO PARTICULAR COUNTY COURTS.

Admiralty	Part III. 1185
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ACTS GIVING IN SOME MATTERS EXCLUSIVE JURISDICTION,
IN OTHERS LIMITED EXCLUSIVE JURISDICTION.

Building Societies Acts, 1874, 1894	1771
Friendly Societies Acts, 1896, 1908	2018
Industrial Assurance Act, 1923	2061
Industrial and Provident Societies Acts, 1893, 1913	2062

ACTS GIVING JURISDICTION CONCURRENT WITH THE HIGH COURT
OR SOME OTHER COURT, BUT NOT LIMITED.

Adoption of Children Act, 1926	1656
Common Law Procedure Act, 1860	1801
Commons Act, 1876	1801
Companies (Consolidation) Act, 1908	1803
Companies Winding-up Rules	1877
Companies, Winding-up Forms	1949
County Courts, Bankruptcy and Winding-up Jurisdiction	1975
Debtors' Act, 1869	Part I. 266
Guardianship of Infants Acts, 1886 and 1925	2040
Inclosure, etc., Expenses Act, 1868	2060
Judicature (Consolidation) Act, 1925	2072
Landlord and Tenant Act, 1927	2087
Legitimacy Act, 1926	2122
Literary and Scientific Institutions Act, 1854	2140
Married Women's Property Act, 1882	2170
Municipal Elections (Corrupt and Illegal Practices) Act, 1884	2282
Oaths Acts, 1888, 1889, 1909	2290
Open Spaces Act, 1906	2292
Perjury Act, 1911	2302
Poor Law Act, 1927	2309

ACTS GIVING LIMITED JURISDICTION CONCURRENT WITH THE
HIGH COURT OR SOME OTHER COURT.

Charitable Trusts Acts, 1853, 1860.	1783
Finance Acts, 1894, 1896	2011
Finance (1909-10) Act, 1910	2013
Intestates Widows and Children Acts, 1873, 1875	2071
Judicial Trustees Act, 1896	2074
Land Charges Act, 1925	2086
Land Registration Act, 1925	2086
Law of Property Act, 1925	2121
Local Loans Act, 1875	2141
Loan Societies Act, 1840	2142
Locomotives Act, 1898 (see Highways Act)	2018
Merchant Shipping:—	
Merchant Shipping Act, 1894.	2173
Rules for Courts of Survey, 1876	2208

Merchant Shipping— <i>continued</i> .	PAGE
Diseases of Animals Act, 1894	2220
Merchant Shipping Act, 1897	2221
Merchant Shipping Act, 1906	2221
Merchant Shipping Act, 1921	2255
Merchant Shipping Acts (Amendment) Act, 1923	2257
Shipowners' Negligence (Remedies) Act, 1905	2232
Merchant Shipping (Seamen's Allotment) Act, 1911	2233
Merchant Shipping (Stevedores and Trimmers) Act, 1911	2233
Maritime Conventions Act, 1911	2235
Pilotage Act, 1913	2238
Order L., Rules 22—29, and Forms	2222
Merchant Shipping (Convention) Act, 1914	2248
Merchant Shipping (Salvage) Act, 1916	2253
Merchant Shipping (Wireless Telegraphy) Act, 1919	2254
Merchant Shipping (International Labour Conventions) Act, 1925	2257
Money-Lenders Acts, 1900 and 1927	2258
Partition Acts, 1868, 1876	2302
Places of Worship (Enfranchisement) Act, 1920	2309
Private Street Works Act, 1892	2309
Probate Acts, 1857 and 1858	2312
Public Health Act, 1875	2318
Public Health (London) Act, 1891	2326
Public Trustee Act, 1906	2323
Settled Land Act, 1925	2411
Stamp Act, 1891	2425
Succession Duty Act, 1853	2434
Summary Jurisdiction Acts, 1848 and 1879	Part I. 909
Trustee Act, 1925	2480
Wages Attachment Abolition Act, 1870	2489

GENERAL STATUTES.

Companies (Particulars as to Directors) Act, 1917	1874
Registration of Business Names Act, 1916	2331
Sale of Goods Act, 1893	2386

ADOPTION OF CHILDREN ACT, 1926.

[16 & 17 GEO. 5. CH. 29.]

Jurisdiction.—The county court within the district of which either the applicant or the infant resides is given jurisdiction, concurrent with the High Court and courts of summary jurisdiction, to make adoption orders under the Act.

The court must appoint some person or body to act as guardian *ad litem* of the infant, with the duty of safeguarding the interests of the infant before the court. The Act contemplates the appointment of a local authority in suitable cases as such guardian, subject to the consent of the authority, and empowers the court to authorise the authority to incur the necessary expenditure (sect. 8 (3)). The Secretary of State for the Home Department has suggested that in most instances the local authority for elementary education is likely to be the most suitable local authority to undertake the work.

Procedure.—For Rules and Forms, see *post*, pp. 1664–1667.

Court Fees.—A fee of 10s. is payable on filing the petition, and the hearing fee is 10s. (C. C. Fees Order, 1925, Fees No. 2 and 20).

AN ACT TO MAKE PROVISION FOR THE ADOPTION OF INFANTS.
4TH AUGUST, 1926.

1.—(1) Upon an application in the prescribed manner by any person desirous of being authorised to adopt an infant who has never been married, the Court may, subject to the provisions of this Act, make an order (in this Act referred to as “an adoption order”) authorising the applicant to adopt that infant.

Power to make adoption orders.

(2) A person so authorised to adopt the infant and an infant authorised to be adopted are in this Act referred to as an “adopter” and an “adopted child” respectively, and “infant” means a person under the age of twenty-one.

(3) Where an application for an adoption order is made by two spouses jointly, the Court may make the order authorising the two spouses jointly to adopt, but save as aforesaid no adoption order shall be made authorising more than one person to adopt an infant.

2.—(1) An adoption order shall not be made in any case where—

(a) the applicant is under the age of twenty-five years, or

(b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made :

Restrictions on making adoption orders.

Provided that, where the applicant and the infant are within the prohibited degrees of consanguinity, it shall be lawful for the court, if it thinks fit, to make the order notwithstanding that the applicant is less than twenty-one years older than the infant.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant :

Provided that the Court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

Section 2.

(4) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them :

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(5) An adoption order shall not be made in favour of any applicant who is not resident and domiciled in England or Wales or in respect of any infant who is not a British subject and so resident.

Matters
with respect
to which
Court to be
satisfied.

3. The Court before making an adoption order shall be satisfied—

(a) that every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights ; and

(b) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant ; and

(c) that the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

Terms and
conditions of
order.

4. The Court in an adoption order may impose such terms and conditions as the Court may think fit and in particular may require the adopter by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the Court is just and expedient.

Effect of
adoption
order.

5.—(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock, and in respect of

Section 5.

the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock :

Provided that, in any case where two spouses are the adopters, such spouses shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

(2) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter, and the expressions "child," "children" and "issue" where used in any disposition whether made before or after the making of an adoption order, shall not, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child.

(3) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopter, or where an adopter takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

(4) For the purposes of this section "disposition" means an assurance of any interest in property by any instrument whether inter vivos or by will including codicil.

(5) For the purposes of the enactments relating to friendly societies, collecting societies and industrial assurance companies, which enable such societies and companies to insure money to be paid for funeral expenses, and which restrict the persons to whom money may be paid on the death of a child under the age of ten, the adopter shall be deemed to be the parent of the child ; and where before the adoption order was made any such insurance had been effected by the natural parent of the child, the rights and liabilities under the policy shall by virtue of the adop-

Section 5.

tion order be transferred to the adopter, and the adopter shall, for the purposes of the said enactments, be treated as the person who took out the policy.

Power to
make
interim
orders.

6.—(1) Upon any application for an adoption order, the Court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the Court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the Court to dispense with any such consent.

Power to
make
subsequent
order in
respect of
infant
already
subject to an
order.
Jurisdiction
and pro-
cedure.

7. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Act.

8.—(1) The Court having jurisdiction to make adoption orders under this Act shall be the High Court or, at the option of the applicant, but subject to any rules under this section, any county court or any Court of summary jurisdiction within the jurisdiction of which either the applicant or the infant resides at the date of the application for the adoption order.

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the Court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect shall be made by the Lord Chancellor.

Such rules may provide for applications for adoption orders being heard and determined otherwise than in open Court, and where the application is made to a court of summary jurisdiction, for the hearing and determination thereof in a juvenile court as defined by the Children Act, 1908.

8 Edw. 7,
c. 67.

(3) For the purpose of any application under this Act and subject to any rules under this section, the Court shall appoint some person or body to act as guardian ad litem of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the Court, and where the body so appointed is a local authority the Court may authorise the

authority to incur any necessary expenditure, and may direct out of which fund or rate such expenditure is to be defrayed, but nothing in this section shall be deemed to authorise the Court to appoint a local authority to act as guardian ad litem of an infant except with the consent of that authority.

Section 8.

9. It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the Court to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.

Restriction
on pay-
ments.

10. Where at the date of the commencement of this Act any infant is in the custody of, and being brought up, maintained and educated by any person or two spouses jointly as his, her or their own child under any de facto adoption, and has for a period of not less than two years before such commencement been in such custody, and been so brought up, maintained and educated, the Court may, upon the application of such person or spouses, and notwithstanding that the applicant is a male and the infant a female, make an adoption order authorising him, her or them to adopt the infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made.

Provisions
as to
existing
de facto
adoptions.

11.—(1) The Registrar-General shall establish and maintain at the General Register Office a register to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

Adopted
children
register.

(2) Every adoption order shall contain a direction to the Registrar-General to make in the Adopted Children Register an entry recording the adoption in the form set out in the Schedule hereto.

(3) If upon any application for an adoption order there is proved to the satisfaction of the Court—

(a) the date of the birth of the infant; and

(b) the identity of the infant with a child to which any entry or entries in the Registers of Births relates;

the adoption order shall contain a further direction to the Registrar-General to cause such birth, entry or entries in the Registers of Birth, to be marked with the word "Adopted," and to include in the entry in the adoption register recording the adoption the date stated in the order of the adopted child's birth in the manner indicated in the Schedule hereto.

Section 11.

(4) The prescribed officer of the Court shall cause every adoption order to be communicated in the prescribed manner to the Registrar-General, and upon receipt of such communication the Registrar-General shall cause compliance to be made with the directions contained in such order in regard both to marking any entry in the Registers of Birth with the word "Adopted," and in regard to making the appropriate entry in the Adopted Children Register.

(5) A certified copy of any entry in the Adopted Children Register if purporting to be sealed or stamped with the seal of the General Register Office shall, without any further or other proof of such entry—

(a) where the entry does not contain any record of the date of the birth of the adopted child be received as evidence of the adoption to which the same relates; and

(b) where the entry contains a record of the date of the birth of the adopted child shall be received not only as evidence of the adoption to which the same relates but also as evidence of the date of the birth of the adopted child to which the same relates in all respects as though the same were a certified copy of an entry in the Registers of Births.

(6) The Registrar-General shall cause an index of the Adopted Children Register to be made and kept in the General Register Office, and every person shall be entitled to search such index and to have a certified copy of any entry in the Adopted Children Register in all respects upon, and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths Registration Acts, 1836 to 1901, in respect of searches in other indexes kept in the General Register Office, and in respect of the supply from such office of certified copies of entries in the certified copies of the Registers of Births, Deaths and Marriages.

(7) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein as may be necessary, to record and make traceable the connexion between any entry in the register of births which has been marked "Adopted" pursuant to this Act and any corresponding entry in the Adopted Children Register, but such last-mentioned registers and books shall not be nor shall any index thereof be open to public inspection or search, nor, except under an order of a court of competent jurisdiction, shall the Registrar-General furnish any person with

any information contained in or with any copy or extract from any such registers or books. Section 11.

(8) Regulations made by the Registrar-General under the Births and Deaths Registration Acts, 1836 to 1901, may make provision as to the duties to be performed by Superintendent Registrars and Registrars of Births and Deaths in the execution of this Act.

12.—(1) This Act may be cited as the Adoption of Children Act, 1926. Short title, commencement and extent.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-seven.

(3) This Act shall not apply to Scotland or Northern Ireland.

Section 11.

SCHEDULE.

1.	2.	3.	4.	5.	6.	7.	8.
No. of Entry.	Date of Entry.	Name of Adopted Child. (Enter Name as stated in Adoption Order.)	Sex of Adopted Child. (Enter Sex as stated in Adoption Order.)	Name and Surname, Address and Occupation of Adopter or Adopters. (Enter name, address and Occupation as stated in Adoption Order.)	Date of Birth of Child. (Enter date of Birth (if any) directed by the Adoption Order to be entered, but otherwise no entry.)	Date of Adoption Order and Description of Court by which made. (Entry to be made as appearing in the Adoption Order.)	Signature of Officer deputed by Registrar-General to attest the Entry.

ADOPTION OF CHILDREN (COUNTY COURT) RULES, 1926.

DATED DECEMBER 23, 1926.

1.—(1) In these Rules, unless the contrary intention appears :—

“ The Act ” means the Adoption of Children Act, 1926 ;

“ The court ” means the County Court having jurisdiction under section 8 of the Act, and also a Judge or Registrar exercising the powers of the Court ;

“ The Judge ” means the Judge of the Court ;

“ The registrar ” means the registrar of the Court ;

“ The County Court Rules ” mean the County Court Rules, 1903, and any amendments thereof and additions thereto ;

“ The infant ” means the child proposed for adoption ;

“ The petitioner ” means the person or persons applying for an adoption order.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these Rules in like manner as it applies to the interpretation of an Act of Parliament.

Application
to be by
petition.

2. An application for an adoption order shall be made by petition to the court intituled in the matter of the Act and in the matter of the County Courts Act, 1888, and in the matter of the infant. The proposed adopter shall be the petitioner. The petition shall be in accordance with the form in the Appendix with such variations as the circumstances may require.

Form 1.

3. The petition shall be filed in the court in accordance, so far as practicable, with the practice relating to other petitions filed in a County Court.

Who are
to be
served.

4. The petition shall be served on—

(a) the parent or parents of the infant,

(b) the guardian or guardians of the infant,

(c) the person or persons having the actual custody of the infant,

(d) the person or persons liable to contribute to the support of the infant ;

but the Judge may in his discretion dispense with service on any of those persons, and may in his discretion order the petition to be served on any other person.

Consents
in writing.
Form 2.

5. Every consent required under subsections (3) and (4) of the Act shall be in writing and shall be in accordance with the form in the Appendix and shall be attested by one witness.

6. Every petition, notice or other document shall be served by being posted in a prepaid registered envelope addressed to the person to be served, unless the court otherwise directs, and shall at the expiration of twenty-four hours from the time of posting be deemed to have been served, unless the contrary appears. The service of every petition, notice or other document not served by the court shall be verified by affidavit, unless the Judge otherwise directs. Section 6.
Mode of service.

7. The petition shall be verified by affidavit paragraph by paragraph. There shall be exhibited to the affidavit all certificates, consents and other documents proper for proving the allegations in the petition. Evidence shall be by affidavit, unless the Judge thinks proper to direct evidence to be given orally, which he shall have power to do. Verification by affidavit.

8. The infant shall be a respondent to the petition. As soon as practicable after the filing of the petition, the Judge shall appoint a guardian *ad litem* to the infant; and the registrar shall thereupon cause the petition to be served on the guardian *ad litem*. Guardian *ad litem*.

9. When a guardian *ad litem* has been appointed, the registrar shall appoint a day for the hearing of the petition, and shall give notice to all parties, including the guardian *ad litem*, of the day so appointed. The notice shall be served seven clear days before the day appointed for the hearing and shall be in accordance with the form in the Appendix. Notice of hearing.
Form 3.

10. All documents filed in the court shall be confidential, and shall be kept secret by the registrar. Every petition and every application shall be heard and determined *in camera*. Secrecy.

11. No copy or duplicate of any order made by the court shall be given to or served upon any person other than the petitioner and the Registrar-General, unless the High Court or the Judge otherwise directs. No copies of order.

12. It shall be the duty of the guardian *ad litem* to investigate as fully as possible all the circumstances of the infant and the petitioner, and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the infant, and, in particular, it shall be his duty to include in his investigation the following questions:— Duty of guardian *ad litem*.

- (a) Whether the statements in the petition are true;
- (b) Whether any payment or other reward in consideration of

Section 12.

the adoption has been received or agreed upon and whether it is consistent with the welfare of the infant ;

- (c) Whether the means and status of the petitioner are such as to enable him to maintain and bring up the infant suitably, and what right to or interest in property the infant has ;
- (d) What insurance, if any, has been effected on the life of the infant
- (e) Whether it is desirable for the welfare of the infant that the court should be asked to make an interim order or to impose in making an adoption order any particular terms or conditions or to require the petitioner to make any particular provision for the infant.

Information
to be
confidential.

13. The guardian *ad litem* and, where a body of persons is appointed guardian *ad litem*, any officer or agent of that body, shall regard all information obtained in the course of the investigation or otherwise in relation to the matter as confidential, and shall not divulge any part of it to any person save as may be necessary for the proper execution of his duty.

Presence of
parties.

14. The Judge may refuse to make an adoption order or an interim order unless all parties including the infant attend before him, but he shall have power in his discretion to dispense with the attendance of any party including the infant, and the Judge may direct that any of the parties shall attend separately and apart from the others, or that any party including the infant shall be interviewed privately by himself or the registrar.

Previous
applications.

15. If it appears that the petitioner has made a previous application under the Act in respect of the same infant and that such application has been refused, the court shall not make an adoption order or an interim order unless satisfied that the previous application was made to a court other than a court of summary jurisdiction, and that there has been a substantial change in the circumstances.

Cases more
fit for High
Court.

16. If owing to special circumstances an application appears to the Judge to be more fit to be dealt with by the High Court, the Judge may, on that ground expressly, refuse to make an order.

Supervision
of infant.

17. An interim order may provide for the supervision of the infant by the guardian *ad litem* or otherwise as the Judge may think advisable.

18. The registrar shall be the prescribed officer for the purpose of subsection (4) of section 11 of the Act, and upon the making of an adoption order the registrar shall forward a sealed copy thereof to the Registrar-General in a prepaid registered postal envelope marked "Confidential." Section 18.
Registrar-General.

19. The Judge may make such orders as to costs as he shall think fit, and may direct the costs to be taxed according to such one of Scales of Costs applicable to actions in the County Court as he shall determine, and in default of such direction the costs shall be taxed under column B of the Higher Scale. The Judge may direct that all the costs of a petition under the Act shall be borne and paid by the petitioner. Costs

20. The registrar shall keep in a place of special security all petitions, consents and other documents relating to any application or order made under the Act. Safe custody of documents.

21. Subject to these Rules, the County Court Rules and practice shall apply to proceedings under the Act, so far as they are applicable. County Court practice to apply.

22. The forms in the Appendix shall be used on applications under the Act, and in any case where no form is included in the Appendix, the forms in use in the County Court may be adapted with such variations as may be necessary. Forms.

23. These Rules may be cited as the Adoption of Children (County Court) Rules, 1926, and shall come into operation on the 1st day of January, 1927. Short title and commencement.

APPENDIX.

No. 1.

Petition.

In the County Court of holden at
In the Matter of the Adoption of Children Act, 1926.

and
In the Matter of the County Court Act, 1888,
and

In the Matter of A.B., of in the County of
an Infant.

To His Honour the Judge of the said Court.

The Petition of C.D., of in the County of [and E.D., his wife,
of the same address] :—

SHEWETH—

1. Your Petitioner(s) is (are) desirous of adopting the said A.B. under the provisions of the Adoption of Children Act, 1926.

2. Your Petitioner(s) is (are) resident and domiciled in England (Wales), namely, at aforesaid.
3. Your Petitioner C.D. is unmarried (was married to your Petitioner E.D., at on the day of 1).
4. Your Petitioner C.D. is by occupation a
5. Your Petitioner C.D. is years of age and your petitioner E.D. is years of age.
6. [Your Petitioner(s) has (have) resident with him (them) the following persons, namely, .]
7. Your Petitioner C.D. (E.D.) is related to the said A.B. as follows :—
(or, Your Petitioner(s) is not [are not nor is either of them] related to the said A.B.)
8. The said A.B. is—
(a) of the sex ;
(b) unmarried ;
(c) a child of and both of in the County of
(d) a British subject ;
(e) years of age, having been born on the day of 19
at in the County of ;
(f) resident at ;
(g) now in the actual custody of of in the County of ;
(h) under the guardianship of of in the County of ;
(i) is entitled to the following property, namely :—
9. of in the County of (and of in the County of) is (are) liable to contribute to the support of the said A.B.
10. The said A.B. has not been the subject of an adoption order or of an application or petition for an adoption order, save that (*State order and application or petition, if any*).
11. Your Petitioner(s) undertakes (undertake), if an order is made on his Petition, to make for the said A.B. the following provision, namely :—
Your Petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require.
12. Consents to this petition have been obtained from the following persons, namely :—
(a) [Parents.]
(b) [Guardian.]
(c) [Actual Custodian of Infant.]
(d) [Person or persons liable to contribute to support of Infant.]
(e) [Spouse of Petitioner.]
13. Your Petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or given or agreed to make or give to the Petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said A.B. (except as follows, viz. :—).
14. It is proposed that the costs of this petition shall be provided for as follows, namely :—

Your Petitioner(s) prays (pray)—

- (1) that an order for the adoption of the said A.B. by four Petitioner(s) may be made in pursuance of the Adoption of Children Act, 1926, with all necessary directions ;
- (2) that the costs of this petition may be provided for as above mentioned or otherwise as the Court may direct ;
- (3) such further or other order as the nature of the case may require.

NOTE.—It is intended to serve this Petition on

No. 2.

Consent to Adoption Order.

(Title as in Petition.)

I, the undersigned of in the County of being—

(a) the Father of the said Infant,

(b) the Mother of the said Infant,

(c) guardian of the said Infant.

(d) a person having the actual custody of the said Infant,

(e) a person liable to contribute to the support of the said Infant,

(f) the Spouse of the petitioner,

(Strike out
all but such
one of these
descriptions
as is
applicable.

hereby state that I understand the nature and effect of the adoption order for which application is made [and that in particular I understand that the effect of the order will be permanently to deprive me of my parental rights]. And I hereby consent to the making of an adoption order in favour of the petitioner(s).

In Witness whereof I have signed this consent on the day of
19 at .

(Signature)

Signed in the presence of :

(Signature of witness)

(Address)

(Description)

No. 3.

Form of Notice of Day appointed for Hearing of Petition.

(Title as in Petition.)

To of .

Take notice that a petition has been presented in the above matter praying that an order may be made for the adoption of the above-named by of and that of has been appointed guardian *ad litem* to the said Infant, and that the said Petition will be heard at a Court to be held at on the day of 19 at o'clock in the noon.

Registrar.

No. 4.

Form of Adoption Order.

(Title as in Petition.)

Upon reading the Petition of [and] and upon reading the affidavits of and and the exhibits thereto [*Refer to the affidavits filed in the matter and the exhibits thereto*] and upon hearing and the evidence of [*State names and addresses of witnesses examined orally*].

And the Judge being satisfied that the allegations in the said Petition are true and being also satisfied with the undertaking of the said [and] as to the provision to be made for the above-named Infant and with the securing thereof and being further satisfied that it is for the benefit of the said Infant that (s)he should be adopted by the said and

and that all the requirements of the Adoption of Children Act, 1926, have been complied with.

It is ordered that the said [and] be authorised to adopt the said Infant.

[And the following payment or reward is sanctioned, viz : .]

And it is ordered that the parties to these proceedings other than the said [and] do recover their costs against the said [and], such costs to be taxed by the Registrar in accordance with column of the Higher Scale of costs applicable to actions in the County Court, and it is ordered that the said [and] do pay the amount of the said costs when taxed to the Registrar of this Court within fourteen days after the date of the certificate of taxation.

And it is directed that the Registrar-General shall make an entry recording this adoption in The Adopted Children Register in the form set out in the Schedule to the said Act.

[And it having been proved to the satisfaction of the Judge that the said Infant was born on the day of 19 and is identical with to whom an entry numbered and made on the day of 19 in the Register of Births for the Registration district of and the Sub-district of in the County of relates, it is further directed that the Registrar-General shall cause such birth entry or entries to be marked with the word "adopted" and shall include the above date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act.]

NOTE.—An adoption order, or copy, sent to the Registrar-General is required to be drawn up on paper of foolscap folio size, thirteen inches by eight inches, and to have a margin, to be left blank, not less than one inch wide on the left side of the face of the order, and a similar margin on the right side of the reverse, if any.

No. 5.

Form of Interim Order.

(Title as in Petition.)

Upon reading, etc.

And upon reading, etc.

And upon hearing, etc.

And the evidence, etc.

} As in adoption order.

And the Judge being satisfied that the allegations in the said petition are true and also being satisfied with the undertaking of the said [and] as to the provision to be made for the above-named Infant and with the security thereof and being further satisfied that it is for the benefit of the said Infant that (s)he should for the present be in the custody of the said [and] and that all the requirements of the Adoption of Children Act, 1926, have been complied with.

The following payment or reward is sanctioned, viz :

And it is ordered that the determination of the petition be postponed and that the custody of the said Infant be given to the said [and] for the period of from the date of this order by way of a probationary period [and subject to the supervision of of who shall be at liberty at all reasonable times to visit and interview the Infant alone and to make all necessary inquiries as to the comfort and well-being of the Infant].

And as regards costs it is ordered that

And any of the parties including the guardian *ad litem* of the said Infant are to be at liberty to apply as they may be advised.

AGRICULTURAL HOLDINGS.

The whole of the Agricultural Holdings Acts for England have been consolidated in the Agricultural Holdings Act, 1923 (13 & 14 Geo. V. c. 9). This Act, with a small Amendment Act (13 & 14 Geo. V. c. 25), noted on p. 1700, and incorporated in the principal Act, now contains the whole law on this important subject.

Jurisdiction.]—The cases in which the county court has jurisdiction may be classed under the following heads :—

A. As to arbitrations and awards, in deciding points of law submitted by the arbitrator in the form of a special case (sect. 16 (4) of Act); in the removal of an arbitrator who has misconducted himself (Schedule II. (7) of Act); in directing an arbitrator on the application of either party to state a special case on any question of law arising in an arbitration (Schedule II. (10) of Act); in setting aside an award when an arbitrator has misconducted himself or when an arbitration or award has been improperly procured (Schedule II. (7) of Act); and in the taxation by the registrar, subject to review by the judge, of the costs of and incidental to an arbitration or award (Schedule II. (15) of Act).

B. In enforcing payment of compensation or costs awarded, in the same manner as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable (sect. 19 of Act). See Order XL., r. 7.

C. In deciding disputes as to distresses. These may also be determined by a court of summary jurisdiction (sect. 36 of Act).

D. To appoint, for purposes of the Act where necessary, a guardian of an infant or person of unsound mind (sect. 38 of Act); and to take separate examinations of married women under the Act (sect. 39 of Act).

Practice.]—For the practice in county court, see Order XL., p. 1711, viz. for—

Appointment or change of guardian (see Rule 1).

Application for order to state a special case and the statement and hearing thereof (see Rules 2, 3, and Forms 415, 416, 417).

Application for removal of arbitrator or to set aside an award (see Rule 4, Forms 418 419, 420).

Application for taxation or review of costs of arbitration (Rules 5, 6).

Application for the recovery of money, awarded or agreed to be paid (Rules 7, 8, Forms 421, 422).

Appeal from county court judge on case stated by an arbitrator is to the Court of Appeal whose decision is final (sect. 13 (3)) (see procedure in such appeal, R. S. C. Order 58, r. 20, *ante* p. 263), in other cases to Divisional Court; see *Williams v. Wallis & Cox*, (1914) 2 K. B. 478; 83 L. J. K. B. 1296.

Costs in proceedings in county court are in discretion of the court. The order of the county court cannot be quashed for want of form, or be removed by *certiorari* or otherwise into any superior court (sect. 51 of Act).

Court fees.]—See *post*, p. 1723.

AGRICULTURAL HOLDINGS ACT, 1923.

(13 & 14 GEO. V. c. 9.)

COMPENSATION FOR IMPROVEMENTS ON HOLDINGS.

1.—(1) Where a tenant of a holding has made thereon any improvement comprised in the First Schedule to this Act he shall, subject as in this Act mentioned, and, in a case where the contract

Right of
tenant to
compensa-
tion for im-
provements

Section 1.
 1908, s. 1.
 1920, First
 Schedule.
 A.A., 1921,
 s. 1 (3).

of tenancy was made on or after the first day of January nineteen hundred and twenty-one, then whether the improvement was or was not an improvement which he was required to make by the terms of his tenancy, be entitled, at the termination of the tenancy, on quitting his holding to obtain from the landlord as compensation for the improvement such sum as fairly represents the value of the improvement to an incoming tenant.

See *In re Lancaster and Macnamara*, (1918) 87 L. J. K. B. 1250.

The date of the contract of tenancy is all important, see *Huckell v. Sainty*, (1923) 1 K. B. 154; 92 L. J. K. B. 313.

(2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account—

- (a) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement, whether expressly stated in the contract of tenancy to be so given or allowed or not; and
- (b) as respects manuring as defined by this Act, the value of the manure required by the contract of tenancy or by custom to be returned to the holding in respect of any crops grown on and sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.

(3) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.

Consent of
 landlord as
 to improve-
 ment in
 First
 Schedule,
 Part I.
 1908, s. 2.

2. Compensation under this Act shall not be payable in respect of any improvement comprised in Part I. of the First Schedule to this Act, unless the landlord of the holding has, previously to the execution of the improvement, consented in writing to the making of the improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation or otherwise, as may be agreed upon between the landlord and the tenant, and, if any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

A consent in writing given under the terms of a lease (and *semble*, a similar consent under the Agricultural Holdings Act) by a landlord to a tenant making improvements during his tenancy, for which improvements, being made with such consent, he becomes entitled to compensation, is a term of the tenancy within a condition of sale affecting purchasers with

Section 2
Notes.

1.

Notice to
landlord as
to improve-
ment in
First
Schedule,
Part II.

1908, s. 3.
1920, s. 15 (2).

Agreements
as to im-
provement
in First
Schedule,
Part III.
1908, s. 4.
1920, s. 27.

notice of the terms of all existing tenancies ; and if any claim for compensation for such improvements arises after the date fixed for completion of the sale, it must be borne by the purchaser. *Derby (Earl of) and Fergusson's Contract, In re*, (1912) 1 Ch. 479 ; (1911) 81 L. J. Ch. 567.

3.—(1) Compensation under this Act shall not be payable in respect of any improvement comprised in Part II. of the First Schedule to this Act, unless the tenant of the holding has, not more than three nor less than two months before beginning to execute the improvement, given to the landlord notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work, and, upon such notice being given, the landlord and the tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed.

(2) If any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

(3) In default of any such agreement the landlord may, unless the notice of the tenant is previously withdrawn, execute the improvement in any reasonable and proper manner which he thinks fit, and recover from the tenant as rent a sum not exceeding five per cent. per annum on the outlay incurred, or not exceeding such annual sum payable for a period of twenty-five years as will repay that outlay in that period, with interest at the rate of three per cent. per annum :

Provided that, if the landlord fails to execute the improvement within a reasonable time, the tenant may execute the improvement, and shall in respect thereof be entitled to compensation under this Act.

The Minister may by regulation substitute such percentages or period as he thinks fit for the percentages and period mentioned in this sub-section, having due regard to the current rates of interest.

(4) The landlord and the tenant may by the contract of tenancy or otherwise agree to dispense with any notice under this section, and any such agreement may provide for anything for which an agreement after notice under this section may provide, and in such case shall be of the same validity and effect as such last-mentioned agreement.

4. Where any agreement in writing entered into before the first day of January nineteen hundred and twenty-one secures to the tenant of a holding for any improvement comprised in Part III. of the First Schedule to this Act fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall as respects that improvement be substituted for compensation under this Act.

Section 5.

Determination of claims to compensation for improvements.

1908, s. 6.

5. If the tenant of a holding claims to be entitled to compensation, whether under this Act, or under custom or agreement, or otherwise, in respect of any improvement comprised in the First Schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration.

This section extends the subject matter of a claim; *Holmes and Formby, In re*, (1895) 1 Q. B. 174; 64 L. J. Q. B. 391 (where it was held that a landlord could not avail himself of a cross claim for waste and breach of covenant further than as a defence against a claim by the tenant) is no longer law. Under the Act of 1883 it was held that a claim for compensation which had not been assessed by arbitration under the Act could not be set up by way of set-off or counter-claim in an action by the landlord (*Gas Light Co. v. Holloway*, (1885) 52 L. T. 434).

Right of tenant who has paid compensation to outgoing tenant.

1908, s. 7.

6. Where an incoming tenant of a holding has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, the incoming tenant shall be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted it at the time at which the incoming tenant quits it.

Provision as to change of tenancy.

1908, s. 8.

7. A tenant who has remained in his holding during two or more tenancies shall not, on quitting his holding, be deprived of his right to claim compensation under this Act in respect of improvements by reason only that the improvements were not made during the tenancy on the termination of which he quits the holding.

Restriction in respect of improvements by tenant about to quit.

1908, s. 9.

8. A tenant of a holding shall not be entitled to compensation under this Act in respect of any improvements, other than manuring as defined by this Act, begun by him—

(a) in the case of a tenant from year to year, within one year before he quits the holding (a), or at any time after he has given or received notice to quit which results in his quitting the holding; and

(b) in any other case, within one year before the termination of the tenancy;

Provided that this section shall not apply in the case of any improvement—

(i.) where the tenant, previously to beginning the improvement, has served notice on his landlord of his intention to begin it, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement; or

- (ii.) in the case of a tenant from year to year, where the tenant has begun the improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord, quits his holding at the expiration of that year.

Section 8.

(a) See where by custom of the country the holding is surrendered at different times the case of *Swinburne v. Andrews*, (1923) 2 K. B. 483; 92 L. J. K. B. 889.

COMPENSATION IN RESPECT OF INCREASED OR DIMINISHED VALUE OF HOLDING.

9.—(1) Where a tenant on quitting a holding proves to the satisfaction of an arbitrator appointed under this Act that the value of the holding to an incoming tenant has been increased during the tenancy by the continuous adoption of a standard of farming or a system of farming which has been more beneficial to the holding than the standard or system (if any) required by the contract of tenancy, the arbitrator shall award to the tenant such compensation as in his opinion represents the value to an incoming tenant of the adoption of that standard or system :

Compensation for continuous adoption of special standard or system of farming.
1920, s. 16.

Provided that—

- (a) this section shall not apply in any case unless a record of the condition of the holding has been made under this Act or any enactment repealed by this Act, or in respect of any matter arising before the date of the record so made ; and
- (b) compensation shall not be payable under this section unless the tenant has, before the termination of the tenancy, given notice in writing to the landlord of his intention to claim such compensation ; and
- (c) the arbitrator in assessing the value to an incoming tenant shall make due allowance for any compensation agreed or awarded to be paid to the tenant for any improvement specified in the First Schedule to this Act which has caused or contributed to the benefit.
- (2) Nothing in this section shall entitle a tenant to recover in respect of an improvement specified in the First Schedule or the Third Schedule to this Act any compensation which he would not have been entitled to recover if this section had not been passed.
- (3) The continuous adoption of such a beneficial standard or system of farming as aforesaid shall be treated as an improvement for the purposes of the provisions of this Act relating to the determination of the rent properly payable in respect of a holding.

Section 10.

Compensation to landlord for deterioration of holding.
1920, s. 19.

10. Where a landlord proves, to the satisfaction of an arbitrator appointed under this Act, on the termination of the tenancy of a holding, that the value of the holding has been deteriorated during the tenancy by the failure of the tenant to cultivate the holding according to the rules of good husbandry or the terms of the contract of tenancy, the arbitrator shall award to the landlord such compensation as in his opinion represents the deterioration of the holding due to such failure :

Provided that,—

- (a) compensation shall not be payable under this section unless the landlord has, before the termination of the tenancy, given notice in writing to the tenant of his intention to claim such compensation ; and
- (b) nothing in this section shall prevent a landlord from claiming compensation for dilapidations or for the deterioration of the holding under the contract of tenancy.

See *Arden v. Rutter*, (1923) 2 K. B. 865 ; 92 L. J. K. B. 894.

COMPENSATION FOR DAMAGE BY GAME.

Compensation for damage by game.
1908, s. 10.

11.—(1) Where a tenant of a holding has sustained damage to his crops from game the right to kill and take which is vested neither in him nor in any one claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall subject as hereinafter mentioned be entitled to compensation from his landlord for such damage if it exceeds in amount the sum of one shilling per acre of the area over which the damage extends.

(2) The amount of compensation payable under this section shall, in default of agreement made after the damage has been suffered, be determined by arbitration, but no compensation shall be recoverable under this section unless notice in writing is given to the landlord as soon as may be after the damage was first observed by the tenant and a reasonable opportunity is given to the landlord to inspect the damage—

- (a) in the case of damage to a growing crop, before the crop is begun to be reaped, raised, or consumed ; and
- (b) in the case of damage to a crop reaped or raised, before the crop is begun to be removed from the land—

and unless notice in writing of the claim, together with the particulars thereof, is given to the landlord within one month after the expiration of the calendar year, or such other period of twelve months as by agreement between the landlord and tenant may be substituted therefor, in respect of which the claim is made.

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(3) Where the landlord proves that, under a contract of tenancy made before the first day of January nineteen hundred and nine, any compensation for damage by game is payable by him, or that in fixing the rent to be paid under such contract allowance in respect of such damage to an agreed amount was expressly made, the arbitrator shall make such deduction from the compensation which would otherwise be payable under this section as may appear just.

(4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by such other person against all claims for compensation under this section.

(5) For the purposes of this section the expression "game" means deer, pheasants, partridges, grouse, and black game.

COMPENSATION FOR DISTURBANCE.

12.—(1) Where the tenancy of a holding terminates by reason of a notice to quit given by the landlord, and in consequence of such notice the tenant quits the holding, then, unless the tenant—

Compensation for disturbance.
1920, s. 10.
A.A., 1921,
s. 1 (1).

(a) was not at the date of the notice cultivating the holding according to the rules of good husbandry; or

(b) had, at the date of the notice, failed to comply within a reasonable time with any notice in writing by the landlord served on him requiring him to pay any rent due in respect of the holding or to remedy any breach being a breach which was capable of being remedied of any term or condition of the tenancy consistent with good husbandry; or

(c) had, at the date of the notice, materially prejudiced the interests of the landlord by committing a breach which was not capable of being remedied of any term or condition of the tenancy consistent with good husbandry; or

(d) was at the date of the notice a person who had become bankrupt or compounded with his creditors; or

(e) has, on or after the first day of January nineteen hundred and twenty-one refused, or within a reasonable time failed, to agree to a demand made to him in writing by the landlord for arbitration under this Act as to the rent to be paid for the holding as from the next ensuing date at which the tenancy could have been terminated by notice to quit given by the landlord at the date of the said demand; or

As to notice and demand for arbitration as to rent given at one and the same time, see *Westlake v. Page*, (1926) 1 K. B. 298; 95 L. J. K. B. 456.

Section 12.

(f) had, at the date of the notice, unreasonably refused, or within a reasonable time failed, to comply with a demand made to him in writing by the landlord requiring him to execute at the expense of the landlord an agreement setting out the existing terms of the tenancy; and unless the notice to quit states that it is given for one or more of the reasons aforesaid, compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section :

Provided that—

- (i.) compensation shall not be payable under this section in any case where the landlord has made to the tenant an offer in writing to withdraw the notice to quit and the tenant has unreasonably refused or failed to accept the offer ; and

An offer to withdraw the notice and allow the tenant to continue at a substantially increased rent is not an offer within the meaning of this sub-section. *Perrett and Bennett-Stanford's Arbitration, In re*, (1922) 2 K. B. 592 ; 91 L. J. K. B. 930.

As to meaning of "landlord," see *Richards v. Pryse*, (1927) 2 K. B. 76.

- (ii.) this section shall not apply where notice to quit was given on or before the twentieth day of May nineteen hundred and twenty ; and
- (iii.) where notice to quit was given after that date but before the first day of January nineteen hundred and twenty-one, this section shall apply whether or not the notice stated the reason or reasons for which it was given.

(2) The landlord of a holding may at any time apply to the agricultural committee for the area in which the holding is situate for a certificate that the tenant is not cultivating the holding according to the rules of good husbandry, and, on any such application being made, the committee, after giving to the landlord and the tenant or their respective representatives an opportunity of being heard, shall, as they think proper, either grant or refuse the certificate within one month after the date of the application.

The landlord or tenant may, within seven days after the notification to him of the refusal or grant by the committee of a certificate, require the question as to whether the holding is being cultivated according to the rules of good husbandry to be referred to an arbitrator who may grant a certificate for the purpose of this sub-section or revoke the certificate granted by the committee, and the award of the arbitrator shall be given within twenty-eight days of the date on which the matter is referred to him.

Subject to any such appeal, a certificate granted under this

sub-section shall be conclusive evidence that the holding is not being cultivated according to the rules of good husbandry. Section 12.

In the case of a holding situate in a county borough for which an agricultural committee has not been appointed, this sub-section shall have effect with the substitution of the Minister for an agricultural committee.

(3) Where the landlord of a holding refuses, or within a reasonable time fails to agree to, a demand made to him in writing by the tenant for arbitration under this Act as to the rent to be paid for the holding as from the next ensuing date at which the tenancy could have been terminated by notice to quit given by the tenant at the date of the said demand, and by reason of the refusal or failure the tenant exercises his power of terminating the tenancy by a notice stating that it is given for that reason, the tenant shall be entitled to compensation in the same manner as if the tenancy had been terminated by notice to quit given by the landlord :

Provided that such compensation shall not be payable if the circumstances are such that a notice to quit could have been given by the landlord for any of the reasons mentioned in paragraphs (a), (b), or (c) of sub-section (1) of this section.

(4) The provisions of this section relating to demands for arbitration as to the rent to be paid for a holding shall not apply where the demand, if made later than six months after the thirty-first day of December, nineteen hundred and twenty, is so made that the increase or reduction of the rent would take effect at some time before the expiration of two years from the commencement of the tenancy of the holding or from the date on which a previous increase or reduction of the rent took effect.

(5) (a) Where a demand in writing for an arbitration as to the rent to be paid for the holding has been made for the purposes of this section and has been agreed to, whether in writing or otherwise, the question as to the rent shall be referred to arbitration.

(b) An arbitrator, in determining for the purposes of this section what rent is properly payable in respect of a holding, shall not take into account any increase in the rental value which is due to improvements which have been executed thereon so far as they were executed wholly or partly by and at the expense of the tenant without any equivalent allowance or benefit made or given by the landlord in consideration of their execution and have not been executed by him under an obligation imposed by the terms of his contract of tenancy, or fix the rent at a higher amount than would have been properly payable if those improvements had not been so executed, and shall not fix the rent at a lower amount by reason of any dilapidation or deterioration of land or buildings made or permitted by the tenant.

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(6) The compensation payable under this section shall be a sum representing such loss or expense directly attributable to the quitting of the holding as the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, and shall include any expenses reasonably incurred by him in the preparation of his claim for compensation (not being costs of an arbitration to determine the amount of the compensation), but for the avoidance of disputes, such sum shall, for the purposes of this Act, be computed at an amount equal to one year's rent of the holding, unless it is proved that the loss and expenses so incurred exceed an amount equal to one year's rent of the holding, in which case the sum recoverable shall be such as represents the whole loss and expenses so incurred up to a maximum amount equal to two years' rent of the holding.

Before the tenant can claim for disturbance under s. 12 (formerly s. 10 of the Agricultural Act, 1920) he must prove that he has actually suffered some loss or incurred some expense such as is indicated in this sub-section (sub-s. 6). On proof thereof he is entitled as a minimum to the amount of one year's rent. *Minister of Agriculture and Fisheries v. Dean*, (1924) 1 K. B. 851; 93 L. J. K. B. 374. As to compensation payable to a tenant of two or more holdings, see *Westlake v. Page*, ante, p. 1677.

(7) Compensation shall not be payable under this section—

(a) in respect of the sale of any goods, implements, fixtures, produce or stock unless the tenant has before the sale given the landlord a reasonable opportunity of making a valuation thereof; or

What is a "reasonable opportunity" for the purpose of this sub-section is always a question of fact. *Dale v. Hatfield Chase Corporation*, (1922) 2 K. B. 282.

(b) unless the tenant has, not less than one month before the termination of the tenancy, given notice in writing to the landlord of his intention to make a claim for compensation under this section; or

"Termination of the tenancy." This means, where the letting is under one contract, the last date at which part of the tenancy is to be given up, where it is to be given up at different times. *Swinburne v. Andrews*, (1923) 2 K. B. 483.

(c) where the tenant with whom the contract of tenancy was made has died within three months before the date of the notice to quit; or

(d) if in a case in which the tenant under section twenty-seven of this Act accepts a notice to quit part of his holding as a notice to quit the entire holding, the part of the holding affected by the notice given by the landlord, together

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with any other part of the holding affected by any previous notice given under that section by the landlord to the tenant, is less than one-fourth part of the original holding, or the holding as proposed to be diminished is reasonably capable of being cultivated as a separate holding, except compensation in respect of the part of the holding to which the notice to quit related; or

NOTE.—As to the position when notice to quit is given by the owner of a severed part of the reversion, see note to sect. 27, *post*, p. 1693.

- (e) where the holding was let to the tenant by a corporation carrying on a railway, dock, canal, water, or other undertaking, or by a Government department or a local authority, and possession of the holding is required by the corporation, department, or authority for the purpose (not being the use of the land for agriculture) for which it was acquired by the corporation, department, or authority, or appropriated under any statutory provision; or
 - (f) in the case of a permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing, and which has since the fourth day of August nineteen hundred and fourteen and before the first day of January nineteen hundred and twenty-one been let to a tenant for a definite and limited period for cultivation as arable land, on the condition that the tenant shall, along with the last or waygoing crop, sow permanent grass seeds; or
 - (g) where a written contract of tenancy has been entered into (whether before or after the commencement of this Act) for the letting by the landlord to the tenant of a holding, which at the time of the creation of the tenancy had then been for a period of not less than twelve months in the occupation of the landlord, upon the express terms that if the landlord desires to resume that occupation before the expiration of a specified term not exceeding seven years the landlord should be entitled to give notice to quit without becoming liable to pay to the tenant any compensation for disturbance, and the landlord desires to resume occupation within the specified period, and such notice to quit has been given accordingly.
- (8) In any case where a tenant holds two or more holdings, whether from the same landlord or different landlords, and receives notice to quit one or more but not all of the holdings, the compensation for disturbance in respect of the holding or holdings shall be reduced by such amount as is shown to the satisfaction of the arbitrator to represent the reduction (if any) of the loss

Section 12. attributable to the notice to quit by reason of the continuance in possession by the tenant of the other holding or holdings.

See *Westlake v. Page*, ante, p. 1677.

(9) The landlord shall, on an application made in writing after the thirty-first day of December nineteen hundred and twenty by the tenant of a holding to whom a notice to quit has been given which does not state the reasons for which it is given, furnish to the tenant within twenty-eight days after the receipt of the application a statement in writing of the reasons for the giving of the notice, and, if he fails unreasonably so to do, compensation shall be payable under this section as if the notice to quit had not been given for a reason specified in sub-section (1) of this section.

(10) The expression "holding" in this section shall not include any land which forms part of any park, garden, or pleasure ground attached to and usually occupied with the mansion house, or any land adjoining the mansion house which is required for its protection or amenity, and the compensation for disturbance payable in respect of a notice to quit given in respect of any such land shall be such compensation (if any) as is payable under the provisions of this Act in that behalf.

(11) Compensation payable under this section shall be in addition to any compensation to which the tenant may be entitled in respect of improvements.

As to "good and sufficient cause," see *In re Arbitration between Bonnett and Fowler* (C. A.), (1913) 2 K. B. 537; 82 L. J. K. B. 713.

See *Harvey and Mann's Arbitration, In re*, (1920) 89 L. J. K. B. 687.

Compensation for disturbance in cases to which s. 12 does not apply.

13.—(1) This section applies only to land (being or forming part of a holding) which is not included in the definition of "holding" for the purposes of section twelve of this Act.

(2) Where the landlord of land to which this section applies, without good and sufficient cause, and for reasons inconsistent with good estate management terminates the tenancy by notice to quit, the tenant upon quitting the land shall, in addition to the compensation (if any) to which he may be entitled in respect of improvements, be entitled to compensation for the loss or expense directly attributable to his quitting the land which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods or his implements of husbandry, produce, or farm stock, on or used in connection with the land:

Provided that no compensation under this section shall be payable—

(a) unless the tenant has given to the landlord a reasonable opportunity of making a valuation of such goods, implements, produce, and stock as aforesaid;

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- (b) unless the tenant has within two months after he has received notice to quit given to the landlord notice in writing of his intention to claim compensation under this section ;
- (c) where the tenant with whom a contract of tenancy was made has died within three months before the date of the notice to quit ;
- (d) if the claim for compensation is not made within three months after the time at which the tenant quits the land.

See *Dale v. Hatfield Chase Corporation*, (1922) 2 K. B. 282 ; (1923) 92 L. J. K. B. 237.

14.—(1) Where the occupation of a dwelling-house (including a garden attached thereto) forming part of a holding has been allowed by the tenant of the holding to a workman employed by him in agriculture on the holding, whether the occupation is under a contract of tenancy or not, and the occupation is terminated on account of the termination by the tenant of the holding of the employment of the workman, the provisions of sections twelve and thirteen of this Act shall (subject as hereinafter provided and so far as the same are capable of application) apply as if the dwelling-house (including a garden attached thereto) were a holding and, where there is no contract of tenancy, as if the person allowing the dwelling-house to be so occupied were the landlord and the workman were the tenant, and the notice to terminate the occupation were a notice to quit :

Application of preceding section to cottages on holdings.
1920, s. 12.
C.P.A., 1921, s. 5.
A.A., 1921, s. 1 (2).

Provided that—

(a) compensation shall not be payable under this section if—

(i.) the notice to terminate the occupation is given before the expiration of six weeks from the commencement of the occupation ; or

(ii.) the tenant of the holding has, before giving the notice, obtained from a court of summary jurisdiction for the district in which the dwelling-house is situate a certificate that the termination of the occupation is necessary or expedient to enable the holding to be worked properly or to better advantage ; or

(iii.) the employment of the workman is for a year or half-year, and the occupation is terminated at the end of such period ; or

(iv.) the workman does not cease to occupy the dwelling-house on the expiration of the notice to terminate his occupation thereof or on the expiration of a period of two months from the date when the notice was given which ever is the later ; or

(v.) the notice is given by reason of the employment of the workman having been terminated on account of his

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misconduct, and such reason shall be substituted for the reasons specified in sub-section (1) of section twelve of this Act; and

- (b) for the purpose of compensation the year's rent of the dwelling-house shall be taken to be the sum of seven pounds and sixteen shillings, or if it is shown that that sum exceeds an amount equal to fifty-two times the weekly rental value of the dwelling-house let free from rates, then such last mentioned amount; and
- (c) sub-sections (2) and (3) and paragraph (b) of sub-section (7) of section twelve of this Act shall not apply; and
- (d) any question as to whether compensation is payable under this section or as to the amount payable shall, on the application of the tenant or workman, be determined by a court of summary jurisdiction for the district in which the dwelling-house is situate, and the court may, in any case in which it appears to the court to be just, direct the payment by the tenant to the workman of a sum in respect of his expenses of appearing before the court, and any sum so directed to be paid shall be recoverable summarily from the tenant as a civil debt.

(2) Where under this section the tenant of a holding seeks to obtain a certificate from a court of summary jurisdiction, the workman shall be entitled to appear before the court and shall, in the event of the certificate being refused, also be entitled to recover from the tenant such sum as the court may direct in respect of any expenses incurred by him in appearing before the court.

COMPENSATION IN CASE OF TENANCY UNDER MORTGAGOR.

Compensation to tenants when mortgagee takes possession.

1908, s. 12.

15. Where a person occupies a holding under a contract of tenancy with a mortgagor, which is not binding on the mortgagee; then—

- (1) the occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mortgagee taking possession be, due to the occupier from the mortgagor as respects crops, improvements, tillages, or other matters connected with the holding, whether under this Act or custom or an agreement authorised by this Act;
- (2) if the contract of tenancy is for a tenancy from year to year or for a term of years, not exceeding twenty-one, at a rackrent, the mortgagee shall, before he deprives the occupier of possession otherwise than in accordance with the contract of tenancy, give to the occupier six months'

notice in writing of his intention so to do, and, if he so deprives him, compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of remaining in the holding for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived ;

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- (3) any sum ascertained to be due to the occupier for compensation, or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the holding, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance with the provisions of this Act relating to the recovery of compensation due from a landlord who is a trustee.

ARBITRATION.

16.—(1) Any question or difference arising out of any claim by the tenant of a holding against the landlord for compensation payable under this Act, or for any sums claimed to be due to the tenant from the landlord for any breach of contract or otherwise in respect of the holding, or out of any claim by the landlord against the tenant for waste wrongly committed or permitted by the tenant, or for any breach of contract or otherwise in respect of the holding, and any other question or difference of any kind whatsoever between the landlord and the tenant of the holding arising out of the termination of the tenancy of the holding or arising, whether during the tenancy or on the termination thereof, as to the construction of the contract of tenancy, and any other question which under this Act is referred to arbitration shall be determined, notwithstanding any agreement under the contract of tenancy or otherwise providing for a different method of arbitration, by a single arbitrator in accordance with the provisions set out in the Second Schedule to this Act.

Matters to be referred to arbitration.
1908, ss. 6 (4), 13 (1), (3), and (4).
1920, s. 18.
See also 1 & Geo. V. c. 6.

NOTE.—Considerable discussion has arisen as to the scope of this section. The Court of Appeal has however now decided in *Lowther v. Clifford*, (1927) 1 K. B. 130, that the section is not to be read with an unrestricted meaning and that its operation is limited to questions referred to arbitration by other sections of the Act, whether arising during the continuance of the tenancy or after its determination. The common law rights and liabilities of landlord and tenant, including the right to sue in the King's courts, are preserved by sect. 54 of the Act, and the questions and differences dealt with in sect. 16 are only those on rights created by the Act and already by the Act referred to arbitration. This ruling adopts the suggestion made by Scrutton, L.J., in *Simpson v. Batey*, (1924) 2 K. B. 666 ; 93 L. J. K. B. 919, and *Harrison v. Ridgway*, (1925) 133 L. T. 238, as to how the section should be construed ; but the decisions in those two cases, and also in *Rex v. Powell*, (1925) 1 K. B. 641 ; 94 L. J. K. B. 433, cannot now be regarded as having authority.

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(2) Any such claim as is mentioned in this section shall cease to be enforceable after the expiration of two months from the termination of the tenancy unless particulars thereof have been given by the landlord to the tenant or by the tenant to the landlord, as the case may be, before the expiration of that period :

See as to meaning of " particulars," *Jones v. Evans*, (1923) 1 K. B. 12; 92 L. J. K. B. 351.

Provided that, where a tenant lawfully remains in occupation of part of a holding after the termination of the tenancy, particulars of a claim relating to that part of the holding may be given within two months from the termination of the occupation.

(3) Where a claim for compensation under this Act has been referred to arbitration, and the compensation payable under an agreement is by this Act to be substituted for compensation under this Act, such compensation as is to be so substituted shall be awarded in respect of any improvements provided for by the agreement.

(4) If in any arbitration under this Act the arbitrator states a case for the opinion of the county court on any question of law, the opinion of the court on any question so stated shall be final unless within the time and in accordance with the conditions prescribed by Rules of the Supreme Court either party appeals to the court of appeal, from whose decision no appeal shall lie.

This sub-section does not oust the jurisdiction of the High Court where there is error on the face of the award (*Jones and Carters' Arbitration, In re*, (1922) 2 Ch. 599; 91 L. J. Ch. 824).

It is a general principle that an agreement by the parties to an arbitration that the arbitrator shall not under any circumstances be required to state a special case, is invalid as contrary to public policy (*Czarnikow v. Roth & Co.*, (1922) 2 K. B. 478). An agreement as to costs made between the parties prior to the arbitration is valid and enforceable though the fact of such agreement is not mentioned to the arbitrator (*Mansfield v. Robinson*, (1928) 2 K. B. 353; 97 L. J. K. B. 466).

52 & 53 Vict.
c. 49.

(5) The Arbitration Act, 1889, shall not apply to any arbitration under this Act.

(6) This section shall not apply in the case of a tenancy which terminated before the first day of January nineteen hundred and twenty-one.

Though the appeal is generally to the Court of Appeal, an appeal lies to a Divisional Court under s. 120 of the County Courts Act, 1888, upon a question of law in an application to set aside an award (*Williams v. Wallis & Cox*, (1914) 2 K. B. 478; 83 L. J. K. B. 1296).

Provisions
for exped-
iting and
reducing
costs of
arbitrations.
1920, s. 20.

17.—(1) Subject as hereinafter provided, the Minister may by rules make such provision (not being inconsistent with the rules contained in the Second Schedule to this Act) as he thinks desirable for expediting, or reducing the costs of, proceedings on arbitrations under this Act.

(2) On an arbitration under this Act the arbitrator—

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(a) shall state separately in his award the amounts awarded in respect of the several claims referred to him; and

(b) may, if he thinks fit, make an interim award for the payment of any sum on account of the sum to be finally awarded.

(3) A rule made under this section shall be laid before each House of Parliament forthwith, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent thirty days on which that House has sat next after any such rule is laid before it praying that the rule may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

18.—(1) Where a holding has become vested in more than one person in several parts and the rent payable by the tenant of the holding has not been apportioned with his consent or under any statute, the tenant shall be entitled to require that any compensation payable to him under this Act shall be determined as if the holding had not been divided, and the arbitrator shall, where necessary, apportion the amount awarded between the persons who for the purposes of this Act together constitute the landlord of the holding, and any additional costs of the award caused by the apportionment shall be directed by the arbitrator to be paid by those persons in such proportions as he shall determine.

Determination of claims for compensation where a holding is divided.
1920, s. 17.

(2) This section shall not apply in the case of a tenancy which terminated before the first day of January nineteen hundred and twenty-one.

19. Where any sum agreed or awarded under this Act to be paid for compensation costs or otherwise by a landlord or tenant of a holding is not paid within fourteen days after the time when the payment becomes due, it shall, subject as in this Act provided, be recoverable upon order made by the county court as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable.

Recovery of compensation and other sums due.
1908, s. 14.

That is, as a judgment debt can be enforced; as to this, see County Courts Act, 1888, s. 146, Order XXV., and Order XL., r. 7, *post*, p. 1717.

CHARGE ON HOLDING FOR COMPENSATION.

20.—(1) A landlord, on paying to the tenant the amount due to him under this Act, or under custom or agreement, or otherwise, in respect of compensation for an improvement comprised in the First Schedule to this Act or in respect of compensation for disturbance, or on expending after notice given in accordance with this Act such amount as may be necessary to execute an improvement comprised in Part II. of the First Schedule to this

Power for landlord on paying compensation to obtain charge.
1908, ss. 15—19.
1920, First Schedule.

Section 20. Act, shall be entitled to obtain from the Minister an order in favour of himself, his executors, administrators, and assigns, charging the holding, or any part thereof, with repayment of the amount paid or expended, and of all costs properly incurred by him in obtaining the charge, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the Minister thinks fit.

“Landlord” includes his executor (*Gough v. Gough* (C. A.), (1891) 2 Q. B. 665; 60 L. J. Q. B. 726).

(2) Where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, in the opinion of the Minister, have become exhausted.

(3) Where the estate or interest of a landlord is determinable or liable to forfeiture by reason of his creating or suffering any charge thereon, that estate or interest shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

(4) The sum charged shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein and for all interests therein subsequent to that of the landlord; but so that, in any case where the landlord's interest is an interest in a leasehold, the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assigns.

(5) Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made under this section, or any like charge made under any repealed enactment, upon such terms and conditions as may be agreed upon between the company and the person entitled to the charge, and may assign any charge so acquired by them.

(6) Where a charge may be made under this section for compensation due under an award, the person making the award shall, at the request and cost of the person entitled to obtain the charge, certify the amount to be charged and the term for which the charge may properly be made, having regard to the time at which each improvement in respect of which compensation is awarded is to be deemed to be exhausted.

(7) A charge made under this section shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, as amended by any subsequent enactment, and may be registered accordingly.

CAPITAL MONEY APPLICABLE FOR COMPENSATION.

Section 20.

21. [Repealed by Settled Land Act, 1925 (15 Geo. 5, c. 18). See now s. 73 (1) (ii) and (iv) of that Act.]

Capital money applicable for compensation.

1908, s. 20.

FIXTURES AND BUILDINGS.

22.—(1) Any engine, machinery, fencing, or other fixture affixed to a holding by a tenant, and any building erected by him thereon for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy : (a)

Tenant's property in fixtures and buildings.

1908, s. 21.

Provided that—

- (i.) before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect of the holding :
- (ii.) in the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding :
- (iii.) immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal :
- (iv.) the tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it :
- (v.) at any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay to the tenant the fair value thereof to an incoming tenant of the holding.

(2) The provisions of this section shall apply to a fixture or building acquired since the thirty-first day of December nineteen hundred by a tenant in like manner as they apply to a fixture or

(a) *Harvey and Mann's Arbitration, In re*, (1920) 89 L. J. K. B. 687. The parties may contract out of this section. See *Premier Dairies, Ltd. v. Garlick*, (1920) 89 L. J. Ch. 332.

Section 22. building affixed or erected by a tenant, but shall not apply to any fixture or building affixed or erected before the first day of January eighteen hundred and eighty-four.

EXTENSION OF TENANCIES UNDER LEASES.

Extension
of tenancies
under leases
for a term
of years.

1920, s. 13.

23.—(1) In the case of a tenancy of a holding for a term of two years or upwards, the tenancy shall not terminate on the expiration of the term for which it was granted, unless not less than one year nor more than two years before the date fixed for the expiration of the term a written notice has been given by either party to the other of his intention to terminate the tenancy, and any notice so given shall be deemed to be a notice to quit for the purposes of this Act.

(2) If no such notice is given the tenancy shall, as from the expiration of the term for which it was granted, continue as a tenancy from year to year, but otherwise so far as applicable on the terms of the original tenancy.

(3) This section shall not apply to any tenancy granted, or agreed to be granted, before the first day of January nineteen hundred and twenty-one.

(4) In any case to which this section shall apply, it shall apply notwithstanding any agreement to the contrary.

Extension
of tenancies
determined
by death.

1920, s. 14.

24.—(1) Where the tenancy of any holding held by a tenant at a rackrent determines by the death or cesser of the estate of any landlord entitled for his life, or for any other uncertain interest, instead of claims to emblements, the tenant shall continue to hold and occupy the holding until the occupation is determined by a twelve months' notice to quit expiring at the end of a year of the tenancy, and shall then quit upon the terms of his tenancy in the same manner as if the tenancy were then determined by effluxion of time or other lawful means during the continuance of his landlord's estate.

(2) The succeeding landlord shall be entitled to recover from the tenant, in the same manner as his predecessor could have done, a fair proportion of the rent for the period which may have elapsed from the date of the death or cesser of the estate of such predecessor to the time of the tenant so quitting.

(3) The succeeding landlord and the tenant respectively shall as between themselves and as against each other be entitled to all the benefits and advantages and be subject to the terms, conditions and restrictions to which the preceding landlord and such tenant respectively would have been entitled and subject in case the tenancy had determined in manner aforesaid at the expiration of the said twelve months' notice.

MISCELLANEOUS RIGHTS OF LANDLORD AND TENANT.

Section 25.

25.—(1) Notwithstanding any provision in a contract of tenancy to the contrary, a notice to quit a holding shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy ; but nothing in this section shall extend to a case where a receiving order in bankruptcy is made against the tenant.

This section applies to a lease for twenty-one years determinable at the end of seven or fourteen years under the express provisions of the deed of demise by six months' notice, and makes such a notice a bad notice (*Edell v. Dulieu*, (1924) A. C. 38 ; 93 L. J. K. B. 286).

(2) This section shall not apply to—

(a) any notice given by or on behalf of the Admiralty, War Department, or Air Council under the provisions of any agreement of tenancy where possession of the land is required for naval, military, or air-force purposes ; or

(b) any notice given by a corporation carrying on a railway, dock, canal, water, or other undertaking in respect of any land acquired by the corporation for the purposes of their undertaking or by a government department or local authority where possession of the land is required by the corporation, government department or authority for the purpose (not being the use of the land for agriculture) for which it was acquired by the corporation, department, or authority or appropriated under any statutory provision ; or

(c) any notice given in pursuance of a provision in the contract of tenancy authorising the resumption of possession of the holding or some part thereof for some specified purpose, unless that purpose is the use of the land for agriculture ; or

(d) any notice given by a tenant to a sub-tenant ; or

(e) any notice given before the first day of January nineteen hundred and twenty-one.

This section reproduces sect. 33 of the 1883 Act which was held not to apply to any demise in which any stipulation for the determination of the tenancy by notice is contained (*Barlow v. Teal* (C. A.), (1885) 15 Q. B. D. 501 ; 54 L. J. Q. B. 564). Where by custom a tenant was entitled to hold part of the land for four months after the expiration of his notice to quit, it was held that his tenancy was not determined until the expiration of the four months, hence notice of claim for compensation given two months before that time was good (*In re Paul*, (1889) 24 Q. B. D. 247 ; 59 L. J. Q. B. 30). In *Morley v. Carter*, (1898) 1 Q. B. 8 ; 66 L. J. Q. B. 843, where the tenancy of the land expired on February 2nd, and of the buildings on May 1st, it was held that the notice ought to be given with reference to the first date, establishing the principle that the expiration of the tenancy of the land determines when the notice should be given.

Section 25
Notes.

A notice to quit under sect. 83 of the 1883 Act might be sent by registered letter (see sect. 53 of this Act): *Van Grutten v. Trevenen* (C. A.), (1902) 2 K. B. 82; 71 L. J. K. B. 544.

Restriction
of notices
to quit.

1919.
1920, First
Schedule.

26.—(1) On the making of any contract for sale of a holding or any part of a holding held by a tenant from year to year any then current and unexpired notice to determine the tenancy of the holding given to the tenant either before or after the commencement of this Act shall, if the contract for sale is made by the person by whom the notice to quit was given, be null and void unless the tenant has after the nineteenth day of August nineteen hundred and nineteen, and prior to such contract of sale, by writing, agreed that such notice shall be valid.

(2) This section shall not apply to a contract for sale to a government department or local authority for the purpose of providing small holdings or allotments, or for any other public purpose made before the twentieth day of August nineteen hundred and twenty-two.

See *Blay v. Dadsell*, (1922) 91 L. J. K. B. 739. *Rochester Sewerage Board v. Clinch*, (1925) 1 Ch. 753; 95 L. J. Ch. 49.

Resumption
of possession
of part of
holding by
landlord.

1908, s. 23.
1920, s. 22.

27.—(1) Where a notice to quit is given by the landlord of a holding to a tenant from year to year with a view to the use of land for any of the following purposes:—

- (i.) The erection of farm labourers' cottages or other houses with or without gardens;
- (ii.) The provision of gardens for farm labourers' cottages or other houses;
- (iii.) The provision of allotments;
- (iv.) The provision of small holdings as defined by the Small Holdings and Allotments Acts, 1908 to 1919;
- (v.) The planting of trees;
- (vi.) The opening or working of any coal, ironstone, limestone, brick earth, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith;
- (vii.) The making of a watercourse or reservoir;
- (viii.) The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith;

and the notice states that it is given with a view to any such use—

- (a) it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding; and
- (b) the provisions of this Act respecting compensation shall

apply as if the part to which the notice relates were a separate holding; and Section 27.

- (c) the tenant shall be entitled to a reduction of rent proportionate to the part to which the notice relates, and in respect of any depreciation of the value to him of the residue of the holding caused by the severance, or by the use to be made of the part severed, and the amount of that reduction shall be settled as in case of compensation under this Act :

Provided that the tenant may, at any time within twenty-eight days after service of the notice to quit, serve on the landlord a notice in writing to the effect that he accepts it as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly.

(2) Where the landlord of a holding gives notice, in pursuance of a provision in that behalf contained in the contract of tenancy, of his intention to resume possession of some part of the holding, the provisions of paragraphs (b) and (c) of sub-section (1) of this section (but not including the proviso thereto) shall apply as if the notice were such a notice to quit as is mentioned in that sub-section :

Provided that, in assessing the compensation payable to the tenant and the reduction of rent, the arbitrator shall take into consideration any benefit or relief allowed to the tenant under the contract of tenancy in respect of any land resumed in pursuance of such provision.

NOTE.—It appears that where the reversion is severed and notice to quit is given to the tenant by the person entitled to a severed part of the reversion, such notice is valid independently of this section; but the tenant may within twenty-eight days give notice to the persons severally entitled to the severed parts of the reversion that he accepts the notice to quit as a notice to quit the entire holding given by the persons so severally entitled, and thereupon the provisions of sect. 12 (7) (d) of this Act will apply (Law of Property Act, 1925, sect. 140, as amended by sect. 2 of the Law of Property (Amendment) Act, 1926).

28. The landlord of a holding or any person authorised by him may at all reasonable times enter on the holding for the purpose of viewing the state of the holding. Power of entry by landlord.
1908, s. 24.

29. Notwithstanding any provision in a contract of tenancy making the tenant of a holding liable to pay a higher rent or other liquidated damages in the event of any breach or non-fulfilment of a term or condition in the contract, a landlord shall not be entitled to recover, by distress or otherwise, any sum in consequence of any such breach or non-fulfilment in excess of the Penal rents and liquidated damages.
1908, s. 25.

Section 29. damage actually suffered by him in consequence of the breach or non-fulfilment :

Provided that this section shall not apply to any term or condition in a contract against the breaking up of permanent pasture, the grubbing of underwoods, or the felling, cutting, lopping, or injuring of trees, or regulating the burning of heather.

Penalty cannot be recovered, but liquidated damages can to extent of the actual damage suffered (*Willson v. Love*, (1896) 1 Q. B. 626; 65 L. J. Q. B. 474).

Freedom of
cropping
and disposal
of produce.
1908, s. 26.

30.—(1) Notwithstanding any custom of the country, or the provisions of any contract of tenancy or agreement respecting the method of cropping of arable lands, or the disposal of crops, a tenant of a holding shall have full right to practise any system of cropping of the arable land on the holding and to dispose of the produce of the holding without incurring any penalty, forfeiture, or liability :

Provided that he shall previously have made, or, as soon as may be, shall make, suitable and adequate provision to protect the holding from injury or deterioration, which provision shall in the case of disposal of the produce of the holding consist in the return to the holding of the full equivalent manurial value to the holding of all crops sold off or removed from the holding in contravention of the custom, contract, or agreement :

This sub-section shall not apply—

- (a) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding ; or
- (b) in any other case, as respects the year before the termination of the tenancy.

Where there is an agreement prohibiting defendant from selling or disposing of hay, straw, or roots during the term, this section does not enable him to sell any such produce off the holding after he has given or received notice to quit which results in his quitting the holding, even though such produce existed before the last year of the tenancy (*Meggeson v. Groves*, (1917) 86 L. J. Ch. 145).

(2) If the tenant exercises his rights under this section in such a manner as to injure or deteriorate the holding, or to be likely to injure or deteriorate the holding, the landlord shall, without prejudice to any other remedy which may be open to him, be entitled to recover damages in respect of such injury or deterioration at any time, and, should the case so require, to obtain an injunction restraining the exercise of the rights under this section in that manner.

(3) A tenant shall not be entitled to any compensation in respect of improvements comprised in Part III. of the First Schedule to this Act which have been made for the purpose of

making such provision to protect the holding from injury or deterioration as is required by this section. Section 30.

(4) In this section the expression "arable land" shall not include land in grass which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.

31. Where notice to terminate the tenancy of a holding is given, either by the tenant or by the landlord, the tenant shall not, subject to any agreement to the contrary, at any time after the date of the notice, sell or remove from the holding any manure or compost, or any hay or straw or roots grown in the last year of the tenancy, unless and until he has given the landlord or incoming tenant a reasonable opportunity of agreeing to purchase on the termination of the tenancy at their fair market value, or at such other value as is provided by the contract of tenancy, the said manure, compost, hay, straw, or roots. Prohibition of removal of manure, etc., after notice to terminate the tenancy. 1920, s. 25.

32. If the landlord or tenant of a holding at any time during the tenancy so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches and cultivation of the holding, and, if so required by the tenant, a record of any existing improvements executed by the tenant or for which the tenant has with the written consent of his landlord paid compensation to an outgoing tenant and of any fixtures or buildings which under section twenty-two of this Act the tenant is entitled to remove, shall be made by a person to be appointed in default of agreement by the Minister, and in default of agreement the cost of making any such record shall be borne by the landlord and tenant in equal shares. Record of holding. 1920, s. 26.

33.—(1) Where the land comprised in a contract of tenancy is not a holding within the meaning of this Act by reason only of the fact that the land so comprised includes land (hereinafter referred to as "the non-statutory land") which, owing to the nature of the buildings thereon or the use to which it is put, would not, if it had been separately let, be a holding within the meaning of this Act, the provisions of this Act relating to compensation for improvements and disturbance shall, unless otherwise agreed in writing, apply to the part of the land exclusive of the non-statutory land as if that part were a separate holding. Extension of meaning of "holding." 1920, s. 24.

(2) This section shall not apply in relation to a contract of tenancy made before the first day of January nineteen hundred and twenty-one.

DISTRESS,

34. It shall not be lawful for a landlord entitled to the rent of a holding to distrain for rent which became due in respect of that holding more than one year before the making of the distress : Limitation of distress in respect of amount and time. 1908, s. 28.

Section 34.

Provided that, where it appears that according to the ordinary course of dealing between the landlord and the tenant of the holding the payment of rent has been deferred until the expiration of a quarter or half-year after the date at which the rent legally became due, the rent shall for the purpose of this section be deemed to have become due at the expiration of that quarter or half-year, and not at the date at which it legally became due.

This section reproduces in substance sect. 44 of the 1883 Act, which was held merely to take away the right of the landlord to distrain for rent which had been due for more than twelve months, but to leave him his other remedies. Thus, where by the course of dealing payment of rent due in advance on June 24th was deferred for three months, it was held that the landlord was enabled by the proviso in sect. 44 of the 1883 Act to distrain in the middle of September for two years' rent, one in arrear and one in advance (*Ex parte Bull*, (1887) 18 Q. B. D. 642; 56 L. J. Q. B. 270).

Limitation
of distress in
respect of
things to be
distrained.
1908, s. 29.

35.—(1) Where live stock belonging to another person has been taken in by the tenant of a holding to be fed at a fair price, the stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and, if so distrained by reason of other sufficient distress not being found, there shall not be recovered by that distress a sum exceeding the amount of the price agreed to be paid for the feeding, or any part thereof which remains unpaid.

(2) The owner of the stock may, at any time before it is sold, redeem the stock by paying to the distrainer a sum equal to such amount as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding.

(3) Any portion of the stock so long as it remains on the holding shall continue liable to be distrained for the amount for which the whole of the stock is distrainable.

(4) Agricultural or other machinery which is the property of a person other than the tenant, and is on the holding under an agreement with the tenant for the hire or use thereof in the conduct of his business, and live stock which is the property of a person other than the tenant and is on the holding solely for breeding purposes, shall not be distrained for rent.

“Fair price” in the 1883 Act was held to mean a “fair equivalent,” so that cows agisted on terms that the agister should take payment in milk were privileged from distress to the extent mentioned in the section (*London and Yorkshire Bank v. Belton*, (1885) 15 Q. B. D. 457; 54 L. J. Q. B. 568). An “exclusive right to feed the grass on the land for four weeks” in consideration of 2*l.* was held not an agreement to agist cattle, but in the nature of rent for use and occupation, and not within protection given by the section (*Masters v. Green*, (1888) 20 Q. B. D. 807).

36.—(1) Where any dispute arises—

- (a) in respect of any distress having been levied on a holding contrary to the provisions of this Act; or
- (b) as to the ownership of any live stock distrained, or as to the price to be paid for the feeding of that stock; or
- (c) as to any other matter or thing relating to a distress on a holding;

Section 36.

Remedy for wrongful distress.
1908, s. 30.

the dispute may be heard and determined by the county court or by a court of summary jurisdiction, and any such court may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid for feeding, or may make any other order which justice requires.

(2) Any such dispute shall be deemed to be a matter in which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts; but any person aggrieved by any decision of a court of summary jurisdiction under this section may appeal to a court of quarter sessions.

37. Where the compensation for disturbance or for any improvement due under this Act or any enactment repealed by this Act, or under custom or agreement, to a tenant of a holding has been ascertained before the landlord distrains for rent, the amount of the compensation may be set off against the rent, and the landlord shall not be entitled to distrain for more than the balance.

Set-off of compensation against rent.
1908, s. 31.
1920, Sched. I.

No set-off of unascertained claim (*Gas Light Co. v. Holloway*, (1885) 52 L. T. 434).

PERSONS UNDER DISABILITY, TRUSTEES, ETC.

38. Where a landlord or a tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the county court on the application of any person interested may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may revoke the appointment and appoint another guardian if and as occasion requires.

Appointment of guardian.
1908, s. 32.

39. Where a woman married before the commencement of the Married Women's Property Act, 1882, is entitled to land her title to which accrued before that commencement, then—

Provisions respecting married women.

- (a) if she is entitled to the land for her separate use and is not restrained from anticipation, she shall, for the purposes of this Act, be in respect of the land as if she were a *feme sole*; and
- (b) in any other case her husband's concurrence shall be requisite, and she shall for the purposes of this Act be examined apart from him by the county court, or by the judge of the county court for the place where she is,

45 & 46 Vict. c. 75.
1908, s. 33.

Section 39.

touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

Provisions
as to limited
owners.

1908, s. 34.

40. Subject to the provisions of this Act in relation to Crown, Duchy, Ecclesiastical, and Charity lands, a landlord of a holding, whatever may be his estate or interest in the holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act, which he might give or make or do or have done to him if he were owner in fee simple or, if his interest is an interest in a leasehold, were absolutely entitled to that leasehold.

Recovery of
compensation,
etc.
from
trustee.

1908, s. 35.

41. Where any sum agreed or awarded to be paid for compensation, or any sum awarded under this Act to be paid by a landlord, is due from a landlord entitled to receive the rents and profits of the holding otherwise than for his own benefit, whether as trustee or in any other character, the sum due shall be charged and recovered as follows and not otherwise (that is to say) :—

- (i.) The amount so due shall not be recoverable personally against the landlord, nor shall he be under any liability to pay that amount, but it shall be a charge on and recoverable against the holding only :
- (ii.) The landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the Minister a charge on the holding to the amount of the sum which is required to be paid or which has been paid, as the case may be, to the tenant :
- (iii.) If the landlord neglects or fails to pay to the tenant the amount due to him for one month after it has become due, the tenant shall be entitled to obtain from the Minister a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge :
- (iv.) Charges under this section shall be made in like manner as other charges under this Act.

Estimation
of best rent.
1908, s. 36.

42. In estimating the best rent, or reservation in the nature of rent, of a holding for the purposes of any Act of Parliament, deed, or other instrument, authorising a lease to be made, provided that the best rent, or reservation in the nature of rent, is reserved, it shall not be necessary to take into account against the tenant any increase in the value of the holding arising from any improvements made or paid for by the tenant.

CROWN AND DUCHY LANDS.

Section 43.

43.—(1) This Act shall apply to land belonging to His Majesty in right of the Crown. Application to Crown lands.

(2) With respect to any such land, for the purposes of this Act, the Commissioners of Woods, or other the proper officer or body having charge of the land for the time being, or, in case there is no such officer or body, then such person as His Majesty may appoint in writing under the Royal Sign Manual, shall represent His Majesty, and shall be deemed to be the landlord. 1908, s. 37.

(3) The power given to the Treasury by section one of the Crown Lands Act, 1866 (being a power to direct the cost of certain improvements to be charged to capital and repaid out of income), shall extend to any compensation under this Act payable by the Commissioners of Woods in respect of an improvement comprised in Part I. or Part II. of the First Schedule to this Act. 29 & 30 Vict. c. 62.

(4) Any compensation under this Act payable by those Commissioners, in respect of an improvement comprised in Part III. of the First Schedule hereto, shall be paid as part of the expenses of the management of the Land Revenues of the Crown.

44.—(1) This Act shall apply to land belonging to His Majesty in right of the Duchy of Lancaster. Application to land of Duchy of Lancaster.

(2) With respect to any such land for the purposes of this Act, the Chancellor of the Duchy shall represent His Majesty, and shall be deemed to be the landlord. 1908, s. 38.

(3) The amount of any compensation under this Act payable by the Chancellor of the Duchy in respect of an improvement comprised in Part I. or Part II. of the First Schedule to this Act shall be raised and paid as an expense incurred in improvement of land belonging to His Majesty in right of the Duchy within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven.

(4) The amount of any compensation under this Act payable by the Chancellor of the Duchy in respect of an improvement comprised in Part III. of the First Schedule to this Act shall be paid out of the annual revenues of the Duchy.

45.—(1) This Act shall apply to land belonging to the Duchy of Cornwall. Application to land of Duchy of Cornwall.

(2) With respect to any such land, for the purposes of this Act, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints, shall represent the Duke of Cornwall or other the possessor aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder. 1908, s. 39.

(3) Any compensation under this Act payable by the Duke of

Section 45. Cornwall, or other the possessor aforesaid, in respect of an improvement comprised in Part I. or Part II. of the First Schedule to this Act, shall be paid, and advances therefor made, in the manner and subject to the provisions of section eight of the Duchy of Cornwall Management Act, 1863, with respect to improvements of land mentioned in that section.

26 & 27 Vict.
c. 49.

ECCLESIASTICAL AND CHARITY LANDS.

Application
to ecclesias-
tical land.

1908, s. 40.
1920, s. 23.

46.—(1) Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord in respect of charging land shall not be exercised by the bishop in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners.

(2) Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord in respect of charging land shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the patron of the benefice, that is, the person or authority who, in case the benefice were vacant, would be entitled to present thereto, or of Queen Anne's Bounty.

(3) Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him in respect of any improvement comprised in the First Schedule to this Act; and thereupon they may, instead of the incumbent, obtain from the Minister a charge on the holding in respect thereof in favour of themselves, and every such charge shall be effectual notwithstanding any change of the incumbent.

Application
to charity
land.

1908, s. 41.

47. The powers by this Act conferred on a landlord in respect of charging land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the approval in writing of the Charity Commissioners or the Board of Education, as the case may require.

SPECIAL PROVISIONS AS TO MARKET GARDENS.

Special pro-
visions as to
market
gardens.

1908, s. 42.
1913, s. 1.

48.—(1) In the case of a holding in respect of which it is agreed by an agreement in writing made on or after the first day of January eighteen hundred and ninety-six that the holding shall be let or treated as a market garden—(a)

(a) Where the agreement declares that the holding "shall not be deemed to be let or treated as a market-garden" no compensation is payable upon leaving, though the holding is in fact a market-garden. *Masters v. Duveen*, (1924) 2 K. B. 729; 93 L. J. K. B. 57.

(i.) the provisions of this Act shall apply as if the improvements comprised in the Third Schedule to this Act were comprised in Part III. of the First Schedule to this Act:

Provided that—

Section 48.

(a) in the case of Crown lands, compensation in respect of an improvement comprised in paragraphs (1) (2) and (5) of the said Third Schedule shall be paid in the same manner and out of the same funds as if it were an improvement comprised in Part I. of the said First Schedule; and

(b) in the case of Duchy lands, compensation in respect of any improvement comprised in the said Third Schedule shall be paid in the same manner and out of the same funds as if it were comprised in Part I. of the said First Schedule;

(c) the right of an incoming tenant to claim compensation in respect of the whole or part of an improvement which he has purchased may be exercised although his landlord has not consented in writing to the purchase:

(ii.) The provisions of this Act relating to tenants' property in fixtures and buildings shall extend to every fixture or building affixed or erected by the tenant to or upon the holding, or acquired by him since the thirty-first day of December nineteen hundred for the purposes of his trade or business as a market gardener:

(iii.) It shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out; but if the tenant does not remove such fruit trees and fruit bushes before the termination of his tenancy, they shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof.

(2) Where under a contract of tenancy current on the first day of January eighteen hundred and ninety-six a holding was at that date in use or cultivation as a market garden with the knowledge of the landlord, and the tenant thereof had then executed thereon, without having received previously to the execution thereof any written notice of dissent by the landlord, any improvement comprised in the Third Schedule to this Act, the provisions of this section shall apply, in respect of that holding, as if it had been agreed in writing after that date that the holding should be let or treated as a market garden, so however that the improvements in respect of which compensation is payable under those provisions as so applied shall include improvements executed before as well as improvements executed after that date.

(3) Where the land to which such agreement relates, or so used

Section 48. and cultivated, consists of part of a holding only, this section shall apply as if that part were a separate holding.

Further provision as to market gardens.
1920, sub-ss. (3), (4), (5), (6) and (7) of s. 15.
1920, s. 27.

49.—(1) Subject to the provisions of this section, where a tenant desires to make on his holding or any part of his holding any improvement comprised in the Third Schedule to this Act and the landlord refuses, or within a reasonable time fails, to agree in writing that the holding or that part of the holding shall be treated as a market garden, the agricultural committee for the area in which the holding is situate may, on the application of the tenant and after hearing the landlord or his representative, and after being satisfied that the holding or part of the holding is suitable for the purposes of market gardening, direct that the last preceding section of this Act shall, either in respect of all the improvements comprised in the said Third Schedule or in respect of some only of those improvements, apply to the holding or to that part thereof, and the said section shall apply accordingly as respects any improvements executed after the date on which the direction is given:

Provided that nothing in this sub-section shall authorise the breaking up of meadow land or pasture.

Any direction given by an agricultural committee under this sub-section shall be subject to such conditions, if any, for the protection of the landlord, as the committee may think fit to attach to the direction, and, where any such direction is given, the following provisions shall have effect:—

- (a) If the tenancy is terminated by notice to quit given by the tenant or by reason of the tenant becoming bankrupt or compounding with his creditors, the tenant shall not be entitled to compensation in respect of any such improvements as are specified in the direction unless the tenant not later than one month after the date on which the notice to quit is given or the date of the bankruptcy or composition, as the case may be, or such later date as may be agreed, produces to the landlord an offer in writing by a substantial and otherwise suitable person (being an offer which is to hold good for a period of three months from the date on which it is produced), to accept a tenancy of the holding from the termination of the existing tenancy thereof, and on the terms and conditions of that tenancy so far as applicable, and, subject as hereinafter provided, to pay to the outgoing tenant all compensation payable under this Act or under the contract of tenancy, and the landlord fails to accept the offer within three months after the production thereof; and

Section 49.

(b) If the landlord accepts any such offer, the incoming tenant shall pay to the landlord on demand all sums payable to him by the outgoing tenant on the termination of the tenancy in respect of rent or breach of contract or otherwise in respect of the holding, and any amount so paid may, subject to any agreement between the outgoing tenant and incoming tenant, be deducted by the incoming tenant from any compensation payable by him to the outgoing tenant; and

(c) If the direction relates to part only of the holding the direction may, on the application of the landlord, be given subject to the condition that the tenant shall consent to the division of the holding into two parts (one such part being the part to which the direction relates) to be held at rents agreed by the landlord and tenant or in default of agreement settled by the committee, but otherwise on the same terms and conditions as the original holding, so far as applicable.

(2) A new tenancy created by the acceptance of a tenant in accordance with the provisions of this section on the terms and conditions of the existing tenancy shall not be deemed to be a new tenancy for the purposes of the provisions of this Act relating to demands for arbitration as to rent.

(3) The powers under this section of an agricultural committee may, in the case of a holding situate in a county borough for which an agricultural committee has not been appointed, be exercised by the Minister.

(4) In the exercise of their powers under this section the agricultural committee and the Minister shall have regard to the likelihood of the land being required for any purpose other than agriculture.

(5) If in any case a landlord or tenant by notice in writing given to the other party shall so require, the powers which under this section may be exercised by a committee shall in that case be exercised by an arbitrator appointed and acting under and in accordance with the provisions of this Act.

(6) Where any agreement in writing secures to the tenant of a holding for any improvement to which the provisions of the last preceding section of this Act apply, or are directed under this section to apply, fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall as respects that improvement be substituted for compensation under this Act.

Section 50.

Avoidance of contract inconsistent with Act.

1908, s. 5.

1920, First Schedule.

Exclusion of *certiorari*.

1908, s. 43.

Costs in county court.

1908, s. 44.

Service of notice, etc.

1908, s. 45.

General saving of rights.

1908, s. 46.

Improvements executed under repealed enactments.

1908,

8 Edw. VII. c. 28, s. 47.

Special provisions as to holdings being allotments.

SUPPLEMENTAL PROVISIONS.

50. Subject to the provisions of this Act, any contract (whether under seal or not) made by a tenant of a holding, by virtue of which his right to claim compensation under this Act is taken away or limited, shall to that extent be void.

51. An order of the county court or of a court of summary jurisdiction under this Act shall not be quashed for want of form, or be removed by *certiorari* or otherwise into any superior court.

52.—(1) The costs of proceedings in the county court under this Act shall be in the discretion of the court.

(2) The Lord Chancellor may prescribe scales of costs for those proceedings, and of costs to be taxed by the registrar of the court.

53. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and in the case of a notice to a landlord "the person to whom it is to be given" shall include any agent of the landlord duly authorised in that behalf.

54. Except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exerciseable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, deteriorations, waste, emblements, tillages, away-going crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing.

See *Lowther v. Clifford*, (1927) 1 K. B. 130, and note, *ante*, p. 1685.

55. The compensation in respect of an improvement made before the first day of January nineteen hundred and nine (being the date of the commencement of the Agricultural Holdings Act, 1908), or made upon a holding held under a contract of tenancy, other than a tenancy from year to year, current on the first day of January eighteen hundred and eighty-four, shall be such (if any) as could have been claimed if this Act had not been passed, but the procedure for the ascertainment and recovery thereof shall be such as is provided by this Act, and the amount so ascertained shall be payable, recoverable, and chargeable as if it were compensation under this Act.

56.—(1) Nothing in this Act shall affect the operation of the Allotments Act, 1922, save that sub-section (6) of section twenty-two of that Act shall cease to have effect.

(2) In the case of any holding to which this Act applies consisting of a parcel of land, whether attached to a cottage or not, if not

more than two acres in extent held by a tenant under a landlord and cultivated as a farm or garden, or partly as a garden and partly as a farm, this Act shall have effect as if the provisions of section six of the Allotments Act, 1922, as to determination and recovery of compensation were substituted for the provisions of this Act as to the determination and recovery of compensation. Section 56.
12 & 13 Geo.
V. c. 51.

57.—(1) In this Act, unless the context otherwise requires—

“Contract of tenancy” means a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year: Interpreta-
tion.
1908, s. 48.
1919, s. 2.
1920, s. 33.

“Termination” in relation to any tenancy means the cesser of the contract of tenancy by reason of effluxion of time, or from any other cause:

“Landlord” means any person for the time being entitled to receive the rents and profits of any land:

NOTE.—See *Dale v. Hatfield Chase Corporation*, (1923) 92 L. J. K. B. 237; (1922) 2 K. B. 282; *Richards v. Pryse*, (1927) 2 K. B. 76.

As to termination of tenancy where by custom of the country parts of the letting are surrendered at different times see *Swinburne v. Andrews*, (1923) 92 L. J. K. B. 889. See also *Tombs v. Turvey*, (1924) 93 L. J. K. B. 785.

“Tenant” means the holder of land under a contract of tenancy, and includes the executors, administrators, assigns, guardian, committee of the estate, or trustee in bankruptcy, of a tenant, or other person deriving title from a tenant:

“Holding” does not include an allotment garden, or include any land cultivated as a garden unless it is cultivated wholly or mainly for the purpose of the trade or business of market gardening, but, except as aforesaid, means any parcel of land held by a tenant, which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord:

See *In re Arbitration, Lancaster & Macnamara*, (1918) 2 K. B. 472.

“Allotment garden” means an allotment not exceeding forty poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family:

“Market garden” means a holding cultivated, wholly or mainly, for the purpose of the trade or business of market gardening:

An orchard may be a market garden (*Lowther v. Clifford*, (1927) 1 K. B. 130).

“County court,” in relation to a holding, means the county court within the district whereof the holding, or the larger part thereof, is situate:

Section 57.

“Live stock” includes any animal capable of being distrained :
 “Manuring” means any of the improvements numbered twenty-five, twenty-six, and twenty-seven in Part III. of the First Schedule to this Act :

“Agreement” includes an agreement arrived at by means of valuation or otherwise, and “agreed” has a corresponding meaning :

“The Minister” means the Minister of Agriculture and Fisheries:

“Agricultural committee” means the agricultural committee established for a county or borough under the Ministry of Agriculture and Fisheries Act, 1919, or, where the powers of an agricultural committee with respect to the matter in question have been delegated to a sub-committee, that sub-committee :

“Rules of good husbandry” means (due regard being had to the character of the holding) so far as is practicable having regard to its character and position—

(a) the maintenance of the land (whether arable, meadow, or pasture), clean and in a good state of cultivation and fertility, and in good condition ; and

(b) the maintenance and clearing of drains, embankments, and ditches ; and

(c) the maintenance and proper repair of fences, stone walls, gates, and hedges ; and

(d) the execution of repairs to buildings, being repairs which are necessary for the proper cultivation and working of the land on which they are to be executed ; and

(e) such rules of good husbandry as are generally recognised as applying to holdings of the same character and in the same neighbourhood as the holding in respect of which the expression is to be applied :

Provided that the foregoing definition shall not imply an obligation on the part of any person to maintain or clear drains, embankments, or ditches, if and so far as the execution of the works required is rendered impossible (except at prohibitive or unreasonable expense) by reason of subsidence of any land or the blocking of outfalls which are not under the control of that person, or in its application to land in the occupation of a tenant imply an obligation on the part of the tenant—

(i.) to maintain or clear drains, embankments, or ditches, or to maintain or properly repair fences, stone walls, gates, or hedges where such work is not required to be done by him under his contract of tenancy ; or

(ii.) to execute repairs to buildings which are not required to be executed by him under his contract of tenancy : Section 57.

(2) The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation.

(3) References to the terms, conditions, or requirements of a contract of tenancy of or of an agreement relating to a holding shall be construed as including references to any obligations, conditions, or liabilities implied by the custom of the country in respect of the holding.

(4) Unless or until a tenant of a holding shall have received notice that the person theretofore entitled to receive the rents and profits of the holding (hereinafter referred to as "the original landlord") has ceased to be so entitled, and also notice of the name and address of the person who has become entitled to receive such rents and profits, any notice, request, demand or other instrument which the tenant shall serve upon or deliver to the original landlord shall be deemed to have been served upon or delivered to the landlord of such holding.

This sub-section was inserted by the Agricultural Holdings (Amendment) Act, 1923, 13 & 14 Geo. 5, c. 25.

58.—(1) This Act shall come into operation at the expiration of one month after the passing thereof.

(2) This Act may be cited as the Agricultural Holdings Act, 1923.

(3) The enactments mentioned in the Fourth Schedule to this Act are hereby repealed to the extent specified in the Third Column of that Schedule :

Provided that (without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889, with respect to the effect of repeals) :—

- (a) all orders, regulations, rules, appointments, scales of costs, charges, directions, certificates, and instruments made or issued and notices and consents given and having effect under any enactment hereby repealed shall have effect as if they had been made or given under this Act ; and
- (b) references in any conveyance, lease, or other document to any enactment so repealed shall have effect as if they had been references to corresponding provisions of this Act.

SCHEDULES.

FIRST SCHEDULE.

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

- (1) Erection, alteration, or enlargement of buildings. 1908, First Schedule.
- (2) Formation of silos. 1920, First Schedule.
- (3) Laying down of permanent pasture.
- (4) Making and planting of osier beds.

- (5) Making of water meadows or works of irrigation.
 - (6) Making of gardens.
 - (7) Making or improvement of roads or bridges.
 - (8) Making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
 - (9) Making or removal of permanent fences.
 - (10) Planting of hops.
 - (11) Planting of orchards or fruit bushes.
 - (12) Protecting young fruit trees.
 - (13) Reclaiming of waste land.
 - (14) Warping or weiring of land.
 - (15) Embankments and sluices against floods.
 - (16) Erection of wirework in hop gardens.
 - (17) Provision of permanent sheep-dipping accommodation.
 - (18) In the case of arable land the removal of bracken, gorse, tree roots, boulders or other like obstructions to cultivation.
- [N.B.—*This part is subject as to market gardens to the provisions of the Third Schedule.*]

PART II.

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

- (19) Drainage.

PART III.

IMPROVEMENTS IN RESPECT OF WHICH CONSENT OF OR NOTICE TO LANDLORD IS NOT REQUIRED.

- (20) Chalking of land.
- (21) Clay-burning.
- (22) Clayng of land or spreading blaes upon land.
- (23) Liming of land.
- (24) Marling of land.
- (25) Application to land of purchased artificial or other purchased manure.
- (26) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding.
- (27) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.
- (28) Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the termination of the tenancy in so far as the value of the temporary pasture on the holding at the time of quitting exceeds the value of the temporary pasture on the holding at the commencement of the tenancy for which the tenant did not pay compensation.
- (29) Repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant is himself under an obligation to execute:

Provided that the tenant, before beginning to execute any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

SECOND SCHEDULE.

RULES AS TO ARBITRATION.

Appointment of Arbitrator.

1908, Second
Schedule.
1920, s. 21,
and First
Schedule.

- 1. A person agreed upon between the parties, or in default of agreement nominated by the Minister on the application in writing of either of the parties, shall be appointed arbitrator.
- 2. If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

3. Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party.

4. Every appointment, notice, revocation, and consent under this part of these rules must be in writing.

5. Such number of persons as may be appointed by the Lord Chief Justice of England shall form a panel of persons from whom any arbitrator nominated, otherwise than by agreement, for the purposes of an arbitration under and in accordance with the provisions of this schedule shall be selected.

The remuneration of an arbitrator so nominated as aforesaid shall be such amount as is fixed by the Minister, and the remuneration of an arbitrator appointed by the parties to any such arbitration shall, in default of agreement between those parties and the arbitrator, be such amount as on the application of the arbitrator or either of the parties is fixed by the registrar of the county court, subject to appeal to the judge of the court.

The remuneration of an arbitrator when agreed or fixed under this rule shall be recoverable by the arbitrator as a debt due from either of the parties to the arbitration, and any amount paid in respect of the remuneration of the arbitrator by either of those parties in excess of the amount (if any) directed by the award to be paid by him in respect of the costs of the award shall be recoverable from the other party to the arbitration.

An arbitrator nominated otherwise than by agreement for an arbitration relating to a holding in Wales or Monmouthshire shall be a person who possesses a knowledge of Welsh agricultural conditions and, if either party to the arbitration so requires, a knowledge also of the Welsh language.

Time for Award.

6. Except where otherwise expressly provided in this Act, the arbitrator shall make and sign his award within twenty-eight days of his appointment or within such longer period as the Minister may (whether the time for making the award has expired or not) direct.

Removal of Arbitrator.

7. Where an arbitrator has misconducted himself the county court may remove him.

Evidence.

8. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator all samples, books, deeds, papers, accounts, writings, and documents, within their possession or power respectively, which may be required or called for, and do all other things which during the proceedings the arbitrator may require.

9. The arbitrator shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbitrator thinks fit, be examined on oath or affirmation.

Statement of Case.

10. The arbitrator may at any stage of the proceedings, and shall if so directed by the judge of the county court (which direction may be given on the application of either party), state in the form of a special case for the opinion of that court any question of law arising in the course of the arbitration.

Award.

11. The arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not later than one month after the delivery of the award for the payment of the money awarded as compensation, costs, or otherwise, and shall be in such form as may be prescribed by the Minister.

12. The award to be made by the arbitrator shall be final and binding on the parties and the persons claiming under them respectively.

13. The arbitrator may correct in an award any clerical mistake or error arising from any accidental slip or omission.

14. Where an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the county court may set the award aside.

See *Jones and Carter's Arbitration*, (1922) 91 L. J. K. B. 824.

Costs.

15. The costs of and incidental to the arbitration and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof are to be paid, and the costs shall be subject to taxation by the registrar of the county court on the application of either party, but that taxation shall be subject to review by the judge of the county court.

16. The arbitrator shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

Forms.

17. Any forms for proceedings in arbitrations under this Act which may be prescribed by the Minister shall, if used, be sufficient.

THIRD SCHEDULE.

IMPROVEMENTS SUBJECT TO SPECIAL PROVISIONS IN THE CASE OF MARKET GARDENS.

- (1) Planting of standard or other fruit trees permanently set out.
- (2) Planting of fruit bushes permanently set out.
- (3) Planting of strawberry plants.
- (4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years.
- (5) Erection or enlargement of buildings for the purpose of the trade or business of a market gardener.

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
8 Edw. VII. c. 28	The Agricultural Holdings Act, 1908.	The whole Act.
2 & 3 Geo. V. c. 21	The Agricultural Holdings Act, 1913.	The whole Act.
9 & 10 Geo. V. c. 63.	The Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919.	The whole Act.
10 & 11 Geo. V. c. 76.	The Agriculture Act, 1920	The whole of Part II. of the Act except section eleven (a); section thirty-three, except the definition of "agricultural committee," and the First Schedule.
11 & 12 Geo. V. c. 17.	The Agriculture (Amendment) Act, 1921.	The whole Act.
11 & 12 Geo. V. c. 48.	The Corn Production Acts (Repeal) Act, 1921.	Section five.
12 & 13 Geo. V. c. 51.	The Allotments Act, 1922.	Sub-section (6) of section twenty-two.

(a) This section is repealed by the Allotments Act, 1922 (12 & 13 Geo. V. c. 51), Sched.

THE COUNTY COURT (AGRICULTURAL HOLDINGS) RULES, 1909.

ORDER XL.

THE AGRICULTURAL HOLDINGS ACT, 1908.

1.—(1) An application for the appointment of a guardian of an infant or person of unsound mind not so found by inquisition for the purposes of the Agricultural Holdings Act, 1908 (in this order referred to as the said Act), or for the revocation of any such appointment and the appointment of another guardian, shall be intituled in the matter of the Act and of the arbitration or intended arbitration, and shall be made in accordance with the rules for the time being in force as to interlocutory applications.

Appoint-
ment or
change of
guardian.
8 Edw. VII.
c. 28, s. 32.

(2) Any such application shall be supported by affidavit, and accompanied by a written consent of the proposed guardian to act as such.

Affidavit.
[Conf. Forms
50, 51.]

(3) An application on behalf of an infant or person of unsound mind for the appointment of a guardian may be made *ex parte*.

Applica-
tions *ex*
parte.

(4) An application by any other person interested for the appointment of a guardian of an infant or person of unsound mind shall be made to the judge on notice in writing; and such notice, together with a copy of the affidavit in support of the application, shall three clear days at least before the day in such notice named for hearing the application be served on the person with whom or under whose care such infant or person of unsound mind is residing, and also, in the case of an infant not residing with or under the care of his father or guardian, on the father or guardian (if any) of such infant: Provided that the registrar may dispense with such last mentioned service. Service may be effected in accordance with the provisions of section 45 of the said Act.

Applica-
tions on
notice.
[Conf. Forms
54, 55, 56.]

(5) An application for the revocation of the appointment of a guardian and the appointment of another guardian shall be made to the judge on notice in writing, which shall be served on the guardian proposed to be removed, or his solicitor, in accordance with the last preceding paragraph.

8 Edw. VII.
c. 28, s. 45.

2—(1) An application to the judge under the said Act for an order directing an arbitrator to state in the form of a special case for the opinion of the court any question of law arising in the course of the arbitration shall be made in court on notice in writing, which shall be intituled in the matter of the Act and of the arbitration, and shall state concisely the question of law which

Application
for order to
state case.
8 Edw. VII.
c. 28,
Sched. II.
par. 9.
Form 415.

Rule 2.

the applicant desires to be stated for the opinion of the court, and shall be supported by an affidavit setting forth the facts of the case and the question of law arising thereon.

(2) The application and affidavit shall be filed with the registrar, and shall be marked by the registrar with a reference number, and all subsequent proceedings shall bear the reference number.

(3) Copies of the application and affidavit shall be served by the applicant on the parties to the arbitration, and on the arbitrator, or on their respective solicitors (if any), ten clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter service, in which case a copy of the order giving such leave shall be served with the copy of the application. Such service may be effected in accordance with the provisions of section 45 of the said Act; and service on any party who does not appear on the hearing of the application shall be proved before an order is made.

8 Edw. VII.
c. 28, s. 45.

(4) Any affidavit intended to be used by any party in opposition to the application shall be filed and a copy thereof shall be served on the applicant or his solicitor four clear days at least before the hearing of the application, or, if leave has been given for short service of the notice of the application, in such reasonable time before the hearing as the date of service of such notice will allow.

(5) A deponent to an affidavit shall on notice from the other side served in accordance with paragraph 3 attend the hearing for cross-examination; and witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action.

8 Edw. VII.
c. 28, s. 45.

(6) The order of the judge on the application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on the arbitrator in accordance with the provisions of section 45 of the said Act, and on all other persons affected thereby in accordance with rule 7 of Order XXIII.

Statement
of case.

8 Edw. VII.
c. 28,
Sched. II.
par. 9.

3.—(1) Where an arbitrator under the said Act states in the form of a special case for the opinion of the court any question of law arising in the course of the arbitration (whether on his own motion or in pursuance of a direction of the court to that effect), such case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of such case the judge and the parties shall be at liberty to refer to the whole contents

of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

Rule 3.

(2) Such special case shall be signed by the arbitrator, and may be filed by the arbitrator or any of the parties to the arbitration with the registrar, and a copy shall be filed therewith for the use of the judge; and such case shall be marked by the registrar with a reference number (which, where a case is stated in pursuance of a direction of the court to that effect, shall be the same as that on the application for such direction) and all subsequent proceedings shall bear the reference number.

Signing and filing.

(3) On a case being filed the registrar shall transmit a copy thereof to the judge, who shall, as soon as conveniently may be, appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. Such day shall be so fixed as to allow such notice to be given ten clear days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day; and such notices may be served in accordance with the provisions of section 45 of the said Act.

Fixing day for hearing.

(4) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Form 416.
8 Edw. VII.
c. 28, s. 45.
Copies of case.

(5) On the hearing of the case an order in accordance with the opinion of the judge shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all parties to the arbitration in accordance with rule 7 of Order XXIII.; and a sealed copy thereof shall be sent in like manner to the arbitrator, for him to proceed in accordance with the opinion of the judge.

Order on hearing.

Form 417.

(6) The judge may remit the case to the arbitrator for re-statement or further statement.

Remitting case for re-statement.

4.—(1) When application is made to the court under the said Act for the removal of an arbitrator on the ground of his misconduct, or for an order setting aside an award on the ground of misconduct of the arbitrator, or on the ground that the arbitration or award has been improperly procured, the party making the application shall be called "the applicant"; and all other parties to the arbitration, and the arbitrator (a), shall be made parties to the application, and shall be called "the respondents."

Application for removal of arbitrator, or to set aside award.
8 Edw. VII.
c. 28,
Sched. II.
Pars. 6, 13.

NOTE.—(a) This provision of this rule calling on the arbitrator to be present is not *ultra vires* (*London v. Keen and Another*, (1916) 1 K. B. 994; 85 L. J. K. B. 1237).

Rule 4.

Proceedings
how
commenced.
Form 418.

(2) Proceedings shall be commenced by filing an application, intituled in the matter of the Act and of the arbitration, which shall be entered and numbered as a plaint. *The application shall not be made more than twenty-one days from the date of the award unless with the leave of the judge.*

NOTE.—Words in italics added by County Court (No. 2) Rules, 1922.

Particulars
and affi-
davit.

(3) Particulars shall be appended or annexed to the application, containing

- (a) A concise statement of the relief or order which the applicant claims, and of the grounds on which the application is made ;
- (b) The full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor :

and the application shall be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made.

Copies for
judge and
respondents.

(4) The applicant shall deliver to the registrar with the application, particulars, and affidavit a copy thereof for the judge, and a copy for each respondent to be served : and where the application is to set aside an award, the applicant shall file a copy of the award for the use of the judge.

Fixing day
of hearing
by registrar.

(5) On the filing of the application the registrar shall fix the hearing thereof before the judge for any court appointed to be held within twenty-eight days from the date of the application, but the date of hearing shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed.

Fixing day
and place of
hearing by
judge.

(6) If there is no such court available, the registrar shall send notice of the application to the judge, who shall, as soon as conveniently may be, appoint a day and place for the hearing of the application. Such day shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed. The place of hearing shall be the place at which the court is held, or, if the judge so orders, any other convenient court of which he is judge.

Notice to
parties.
Forms 419,
420.

(7) On the day for the hearing of the application being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the application will be heard, and shall issue the copies of the application, particulars, and affidavit, under the seal

of the court, for service on the respondents together with notices signed by the registrar himself and under the seal of the court, stating the place at which and the day and hour on and at which the application will be heard, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Rule 4.

(8) The copies and notices mentioned in the last preceding paragraph shall be served on each respondent ten clear days at least before the day fixed for the hearing, unless such respondent, or his solicitor on his behalf, agrees to accept shorter notice.

Service on respondents.

(9) Such copies and notices may be served—

By whom service may be effected.

(a) By a bailiff of a court ;

or, at the request of the applicant or his solicitor,

(b) By the applicant, or some clerk or servant in his permanent and exclusive employ ; or

(c) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

(10) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of section 45 of the said Act.

Mode of service.
8 Edw. VII.
c. 28, s. 45.

(11) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service endorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also deliver or transmit to the registrar an affidavit of the service of such document, according to the form in the Appendix, with such variations as the circumstances of the case may require.

Where service effected otherwise than by bailiff.

Form 37.

(12) Any affidavit intended to be used by any respondent on the hearing of the application shall be filed and a copy thereof shall be served on the applicant or his solicitor four clear days at least before the hearing of the application, or, if short service of the notice of the application has been accepted, in such reasonable time before the hearing as the date of service will allow.

Affidavits by respondents.

(13) A deponent to an affidavit shall on notice from the other side served in accordance with the provisions of section 45 of the said Act, attend the hearing for cross-examination ; and witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action.

Attendance for cross-examination.
8 Edw. VII.
c. 28, s. 45.

Rule 4.

Procedure
on applica-
tion.

(14) Subject to the special provisions of this rule, the procedure on an application shall be the same as the procedure in an action commenced in the court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such application accordingly; and in the application of such provisions and rules the application shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the application shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

“Costs.”]—If an arbitrator, on being served with notice of proceedings to set aside his award on the ground of misconduct, appears and takes part in the proceedings; he makes himself an active party and may be ordered to pay costs. If guilty of real misconduct justifying the setting aside of his award costs may, and ought to be given against him, whether he appears in the proceedings or not. If he is only guilty of technical misconduct the county court judge is not entitled to order him to pay the applicant's costs (*London v. Keen and Another*, (1916) 1 K. B. 994; 85 L. J. K. B. 1237).

Order.

(15) The order of the judge on any application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with rule 7 of Order XXIII.; and such order shall be enforceable in the same manner as a judgment or order of the court.

Where hear-
ing is to
take place
in another
court.

(16) Where the hearing is to take place at another court, the registrar of the court in which the proceeding is pending shall forthwith send notice to the registrar of such other court that the judge has ordered the hearing to take place there; and he shall, in sufficient time before the hearing, transmit the papers to the registrar of the court at which the hearing is to take place, who shall act at the hearing for such first mentioned registrar, and shall, after the hearing, return the papers to him, with a minute of the order made; and such order shall be prepared, settled, signed, sealed, filed, served, and proceeded on in the court in which the proceeding is pending, in like manner as if the hearing had taken place there.

Application
for taxation
of costs of
arbitration.
8 Edw. VII.
c. 28,
Sched. II.
par. 14.
[Conf.
Form 423.]

5.—(1) An application to the registrar to tax the costs of and incidental to an arbitration and award under the said Act shall be made in writing, and shall state on whose behalf the application is made.

(2) On receipt of such application the registrar shall fix a place and time for proceeding with such taxation, and shall give or send by post notice in writing to the applicant and to the parties whose

costs are to be taxed, signed by the registrar himself and under the seal of the court, stating the place, day, and hour at and on which the taxation will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend either in person or by their solicitors such order will be made and proceedings taken as to the registrar shall seem fit. Such notices shall be given or sent four clear days at least before the day fixed for the taxation.

Rule 5.

Notice of time and place for taxation.
[Conf. Form 424.]

(3) On the completion of the taxation, or in the case of review by the judge, after such review, the registrar shall give or send by post to each party a certificate of the result of the taxation, stating the amount at which the costs have been allowed.

Certificate of taxation.

6. An application to the judge to review any taxation by the registrar shall be made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications.

Review of taxation by judge.

8 Edw. VII.

c. 28, Sched. II. par. 14.

7.—(1) An application to the judge under the said Act, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, (a) for an order that money awarded to be paid for compensation, costs, or otherwise, shall be recoverable as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable, shall be made in court on notice in writing, which shall be intituled in the matter of the Act and of the arbitration; and on filing the application the applicant shall produce to the registrar the original award (or a duplicate thereof) and shall file a copy thereof, together with an affidavit intituled as above, verifying both the original and the copy award, and the amount remaining due thereunder.

Application for recovery of money awarded to be paid for compensation, &c.

8 Edw. VII.

c. 28, s. 14. 50 & 51 Vict. c. 26, s. 17.

Form 421.

(2) Where the application is for the recovery of or includes the recovery of any money awarded to be paid for costs, the affidavit shall state the amount at which such costs have been agreed upon or allowed on taxation, and that a demand for payment of such amount with, in the case of taxation, a copy of the certificate of the result of the taxation, has been served on the party against whom the application is made fourteen days at least before the date of the application. Service of such demand may be effected in accordance with the provisions of section 45 of the said Act.

8 Edw. VII. c. 28, s. 45.

(3) The application shall not be numbered as a plaint, but shall be marked by the registrar with a reference number as a commencement of proceedings, and all subsequent proceedings shall bear the reference number.

(4) A copy of the application and affidavit shall be served on the party against whom the application is made, and proof of such service shall be made, in accordance with paragraph 3 of rule 2 of

(a) Now Allotments Act, 1922, *post*, p. 1736.

Rule 7. this Order ; and the provisions of paragraphs 4 and 5 of the last-mentioned rule shall apply to proceedings on an application under this rule.

Form 422. (5) The order of the judge on the application shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with rule 7 of Order XXIII. ; and such order shall be enforceable in the same manner as a judgment or order of the court.

Proceedings
for recovery
of money
agreed to be
paid under
8 Edw. VII.
c. 28, s. 14 ;
50 & 51 Vict.
c. 26, s. 17 ;
or for settle-
ment of dis-
putes under
8 Edw. VII.
c. 28, s. 30.

8. Proceedings for the recovery of money agreed to be paid for compensation, costs, or otherwise, under the said Act, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, (a) or for the settlement of a dispute under section 30 of the said Act, shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed in any such action, stating concisely the nature of the claim or dispute and the relief or order which the plaintiff claims.

Application
of Order to
cases under
Acts applying
8 Edw. VII.
c. 28.

9. This order shall, with the necessary modifications, apply to all cases in which by virtue of any other Act of Parliament questions referred to arbitration are to be determined in accordance with the said Act.

[See 8 Edw.
VII. c. 36,
ss. 38, 58.]

FORMS.

415.

Application for Order Directing Statement of Case.

The Agricultural Holdings Act, 1923.

[*Not to be printed.*]

In the County Court of holden at .

[*Reference Number*]

In the matter of the Agricultural Holdings Act, 1923,

and

In the matter of an Arbitration between

A.B.,

of &c.,

and

Tenant,

C.D.,

of &c.,

Landlord.

TAKE NOTICE, that application will be made to the judge at on the day of 19 , at the hour of o'clock in the noon, on behalf of the above-named , for an order directing Mr. the arbitrator appointed in the above-mentioned arbitration, to state in the form of a special case for the opinion of the court the following question of law arising in the course of the arbitration, viz.,

[*State the question of law.*]

And further take notice, that an affidavit of filed herewith [*in the*

(a) Now Allotments Act, 1922, post, p. 1736.

notice served on any party substitute for these words a copy whereof is served herewith] will be read in support of the application.

Dated this day of 19 .
(Signed)

Applicant.
[or Applicant's Solicitor].

To the Registrar of the Court
and to [the other parties to the arbitration
and the arbitrator, naming them].

416.

Notice of Day on which Case will be heard.

Order XL.,
Rule 8 (3).

The Agricultural Holdings Act, 1923.

[Not to be printed.]

In the County Court of holden at .
[Heading as in Special Case.]

TAKE NOTICE, that the judge of this court will hear the special case stated by Mr. , the arbitrator appointed in the above-mentioned matter, at a court to be holden at on the day of 19 , at the hour of in the noon; and that if you do not attend in person or by your solicitor at the time and place above-mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office, and upon prepayment of the costs of such copy.

The hearing fee must be paid before the case is called on.

Dated this day of 19 .

Registrar.

To
[the parties to the arbitration.]

417.

Order on Hearing of Case.

Order XL.,
Rule 8 (5).

The Agricultural Holdings Act, 1923.

[Not to be printed.]

[Heading as in Special Case.]

The special case stated by Mr. , the arbitrator appointed in the above-mentioned matter [if stated pursuant to an order of the judge, add in pursuance of an order of the judge made in the above-mentioned matter on the day of 19] coming on for hearing this day :

Now, upon reading the said case, and upon hearing the above-mentioned A.B. [or Mr. , solicitor [or of counsel] for the above-named A.B.] and the above-named C.D. [or Mr. , solicitor [or of counsel] for the above-named C.D.] [or if either party does not appear, no one appearing for the above-named A.B. [or C.D.], and upon debate of the matter, the judge of this court doth declare his opinion on the question of law stated for the opinion of the court as follows :—

[State Opinion.]

And it is ordered that a copy of this order be sent by the registrar to the said Mr. , for him to proceed in accordance with the opinion so declared as aforesaid.

[Add directions as to costs, if any.]

Dated this day of 19 .

Registrar.

To
[the parties to the arbitration
and the arbitrator.]

418.

Order XL.,
Rule 4 (2).*Application for Removal of Arbitrator, or to set aside Award.***The Agricultural Holdings Act, 1923.**

[Not to be printed.]

In the County Court of . . . holden at . . . No. of Plaintiff
 In the matter of the Agricultural Holdings Act, 1923,
 and
 In the matter of an Arbitration between

A.B.,
 of &c., . . . Tenant,
 and
 C.D.,
 of &c., . . . Landlord.

Application is hereby made on behalf of the above-named
 (1) for the removal of Mr. . . . the arbitrator appointed in the above-
 mentioned arbitration, on the ground of his misconduct.

Particulars are hereto appended [or annexed].

[or (2) to set aside the award made by Mr. . . . the arbitrator appointed
 in the above-mentioned arbitration, on the . . . day of . . . on the ground
 of the misconduct of the said Mr. . . . [or on the ground that the said
 arbitration [or award] was improperly procured].]

Particulars are hereto appended [or annexed].

An affidavit of . . . in support of the application is filed herewith.

Application is hereby made to the court to fix a day for the hearing of the
 said application.

The names and addresses of the applicant and his solicitor are :—

Of the applicant

Of his solicitor

The names and addresses of the respondents to be served with this
 application are

Dated this . . . day of . . . 19 . . .
 (Signed)

Applicant
 [or Applicant's Solicitor].

419.

Order XL.,
Rule 4 (7).*Notice to Applicant of Day on which Application will be heard.***The Agricultural Holdings Act, 1923.**

[Not to be printed.]

[Heading as in Application.]

TAKE NOTICE, that the judge of this court will hear the application in
 this matter at [state place of hearing] on . . . the . . . day of . . . 19 . . .
 at the hour of . . . in the . . . noon.

Dated this . . . day of . . . 19 . . .

To
 of

Registrar.

420.

Notice to Respondents of Day on which Application will be heard.

Order XL,
Rule 4 (7).

The Agricultural Holdings Act, 1923.

[*Not to be printed.*]

[*Heading as in Application.*]

TAKE NOTICE, that the judge of this court will hear the application a sealed copy of which, with the particulars thereunto appended [*or annexed*] and a sealed copy of an affidavit filed in support thereof, is served herewith at [*state place of hearing*] on the day of 19, at the hour of in the noon; and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of 19 .

To
of
[*naming all the respondents*].

Registrar.

421.

Application for Order for Recovery of Money awarded to be paid.

Order XL,
Rule 7 (1).

The Agricultural Holdings Act, 1923.

[*Or The Allotments Act, 1922.*]

[*Not to be printed.*]

In the County Court of holden at . [Reference number .]

In the matter of the Agricultural Holdings Act, 1923 [*or* In the matter of the Allotments Act, 1922.]

and

In the matter of an Arbitration between

A.B.,
of, &c.

Tenant,

and

C.D.,
of, &c.,

Landlord.

TAKE NOTICE, that application will be made to the judge at on the day of 19, at the hour of in the noon, on behalf of the above-named A.B. for an order that the sum of £, being the total amount [*or* the balance of the total amount] of (1) a sum of £ which by an award made in the above-mentioned matter on the day of 19, was awarded to be paid by the above-named C.D. to the above-named A.B., and of (2) a further sum of £ for costs which by the said award were awarded to be paid by the said C.D. to the said A.B., and which costs were subsequently agreed upon [*or* allowed on taxation] at the sum of £, and which said first-mentioned sum of £ remains unpaid shall be recoverable as money ordered by the court under its ordinary jurisdiction to be paid is recoverable.

And further take notice, that an affidavit of _____ filed herewith [*in the notice to be served on the opposite party, substitute for these words a copy whereof is served herewith*] will be read in support of the application.

Dated this _____ day of _____ 19 ____.

(Signed)

Applicant
[or Applicant's Solicitor].

To the Registrar of the Court
and to [*naming the party against whom
the application is made*].

422.

Order XL.,
Rule 7 (5).

Order for Recovery of Money awarded to be paid.

The Agricultural Holdings Act, 1923.

[Or The Allotments Act, 1922.]

[*Not to be printed.*]

[*Title as in Application.*]

Upon the application of _____, and upon reading an award made in the above-mentioned matter on the _____ day of _____ 19 ____, and an affidavit of _____ sworn on the _____ day of _____ 19 ____, and filed on the _____ day of _____ 19 ____, and upon hearing [*the opposite party*] [*or if the opposite party does not appear and no one appearing for [the opposite party] though proof has been made of his having been duly served with notice of this application*];

It is ordered by the judge of this court that the above-named *A.B.* do recover from the above-named *C.D.* _____ the sum of £ _____, being the total amount [*or the balance of the total amount*] of (1) a sum of £ _____ which by the said award was awarded to be paid by the above-named *C.D.* to the above-named *A.B.* _____, and of (2) a further sum of £ _____ for costs which by the said award were awarded to be paid by the said *C.D.* to the said *A.B.* _____, and which costs were subsequently agreed upon [*or allowed on taxation*] at the sum of £ _____, and which said first-mentioned sum of £ _____ remains unpaid, together with the sum of £ _____ for the costs of this application; and that in default of payment of the said sums of £ _____ and £ _____ by the said *C.D.* _____ to the said *A.B.* _____ within _____ days from the date of this order, the said sums or so much thereof as shall remain unpaid shall be recoverable as money ordered by this court under its ordinary jurisdiction to be paid is recoverable.

Dated this _____ day of _____ 19 ____.

Registrar.

AGRICULTURAL HOLDINGS ACTS.

ORDER OF THE LORD CHANCELLOR, DATED NOVEMBER 27, 1900, AS TO COSTS.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the twenty-seventh section of the Agricultural Holdings (England) Act, 1883, hereby prescribe the following scales of costs for proceedings in the county court under the Agricultural Holdings (England) Acts, 1883 to 1900, and of costs to be taxed by registrars of county courts under the said Acts, (that is to say) :

1. Costs of proceedings in the county court under the said Acts shall be taxed according to such one of the scales of costs applicable to actions in the county court as the judge shall direct, and in default of such direction they shall be taxed under column B of such scales.

2. Costs of and incidental to an arbitration and award awarded by an arbitrator under the said Acts shall be taxed according to such one of the scales of costs applicable to actions in the county court as the arbitrator shall direct, and in default of such direction they shall be taxed under column B of such scales.

Dated this 27th day of November, 1900.

NOTE.—See sect. 52 and Sched. II., paragraphs 15 and 16, of the Act of 1923. The above order seems to be still in force by virtue of sect. 58.

COURT FEES.

The court fees payable on proceedings under the Agricultural Holdings Act, 1923, are prescribed by the County Court Fees Order, 1925 (*ante*, Part II.), as follows:—

	£	s.	d.
(40) (i.) On an application for the appointment of a guardian of an infant or of a person of unsound mind not so found by inquisition, or for the revocation of any such appointment and the appointment of another guardian	1	0	0
(ii.) On an application for an order directing an arbitrator to state a special case	2	0	0
(iii.) On filing a special case stated by an arbitrator (including the hearing of the case and the order made thereon)	3	0	0
(iv.) On an application for an order for the recovery of money awarded to be paid for compensation costs or otherwise 6d. on the £ on amount so awarded			

Minimum fee, 10s.; maximum fee, 3l.

NOTE (1) On any proceedings under the Act where no fee is prescribed above, the fees in the other sections of the Order are payable so far as applicable.

(2) The fee on an application for an order or certificate includes: (a) the examination, allowance and filing of any affidavit in support of or in opposition to the application; and (b) the drawing, entering, sealing and issue of the order or certificate made thereon, and the service of such order or certificate by post.

MINISTRY OF AGRICULTURE RULES.

AGRICULTURAL HOLDINGS (ENGLAND) RULES OF 1923. (DATED JULY 6TH, 1923.)

The Minister of Agriculture and Fisheries, by virtue and in exercise of the powers vested in him under the Agricultural Holdings Act, 1923, hereby prescribes as follows:—

1. An award in an arbitration under the Agricultural Holdings Act, 1923, shall be in the form set forth in the first schedule hereto, or to the like effect, with such modifications of the terms thereof as circumstances may require.

2. The several forms for proceedings in arbitrations under the said Act, which are set forth in the Second Schedule hereto, shall, if used, be sufficient.

3. These Rules extend to England and Wales only and shall come into operation on the 7th day of July, 1923.

4. The Agricultural Holdings (England) Rules of 1921 shall remain in force for the purpose only of awards on applications made before the 7th day of July, 1923.

5. These Rules may be cited as the Agricultural Holdings (England) Rules of 1923.

The First Schedule to the above Rules.

FORM A.

Form of Award.

Agricultural Holdings Act, 1923.

Insert name
(if any) and
description
of holding.

In the matter of a holding known as _____, [lately] in the occupation of *A.B.*, of _____ (the [quitting] tenant).

To all to whom these presents shall come I, *F.G.*, of _____ send greeting.

Whereas under the Agricultural Holdings Act, 1923, the claims, questions or differences set forth in the Schedule to this Award are referred to arbitration in accordance with the provisions set out in the Second Schedule to the Act.

And whereas by an appointment, dated the _____ day of _____, 19____, signed by [or on behalf of] the said *A.B.* and *C.D.* [or sealed by the Minister of Agriculture and Fisheries, as the case may be,] I, the said *F.G.*, was duly appointed under the Agricultural Holdings Act, 1923, to act as arbitrator for the purpose of settling the said claims, questions or differences in accordance with the provisions set out in the Second Schedule to the Act.

[And whereas the time for making my Award has been extended by the Minister of Agriculture and Fisheries to the _____ day of _____, 19____.]

Now know ye that I, the said *F.G.*, having taken upon myself the burden of the said reference, and having heard, examined, and considered the witnesses and evidence concerning the said claims, questions or differences so referred to me as aforesaid, do make and publish this my Award of and concerning the same in manner following, that is to say:—

1. I award and determine that the said *A.B.* is entitled to receive from the said *C.D.* the sum of _____ pounds _____ shillings and _____ pence, as compensation in respect of the claims set forth in the first part of the Schedule hereto, the amount awarded in respect of each claim being as there stated.

2. I award and determine that the said *C.D.* is entitled to receive from the said *A.B.* the sum of pounds shillings and pence, in respect of the claims set forth in the second part of the Schedule hereto, the amount awarded in respect of each claim being as there stated.

3. I determine the questions and differences set forth in the third part of the schedule hereto in manner following (that is to say): [*Here set out determinations.*]

4. I award and determine that the said sum[s] of pounds shillings and pence [and pounds shillings and pence] awarded by me shall, subject to the provisions of the Agricultural Holdings Act, 1923, be paid by the said *C.D.* to the said *A.B.* on the day after the delivery of this Award; and that the said sum of pounds shillings and pence awarded by me shall, subject as aforesaid, be paid by the said *A.B.* to the said *C.D.* on the same day.

NOTE—The date in paragraphs 4 and 5 must not be later than one calendar month after the delivery of the award.

5. I award and direct that the costs of and incidental to the arbitration and this Award shall be paid by the said *A.B.* or *C.D.* or by the said *A.B.* and *C.D.* in the following proportions, namely, part thereof by *A.B.* and part thereof by the said *C.D.* [*or otherwise as may be directed*], or I award and direct that each party shall bear his own costs of and incidental to this arbitration, and shall pay part of my costs of this Award, and that any costs payable by the one party to the other party or by virtue of this Award shall be so paid on the day after the delivery of this Award.

See note above.

In Witness whereof I have hereunto set my hand this day of , 19 .

Signed by the said *F.G.* in the presence of *F.G.*

The Schedule referred to in the above-written Award.

[*Here set forth the claims, questions or differences to be determined. Part I. will contain claims by the tenant; Part II. will contain claims by the landlord; Part III. will contain any other matter. The person making the Award must state separately in the Award the amounts awarded in respect of the several claims referred to him.*]

NOTE.—The Award may be endorsed as follows:
This Award was delivered to *A.B.* [*or C.D.*] on the day of , 19 .
F.G.

The Second Schedule to the above Rules.

FORM B.

(Application for Appointment by Minister of Agriculture and Fisheries of Arbitrator to determine claims, questions or difference arising between the landlord and tenant of a holding).

Agricultural Holdings Act, 1923.

To the Minister of Agriculture and Fisheries.
In the matter of the holding known as , [lately] in the occupation of *A.B.*, of (the [quitting] tenant).

Insert name (if any) and description of holding.

Whereas under the Agricultural Holdings Act, 1923, the claims, questions or differences set forth in the Schedule to this application are referred to arbitration in accordance with the provisions set out in the Second Schedule to the Act.

And whereas the said *A.B.*, the tenant of the said holding, and *C.D.*, the landlord thereof, have failed to agree as to the person to act as arbitrator for the purpose of settling the said claims, questions or differences.

And whereas there is not any provision in any agreement between the said *A.B.* and *C.D.* relating to the appointment of such arbitrator, and such arbitrator may accordingly be appointed by the Minister of Agriculture and Fisheries on the application in writing of either of the parties.

Now, I, the said undersigned, do hereby apply to the Minister of Agriculture and Fisheries for the appointment by him of an arbitrator for the purpose of settling the claims, questions or differences set forth in the Schedule to this application (and for determining all other claims, questions or differences arising out of the termination of the tenancy of the said holding.)

(Signature of *A.B.* [*or C.D.*], or his duly authorised agent.)

Schedule.

(Here set forth precisely the claims, questions or differences to be determined)
e.g.—

PART I.

- (1) Claims for compensation for improvements.
- (2) Short particulars of any further claim by the tenant.

PART II.

- (3) Short particulars of any claim by the landlord.

PART III.

- (4) Any other question or difference referred to arbitration.

NOTE.—Delay in making the appointment will be avoided if the application is signed by or on behalf of both parties. In any case the names and addresses of both parties and their agents (if any) should be given.

Applications should be made to the Ministry in duplicate.

If the tenancy has terminated the date of the termination should be stated in a covering letter.

It will assist the Ministry in selecting a suitable Arbitrator if a brief statement as to the size and character of the holding is furnished with the application.

FORM C.

Application to Minister of Agriculture and Fisheries for extension of time for Award.

Agricultural Holdings Act, 1923.

To the Minister of Agriculture and Fisheries.

Insert name
(if any) and
description
of holding.

In the matter of an arbitration under the above-mentioned Act between *A.B.*, of (the [quitting] tenant), and *C.D.*, of (the landlord), relating to the holding known as [lately] in the occupation of the said *A.B.*

Whereas the time for making the award in the said arbitration will expire [or expired] on the day of , 19 .

Now I, the undersigned, do hereby apply to the Minister of Agriculture and Fisheries to extend the time for making the said award to the day of , 19 .

NOTE.—Delay in issuing the extension will be avoided if the application is signed by the arbitrator and by, or on behalf of both parties. In any case the full names and addresses of both parties and their agents (if any) should be given.

THE ALKALI, &c., WORKS REGULATION ACT, 1906.

[6 EDW. VII. c. 14.]

Jurisdiction.]—This Act, by sects. 1 to 7 and sect. 9, imposes certain fines (other fines, *e.g.*, fines under sect. 12, sub-s. 4, are recoverable on conviction under the Summary Jurisdiction Acts) which must be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed (sect. 17); except as to the above-mentioned fines summarily recoverable, the jurisdiction of the county court is exclusive.

Ordinary practice of the County Courts, both as to procedure and appeal.

Procedure.]—By sect. 20 the owner of a works (see sect. 18) shall be deemed responsible for the offence committed till the contrary has been proved. The fine shall be recovered by action in the county court having jurisdiction in the district where offence is alleged, but such action shall not be brought without the sanction of the central authority (sect. 17; for meaning of central authority see sect. 27), and only by the chief or other inspector as the Local Government Board may direct nor (except as to the registration of works) after the expiration of three months from the offence (sect. 17, **Time limit.** sub-s. 2); the provisions of the County Courts Acts Rules and Orders are to apply (sect. 17, sub-s. 6).

Appeal.]—Either party may appeal to the High Court on points of law or on merits, or in respect of the admission or rejection of evidence (sect. 17, sub-s. 5).

Service.]—Sect. 21 provides as to the service of notices and documents.

PART I.

ALKALI WORKS AND ALKALI WASTE.

1.—(1) Every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gases, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid. Condensation of muriatic acid gas in alkali works.

(2) The owner of any alkali work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

2.—(1) In addition to the condensation of muriatic acid gas as aforesaid, the owner of every alkali work shall use the best practicable means for preventing the escape of noxious or offensive gases by the exit flue of any apparatus used in any process carried on in the work, and for preventing the discharge, whether directly or indirectly, of such gases into the atmosphere, and for rendering such gases where discharged harmless and inoffensive, subject to Prevention of discharge of noxious and offensive gas in alkali works.

Section 2.

the qualification that, on the basis of the amount of acid gas per cubic foot, no objection shall be taken under this section by an inspector to any muriatic acid gas in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet where the amount of such acid gas in each cubic foot of air, smoke, or gases so discharged does not exceed the amount limited by the last preceding section.

(2) If the owner of any alkali work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Separation
of acids
and other
substances
from alkali
waste and
drainage
therefrom.

3.—(1) Every work of whatever description in which any liquid containing either acid or any other substance capable of liberating sulphuretted hydrogen from alkali waste or drainage therefrom is produced or used shall be carried on in such manner that the liquid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

(2) The owner of any work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

(3) On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off such liquid as aforesaid produced in such work into the sea or into any river or water-course into which the liquid can be carried without contravention of the Rivers Pollution Prevention Act, 1876, as amended by any subsequent enactment; and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers whether within or without their district, under the Public Health Act.

(4) Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

39 & 40 Vict.
c. 75.

Deposit or
discharge
of alkali
waste.

4.—(1) Alkali waste shall not be deposited or discharged, without the best practicable means being used for effectually preventing any nuisance arising therefrom.

Section 4.

(2) Any person who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

5. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector, if satisfied of the existence of the nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and, if such owner or occupier fails to use the best practicable and reasonably available means for the abatement thereof, he shall be liable to a fine not exceeding twenty pounds, and, if he does not proceed to use such means within such time as may be limited by the court inflicting such fine, he shall be liable to a further penalty not exceeding five pounds for every day after the expiration of the time so limited during which such failure continues.

Prevention of nuisance from alkali waste already deposited or discharged.

PART II.

SULPHURIC ACID, MURIATIC ACID, AND OTHER SPECIFIED WORKS.

6.—(1) Every sulphuric acid work as defined in paragraph (1) of the first schedule to this Act shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, of the acid gases of sulphur or of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in that work, to such an extent that the total acidity of those gases in each cubic foot of residual gases after completion of the process, and before admixture with air, smoke, or other gases, does not exceed what is equivalent to four grains of sulphuric anhydride.

Condensation of acid gases in sulphuric acid and muriatic acid works.

(2) Every muriatic acid work as defined in paragraph (8) of the first schedule to this Act shall be carried on in such manner as to secure the condensation to the satisfaction of the chief inspector of the muriatic acid gas evolved in such work, to such extent that in each cubic foot of air, smoke, or chimney gases escaping from the work into the atmosphere there is not contained more than one-fifth part of a grain of muriatic acid.

(3) The owner of any sulphuric acid work or of any muriatic acid work which is carried on in contravention of this section shall be liable to a fine not exceeding in the case of the first offence

Section 6. fifty pounds, and in the case of every subsequent offence one hundred pounds.

Prevention
of discharge
of noxious
or offensive
gas in
scheduled
works.

7.—(1) The owner of any work specified in the first schedule to this Act (hereinafter referred to as a scheduled work) shall use the best practicable means for preventing the escape of noxious or offensive gases by the exit flue of any apparatus used in any process carried on in the work, and for preventing the discharge whether directly or indirectly, of such gases into the atmosphere, and for rendering such gases where discharged harmless and inoffensive, subject to the qualification that, on the basis of the amount of acid gas per cubic foot, no objection shall be taken under this section by an inspector—

(a) To any muriatic acid gas in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet, where the amount of such acid gas in each cubic foot of air, smoke, or gases so discharged does not exceed the amount limited by the last preceding section :

(b) To any acid gases in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet receiving the residual gases from any process for the concentration or distillation of sulphuric acid, where the total acidity of such acid gases (including those from the combustion of coal) in each cubic foot of air, smoke, or gases so discharged does not exceed what is equivalent to one grain and a half of sulphuric anhydride.

(2) If the owner of any such work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

* * * * *

PART III.

(i.) REGISTRATION OF WORKS.

Registration
of works
and stamp
duty.

9.—(1) An alkali work, a scheduled work, a cement work, or a smelting work shall not be carried on unless it is certified to be registered.

(2) The work shall be registered in a register containing the prescribed particulars, and the register shall be conducted and the certificates issued in the prescribed manner.

(3) A certificate of registration, if issued at a time when a previous certificate is in force, shall be in force for one year after the time when that certificate ceases to be in force, and if issued at

a time when no previous certificate is in force shall be in force until the following first day of April.

Section 9.

(4) An application for a certificate of registration of a work may, in the case of the first registration of that work, be made at any time, and an application for any subsequent certificate in respect of that work shall be made in the month of January or February.

(5) A certificate of registration shall be issued on application being made in the prescribed manner by the owner of the work, if the conditions of registration are complied with, and one of the conditions, in the case of the first registration of an alkali or scheduled work, or the registration of such a work if the work has been closed for a period of twelve months previously, shall be that the work is at the time of registration furnished with such appliances as appear to the chief inspector or, on appeal, to the Local Government Board to be necessary in order to enable the work to be carried on in accordance with such of the requirements of this Act as apply to the work.

Provided that the Local Government Board may dispense with the last-mentioned condition in the case of works erected before the commencement of this Act which were not before the commencement of this Act required to be registered.

(6) There shall be charged upon every such certificate a stamp duty of five pounds in the case of an alkali work, and of three pounds in the case of any other work, and the Commissioners of Inland Revenue shall issue stamped forms of certificate for the purpose.

(7) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall within one month after such change be sent by the owner to the Local Government Board, and the register and the certificate shall be altered accordingly in the prescribed manner without charge and without the issue of a new certificate. If such notice is not sent as so required the work shall not be deemed to be certified to be registered.

(8) The owner of a work which has been carried on in contravention of this section shall be liable to a fine not exceeding fifty pounds.

* * * * *

17. The following regulations shall have effect with respect to the recovery of fines for offences under this Act other than fines recoverable summarily :

Recovery of fines for offences against Act in county court.

(1) Every such fine shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed :

(2) The action shall not be brought without the sanction of the

Section 17.

central authority, nor by any person other than the chief inspector or such other inspector as the Local Government Board may in any particular case direct, nor, except as respects a fine for the contravention of the provisions of this Act as to the registration of works, after the expiration of three months from the commission of the offence, and for the purposes of such action the fine shall be deemed to be a debt due to such inspector :

- (3) The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorised under this Act to bring action, until the contrary is proved by the defendant :
- (4) The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just ; and the amount so awarded shall be deemed to be costs in the action :
- (5) If either party in any action under this Act feels aggrieved by the decision or direction of the court in point of law, or on the merits, or in respect of the admission or rejection of any evidence, he may appeal to the High Court :
- (6) Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and to appeals shall apply as if the action related to a matter within the ordinary jurisdiction of the court.

Further provisions as to recovery of fine in county court.

18.—(1) In any proceeding under this Act in relation to a fine for an offence other than an offence against a special rule—

- (a) It shall be sufficient to allege that any work is a work to which this Act applies, without more ; and
 - (b) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.
- (2) A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

(3) Not less than twenty-one days before the hearing of any proceeding against an owner to recover a fine under this Act for failing to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means as required by this Act, an inspector shall serve on the owner proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion,

for the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognizance of the matter.

Section 18.

(4) A person shall not be liable under this Act to an increased fine in respect of a second offence or in respect of a third or any subsequent offence, unless a fine has been recovered within the preceding twelve months against such person for the first offence, or for the second or other offence as the case may be.

* * * * *

21. Any notice, summons, or other document required or authorised for the purposes of this Act to be delivered to or served on or sent to the owner of any work, may be served by post or by delivering the same to the owner, or at his residence or works; and the document shall be deemed to be properly addressed if addressed to the registered address of an owner, or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner.

* * * * *

27.—(1) In this Act, unless the context otherwise requires,—the expression “alkali work” means every work for—

Interpre-
tation of
terms.

- (a) the manufacture of sulphate of soda or sulphate of potash, or
- (b) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed,

in which muriatic acid gas is evolved :

The expression “noxious or offensive gas” includes the following gases and fumes :—

Muriatic acid ;

Sulphuric acid ;

Sulphurous acid, except that arising solely from the combustion of coal ;

Nitric acid and acid-forming oxides of nitrogen ;

Sulphuretted hydrogen ;

Chlorine, and its acid compounds ;

Fluorine compounds ;

Cyanogen compounds ;

Bisulphide of carbon ;

Chloride of sulphur ;

Fumes from cement works ;

Fumes containing copper, lead, antimony, arsenic, zinc, or their compounds ;

Fumes from tar works ;

The expression “owner” includes any lessee occupier, or any other person carrying on any work to which this Act applies :

Section 27.

The expression "best practicable means," where used with respect to the prevention of the escape of noxious and offensive gases, has reference not only to the provision and the efficient maintenance of appliances adequate for preventing such escape, but also to the manner in which such appliances are used and to the proper supervision, by the owner, of any operation in which such gases are evolved :

The expression "prescribed" means prescribed by the Local Government Board :

The expression "central authority" means as regards England the Local Government Board, as regards Ireland the Local Government Board for Ireland, and as regards Scotland the Secretary for Scotland :

The expression "sanitary authority" means any local authority entrusted with the execution of the Public Health Act :

38 & 39 Vict.
c. 55.
54 & 55
Vict. c. 76.
60 & 61 Vict.
c. 38.
41 & 42 Vict.
c. 52.

The expression "the Public Health Act" means, as regards England the Public Health Act, 1875, or in the case of London the Public Health (London) Act, 1891 ; and as regards Scotland the Public Health (Scotland) Act, 1897 ; and as regards Ireland the Public Health (Ireland) Act, 1878, and includes any enactment amending those Acts.

(2) Nothing in this Act shall be construed as exempting any work from any of the provisions of this Act applicable to the work as being a work of a certain class or description by reason only that the work is subject to other provisions of this Act as being a work of some other class or description.

* * * * *

Sections
6, 7.

SCHEDULES

FIRST SCHEDULE.

List of Works.

(1) Sulphuric acid works, that is to say, works in which the manufacture of sulphuric acid is carried on by the lead chamber process, namely, the process by which sulphurous acid is converted into sulphuric acid by the agency of oxides of nitrogen and by the use of a lead chamber.

(2) Sulphuric acid (Class II.) works, that is to say, works in which the manufacture of sulphuric acid is carried on by any process other than the lead chamber process, and works for the concentration or distillation of sulphuric acid.

(3) Chemical manure works, that is to say, works in which the manufacture of chemical manure is carried on, and works in which any mineral phosphate is subjected to treatment involving chemical change through the application or use of any acid.

(4) Gas liquor works, that is to say, works (not being sulphate of ammonia works or muriate of ammonia works) in which sulphuretted hydrogen or any other noxious or offensive gas is evolved by the use of ammoniacal liquor in any manufacturing process, and works in which any such liquor is desulphurised by the application of heat in any process connected with the purification of gas.

(5) Nitric acid works, that is to say, works in which the manufacture of nitric acid is carried on and works in which nitric acid is recovered from oxides of nitrogen.

(6) Sulphate of ammonia works and muriate of ammonia works, that is to say, works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on.

(7) Chlorine works, that is to say, works in which chlorine is made or used in any manufacturing process.

(8) Muriatic acid works, that is to say—

(a) Muriatic acid works, or works (not being alkali works as defined in this Act) where muriatic acid gas is evolved either during the preparation of liquid muriatic acid or for use in any manufacturing process.

(b) Tin plate flux works, that is to say, works in which any residue or flux from tin plate works is calcined for the utilisation of such residue or flux, and in which muriatic acid gas is evolved; and

(c) Salt works, that is to say, works (not being works in which salt is produced by refining rock salt, otherwise than by the dissolution of rock salt at the place of deposit) in which the extraction of salt from brine is carried on, and in which muriatic acid gas is evolved.

(9) Sulphide works, that is to say, works in which sulphuretted hydrogen is evolved by the decomposition of metallic sulphides, or in which sulphuretted hydrogen is used in the production of such sulphides.

(10) Alkali waste works, that is to say, works in which alkali waste or the drainage therefrom is subjected to any chemical process for the recovery of sulphur or for the utilisation of any constituent of such waste or drainage.

(11) Venetian red works, that is to say, works for the manufacture of Venetian red, crocus, or polishing powder, by heating sulphate or some other salt of iron.

(12) Lead deposit works, that is to say, works in which the sulphate of lead deposit from sulphuric acid chambers is dried or smelted.

(13) Arsenic works, that is to say, works for the preparation of arsenious acid, or where nitric acid or a nitrate is used in the manufacture of arsenic acid or an arseniate.

(14) Nitrate and chloride of iron works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of nitrate or chloride of iron.

(15) Bisulphide of carbon works, that is to say, works for the manufacture of bisulphide of carbon.

(16) Sulphocyanide works, that is to say, works in which the manufacture of any sulphocyanide is carried on by the reaction of bisulphide of carbon upon ammonia or any of its compounds.

(17) Picric acid works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of picric acid.

(18) Paraffin oil works, that is to say, works in which crude shale oil is refined.

(19) Bisulphite works, that is to say, works in which sulphurous acid is used in the manufacture of acid sulphites of the alkalis or alkaline earths.

(20) Tar works, that is to say, works where gas or coal tar is distilled or is heated in any manufacturing process.

(21) Zinc works, that is to say, works in which, by the application of heat, zinc is extracted from the ore, or from any residue containing that metal.

ALLOTMENTS ACT, 1922.

[12 & 13 GEO. 5, c. 51.]

As amended by the Allotments Act, 1925 (15 & 16 Geo. 5, c. 61).

By s. 6 of this Act the compensation payable to the tenant of an allotment under the provisions of the Act, or the contract of tenancy, is to be settled by a person appointed in default of agreement by the judge of the County Court having jurisdiction where the land is situated; and, if not paid when ascertained, within fourteen days, may be recovered in the same way as money ordered to be paid by a County Court under its general jurisdiction.

Determina-
tion of
tenancies of
allotment
gardens.

1.—(1) Where land is let on a tenancy for use by the tenant as an allotment garden or is let to any local authority or association for the purpose of being sub-let for such use the tenancy of the land or any part shall not (except as hereinafter provided) be terminable by the landlord by notice to quit or re-entry, notwithstanding any agreement to the contrary, except by—

- (a) a six months' or longer notice to quit expiring on or before the sixth day of April or on or after the twenty-ninth day of September in any year; or
- (b) re-entry, after three months' previous notice in writing to the tenant, under a power of re-entry contained in or affecting the contract of tenancy on account of the land being required for building, mining, or any other industrial purpose or for roads or sewers necessary in connection with any of those purposes; or
- (c) re-entry under a power in that behalf contained in or affecting the contract of tenancy in the case of land let by a corporation or company being the owners or lessees of a railway, dock, canal, water, or other public undertaking on account of the land being required by the corporation, or company, for any purpose (not being the use of the land for agriculture) for which it was acquired or held by the corporation, or company, or has been appropriated under any statutory provision, but so that, except in a case of emergency, three months' notice in writing of the intended re-entry shall be given to the tenant; or
- (d) re-entry under a power in that behalf contained in or affecting the contract of tenancy, in the case of land let by a local authority (being land which was acquired by the local authority before the passing of this Act under the Housing Acts, 1890 to 1921) on account of the land being required by the local authority for the purposes of those Acts, and, in the case of other land let by a local authority, after three months' previous notice in writing to the tenant on account of the land being required by the

Section 1.

local authority for a purpose (not being the use of land for agriculture) for which it was acquired by the local authority, or has been appropriated under any statutory provision ; or

- (e) re-entry for non-payment of rent or breach of any term or condition of the tenancy or on account of the tenant becoming bankrupt or compounding with his creditors, or where the tenant is an association, on account of its liquidation.

(2) This section shall apply to a tenancy current at the date of the passing of this Act, but not so as to affect the operation of any notice to quit given, or proceedings for recovery of possession commenced, before that date.

(3) Where under any contract of tenancy to which this section applies, made before the passing of this Act, the tenancy is either by express provision or by implication made terminable by the landlord by notice to quit expiring on a date between the sixth day of April and the twenty-ninth day of September, the tenancy shall be terminable by him on the twenty-ninth day of September, and any such notice to quit given in accordance with the contract shall have the effect of a notice to quit on that day.

(4) This section shall not apply to land held by or on behalf of the Admiralty, War Department, or Air Council, and so let as aforesaid when possession of the land is required for naval, military, or air force purposes.

2.—(1) Where under any contract of tenancy land is, before or after the passing of this Act, let for use by the tenant as an allotment garden, the tenant shall, subject to the provisions of this section and notwithstanding any agreement to the contrary, be entitled at the termination of the tenancy, on quitting the land, to obtain from the landlord compensation as provided by this section.

Compensation on quitting allotment gardens.

(2) Subject to the provisions of this section, compensation shall be recoverable under this section only if the tenancy is terminated by the landlord and is so terminated either—

- (a) between the sixth day of April and the twenty-ninth day of September ; or
- (b) by re-entry at any time under paragraph (b) or paragraph (c) or paragraph (d) of sub-section (1) of the last preceding section.

(3) The compensation recoverable from the landlord under this section shall be for crops growing upon the land in the ordinary course of the cultivation of the land as an allotment garden or allotment gardens, and for manure applied to the land.

(4) A tenant whose tenancy is terminated by the termination of the tenancy of his landlord shall be entitled to recover from his

Section 2. landlord such compensation (if any) as would have been recoverable if his tenancy had been terminated by notice to quit given by his landlord.

(5) Any sum due to the landlord from the tenant in respect of rent or of any breach of the contract of tenancy under which the land is held, or wilful or negligent damage committed or permitted by the tenant, shall be taken into account in reduction of the compensation.

(6) This section shall also apply to any contract of tenancy made after the passing of this Act by which land is let to any local authority or association for the purpose of being sub-let for use by the tenants as allotment gardens and, notwithstanding that the crops have been grown and the manure applied by the tenants of the local authority or association, section twenty-three of the Land Settlement (Facilities) Act, 1919, shall not apply to land let after the passing of this Act to any local authority or association for the purpose of being sub-let for use by the tenants as allotment gardens.

9 & 10 Geo.
V. c. 59.

(7) This section shall apply to the termination of the tenancy of the whole or any part of the land the subject of a contract of tenancy.

(8) Except as provided by this section or by the contract of tenancy, the tenant of land under a contract of tenancy to which this section applies shall not be entitled to recover compensation from the landlord at the termination of the tenancy.

(9) If the tenancy of the tenant is terminated on the twenty-ninth day of September or the eleventh day of October, or at any date between those days, either by notice to quit given by the landlord or by the termination of the tenancy of the landlord, the tenant whose tenancy is so terminated shall be entitled at any time within twenty-one days after the termination of the tenancy to remove any crops growing on the land.

(10) This section shall not apply to any tenancy which is terminated by the effluxion of time before the date of the passing of this Act, or, where a notice to quit has been given, re-entry has been made or proceedings for recovery of possession have been commenced before that date.

Provision as
to cottage
holdings and
certain allot-
ments.

3.—(1) The foregoing provisions of this Act as to determination of tenancies of allotment gardens and compensation to a tenant on quitting the same shall not apply to any parcel of land attached to a cottage.

(2) In the case of any allotment within the meaning of this section (not being an allotment garden), the tenant shall, on the termination of his tenancy by effluxion of time, or from any other cause, be entitled, notwithstanding any agreement to the con-

trary, to obtain from the landlord compensation for the following matters :— Section 3.

- (a) For crops, including fruit, growing upon the land in the ordinary course of cultivation and for labour expended upon and manure applied to the land ; and
- (b) For fruit trees or bushes provided and planted by the tenant with the previous consent in writing of the landlord, and for drains, outbuildings, pigsties, fowl-houses, or other structural improvements made or erected by and at the expense of the tenant on the land with such consent.
- (3) Any sum due to the landlord from the tenant in respect of rent or of any breach of the contract of tenancy under which the land is held, or wilful or negligent damage committed or permitted by the tenant, shall be taken into account in reduction of the compensation.

(4) The amount of the compensation shall, in default of agreement, be determined and recovered in the same manner as compensation is, under this Act, to be determined and recovered in the case of an allotment garden.

(5) The Agricultural Holdings Acts, 1908 to 1921, shall, in the case of an allotment within the meaning of this section to which those Acts apply, have effect as if the provisions of this section as to the determination and recovery of compensation were substituted for the provisions of those Acts as to the determination and recovery of compensation, and a claim for compensation for any matter or thing for which a claim for compensation can be made under this section, may be made either under those Acts or under this section, but not under both.

(6) The compensation in respect of an improvement made or begun on an allotment (not being an allotment garden) before the passing of this Act shall be such (if any) as could have been claimed if this Act had not been passed.

(7) In this section the expression " allotment " means any parcel of land, whether attached to a cottage or not, of not more than two acres in extent, held by a tenant under a landlord and cultivated as a farm or a garden, or partly as a garden and partly as a farm.

4.—(1) A tenant of land held under a contract of tenancy to which any of the foregoing provisions of this Act apply may, before the termination of the tenancy, remove any fruit trees or bushes provided and planted by the tenant and any erection, fencing or other improvement erected or made by and at the expense of the tenant, making good any injury caused by such removal.

(2) A tenant of land held under a contract of tenancy to which any of the foregoing provisions of this Act apply and which is

Further provision as to allotment gardens and allotments.

Section 4.

made with a mortgagor but is not binding on the mortgagee, shall, on being deprived of possession by the mortgagee, be entitled to recover compensation from him as if he were the landlord and had then terminated the tenancy, but subject to the deduction from such compensation of any rent or other sum due from the tenant in respect of the land.

Rights of tenant who has paid compensation to outgoing tenant.

5. Where a tenant of an allotment has paid compensation to an outgoing tenant for any fruit trees or bushes or other improvement, he shall have the same rights as to compensation or removal as he would have had under this Act if the fruit trees or bushes had been provided and planted or the improvement had been made by him and at his expense.

Assessment and recovery of compensation.

6.—(1) The compensation under the foregoing provisions of this Act, and such further compensation (if any) as is recoverable under the contract of tenancy shall, in default of agreement, be determined by a valuation made by a person appointed in default of agreement by the judge of the county court having jurisdiction in the place where the land is situated, on an application in writing being made for the purpose by the landlord or tenant, and, if not paid within fourteen days after the amount is agreed or determined, shall be recoverable upon order made by the county court as money ordered to be paid by a county court under its ordinary jurisdiction, is recoverable.

(2) The proper charges of the valuer for the valuation shall be borne by the landlord and tenant in such proportion as the valuer shall direct, but be recoverable by the valuer from either of the parties and any amount paid by either of the parties in excess of the amount (if any) directed by the valuer to be borne by him shall be recoverable from the other party and may be deducted from any compensation payable to such party.

NOTE.—On an application to the county court for an order under this section for the recovery of money awarded to be paid for compensation, costs or otherwise, the court fee payable is 6*d.* in the £ on the amount so awarded. Minimum fee 10*s.*, maximum 3*l.* See C. C. Fees Order, 1925, Fee No. 41, *ante*, Part II.

Application to Crown lands.

7. The foregoing provisions of this Act shall not apply to any land of which possession was taken by or on behalf of any Government department under the enactments relating to the Defence of the Realm or the regulations made thereunder and possession of which has been continued by virtue of any enactment, or to any land forming part of a royal park; but, save as aforesaid, the foregoing provisions of this Act shall apply to land vested in His Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as otherwise hereinbefore expressly provided, to land vested in any Government department for public purposes.

8.—(1) The period during which an order for the compulsory acquisition of land for allotments is, under section one of the Land Settlement (Facilities) Act, 1919, exempted from the requirement of submission to and confirmation by the Minister is hereby extended to the thirty-first day of December, nineteen hundred and twenty-two.

(2) The restrictions imposed by section forty-one of the Small Holdings and Allotments Act, 1908, on the compulsory acquisition of land which has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking shall not apply to the hiring of land by a council of a borough or urban district or by the council of a county to whom the powers and duties of a borough or urban district council have been transferred under the provisions of sub-section (2) of section twenty-four of the Small Holdings and Allotments Act, 1908, for the purpose of providing allotment gardens :

Provided that every such hiring shall be subject to a condition enabling—

- (a) the corporation or company to resume possession of the land when required by the corporation or company for the purpose (not being the use of land for agriculture) for which it was acquired by the corporation or company ; and
- (b) nothing in this sub-section shall prejudice the protection given by the said section forty-one to land which is the property of a local authority.

(3) Notwithstanding anything contained in any other enactment, counsel shall not be heard in any arbitration under this Act or as to compensation payable for land acquired for allotments under the Allotments Acts unless the Minister otherwise directs.

(4) No land shall be authorised by an order under the Allotments Acts to be hired compulsorily for the purposes of allotments which at the date of the order is pasture land if it is proved to the satisfaction of the Minister that arable land which is equally suitable for the purpose of allotments to the pasture land proposed to be compulsorily hired is reasonably available for hiring by the council.

(5) Paragraph 2 (b) of Part II. of Schedule I. to the Small Holdings and Allotments Act, 1908 (which restricts the breaking up of pasture compulsorily hired) shall not apply to land compulsorily hired for the provision of allotment gardens.

9. The provisions of the Small Holdings and Allotments Acts, 1908 to 1919, enabling grants of land to be made to a county council for the purposes of small holdings at fee farm and other rents, and authorising a county council to covenant to pay any such rent, shall apply with the necessary adaptations to the

Section 8.

Amendment of statutory provisions as to compulsory acquisition of land for allotments.

9 & 10 Geo. V. c. 59.
8 Edw. VII. c. 36.

Purchase of land for fee farm rents.

Section 9.

Powers of
entry on
unoccupied
land.

acquisition of land by the council of a borough or urban district for the purpose of providing allotments.

10.—(1) The council of a borough or urban district or the council of a county to whom the powers and duties of a borough or urban district council have been transferred under the provisions of sub-section (2) of section twenty-four of the Small Holdings and Allotments Act, 1908, may, after giving such notice of intention to enter as is hereinafter provided—

- (a) enter upon any land to which this section applies for the purpose of providing allotment gardens thereon ;
- (b) adapt any such land for use for such purpose ;
- (c) let any such land for use by the tenant as an allotment garden or to any association (being an association to which land may be let by the council under the Small Holdings and Allotments Acts, 1908 to 1919) for the purpose of sub-letting for such use, but so that any tenancy created by the council shall terminate at the date when the right of occupation of the council is terminated under this section ;
- (d) on the termination of such occupation remove any erection or work of adaptation making good any injury to the land caused by such removal.

(2) Before entry under this section, the council shall give not less than fourteen days' notice in writing to the owner of the land, in such manner as notices may be given to an owner under the regulations for the time being applicable to compulsory hiring of land under the Allotments Acts.

(3) The right of occupation of the council may be terminated—

- (a) by not less than six months' notice in writing to that effect given by the council to the owner in manner aforesaid, and expiring on or before the sixth day of April, or on or after the twenty-ninth day of September in any year ; or
- (b) by not less than two months' notice in writing given by the owner to the council in any case where the land is required for any purpose other than the use of the land for agriculture.

See Allotments Act, 1925, s. 6, *post*, p. 1751.

(4) A tenant to whom land is let by a council under this section and whose tenancy is terminated by the termination of the right of occupation of the council shall, unless otherwise agreed in the contract of tenancy, be entitled to recover from the council such compensation (if any) as would have been recoverable if his tenancy had been terminated by notice to quit given by the council, and have the same right to remove his crops as if the tenancy had been so terminated.

See Allotments Act, 1925, s. 7, *post*, p. 1751.

Section 10.

(5) Any person who is interested in any land on which entry is made by the council under this section, and who suffers any loss by reason of the exercise of the powers conferred by this section shall, if he makes a claim not later than one year after the termination of the right of occupation, be entitled to be paid by the council such amount or amounts by way of periodical payments or otherwise as may represent the loss, and such amount or amounts shall in default of agreement be determined by a valuation made by a person appointed, in default of agreement, by the Minister :-

Provided that a periodical payment of compensation in the nature of rent shall not exceed the rental value of the land as defined by this section.

(6) This section applies to—

- (a) land which at the date of the notice of intended entry is not the subject of a rateable occupation ; or
- (b) land of which at the date of the notice of intended entry the Minister is in possession by himself or any person deriving title under him under the provisions of section one of the Defence of the Realm (Acquisition of Land) Act, 1916, as explained by section thirty of the Land Settlement (Facilities) Act, 1919, and which when possession thereof was first taken under the Defence of the Realm Regulation was not the subject of a rateable occupation ;

except land being the property of a local authority or land which has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or forming part of any metropolitan common within the meaning of the Metropolitan Commons Act, 1866, or any land which is subject, or might be made subject, to regulation under an order or scheme made in pursuance of the Inclosure Acts, 1845 to 1899, or under any local Act or otherwise, or land which is or forms part of any town or village green, or any area dedicated or appropriated as a public park, garden, or pleasure ground, or for use for the purposes of public recreation, or land forming part of the New Forest (as defined in the New Forest Act, 1877), or of the trust property to which the National Trust Act, 1907, applies.

(7) For the purposes of this section—

The expression “ rental value ” means the annual rent which a tenant might reasonably be expected to pay for the land if the land had continued in the same condition as at the date when entry was made under this section, or at the date when possession thereof was so first taken as aforesaid, as the case may be.

The expression “ rateable occupation ” means such occupa-

29 & 30 Vict.
c. 122.

40 & 41 Vict.
c. cxxi.

7 Edw. VII.
c. 136.

Section 10.

tion as would involve liability to payment of the poor rate or any rate leviable in like manner as the poor rate.

The expression "owner" includes the person who, but for the occupation of the council, would be entitled to the possession of the land.

Determina-
tion of
questions
arising on
resumption
of land.

11.—(1) Where land has been let to a local authority or to an association for the purpose of being sub-let for use as allotment gardens, or is occupied by a council under the powers of entry conferred by this Act, and the landlord, or the person who but for such occupation would be entitled to the possession of the land, proposes to resume possession of the land in accordance with the provisions of this Act for any particular purpose, notice in writing of the purpose for which resumption is required shall be given to the local authority or association.

(2) The local authority or association may, by a counter notice served within ten days after receipt of such notice on the person requiring possession, demand that the question as to whether resumption of possession is required in good faith for the purpose specified in the notice shall be determined by arbitration under and in accordance with the provisions of the Second Schedule to the Agricultural Holdings Act, 1908.

(3) Possession of the land shall not be resumed until after the expiration of the said period of ten days or the determination of such question as aforesaid where such determination is demanded under this section.

(4) This section shall not apply to any case where resumption of possession is required by a corporation or company being the owners or lessees of a railway, dock, canal, water, or other public undertaking.

See Allotments Act, 1925, s. 9, *post*, p. 1751.

Time limit
for serving
notice to
treat for
compulsory
acquisition
of land.

12.—(1) Where an order has been made for the compulsory acquisition of any land and notice to treat thereunder is not served by the acquiring authority within three calendar months after the date of the said order, or where confirmation of the said order is necessary, then after the date of the confirmation thereof the order so far as it relates to land in respect of which notice to treat has not been so served shall become null and void.

(2) Where an order has so become null and void as respects any land, no order authorising the compulsory acquisition of that land or any part of such land shall, if made within three years after the expiration of the said three calendar months, be valid, unless confirmed by the Minister, or be so confirmed, unless it is proved to the satisfaction of the Minister that there are special reasons justifying the failure to exercise the powers under the original order and the making of the order submitted for confirmation.

13. The obligation of a council of a borough or urban district under the Allotments Acts to provide allotments shall, if the population thereof is ten thousand or upwards, be limited to the provision of allotment gardens not exceeding twenty poles in extent.

Section 13.

Restriction of obligations of urban authorities to provide allotments.

14.—(1) The council of every borough or urban district with a population of ten thousand or upwards shall, unless exempted by the Minister, after consultation with the Minister of Health, from the provisions of this section, establish an allotments committee, which may be an existing committee of the council or a sub-committee of an existing committee and all matters relating to the exercise and performance by the council of their powers and duties under the Allotments Acts as respects the provision of allotment gardens (except the power of raising a rate or borrowing money) shall stand referred to such committee, and the council before exercising any such powers shall, unless in their opinion the matter is urgent, receive and consider the report of the committee with respect to the matter in question, and the council may delegate to the committee, with or without restrictions, any of their said powers except as aforesaid.

Allotment committees of urban authorities.

(2) An allotments committee established under this section shall comprise persons, other than members of the council, being persons experienced in the management and cultivation of allotment gardens and representative of the interests of occupiers of allotment gardens in the borough or district, provided that the number of such representative members shall be not more than one-third of the total number of the members of the committee or be less than two or one-fifth of such total number whichever be the larger number.

(3) The accounts of any receipts or payments by or to a committee under powers delegated under this section shall be accounts of the council and made up and audited accordingly.

(4) In the case of a county borough, the council may appoint their small holdings committee, if constituted so as to comply with the provisions of this section, to be their allotment committee under this section.

15. A county council may let land acquired or appropriated by the council for small holdings for cultivation as an allotment, or to a local authority or association, being an association to which land may be let by a council under the Small Holdings and Allotments Acts, 1908 to 1919, for the purpose of being sub-let for such use: Provided that this section shall not be deemed to authorise a council to let any land held by the council under a contract of tenancy or the use of any land so held in contravention of any term or condition of the contract.

Power for county councils to let land for allotments.

Section 16.

Limitation
on expendi-
ture on allot-
ments and
rents to be
charged.

16.—(1) A council shall not take any proceedings under the provisions of the Allotments Acts relating to allotments, unless in the opinion of the council the expenses of the council incurred under those provisions (other than such expenses as are herein-after specified) may reasonably be expected, after the proceedings are taken, to be defrayed out of the receipts of the council under those provisions.

(2) For the purposes of this section, expenses and receipts shall be calculated in such manner as the Minister of Health may direct, and shall include expenses and receipts in respect of land acquired whether before or after the passing of this Act :

Provided that such expenses shall not include—

- (a) expenses in relation to the acquisition of land other than the purchase price or rent, or other compensation payable in respect of the land ;
- (b) expenses incurred in making roads to be used by the public ;
- (c) sinking fund charges in respect of loans raised in connection with the purchase of land.

(3) Land let by a council under the Allotments Acts for use as an allotment shall be let at the full fair rent for such use and not more than a quarter's rent (except where the yearly rent is twenty shillings or less) shall be required to be paid in advance.

Rating of
allotments.

17.—(1) A council providing land for allotments whether under the Allotments Acts or otherwise may, by notice to the authority by which any rate is levied, require that the council shall be assessed to the rate as the occupiers of the land notwithstanding that the land or part thereof may be let, and in such case the council shall, for the purposes of any rate levied by that authority and made after the notice is given and before the notice is withdrawn, be deemed to be the occupiers of the land.

(2) The foregoing sub-section shall apply to an association providing land for allotments in like manner as it applies to a council, if at the request of the association the authority by which a rate is levied agrees that it shall so apply.

See Allotments Act, 1925, s. 11, *post*, p. 1752.

Financial
provisions.

18.—(1) The maximum period for the repayment of money borrowed by the council of a borough or urban district or parish under the Allotments Acts shall, where the purpose for which the money is borrowed is the purchase of land for allotments, be eighty years, and the provisions of sub-section (2) of section fifty-two of the Small Holdings and Allotments Act, 1908, relating to loans by the Public Works Loan Commissioners for small holdings shall extend to money borrowed by any such council for the purpose of providing allotments.

(2) Money borrowed by a council for the purpose of providing allotments shall not be reckoned as part of the total debt of the council for the purpose of any enactment limiting the powers of borrowing by the council. Section 18.

19.—(1) Any person who by any act done without lawful authority or by negligence causes damage to any allotment garden or any crops or fences or buildings thereon shall be liable on summary conviction to a penalty not exceeding five pounds, but this provision shall not apply unless notice of this provision is conspicuously displayed on or near the allotment garden. Penalty for damage to an allotment garden.

(2) Sub-section (4) of section twenty-two of the Land Settlement (Facilities) Act, 1919, is hereby repealed.

20. If it appears to the Minister, in relation to the London County Council or the council of any county borough or Metropolitan borough, after holding a local inquiry at which the council, and such other persons as the person holding the inquiry, may, in his discretion, think fit to allow, shall be permitted to appear and be heard, that the council have failed to satisfy to the extent to which it is reasonably practicable, having regard to the provisions of the Allotments Acts, the demand for allotment gardens to be provided by the council the Minister may, by order, transfer to the Small Holdings Commissioners all or any of the powers of the council relating to the provision of allotment gardens and the provisions of section twenty-four of the Small Holdings and Allotments Act, 1908, shall apply as if references to the Commissioners were substituted for references to the county council and with such other adaptations as may be made by the order. Action in default of certain local authorities.

21.—(1) Notwithstanding anything in any other Act, the Commissioners of Woods may let for any term to a local authority under the Allotments Acts, and the local authority may take for the purpose of providing allotment gardens any land in the Forest (as defined in the New Forest Act, 1877) which is vested in His Majesty and was on the fifth day of April, nineteen hundred and twenty-two, being used for the provision of allotment gardens, and, with the consent of the Minister, such further land in the forest not exceeding sixty acres, as may be agreed between the Commissioners of Woods and the Verderers of the Forest : Provision as to parts of New Forest now used for allotment gardens.

Provided that, if at any time any land so let is used for any purpose other than the provision of allotment gardens, the lease shall become void and the land shall revert to His Majesty and be held in the same manner as it was held before its use for the provision of allotment gardens and subject to the same rights and liabilities so far as practicable.

Section 21. (2) While a lease under this section has effect any land let thereunder shall be free from all rights of common and all other similar rights and privileges except the right of the public to use any highway on the land.

(3) Any rent received by the Commissioners under the lease shall be divisible between the Commissioners and the Verderers of the Forest in such proportions as may be agreed, or, in default of agreement, may be determined by the arbitration of a single arbitrator under the Arbitration Act, 1889, and the proportion received by the Verderers shall be applied as money received by the Verderers under the New Forest Act, 1877.

52 & 53 Vict.
c. 49.

(4) Repealed. See now Poor Law Act, 1927 (17 & 18 Geo. 5, c. 14), s. 162 (2).

Interpreta-
tion.

22.—(1) For the purposes of this Act, where the context permits—

The expression “allotment garden” means an allotment not exceeding forty poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family ;

The expression “landlord” means in relation to any land the person for the time being entitled to receive the rents and profits of the land ;

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under this Act in respect of compensation and shall include the legal personal representative of either party ;

The expression “council” shall, in the case of a rural parish not having a parish council, mean the parish meeting ;

The expression “industrial purpose” shall not include use for agriculture or sport, and the expression “agriculture” includes forestry, horticulture, or the keeping and breeding of livestock ;

The expression “the Allotments Acts” means the provisions of the Small Holdings and Allotments Acts, 1908 to 1919, which relate to allotments and this Act ;

The expression “Minister” means the Minister of Agriculture and Fisheries ;

The expression “borough” includes a metropolitan borough ;

The expression “sinking fund charges” includes any charges for the repayment of loans whether by means of a sinking fund or otherwise.

(2) For the purposes of this Act, references to population shall be construed as references to population according to the published returns of the last census for the time being.

(3) Compensation recoverable by a tenant under this Act for crops or other things shall be based on the value thereof to an incoming tenant. Section 22.

(4) Where land is used by the tenant thereof as an allotment garden, then, for the purposes of this Act, unless the contrary is proved—

(a) the land shall be deemed to have been let to him to be used by him as an allotment garden; and

(b) where the land has been sub-let to him by a local authority or association which holds the land under a contract of tenancy, the land shall be deemed to have been let to that authority or association for the purpose of being sub-let for such use as aforesaid.

(5) The powers conferred by this Act on a council of a borough, may, in London, be exercised by the London County Council.

(6) Repealed, see Agricultural Holdings Act, 1923, Sched. 4.

23.—(1) This Act may be cited as the Allotments Act, 1922, and the provisions of the Small Holdings and Allotments Acts, 1908 to 1919, which relate to allotments and this Act may be cited together as the Allotments Acts, 1908 to 1922. Short title, commencement, and repeal.

(2) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(3) This Act shall not apply to Scotland or Ireland.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
3 & 9 Vict. c. 118.	The Inclosure Act, 1845.	In section one hundred and ten from "Provided" to the end of the section.
50 & 51 Vict. c. 26.	The Allotments and Cottage Gardens Compensation for Crops Act, 1887.	The whole Act.
53 & 54 Vict. c. 57.	The Tenants Compensation Act, 1890.	The whole Act.
3 Edw. VII. c. 36.	The Small Holdings and Allotments Act, 1908.	Sub-section (3) of section twenty-five. Sub-section (1) of section twenty-seven, in section thirty the proviso to sub-section (2).
10 & 11 Geo. V. c. 76.	The Agriculture Act, 1920.	Section eleven.

ALLOTMENTS ACT, 1925.

[15 & 16 GEO. 5, c. 61.]

Interpreta-
tion.
12 & 13
Geo. 5, c. 51.

1. In this Act, unless the context otherwise requires,—
- “Allotment” means an allotment garden as defined by the Allotments Act, 1922, or any parcel of land not more than five acres in extent cultivated or intended to be cultivated as a garden or farm, or partly as a garden and partly as a farm :
- “Commissioners” means the Public Works Loans Commissioners :
- “The Act of 1922 ” means the Allotments Act, 1922.

* * * * *

Provision
for
allotments
in town-
planning
schemes.
15 Geo. 5,
c. 16.

3.—(1) Every local authority or joint committee of local authorities preparing a town-planning scheme in pursuance of the Town Planning Act, 1925, shall, in preparing such scheme, consider what provision ought to be included therein for the reservation of land for allotments.

Before determining whether provision shall be included as aforesaid, the local authority or joint committee shall consult the council of any borough or urban district any part of whose district is within the area of the proposed scheme, and consider any recommendations which the council of the borough or urban district make.

Every local authority or joint committee submitting a town-planning scheme to the Minister of Health for his approval shall furnish therewith a statement under the hand of their clerk or other competent officer certifying that the requirements of this subsection have been complied with

(2) The Minister of Health shall notify the Minister of Agriculture and Fisheries of any resolution passed by a local authority or joint committee deciding to prepare a town-planning scheme in pursuance of the Town Planning Act, 1925.

(3) The council of every borough or urban district, any part of whose district is within the area of a town-planning scheme, shall take into consideration from time to time, but at least once in every year, the question whether any and, if so, what lands within the area of the scheme are needed for allotments, whether reserved for the purpose or not, and ought to be acquired under and in accordance with the provisions of the Allotments Acts, 1908 to 1922, as amended by this Act.

(4) In the case of any borough or urban district for which an allotments committee is appointed under the Act of 1922, as amended by this Act, the council of the borough or urban district shall refer to their allotment committee any matter which they are

required to consider under subsections (1) and (3) of this section, or which is referred to them for their consideration by any other local authority under subsection (1) of this section, and shall consider the report of the allotments committee thereon.

Section 3.

6. Section ten of the Act of 1922 is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph :—

Amendment of section ten (3) of Act of 1922.

(b) by not less than three months' notice in writing given by the owner to the council in any case where the land is required for any purpose other than the use of the land for agriculture, sport, or recreation, and by not less than six months' notice in writing so given and expiring on or before the sixth day of April, or on or after the twenty-ninth day of September, where the land is required for use for sport or recreation.

7. The right of a tenant to claim compensation under subsection (4) of section ten of the Act of 1922 shall be exerciseable notwithstanding that it is otherwise agreed in the contract of tenancy in any case where the rent payable by the tenant under his contract of tenancy for the land exceeds threepence per pole, unless, in the case of a tenancy existing at the passing of this Act, the council within three months after the passing of this Act gives notice in writing to the tenant that the rent of the land is as from the last preceding date for payment of rent reduced to a rent of threepence per pole or less.

Amendment of section ten (4) of Act of 1922.

9. Section eleven of the Act of 1922 shall be read as if the period of twenty-one days were substituted therein for the period of ten days as the period within which a notice may be served on the person requiring possession.

Amendment of s. 11 of the Act of 1922.

10. Where after the date of this Act coming into operation land which is not used for allotments commences to be so used, the gross value, or the gross estimated rental, for the purposes of any enactment relating to rating, at which the land is assessed immediately before such user shall not be increased during the first three years of such user, and where the land so used was immediately before such user included with other land in one assessment in the valuation list in force, the gross value or gross estimated rental of the land included in that assessment shall for the purposes of this section be apportioned according to acreage as between the land used for allotments and the other land :

Rating of new allotments.

Provided that, if on the application of any person interested, or without any such application, it appears to the assessment

Section 10. committee that apportionment according to acreage would work an injustice, the gross value or gross estimated rental shall be apportioned in such manner as the assessment committee may determine.

Amendment
of section
seventeen of
the Act of
1922.

11. The provisions of subsection (1) of section seventeen of the Act of 1922, relating to the assessment of a council to rates shall apply to an approved society providing land for allotments in the same manner as it applies to a council, and subsection (2) of that section is hereby repealed.

Allotment
committees
of urban
authorities.

12.—(1) Subsection (1) of section fourteen of the Act of 1922 shall apply in any case where the total number of allotments provided by the council of a borough or urban district exceeds the number of four hundred, notwithstanding that the population of the borough or urban district is less than ten thousand.

(2) In section fourteen subsection (2) of the Act of 1922 the words "be not more than one-third of the total number of the members of the committee or be less than two or one-fifth of such total number whichever be the larger number" are hereby repealed, and the following words shall be and are hereby substituted therefor "be as near as may be one-third of the total number of the members of the committee, and in no case shall the number of representative members be less than two."

(3) This section shall not come into operation until the first day of November, nineteen hundred and twenty-five.

* * * * *

Short title.

14.—(1) This Act may be cited as the Allotments Act, 1925, and the Allotments Acts, 1908 to 1922, and this Act may be cited together as the Allotments Acts, 1908 to 1925.

(2) This Act shall not apply to Scotland or Northern Ireland.

ALLOTMENTS EXTENSION ACT, 1882.

[45 & 46 VICT. c. 80.]

The purpose of the Act is to compel trustees of lands vested for the benefit of the poor to let some portion of such lands as allotments. Certain public notices are to be given of the setting apart of a field or of a portion of land for such purpose, and of the amount of the land to be let, of the rent per acre or rod to be paid, and of the time and place at which applications for the same are to be made.

Jurisdiction.—The county court is given jurisdiction by the schedule to the Act, in case of default by the trustees, to fix the time for giving such notices; this is the extent of the jurisdiction.

SCHEDULE.

REGULATIONS AS TO PUBLIC NOTICES AND LETTINGS.

1. Public notice, for the purposes of this Act, shall be given by fixing the notice on the doors of the church of the parish in which the land referred to in the notice is situate, and if there is no church, then on some public building or conspicuous place therein.

2. Public notice of the setting apart under this Act of a field or portion of land shall be given in the month of February, or such other month as the trustees may fix, and the first notice shall be given in the said month next after the passing of this Act, and if not so given shall be given as soon as may be afterwards, at such time as may be fixed by the trustees, or, in case of their default, by the county court judge for the district in which the land is situate, or by the Charity Commissioners.

LETTING.

3. The public notice of the intention to let an allotment out of land when set apart shall specify the amount of land to be let, and the rent per acre or rod to be paid, and the place and time at which applications are to be made, and shall be given annually in the month of June, or in such other month as may be fixed by, or in pursuance of, rules under this Act: Provided that in any year in which there will be no allotment vacant out of land already set apart, it shall not be necessary to give such notice.

4. The first public notice of the intention to let an allotment shall be given in the month of June next after the trustees obtain possession of the allotment, or at such other time, not more than one month later, as may be fixed by or in pursuance of rules under this Act; and, if not so given, shall be given at such time as may be fixed by the county court judge for the district in which the land is situate, or by the Charity Commissioners.

5. The time for applications for allotments out of land when already set apart shall be the month of August, or such other month as may be fixed by or in pursuance of rules under this Act.

6. The allotments shall be let to persons in the order in which they apply, or in accordance with such other order as may be provided by rules under this Act, so that there shall be no undue preference shown as regards the persons to whom they are let.

7. Each allotment shall be let on a yearly tenancy beginning at Michaelmas day, or at such other day as may be fixed by or in pursuance of rules under this Act.

Practice is governed by the following rule:—

ORDER L. RULE 15.

An application to the judge under paragraph 2 or paragraph 4 in the schedule to the Allotments Extension Act shall be intituled in the matter of the Act and of the land, and shall be made in accordance with the rules for the time being in force as to interlocutory applications, and supported by affidavit. If an application is made by any other person than the trustees in whom the land is vested, it shall be made on notice to such trustees.

Applications
under 45 &
46 Viet. c. 86,
Schedule,
pars. 2, 4.

APOTHECARIES (SEE PHARMACY ACTS).

THE ARMY ACT, 1881.

[44 & 45 VICT. c. 58.]

Under this Act His Majesty may by order stating that a case of emergency exists, authorise certain military officers to issue requisitions for the provision of animals, carriages, and vessels. This has been extended by subsequent statutes to include locomotives of every description, including motor cars and lorries, aircraft and food forage, and stores of every description. For further amendments of the provisions for impressment of carriages, see Army and Air Force (Annual) Act, 1925, s. 10 and Sched. II. On such requisition a justice shall issue his warrant to enforce the furnishing or sale of any of the articles requisitioned.

Sect. 115, sub-s. 4, provides :—

(4) A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, or vessel shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition.

Jurisdiction.—The jurisdiction is given to the judge, not to the court. The judge's jurisdiction is confined to the determination of a difference respecting amount, and would not extend to any other question. Such jurisdiction must be exercised by the judge himself, and could not, except by consent, be referred to the registrar or any other person.

The procedure is set out in County Court Rules, Order L., r. 14.

PROCEDURE BEFORE COUNTY COURT JUDGE.

COUNTY COURT, ENGLAND.

Procedure.

COUNTY COURT RULE, DATED MAY 19, 1915, AS TO APPLICATIONS FOR CERTIFICATES UNDER THE ARMY ACT, 1881, SECTION 115, SUB-SECTION 4, AND THE ACTS AMENDING THE SAME, AND THE NAVAL BILLETING, &C., ACT, 1914.

ORDER L., r. 14.

The Army Act, 1881, 44 & 45 Vict. c. 58, s. 115, and the Acts amending the same. The Naval Billeting, &c., Act, 1914.

Application
for certifi-
cate under
44 & 45 Vict.
c. 58, s. 115.
4 & 5 Geo.
5, c. 70.
5 Geo. 5,
c. 26, s. 2.
Form 453.

(1) An application to a judge for a certificate under sub-s. 4 of sect. 115 of the Army Act, 1881, and the Acts amending and extending the same (herein referred to as the Act), fixing the amount of payment for any carriage, animal, vessel, or aircraft, may be made to any judge mentioned in the said sub-section in accordance with the provisions of this rule.

(2) The application may be made either in or out of court on notice in writing according to the form in the Appendix, which shall be served on the opposite party ten clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(3) Service of notice of the application may be effected in accordance with Order LIV., Rules 2 and 3.

(4) Where the notice of the application is to be served on the Army Council, it may be served on the Permanent Secretary to the War Office or on the Solicitor to the Treasury.

(5) No affidavit in support shall be used, except by leave of the judge, but the judge shall hear oral evidence tendered by either party.

(6) On the hearing of the application, or at any adjournment thereof, the judge shall fix the amount in accordance with the said sub-section, and shall specify the amount in a certificate which shall be signed in duplicate and sent to the parties; but no order directing payment shall be inserted in the certificate except in the cases mentioned in the next following paragraph and in paragraph 5 of the Sixth Schedule to the Act.

(7) If the judge orders any sum to be paid by way of costs to the Army Council, pursuant to paragraph 4 of the Sixth Schedule to the Act, and such sum exceeds the amount payable by the Army Council as the value of the article requisitioned, the judge shall certify the amount of the excess, and shall order the amount so certified to be paid to the Army Council, and the order shall be enforceable in like manner as a judgment of the county court.

(8) Subject to the provisions of the Act and this Rule, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application for a certificate.

(9) This Rule shall apply to cases in which the provisions of the Act are by 4 & 5 Geo. the Naval Billenting, &c., Act, 1914, extended to the impressment of any 5, c. 70. carriage, animal, vessel, or aircraft for the purposes of any naval forces; and in any such case the words "the Admiralty" shall be substituted for the words "the Army Council" or "the War Office" wherever they occur in this Rule or in the form in the Appendix.

APPENDIX.

453.

NOTICE OF APPLICATION FOR CERTIFICATE UNDER THE ARMY ACT, 1881, Order L.
44 & 45 VICT. c. 58, s. 115, AND THE ACTS AMENDING AND EXTENDING Rule 14.
THE SAME.

In the county court of _____, holden at _____
The Army Act, 1881, s. 115, and the Acts amending and extending the same.

Between

A.B. _____ Applicant,
(address and description) _____
and _____
The Army Council _____ Respondents.
(or as the case may be.)

TAKE NOTICE—

That _____, of _____, intends to apply to the judge at (state where application is to be made) _____ on the _____ day of _____, at the hour of _____ in the _____ noon, for a certificate fixing the amount of payment for a certain carriage [animal, vessel, or aircraft (as the case may be)] furnished in pursuance of the Army Act, 1881, s. 115, and the Acts amending and extending the same.

Dated this _____ day of _____ (Signed)

Applicant.
[or Solicitor for the Applicant.]

To the Registrar of the Court
and to the Army Council
(or as the case may be).

THE BALLOT ACT, 1872.

[35 & 36 VICT. c. 33.]

Jurisdiction.—Applications for orders for the inspection and production of ballot papers and documents used in a municipal election for the purpose of a prosecution or petition must be made to the county court having jurisdiction in the borough, or some part thereof, or to the tribunal in which an election is questioned, in short, putting the county court as to municipal elections into the position occupied as to parliamentary elections by the House of Commons and the Superior Court (Schedule I. r. 64), applying rr. 40—43 to municipal elections.

An Appeal lies from the county court to the High Court (Schedule I. r. 64).

Practice is governed by Order L. r. 5, *infra*; the application must be made in writing, intituled in the matter of the Act, and of the particular matter. Costs to be taxed on such scale as the judge directs.

For the form of the Order, see *R. v. Beardsall*, (1876) 1 Q. B. D. 452; 45 L. J. M. C. 157.

RULES FOR MUNICIPAL ELECTIONS.

Rule 64.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made:—

* * * * *

(a) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty's Superior Courts; but an appeal from such county court may be had in like manner as in other cases in such county court;

(b) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's Principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough:

(c) Nothing in this Schedule with respect to the day of the poll shall apply to a municipal election.

COUNTY COURT RULE, ORDER L. RULE 5.

THE BALLOT ACT, 1872.

Application
under 35 &
36 Vict. c 33,
Sched. I.,
rules 40, 41.

5. An application to the Court under rule 40 or rule 41 in the first schedule to the Ballot Act, 1872, as applied by rule 64 in the said schedule, may be made in writing and shall be intituled

in the matter of the Acts and of the particular matter. Such application shall be made in accordance with the rules for the time being in force as to interlocutory applications, save that, unless by consent or otherwise ordered only oral evidence shall be admitted. Costs if allowed shall be taxed on such scale as the judge shall direct.

THE BANKRUPTCY ACT, 1883.

[46 & 47 VICT. c. 52.]

122. [This section relates to administration orders, and is set out, *ante*, pp. 285 *et seq.*]

145. Where the sheriff sells the goods of a debtor under an execution for a sum exceeding twenty pounds (including legal incidental expenses), the sale shall, unless the court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on and during three days next preceding the day of sale.

Sales under
executions
to be public.

“ Sheriff ” apparently includes high bailiff.

This section is preserved by the 6th Sched. of the Bankruptcy Act, 1914. The purchaser acquires a good title against the trustee in bankruptcy (see sect. 40, sub-s. 3, Bankruptcy Act, 1914, *post*, p. 1759).

Private Sale.—An application for a sale otherwise than by auction must be made to the court on notice (Form 170), stating the grounds of application. The high bailiff must deliver to any applicant a list of the names and addresses of every person at whose instance any warrant or writ of execution has been lodged with him. This list must be produced to the court on the hearing. The notice must be served on every person named in the list except the applicant four clear days at least before the return day of the notice (Order XXV. r. 24).

If the high bailiff has notice of another execution or executions the court may not consider an application to sell privately until notice has been given to the other execution creditors (Bankruptcy Act, 1890, s. 12, *infra*). Every person on whom notice is served may attend the hearing and be heard. The court may order all or any part of the costs to be paid by any of the persons who attend (Order XXV. r. 24).

Account of Sale.—The high bailiff must, on the request of the execution debtor, furnish him with a detailed account in writing of the sale and of the application of the proceeds thereof (Order XXV. r. 23).

THE BANKRUPTCY ACT, 1890.

[53 & 54 VICT. c. 71.]

12. Where any goods of a debtor are taken in execution, and the sheriff has notice of another execution or other executions, Sale of assets by sheriff.

Section 12.

the court shall not consider an application for leave to sell privately until the notice directed by rules of court has been given to the other execution creditor or creditors, who may appear before the court and be heard upon the application.

Every person on whom notice is served may attend the hearing and be heard. The court may order all or any part of the costs to be paid by any of the persons who attend (Order XXV. r. 24).

The high bailiff must, on the request of the execution debtor, furnish him with a detailed account in writing of the sale, and of the application of the proceeds thereof (Order XXV. r. 23).

BANKRUPTCY AND DEEDS OF ARRANGEMENT ACT, 1913.

[3 & 4 GEO. 5, c. 34.]

15. Where any goods in the possession of an execution debtor at the time of seizure by a sheriff, high bailiff, or other officer charged with the enforcement of a writ, warrant, or other process of execution, are sold by such sheriff, high bailiff, or other officer, without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to the goods so sold, and no person shall be entitled to recover against the sheriff, high bailiff, or other officer, or anyone lawfully acting under the authority of either of them, except as provided by the Bankruptcy Acts, 1883 and 1890, for any sale of such goods or for paying over the proceeds thereof, prior to the receipt of a claim to the said goods unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained that the goods were not the property of an execution debtor. Provided that nothing in this section contained shall affect the right of any claimant who may prove that at the time of sale he had a title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such sheriff, high bailiff, or other officer as aforesaid.

NOTE.—This section overrules the decisions in *L. C. & D. Rly. Co. v. Cable*, (1899) 80 L. T. 119; *Crane v. Ormerod*, (1903) 2 K. B. 37; and *Jelks v. Hayward*, (1905) 2 K. B. 460.

THE BANKRUPTCY ACT, 1914.

[4 & 5 GEO. 5, c. 59.]

Compositions
and schemes
of arrange-
ment.

16.—(9) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the court is required

where the debtor is adjudged bankrupt to refuse his discharge, the court shall refuse to approve the proposal. Section 16.

(10) If any facts are proved on proof of which the court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than five shillings in the pound on all the unsecured debts provable against the debtor's estate.

(11) In any other case the court may either approve or refuse to approve the proposal.

40.—(1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor. Restriction of rights of creditor under execution or attachment.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy.

Attachment of Debt.—The actual receipt of the debt is essential, the undertaking of the garnishee to pay will not suffice (*Re Trehearne* (C. A.), (1890) 60 L. J. Q. B. 50).

Receiver.—It has been held in the High Court that where a certificate of a decree of the Court of Session in Scotland has been registered in the High Court under the Judgments Extension Act, 1868, that court has the same jurisdiction to appoint a receiver by way of equitable execution as if the judgment had been originally obtained in the High Court (*Thompson v. Gill* (C. A.), (1903) 88 L. T. 714).

The receiver may be appointed in the action by order made after final judgment; no new action is necessary (*Salt v. Cooper* (C. A.), (1880) 16 Ch. D. 544; 50 L. J. Ch. 529). It has been decided that when the order is made as to land, it is equivalent to an actual delivery in execution (*Hatton v. Haywood*, (1874) L. R. 9 Ch. 229; 43 L. J. Ch. 372), and therefore equivalent to a writ or order under the Land Charges Act, 1925 (15 Geo. V. c. 22, sect. 6), and gives the judgment creditor priority over a subsequent purchaser of the judgment debtor's interest (*Re Pope*, (1886) 17 Q. B. D. 743; 55 L. J. Q. B. 522), provided it be registered pursuant to that Act. The order will, moreover, complete the execution, as regards an equitable interest in land, against the trustee in bankruptcy for the purpose of the

Section 40 Notes.

section ; but when the order is made as to goods, even if it is to be treated as an execution, the mere possession of the receiver under it will not complete the execution for the purposes of the same section (*Re Dickinson* (C.A.), (1888) 22 Q. B. D. 187 ; 58 L. J. Q. B. 1).

The judge, in determining whether it is just or convenient that a receiver should be appointed, should, amongst other things, have regard to the amount which could probably be obtained by a receiver, and to the probable costs of appointment, and if necessary may direct inquiries on these points before making the appointment (Order XIII. r. 13). Where the debt and costs exceed 50*l.*, but do not exceed 100*l.*, the total amount to be allowed for costs, including the cost of receiver's appointment, completing his security, passing his accounts and obtaining his discharge, but exclusive of his salary, must not exceed 2½ per cent. of such debt and costs (Order XIII. r. 14 (1)) ; where debt and costs exceed 20*l.*, but do not exceed 50*l.*, the total amount allowed is not to exceed 1*l.* 5*s.* for costs (Order XIII. r. 14 (2)) ; where debt and costs exceed 5*l.*, but do not exceed 20*l.*, there may be allowed for costs not less than 7*s.* 6*d.*, or more than 1*l.*, as the judge shall direct (Order XIII. r. 14 (3)).

When a receiver is appointed by way of equitable execution where the debt and costs do not exceed 50*l.*, the judge may direct that instead of the receiver giving security, the applicant shall be answerable for his acts and defaults, and that the receiver shall not receive more, without leave of the court, than the debt and costs, the allowance to the receiver and the costs of the receiver's appointment (Order XIII. r. 14 (4)).

Forms 300A and 300B in the Appendix, with necessary modifications, may be used for interim or final orders for the appointment of a receiver by way of equitable execution (Order XIII. r. 15).

Duties of
sheriff as to
goods taken
in execution.

41.—(1) Where any goods of a debtor are taken in execution and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

The official receiver is not, under the above sub-section, entitled to the proceeds where in an execution against a firm the partnership goods are sold and within fourteen days a receiving order is made against *one* partner (*Dibb*

Brooke, (1894) 2 Q. B. 338; 63 L. J. Q. B. 665). Also, an administration order in the case of a deceased insolvent is not for the purposes of this section equivalent to a receiving order (*Hasluck v. Clark*, (1899) 1 Q. B. 699; 68 L. J. Q. B. 486).

Section 41.
Notes.

“Balance.”—This means the balance proper, *i.e.*, the balance after the payment of the sheriff's costs, and where the execution creditor had paid 20*l.* for rent due to the landlord, and the sheriff then sold the debtor's goods and paid over the whole value (less his expenses) to the trustee in bankruptcy, held he had paid over 220*l.* which formed no part of the debtor's estate, and the trustee in bankruptcy must return such sum. Section 1 of the statute of 8 Anne, c. 14 (which requires the landlord's rent to a limited extent to be paid as a first charge on goods seized in execution), is not overridden by sect. 41 of the Bankruptcy Act, 1914 (*In re Craig & Sons, Ex parte Hinchcliffe*, (1916) 2 K. B. 497; 85 L. J. K. B. 1537).

Execution being levied, the judgment debtor paid debt and costs to the execution creditors direct, and the sheriff withdrew. In less than fourteen days after the debtor had a receiving order made against him. Held, that the execution had not been completed, and the execution creditors must pay the money to the trustee in bankruptcy (*In re Godding*, (1914) 2 K. B. 70; 83 L. J. K. B. 1222). See sect. 40, *ante*, p. 1759.

In *Bower v. Hett*, (1895) 2 Q. B. 337; 64 L. J. Q. B. 772 the Court of Appeal held that where the debtor's father paid the money to avoid seizure (the sheriff being out of possession) the money was not paid “to avoid sale” and the sheriff was not entitled to retain the money for fourteen days.

In ascertaining the 20*l.* in sub-sect. 2 (*supra*) the amount of the execution, not the judgment, must be looked at (*Howes v. Young*, (1876) 1 Ex. D. 146), and the costs of the high bailiff to the time of sale must be included (*Ex parte Sims*, (1877) 5 Ch. D. 375; 46 L. J. Bk. 103); but not the expenses of possession money, appraisement and sale, unless they have been actually incurred (*Willey v. Hucks*, (1909) 1 K. B. 760; 78 L. J. K. B. 513).

This notice to be effective ought to be served on the high bailiff or at his office, and not on the bailiff in possession (see *Ex parte Warren* (C. A.), (1885) 15 Q. B. D. 48; 54 L. J. Q. B. 320; *Bellyse v. McGinn*, (1891) 2 Q. B. 227).

After completion of the levy, the high bailiff must within twenty-four hours send notice of the levy and of the amount realised to the registrar of the court out of which the warrant originally issued and to the execution creditor (Order II. r. 35; Form 171). If he has paid the money over to the registrar without notice of the receiving order, he is now protected, but must give notice to the registrar forthwith when such knowledge comes to him. The registrar, after deducting the costs of execution, must account to the official receiver (Bankruptcy Rule 323A, *post*, p. 1764).

“Any other petition of which the sheriff has notice.”—The words “any other petition” include any subsequent petition of which the sheriff has notice whilst so holding although presented after the expiration of the fourteen days (*Latter v. Jukes*, (1927) 1 K. B. 17).

Purchaser acquires Good Title.—An execution levied by seizure and sale is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the high bailiff acquires a good title against the trustee (Bankruptcy Act, 1914, s. 40 (3), *ante*, p. 1759).

103. A county court shall, for the purposes of its bankruptcy jurisdiction, in addition to the ordinary powers of the court, have all the powers and jurisdiction of the High Court, and the orders of the court may be enforced accordingly in manner prescribed. Powers of county court.

See *Savill v. Dalton*, and notes to sects. 56 and 63 of County Courts Act.

Section 105

General
power of
bankruptcy
courts.

105.—(1) Subject to the provisions of this Act, every court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case :

Provided that the jurisdiction hereby given shall not be exercised by the county court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not, in the opinion of the judge, exceed in value two hundred pounds.

Judgment
debtor's
summons to
be bank-
ruptcy
business.

107.—(1) It shall be lawful for the Lord Chancellor by order to direct that the jurisdiction and powers under section five of the Debtors Act, 1869, now vested in the High Court, shall be assigned to and exercised by the judge to whom bankruptcy business is assigned.

(2) It shall be lawful also for the Lord Chancellor in like manner to direct that the whole or any part of the said jurisdiction and powers shall be delegated to and exercised by the registrars in bankruptcy of the High Court.

(3) Any order made under this section may, at any time, in like manner, be rescinded or varied.

(4) Where, under section five of the Debtors Act, 1869, application is made by a judgment creditor to a court, having bankruptcy jurisdiction, for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Act, except Part VII. thereof, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Receiving Order.—The creditor will have to pay the same fee and deposit as are required on a bankruptcy petition, and if he does not consent to pay them, the court may dismiss the application or adjourn it on such terms as may be just (Bankruptcy Rules, 1915, r. 376). The receiving order cannot be made if there is no evidence of means before the county court judge (*In re a Debtor, Ex parte the Debtor*, (1905) 1 K. B. 375; 74 L. J. K. B. 362; and see *In re Clark* (C. A.), (1898) 1 Q. B. 20; 66 L. J. Q. B. 875); though it has been held that the absence of means is immaterial in a case where the debtor had made an assignment of the

whole of his property on the morning of the day when judgment was given against him (*R. v. Sussex C. C.*, (1888) 59 L. T. 32).

Section 107
Notes.

Transfer to Another Court.]—If the court has bankruptcy jurisdiction, but still is not the court to which a bankruptcy petition against a debtor could be properly presented, the court may make the order, but must then transfer the proceedings to the court to which a petition would be properly presented. The registrar must then transmit the proceedings and a sealed copy of the order of transfer to the registrar of the other court (Bankruptcy Rules, 1915, r. 378, *post*, p. 1766).

Transfer to Court having Bankruptcy Jurisdiction.]—Where the application is made to a court not having bankruptcy jurisdiction, if the judge is of opinion that a receiving order should be made in lieu of a commitment, he may order the matter to be transferred to the court to which a bankruptcy petition against the debtor might be presented. The registrar must then transmit by post to the court to which the matter is transferred, the proceedings in the matter, together with a copy of the order of transfer (Bankruptcy Rules, 1915, r. 377, *post*, p. 1765).

Notice of the order and of the subsequent proceedings must be served on the judgment debtor. The court to which the proceedings are transferred does not appear to be bound by the opinion of the court which transfers, but must decide on the merits (*Re Andrews*, (1885) 15 Q. B. D. 335; 54 L. J. Q. B. 572). The order of transfer suspends the operation of any commitment previously made (*Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420).

The court may also make an administration order if the total liabilities of the debtor do not exceed 50*l.* and the court thinks that an order of commitment ought not to be made (Bankruptcy Rules, 1886, r. 358), *ante*, p. 291.

(5) General rules under this Act may be made for the purpose of carrying into effect the provisions of the Debtors Act, 1869.

APPEALS.

108.—(1) Every court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it under its bankruptcy jurisdiction. Appeals in bankruptcy.

See *In re A Debtor; Ex parte Goldstein*, (1917) 1 K. B. 558; 86 L. J. K. B. 705.

(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows:—

(a) Where the order is made by a county court, an appeal shall lie to a divisional court of the High Court, of which the judge to whom bankruptcy business is for the time being assigned shall, for the purpose of hearing any such appeal, be a member. The decision of the divisional court upon any such appeal shall be final and conclusive, unless in any case the divisional court or the Court of Appeal sees fit to give special leave to appeal therefrom to the court of appeal, whose decision in such case shall be final and conclusive;

122. The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every Courts to be auxiliary to each other.

Section 122. British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other on all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

See *In re Marquis of Huntley; Ex parte Goldstein*, (1917) 2 K. B. 728; (1918) 87 L. J. K. B. 735.

Married
women.

125.—(1) Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were a feme sole.

(2) Where a married woman carries on a trade or business, and a final judgment or order for any amount has been obtained against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid.

Under this section bankruptcy proceedings can be taken upon a judgment obtained after the Act came into force in respect of a debt incurred before the Act came into force (*Clark, In re, Pope, Ex parte*, (1914) 3 K. B. 1095; 84 L. J. K. B. 89).

A married woman continues to carry on business so long as any business debt remains unpaid. A judgment against her in tort arising out of the negligence of her servant, is available for bankruptcy proceedings against her under this section (*Allen, In re*, (1915) 1 K. B. 285; 84 L. J. K. B. 271).

As to the meaning of "trade or business" within this section, see *Re a Debtor*, (1926) 135 L. T. 689.

Gazette to be
evidence.

137.—(1) A copy of the *London Gazette* containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice.

(2) The production of a copy of the *London Gazette* containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Interpreta-
tion of terms.

167. In this Act, "sheriff" includes any officer charged with the execution of a writ or other process.

THE BANKRUPTCY RULES, 1915.

323A.—(1) Payment by the High Bailiff of a County Court to the Registrar, pursuant to the County Court Rules for the time

being in force, of any money seized or received by such High Bailiff in part satisfaction of an Execution, shall be a good discharge to him as against the Official Receiver under Section 41 (1) of the Act, provided that such payment is made without notice that a Receiving Order has been made against the Execution Debtor.

Rule 323a.

(2) When notice is given to the High Bailiff of such a Receiving Order as is mentioned in paragraph (1) of this Rule, he shall forthwith inform the Registrar thereof, and the Registrar shall, after deducting the costs of execution, on request pay over to the Official Receiver all monies paid to him by the High Bailiff in respect of the execution and not paid out by the Registrar before he has notice of the Receiving Order.

376.—(1) When a receiving order is made under section 107 (4) of the Act, the creditor shall pay the like fee and deposit as are prescribed in the case of a bankruptcy petition. Fee on receiving order.

(2) Where the court is of opinion that a receiving order ought to be made in lieu of committal, and the judgment creditor does not consent to pay the required fee and deposit, the court may dismiss the application or adjourn it on such terms, as to costs and otherwise, as may be just.

The receiving order cannot be made if there is no evidence of means before the county court judge (*In re a Debtor, Ex parte the Debtor*, (1905) 1 K. B. 375; 74 L. J. K. B. 362; and see *In re Clark* (C. A.), (1898) 1 Q. B. 20; 66 L. J. Q. B. 875), though it has been held that the absence of means is immaterial in a case where the debtor had made an assignment of the whole of his property on the morning of the day when judgment was given against him (*R. v. Sussex C. C.*, (1888) 59 L. T. 32).

377.—(1) Where an application to commit is made to the judge of a court not having bankruptcy jurisdiction, and he is of opinion that a receiving order should be made in lieu of committal, he may order the matter to be transferred to the court to which, under the provisions of the Act and rules, a bankruptcy petition against the debtor in relation to the amount of the judgment debt would at the date of the transfer be properly presented. Transfer in lieu of committal.

(2) In such case the registrar of the court making the transfer shall transmit by post to the registrar of the court to which the matter is transferred the proceedings in the matter, together with a copy of the order of transfer.

Notice of the order and of the subsequent proceedings must be served on the judgment debtor. The court to which the proceedings are transferred does not appear to be bound by the opinion of the court which transfers, but must decide on the merits (*Re Andrews*, (1885) 15 Q. B. D. 335; 54 L. J. Q. B. 572). The order of transfer suspends the operation of any

**Rule 377
Note.**

Transfer of
matter to
proper court.

commitment previously made (*Re Ryley*, (1885) 15 Q. B. D. 329; 54 L. J. Q. B. 420).

378.—(1) Where under section 107 of the Act a receiving order is made by a court to which a bankruptcy petition against the debtor could not properly be presented, the court making the order shall by the order transfer the matter to the court to which a bankruptcy petition against the debtor would properly be presented, and thereupon the official receiver of such latter court shall be constituted the official receiver of the debtor's estate, and all proceedings shall be taken as if the receiving order had been made by such latter court.

(2) Where any such order of transfer is made the registrar of the court making the transfer shall forthwith transmit by post to the registrar of the court to which the matter is transferred the proceedings in the matter, together with a sealed copy of the order of transfer, and the registrar of the latter court shall forthwith give notice of the transfer to the official receiver and the Board of Trade.

County court
rules apply.

379. The county court rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to all courts exercising jurisdiction under section 5 of the Debtors Act, 1869, provided that any reference therein to the Bankruptcy Act, 1869, shall be deemed to extend also to the corresponding provisions of the Act (Act of 1914).

BILLS OF SALE ACT, 1882.

[45 & 46 VICT. c. 43.]

AS AMENDED BY ADMINISTRATION OF JUSTICE ACT, 1925 (15 & 16 GEO. 5, c. 28), s. 23.

Sect. 11 of this Act (*infra*) casts a ministerial duty upon the registrar of county courts outside the London bankruptcy district to file, keep and index in the prescribed manner the abstract (*a*) sent to him by the registrar of bills of sale, of all bills of sale given by persons residing in the county court district. The county court registrar's duties and the remuneration are prescribed by the rules of the Supreme Court, *infra*.

An omission to transmit the abstract to the county court registrar does not invalidate the registration (*Trinder v. Raynor*, (1887) 56 L. J. Q. B. 422).

(*a*) Copies of bills of sale themselves, not abstracts only, have now to be sent (Administration of Justice Act (*supra*)).

Local regis-
tration of con-
tents of bill of
sale.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or

giving the same, or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract (a) in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars, to each such registrar.

Every abstract (a) so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

(a) By sect. 23 (*supra*) copies of the bills of sale must now be sent instead of an abstract.

NOTE.—A sale of chattels in their house by a husband to his wife when they are living in the same house together does not require registration under the Bills of Sale Act. Where the possession is a mixed possession, possession follows the title (*Ramsey v. Margrett*, (1894) 2 Q. B. 18). The rule would seem to be the same where the husband, residing with his wife, gives by deed such chattels to his wife (*Trench v. Gething*, (1921) 3 K. B. 230).

See *Marshall and Snellgrove, Ltd. v. I. F. Gower*, (1923) 92 L. J. K. B. 499.

Where goods are described in the bill of sale as belonging to husband and wife, the grantors of the bill of sale, and are subsequently found to belong to the wife only, the bill of sale, except as against the grantor, is void (*Gordon v. Goldstein (I. Goldstein and anr., Claimants)*, (1924) 2 K. B. 779; (1925) 94 L. J. K. B. 21).

RULES OF THE SUPREME COURT.

BILLS OF SALE ACTS, 1878 AND 1882.

LOCAL REGISTRATION OF BILLS OF SALE.

3. *Abstract*.—The abstract of the contents of a bill of sale, required by the Bills of Sale Act (1878) Amendment Act, 1882, to be transmitted to the registrar of a county court, shall be in the form given in the appendix hereto.

4. *Abstract to be Sealed and Dated*.—The abstract shall be sealed with the seal of the Bills of Sale Department of the Central Office

of the Supreme Court of Judicature, and dated on the day on which it is transmitted by post to the registrar of the county court named therein.

5. *Abstract of re-registered Bills of Sale.*—Where a bill of sale has been re-registered since the 31st October, 1882, or shall be re-registered hereafter under section 11 of the Bills of Sale Act, 1878, an abstract of the re-registration, sealed and dated, shall be transmitted by post to the registrar of the county court to which such abstract should have been transmitted had the bill of sale been registered under the Bills of Sale Act (1878) Amendment Act, 1882.

6. *Notice of a satisfaction of a Bill of Sale to be Transmitted to Local Registry.*—Where a memorandum of satisfaction has been or shall be written under section 15 of the Bills of Sale Act, 1878, upon any registered or re-registered copy of a bill of sale, an abstract of which has been transmitted to any registrar of a county court, a notice of such satisfaction, in the form in the Appendix hereto, duly sealed and dated, shall be transmitted to each of the registrars to whom an abstract of such bill of sale shall have been transmitted.

7. *Abstracts to be Numbered and Filed.*—The registrar shall number the abstracts and notices of satisfaction in the order in which they shall respectively be received by him, and shall file and keep them in his office.

8. *Index, how to be kept.*—The registrar shall keep an index, alphabetically arranged, in which he shall enter under the first letters of the surname of the mortgagor or assignor such surname, with his Christian name or names, address, and description, and the number which has been affixed to the abstract.

9. *Satisfaction to be Noted in Index.*—Upon the receipt of a notice of satisfaction, the registrar shall enter the notice of satisfaction on the abstract of the Bill to which it relates, and shall note in the index against the name of the mortgagor or assignor the fact of the satisfaction having been entered.

10. *Search and Inspection of Abstract.*—The registrar shall allow any person to search the index at any time during which he is required by the County Court Rules for the time being to keep his office open, upon payment by such person of one shilling; and to make extracts from the abstract or notice of satisfaction upon payment of one shilling for each abstract or notice of satisfaction inspected.

11. *Office Copy of Abstract.*—The registrar shall also, if required, cause an office copy to be made of any abstract or notice of satis-

faction, and shall be entitled for making, marking and sealing the same to the same fee as is payable in the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, viz., sixpence per folio.

12. Authority to Take Oaths.—[Refers to Central Office.]

ABSTRACT.

LOCAL REGISTRATION OF BILLS OF SALE.

Satisfaction entered.	Number.	Mortgagor or Assignor.	Residence and Occupation.	Mortgagee or Assignee.	Nature of Instrument and Consideration.	Nature of Property assigned.	Amount secured and how repayable.	Rate of Interest.	Date of Instrument.	Date of Registration.	Date of Filing Affidavit of Renewal.
									19	19	19

*To the Registrar of the County Court of , holden at
Sent on the day of , 19 . (L.S.)*

NOTICE OF SATISFACTION.

Bills of Sale Registry,
Royal Courts of Justice,
London.

to

Registered [or re-registered] 19 .
Abstract transmitted 19 .
Satisfaction entered 19 .

TAKE NOTICE THAT

A memorandum of satisfaction to the above Bill of Sale was entered on the register on the above date.

(Signed)

*To the Registrar of the County Court of , holden at
Sent on the day of .*

**BRINE PUMPING (COMPENSATION FOR
SUBSIDENCE) ACT, 1891.**

[54 & 55 VICT. c. 40.]

This Act enables an owner or owners of land of a rateable value of 2,000*l.* alleging subsidence of such land by brine pumping operations, to apply to the Local Government Board for the formation of a compensation district

(sect. 1). Every district formed under the Act shall have a compensation board (sect. 9). Such board, if and when appointed, shall form and maintain (sect. 21) a compensation fund for the district solely applicable to compensation for damage arising from subsidence. Such fund is derived from the assessment and levy of a rate per thousand gallons of brine pumped within the district.

Jurisdiction.]—The jurisdiction of county courts is limited (1) to the recovery as a debt of the sum awarded (sect. 26); (2) in allowing or disallowing a claim on the ground that the claimant had or had not such title or interest in the property damaged by subsidence as would entitle him to recover (sect. 27).

Practice in County Court.]—This is governed by Order L. rr. 19—21, *post*, p. 1771.

Appeal.]—An appeal from the county court under sect. 27 will be as provided by sect. 120 of the County Courts Act, 1888 (sect. 27 (5)).

Court Fees.]—The fees payable under this Act are prescribed by the County Court Fees Order, 1925, as follows :—

	£	s.	d.
(44) (i.) On entering an appeal under sect. 27 of the Act	2	0	0
(ii.) On hearing the appeal (including the order made thereon)	2	0	0

Recovery
of sums
awarded.

26. Any sum awarded by a compensation board to be paid under any of the provisions of this Act shall be certified by the clerk of the board under his hand, and may, subject to the provisions of this Act, be recovered as a debt at the expiration of three months from the date of such certificate in the county court within whose jurisdiction the property to which the claim relates is situate.

Appeal on
questions
of title.

27.—(1) If a board disallow a claim or any item thereof on the ground that the claimant had not, as respects such claim or item, such title or interest in the property damaged by subsidence as would entitle him to recover under this Act, the claimant may appeal in manner in this section mentioned on the ground that he had such title or interest.

(2) If a board allow a claim or any item thereof, any person assessed to the last rate made under this Act in and for the district may appeal in manner in this section mentioned against such allowance on the ground that the board ought to have decided that the claimant had not (as respects such claim or item) such title or interest as hereinbefore mentioned.

(3) Notice of appeal under this section must be given in writing to the board at the meeting at which the decision appealed against is given, or within three weeks afterwards.

(4) The appeal shall be brought in the county court within whose jurisdiction the land is situate, in manner prescribed by rules made or to be made by the authority for the time being

empowered to make rules for the procedure and practice of county courts. Section 27.

(5) The judgment of the county court shall be binding on all persons, subject to an appeal to the Supreme Court according to the practice for the time being in use with respect to appeals from county courts. Appeal from county court.

(6) The costs of any appeal under this section shall be in the discretion of the court in which the same are incurred.

(7) If as a consequence of any decision on appeal under this section any damage is to be assessed, increased, or reduced, the claim shall stand remitted to the board to be adjudicated, and allowed, altered, increased, or reduced as the case may require.

* * * * *

29. In no case shall there be any appeal, by special case or otherwise, where the amount claimed does not exceed one hundred pounds. Limit of appeal.

COUNTY COURT RULES, ORDER L., RR. 19—21.

19. Any person desirous of appealing to the court under sect. 27 of the Brine Pumping (Compensation for Subsidence) Act, 1891, shall within fourteen days from the date of giving notice of appeal file with the registrar a written statement of the decision of the board and of the grounds of appeal against such decision, together with as many copies thereof as there are respondents to the appeal. Appeals under 54 & 55 Vict. c. 40, s. 7.

20. The registrar shall forthwith on the filing of the said statement and copies enter a plaint and issue a summons calling upon the board and (in the case of an appeal against the allowance of a claim or any item thereof) upon the claimant to show cause why the decision of the board should not be reversed or modified, and shall annex to the summons for service on each respondent a copy of the said statement, which copy shall be deemed to be part of the summons. Entry of plaint and issue of summons. [Conf. Form 446.]

21. The practice, procedure, and costs in an action shall be applicable to an appeal under the said section. Practice and costs.

THE BUILDING SOCIETIES ACTS, 1874 AND 1894.

[37 & 38 VICT. c. 42; 57 & 58 VICT. c. 47.]

Jurisdiction of the county court under these Acts is partly exclusive and partly concurrent with the High Court, and relates to four different matters: (1) as to defaults of officers (sect. 24); (2) as to winding-up (sect. 32); (3) as to enforcing awards of arbitrators (sect. 34); (4) as to decision of disputes between a society and its members (sect. 35).

“The Court” in the 1874 Act means the county court of the district in which the chief office or place of meeting for business of the society is situate. See sect. 4.

Appeal.]—Every determination of a dispute by arbitrators or by the court or by the registrar shall be binding on all parties and shall be final, provided that the arbitrators or registrar or the court may at the request of either party state a case for the opinion of the Supreme Court on any question of law (sect. 36), but are not compelled to do so (sect. 20, 1894 Act).

37 & 38 VICT. c. 42.

4. The court in this Act means,—

Definition
of court.

In England, the county court of the district in which the chief office or place of meeting for the business of the society is situate. . . .

Matters to
be set forth
in the rules.

16. The rules of every society hereafter established under this Act shall set forth :—

- (9) Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the court, or to the registrar, or to arbitration.

Officers to
account.

24. Every such officer, his executors or administrators, shall, upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the board of directors or committee of management of the society to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all the moneys remaining in his hands, and deliver all securities and effects, books, papers, and property of the society in his hands or custody, to such person as the society appoint ; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property, in manner aforesaid, the society may sue upon the bond or may apply to the court, who may proceed thereupon in a summary way, and make such order thereon as to the court in its discretion shall seem just, which order shall be final and conclusive.

Practice.]—The jurisdiction under sect. 24 is exclusive. Proceedings should be by action commenced by plaint and summons, the society being plaintiffs and the officer in default defendant (Order XLI. r. 7, *post*, p. 1779). Particulars of demand must be filed (*ib. rr. 8, 9, 10*).

Proceedings
necessary
for the ter-
mination or
dissolution
of a society.

32. A society under this Act may terminate or be dissolved—

- (1) Upon the happening of any event declared by its rules to be the termination of the society.
- (2) By dissolution in manner prescribed by its rules.
- (3) By dissolution with the consent of three-fourths of the members holding not less than two-thirds of the number

of shares in the society, testified by their signatures to the instrument of dissolution. The instrument of dissolution shall set forth— Section 32.
—

- (a) The liabilities and assets of the society in detail.
- (b) The number of members, and the amount standing to their credit in the books of the society.
- (c) The claims of depositors and other creditors, and the provision to be made for their payment.
- (d) The intended appropriation or division of the funds and property of the society.
- (e) The names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

Alterations in the instrument of dissolution may be made with the like consent, testified in the same manner. The instrument of dissolution and all alterations therein shall be registered in the manner provided for the registration of rules, and shall be binding upon all the members of the society.

- (4) By winding-up, either voluntarily under the supervision of the court or by the court, if the court shall so order, on the petition of any member authorised by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise. General orders for regulating the proceedings of the court under this section may be from time to time made by the authority for the time being empowered to make general orders for the court. Winding-up.

Notice of the commencement and termination of every dissolution or winding up shall be sent to the registrar, and registered by him.

The effect of sect. 32 is considerably altered by sect. 8 of the 1894 Act (*infra*), as since the passing of that section Jurisdiction in winding-up is limited to a society the amount of whose capital paid up, or credited as paid up, does not exceed 10,000*l*.

57 & 58 VICT. c. 47.

8.—Notwithstanding anything in the Building Societies Acts, every society under those Acts shall be deemed to be a company within the meaning of the Companies (Winding-up) Act, 1890. Application of 53 & 54 Vict. c. 63, to building societies.

Although the Companies (Winding-up) Act, 1890, has been repealed by the Companies (Consolidation) Act, 1908, yet sects. 286 to 291 of the said Act make it clear that the winding-up of building societies must be effected

Section 8 Notes.

under the provisions of the 1908 Act, hence the jurisdiction is limited as above-mentioned. For winding-up the county court will be the county court to which the district in which the chief office or place of meeting for business of the society is situate is attached for the purpose of jurisdiction in bankruptcy (see Order XLI., r. 12, *post*, p. 1779).

Three-fourths, how computed.]—In computing the three-fourths mentioned in sect. 32, members who have given notice of withdrawal, but have not been paid out, must be counted (*Sibun v. Pearce* (C. A.), (1890) 44 Ch. D. 354; see also *Pepe v. City and Suburban Building Society*, (1893) 2 Ch. 311; 62 L. J. Ch. 501).

Costs.]—These in the winding-up are taxed according to the scale of costs for the time being in use in the Supreme Court (Order XLI. r. 12, *post*, p. 1779).

An Instrument of dissolution is not equivalent in its operation to a winding-up order. Upon such instrument advanced members who have covenanted to pay their advances by instalments cannot be compelled to pay forthwith the balances due from them (*Kemp v. Wright*, (1895) 1 Ch. 121; 64 L. J. Ch. 59).

Claims against Society.]—Many difficult questions arise in the course of a winding-up as to the claims admissible against the society and the various priorities of claimants, and also as to the distribution of assets when there is a surplus after payment of debts. The particular words used in the rules generally make provision as to the rights of members: subject to them the following rules appear to be supported by the authorities.

Debts. Loan to Society.]—The debts payable by the society must be satisfied first. The most important item under this head is that of loans. Prior to the Act of 1874 no society could borrow money so as to create a debt from the society unless its rules authorised borrowing (*Ex parte Williamson*, (1870) L. R. 5 Ch. 309). If the rules gave a limited or unlimited power to borrow, borrowing pursuant thereto created debts enforceable against the society (*Murray v. Scott*, (1884) 9 App. Cas. 519; 53 L. J. Ch. 745). The Act limits the power of borrowing (sect. 15), and any borrowing beyond that limit, or in societies not under the Act, beyond the limit imposed by the rules, or for purposes other than those authorised by the rules, will create no debt enforceable against the society, by action (*Chapleo v. Brunswick Building Society* (C. A.), (1881) 6 Q. B. D. 696; 50 L. J. Q. B. 372; *Re Professional Building Society*, (1871) L. R. 6 Ch. 856), or in a winding-up (*In re Davies' Trusts*, (1871) L. R. 12 Eq. 516; 40 L. J. Ch. 566; *Cunliffe Brooks v. Blackburn Building Society*, (1884) 9 App. Cas. 857; 54 L. J. Ch. 562). See also *Sinclair v. Brougham and Another*, [1914] A. C. 398; 83 L. J. Ch. 465. If, however, a lender whose loan is thus invalid can prove that his money has been applied in satisfaction of any valid debt of or claim against the society, he will be entitled to that extent to maintain his claim against the society (*Cunliffe Brooks v. Blackburn Building Society*, *supra*); or if the money has been advanced to members on mortgage, he will be entitled to the benefit of the security (*Neath Building Society v. Luce* (1889), 43 Ch. D. 158; 59 L. J. Ch. 3). Where money has been lent to a society without borrowing powers, the directors have no power, after incorporation under the Act of 1874, to create a debt against the society in respect of such money by the issue of any form of security under seal (*Ex parte Watson*, (1888) 21 Q. B. D. 301; 57 L. J. Q. B. 609). As to personal liability of directors, see *Cross v. Fisher* (C. A.), (1892) 1 Q. B. 467; 61 L. J. Q. B. 609.

Lenders when not Members.]—A mere lender, who lends his money and gets a bond or promissory note as security for it, does not thereby become a member of the society, and, generally speaking, he and other lenders will be entitled to be paid in full before any member is entitled to participate in the assets, whether the member has given notice to withdraw

or not (*Re Mutual Aid Building Society* (C. A.), (1885) 30 Ch. D. 434; 55 L. J. Ch. 111; *Murray v. Scott*, *supra*; *Sinclair v. Brougham and Another*, *supra*). But a member might, it is believed, lend money in the ordinary way, and, in regard to it, be an outside creditor. See *Sinclair v. Brougham*, *supra*.

Deposit, etc., Members.]—In many societies, persons, under the name of deposit members, or without any particular designation, are allowed to pay money into the society from time to time and receive a kind of pass-book in which they are described as members. When lenders of this kind received “deposit” shares they were held to rank after outside creditors, but before unadvanced members (*Murray v. Scott*, *supra*).

Advanced Members.]—Advanced members are, in the absence of special provisions to the contrary in the rules, entitled to redeem and pay up all moneys due from them to the society pursuant to the rules, including fines, etc. (no interest chargeable on fines (*Parker v. Butcher*, (1867) L. R. 3 Eq. 762; 36 L. J. Ch. 552)), at any time either before or after a winding-up, and on so doing generally cease to be liable to contribute to any deficiency in funds (*Parker v. Butcher*, *supra*; *Re Doncaster Building Society*, (1866) L. R. 3 Eq. 158; *Brownlie v. Russell*, (1883) 8 App. Cas. 235; *Tosh v. North British Building Society*, (1886) 11 App. Cas. 489). Where the rules, however, provide for their participation in losses, they cannot redeem without paying their share of the losses (*Re West Riding of Yorkshire Building Society* (No. 1), (1890) 43 Ch. D. 407; 59 L. J. Ch. 197).

Unadvanced Members.]—Unadvanced members supply the fund to which creditors ultimately resort. The extent of their liability is generally limited by the rules, and such limit is expressly confirmed by the Act (sect. 14). Members of this class are, however, generally empowered to withdraw on giving a specified notice. When such notices have been given and have expired before the commencement of a winding-up, and the members have been paid out, they cease to be members and cannot be placed on the list of contributories (*Re Sheffield Building Society*, (1889) 22 Q. B. D. 470; 58 L. J. Q. B. 265, explained by *Sibun v. Pearce*, (1890) 44 Ch. D. 354); if not paid out they will generally be entitled to be paid out of the assets in priority to others who have not given notice, although there were no funds in hand for payment between the giving of notice and the winding-up (*Walton v. Edge*, (1884) 10 App. Cas. 33; 54 L. J. Ch. 362; *Re Alliance Society* (C. A.), (1885) 28 Ch. D. 559; 54 L. J. Ch. 540); unless, indeed, it has become patent that liquidation is inevitable, when notices then given are as inoperative as if given after the order to wind-up (*Re Sunderland Building Society* (No. 2), (1890) 24 Q. B. D. 394; 59 L. J. Q. B. 217. See this case also as to interest after notice).

34. Where the rules of a society under this Act direct disputes to be referred to arbitration, arbitrators shall be named and elected in the manner such rules provide, or if there be no such provision, at the first general meeting of the society, none of the said arbitrators being beneficially interested, directly or indirectly, in its funds; of whom a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of the society; the names of such arbitrators shall be duly entered in the minute book of the society, and, in case of the death or refusal or neglect of any of the said arbitrators to act, the society, at a general meeting, shall name and elect an arbitrator to act in the place of the arbitrator dying, or refusing or neglecting to act; and

Determina-
tion of dis-
putes by
arbitration.

Section 34.

Court may order compliance with the decision.

Determination of disputes by registrar.

whatever award shall be made by the arbitrators or the major part of them, according to the true purport and meaning of the rules of the society, shall determine the dispute ; and should either of the parties to the dispute refuse or neglect to comply with or conform to such award within a time to be limited therein, the court, upon good and sufficient proof being adduced of such award having been made, and of the refusal of the party to comply therewith, shall enforce compliance with the same upon the petition of any person concerned. Where the parties to any dispute arising in a society under this Act agree to refer the dispute to the registrar, or where the rules of the society direct disputes to be referred to the registrar, the award of the registrar shall have the same effect as that of arbitrators.

Jurisdiction under this section is exclusive.

Practice.—Every application to enforce an award must be by plaint and summons, the party claiming the benefit of the award to be plaintiff, the party against whom the award has been given, defendant ; file particulars stating relief or order claimed (Order XLI. r. 4, *post*, p. 1778).

Determination of disputes by court.

35. The court may hear and determine a dispute in the following cases :—

- (1) If it shall appear to the court, upon the petition of any person concerned, that application has been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the society, and that such application has not within forty days been complied with, or that the arbitrators have refused or for a period of twenty-one days have neglected to make any award.
- (2) Where the rules of the society direct disputes to be referred to the court or to justices.

Determination to be final.

36. Every determination by arbitrators or by the court or by the registrar under this Act of a dispute shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity ; provided always, that the arbitrators, or the registrar, or the court, as the case may be, may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law, and shall have power to grant to either party to the dispute such discovery, as to documents and otherwise, as might now be granted by any court of law or equity, such discovery to be made on behalf of the society by such officer of the society as the arbitrators, registrar, or court may determine.

Members cannot, by giving notice to withdraw, sue in the ordinary courts (*Walker v. General Building Society* (C. A.), (1887) 36 Ch. D. 777; *Huckle v. Wilson*, (1877) 2 C. P. D. 410); if there is a "dispute" it must be disposed of according to the Act and rules. Where a member alleged that he was not bound by certain new rules and prayed the benefit of old ones, it was held that there was a dispute (*Thompson v. Planet Building Society*, (1873) L. R. 15 Eq. 333; 42 L. J. Ch. 364).

Section 36
Notes.

But every contention is not a "dispute" to which the Act applies, e.g., an action by a society against an officer to recover moneys received for and not paid over to the society (*Municipal Building Society v. Richards* (C. A.), (1888) 39 Ch. D. 372; 58 L. J. Ch. 8); or an action on a covenant in a mortgage deed (*Western Building Society v. Martin* (C. A.), (1886) 17 Q. B. D. 609; 55 L. J. Q. B. 382); or an action for redemption (*Mulkern v. Lord*, (1879) 4 App. Cas. 182; 48 L. J. Ch. 745. but this has been only since the passing of the Building Societies Act, 1884 (47 & 48 Vict. c. 41), s. 2, which defined the meaning of "dispute" in the Building Societies Acts, as follows:—

47 & 48 Vict. c. 41, s. 2.]—The word "disputes" in the Building Societies Acts or in the rules of any society thereunder, shall be deemed to refer only to disputes between the society and a member or any representative of a member, in his capacity of a member of the society, unless by the rules for the time being it shall be otherwise expressly provided; and in the absence of such express provision, shall not apply to any dispute between any such society and any member thereof, or other person whatever as to the construction or effect of any mortgage deed or any contract contained in any document, other than the rules of the society, and shall not prevent any society or any member thereof or any person claiming through or under him from obtaining in the ordinary course of law any remedy in respect of such mortgage or other contract to which he or the society would otherwise be by law entitled: Provided always that nothing in this Act shall apply to any dispute pending at any time before the passing of this Act between any such society or any member thereof or other person which before the passing of this Act shall have been actually referred or agreed to be referred to arbitration, or as to which the jurisdiction of any court of law shall have been adjudged to be excluded by any decision of any court of competent jurisdiction in any action or suit between the society and any member thereof or other person.

Practice on plaint for dispute.]—The dispute must be brought into court by plaint and summons (Order XLI. r. 1 (*infra*)). The aggrieved member or other person must be plaintiff and the society, either in its own name or in the name of such persons as are authorised by the Act to be sued on behalf of the society, defendants (*Ib.* r. 2), particulars must be filed with the required copies, which must state concisely the nature of the dispute referred and the relief or order claimed (*Ib.* r. 3).

The following section of the 1894 Act preserves the right of the arbitrators, or the court, or the registrar to refuse to state a special case.

20. Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the arbitrators, registrar, or court to whom a dispute is referred in pursuance of the Building Societies Act, 1874, shall not be compelled to state a special case on any question of law arising in the case, but may do so on the request of either party as provided in section thirty-six of the Building Societies Act, 1874.

Arbitrators
not to be
compelled
to state
special case
on settle-
ment of dis-
putes.

COUNTY COURT RULES, ORDER XLI.

THE FRIENDLY SOCIETIES ACTS. THE BUILDING SOCIETIES ACTS.
 THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893.
 THE LITERARY AND SCIENTIFIC INSTITUTIONS ACT, 1854.
 WINDING-UP OF BUILDING AND INDUSTRIAL SOCIETIES.

Rule 1.

Disputes
under
Friendly
Societies
and other
Acts.

38 & 39 Vict.
c. 60.

59 & 60 Vict.
cc. 25, 26.

56 & 57 Vict.
c. 39.

37 & 38 Vict.
c. 42.

Parties.

Particulars.

Proceedings
for enforce-
ment of
decisions on
disputes
given other-
wise than by
the Court, or
of awards.

Application
for relief on
amalgama-
tion, trans-
fer of engage-
ments, or
dissolution
of friendly
society or
branch.

38 & 39 Vict.
c. 60.

59 & 60 Vict.
c. 25.

1. Any dispute referred to the Court under the Friendly Societies Act, 1875, the Friendly Societies Act, 1896, the Collecting Societies and Industrial Assurance Companies Act, 1896, the Industrial and Provident Societies Act, 1893, the Building Societies Act, 1874, or the Literary and Scientific Institutions Act, 1854 (in this order referred to as the said Acts), shall be so referred by plaint and summons in the ordinary way.

2. In proceedings commenced pursuant to the last preceding rule, the claiming or aggrieved member (or other person) shall be plaintiff, and the society, either in its own name, or in the name of such persons as are authorised by the said Acts respectively to be sued on behalf of the society, shall be defendants.

3. Particulars of demand shall be filed in all cases of disputes under the said Acts, and shall state concisely the nature of the dispute referred, and the relief or order which the plaintiff claims.

4. An application under any of the said Acts for the enforcement of a decision on a dispute given by any authority other than the Court, or for the enforcement of an award, shall be commenced by plaint and summons in the ordinary way, in which the party to the dispute or award entitled or claiming to be entitled to the benefit of such decision or award shall be plaintiff, and the party against whom such decision or award is given shall be defendant. Particulars of demand shall be filed with every such application, stating concisely the relief or order which the plaintiff claims.

5. An application for relief or other order under the Friendly Societies Act, 1875, or the Friendly Societies Act, 1896, by any person dissatisfied with the provision made for satisfying his claim in the case of the amalgamation, transfer of engagements, or dissolution of any society or branch, shall be made by plaint and summons in the ordinary way, in which the person so dissatisfied shall be plaintiff, and the society or branch, either in its own name or in the name of such persons as are authorised by the said Acts respectively to be sued on behalf of the society or branch, shall be defendants. Particulars of demand shall be filed on every such application, stating concisely the relief or other order which the plaintiff claims.

- 6.** An application to the Court by the trustees or authorised officers of a friendly society in respect of any of the matters mentioned in section 20 of the Friendly Societies Act, 1875, or section 55 of the Friendly Societies Act, 1896, shall, whether any bond be put in suit or not, be by action commenced by plaint and summons in the ordinary way, in which the society or the trustees or authorised officers thereof shall be plaintiffs, and the person against whom the application is made shall be defendant. **O. XLI. r. 6.**
Application against officer of friendly society.
38 & 39 Vict. c. 60, s. 20.
59 & 60 Vict. c. 25, s. 55.
- 7.** An application to the Court under the Building Societies Act, 1874, or the Industrial and Provident Societies Act, 1893, against an officer of any society, shall, whether any bond be put in suit or not, be by action commenced by plaint and summons in the ordinary way, in which the society shall be plaintiffs, and the officer against whom the application is made shall be defendant. Application against officer of building or industrial society.
37 & 38 Vict. c. 42.
56 & 57 Vict. c. 39.
- 8.** Particulars of demand shall be filed in all actions commenced pursuant to rules 6 and 7 of this order. Particulars under Rules 6 and 7.
- 9.** If the application is made by action without putting the bond in suit, the particulars shall state shortly the nature of the thing required to be done or the neglect complained of. Where bond not in suit.
- 10.** If the thing required to be done be the delivering up of any property, the particulars shall contain a description of the property required to be given up. Where property is required to be delivered up.
- 11.** Proceedings to set aside the dissolution of any society or branch under any of the said Acts shall be commenced by plaint and summons in the ordinary way, in which the person seeking to set aside such dissolution shall be plaintiff, and the society or branch, either in its own name or in the name of such persons as are authorised by the said Acts respectively to be sued on behalf of the society or branch, shall be defendants. Particulars of demand shall be filed in such proceedings, and shall state concisely the relief or order which the plaintiff claims. Proceedings to set aside dissolution of society or branch.
59 & 60 Vict. c. 25, s. 79 (6).
56 & 57 Vict. c. 39, s. 61 (e).
- 12.** The provisions of the Companies (Consolidation) Act, 1908, and the rules made thereunder, so far as they relate to winding-up shall apply to the winding-up of societies registered under the Building Societies Act, 1874, and the Acts amending the same, or under the Industrial and Provident Societies Act, 1893; and the winding-up of any such societies shall be conducted in all respects as if such societies were companies registered under the said Companies (Consolidation) Act, 1908. Costs shall be taxed according to the scale of costs for the time being in use in the Supreme Court. Winding-up of building and industrial and provident societies.
8 Edw. VII. c. 69.

THE COMPANIES ACTS, 1862 TO 1890. THE BUILDING SOCIETIES ACT, 1874; AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1876.

WHEREAS by Order XLI. rule 9 (a), of the County Court Rules, 1892, it is provided that the provisions of the Companies Acts, 1862 to 1890, and the rules made thereunder, so far as they relate to winding-up, shall apply to the winding-up of societies registered under the Building Societies Act, 1874, and the Industrial and Provident Societies Act, 1876, and that the winding-up of any such societies shall be conducted in all respects as if such societies were companies registered under any of the said Companies Acts. And whereas, as regards certain of the courts exercising jurisdiction under the said Building Societies Act, 1874, and the said Industrial and Provident Societies Act, 1876, official receivers are not attached to the said courts for bankruptcy purposes, inasmuch as the said courts do not exercise bankruptcy jurisdiction.

Now, therefore, the Board of Trade do hereby order that Charles John Stewart, who has been appointed by the Board of Trade the Official Receiver attached to the High Court for the purposes of the Companies (Winding-up) Act, 1890, shall also for the purposes of proceedings in the said courts for the winding-up of societies under the said Acts be the officer attached to such of the courts respectively as exercise jurisdiction under the said Building Societies Act, 1874, and the said Industrial and Provident Societies Act, 1876, within the London Bankruptcy District, as defined by section 96 of the Bankruptcy Act, 1883, and do appoint the said Charles John Stewart to be such officer accordingly.

And the Board of Trade do further order that as regards each of the courts exercising jurisdiction under the said Building Societies Act, 1874, and the said Industrial and Provident Societies Act, 1876, not being courts within the said London Bankruptcy District, or courts exercising bankruptcy jurisdiction the official receiver of the court to which the said court is attached for the purposes of bankruptcy jurisdiction shall be the officer attached to the said court for the purpose of proceedings in the said court for the winding-up of societies under the said Acts, and do appoint such official receivers respectively to be such officers accordingly.

Dated the 16th day of September, 1892.

HENRY G. CALCRAFT,

Secretary to the Board of Trade.

(a) Now Order XLI. r. 12.

FORMS.

167.

Order under the Building Societies, Friendly Societies, and other Acts.*[Not to be printed.]*

Upon hearing this action at a court this day holden it is ordered that the Order XL. defendant do *[here insert the terms of the order made by the court]* :

And it is further ordered, that *[recite terms of order]*.

168.

Order for Warrant of Execution to issue under the Friendly Societies and other Acts.*[Not to be printed.]*

Whereas at a court holden at on the day of 19 it was Order XLI. ordered by the said court *[here insert the terms of the order of the court]* :

And it was then further ordered, that *[recite terms of order]*.

And whereas it appears to the court that the defendant has not obeyed either of the said orders, although demand in that behalf was duly made upon him :

It is therefore ordered, that a warrant of execution issue for the said sum being the amount of such penalty and the costs thereof.

169.

Warrant of Execution against the Goods under the Friendly Societies and other Acts.

Whereas at a court holden at on the day of 19 it was Order XLI. ordered by the said court, that *[here insert the terms of the order of the court]* :

And it was then further ordered, that *[recite terms of order]* :

And whereas the defendant has not obeyed either of the said orders :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount of such penalty and costs, together with the costs of this execution, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the court, this day of 19 .

By the court,

Registrar of the court.

To the high bailiff of the said court
and others the bailiffs thereof.

	£	s.	d.
Amount ordered to be paid			
Costs adjudged			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed thereon]			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized unless they be of a perishable nature, or at the request of the said defendant.

Application was made to the registrar for this warrant at _____ minutes
past the hour of _____ in the _____ noon of the _____ day of _____ 19 _____.

SEE BACK.

For indorsement of fees for execution of warrant, see Form 163.

THE CELLULOID AND CINEMATOGRAPH FILM
ACT, 1922.

[12 & 13 GEO. V. c. 35.]

Sect. 8 of this Act gives the county court power to modify agreements where any structural alterations are necessary to premises, to enable the occupier to comply with the Act, also to apportion the expenses of the same between the owner and occupier.

The section is as follows :—

Power of
county court
to modify
agreements
and to
apportion
expenses.

8.—(1) If any occupier of premises is prevented by any agreement from carrying out any structural alterations which are necessary to enable him to comply with the provisions of this Act, and is unable to obtain the consent to those alterations of the person whose consent is necessary under the agreement, he may apply, in accordance with rules of court, to the county court, and the court, after hearing the parties and any witnesses whom they may desire to call, may make such an order setting aside or modifying the terms of the agreement as the court considers just and equitable in the circumstances of the case.

(2) Where in any premises any structural or other alterations are required in order to comply with the provisions of this Act and the occupier alleges that the whole or part of the expense of the alterations ought to be borne by the owner, the occupier may apply, in accordance with rules of court, to the county court, and the court, after hearing the parties and any witnesses whom they may desire to call, may make such order concerning the expenses or their apportionment as the court considers just and equitable in the circumstances of the case, regard being had to the terms of any contract between the parties, or in the alternative the court may, at the request of the occupier, determine the lease.

THE CHARITABLE TRUSTS ACTS.

THE CHARITABLE TRUSTS ACT, 1853 (16 & 17 VICT. c. 137).
 THE CHARITABLE TRUSTS AMENDMENT ACT, 1855 (18 & 19 VICT. c. 124). THE CHARITABLE TRUSTS ACT, 1860 (23 & 24 VICT. c. 136). THE CHARITABLE TRUSTS ACT, 1869 (32 & 33 VICT. c. 110). THE CHARITABLE TRUSTS (RECOVERY) ACT, 1891 (54 & 55 VICT. c. 17). THE CHARITABLE TRUSTS ACT, 1894 (57 & 58 VICT. c. 35).

Under the Act of 1853 four commissioners, a secretary, and two inspectors were appointed as Charity Commissioners for England and Wales, any two of whom might form a board to inquire into the condition and management of charities (sect. 9); and to require accounts and statements (sect. 10).

Jurisdiction.—Where any charity whose gross annual income does not exceed 50*l.* is established wholly or partially within the district of a county court, any relief, order, or direction which may be made by the Court of Chancery, the same relief, order, or direction may be made by the county court (sect. 32 of the 1853 Act as amended by sect. 11 of the 1860 Act). Where two or more county courts have concurrent jurisdiction with respect to the same charity, application shall be made to only one court, and the board may order (and such order will be conclusive as to the jurisdiction) to which court (sect. 34).

Title.—The county court has no power to determine the title to any real or personal property, or to determine the existence or extent of any charge or trust (sect. 41); but an action to recover arrears of rent-charge is not a proceeding within the section (*Bassano v. Bradley*, (1896) 1 Q. B. 645; 65 L. J. Q. B. 479).

Notice of legal proceedings by all persons, except the Attorney-General, to be given to the board, and no proceedings can be entertained except upon the certificate of the board (sect. 17).

The Official Trustees have an official seal, which must be officially and judicially noticed, and any company cannot refuse to enter the trustees on its books on the ground that they are a corporation.

Practice is set out in Order XLVIII., *post*, p. 1788, both as to proceedings by private persons and by the Attorney-General. By Rule 10 upon the requisition of the Charity Commissioners, and by Rule 11 on that of the Attorney-General, in proceedings instituted by him, the judge's note of the evidence shall be transmitted by the registrar. There is no rule requiring the judge to take a note, but it is expedient for him to do so. No court fees are payable in respect of proceedings under these Acts.

Appeal.—The board if dissatisfied with the order of the county court may remit the order for consideration or transfer the matter to the judge of a Chancery Court (sect. 37).

THE CHARITABLE TRUSTS ACT, 1853.

16 & 17 VICT. c. 137.

* * * * *

32. When any charity of which the gross annual income for the County time being does not exceed 50*l.* shall be established or administered, or be applicable wholly or partially to or for objects or purposes within the district, or any two or more of the districts of any county court or courts holden under the Act of the session holden in the ninth and tenth years of the reign of Her Majesty, chapter ninety-five, and the appointment or removal of any trustee, do not

courts to have jurisdiction in cases of charities, the incomes whereof

Section 32.

exceed 30l.
per annum.
See sect. 11,
23 & 24 Vict.
c. 136, ex-
tending
jurisdiction
to 50l., *post*.
Rules 3, 4.

or any other relief, order or direction whatsoever concerning such charity, shall be considered desirable, and such appointment or removal, or other relief, order or direction, might now be made or given by the Court of Chancery in respect either of its ordinary or its special or statutory jurisdiction, or by the Lord Chancellor, intrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorised in this behalf by the order or certificate of the said board, or for the Attorney-General, to make application to such county court, or, as the case may be, to any one of such county courts, for such order, direction, or relief, as the nature of the case may require : and such county court shall entertain such application, and shall hear the matter in open court, and shall give such relief, and make such orders and directions in relation to the matter of such application, as might now be made or given by the Court of Chancery or by the Lord Chancellor, intrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require ; and the clerk of such county court shall transmit a copy of such order or direction to the office in London of the registrar of county courts' judgments, to be there enrolled : Provided always, that no judge of any county court shall be authorised to vary any decree, order or direction of the Court of Chancery, or of any judge thereof, or to make or give any order or direction inconsistent or conflicting with any such decree, order or direction : Provided also, that where two or more district or county courts shall have concurrent jurisdiction with respect to any charity under this Act, no application in respect of such charity shall be made to or entertained by more than one of such district or county courts at the same time.

* * * * *

Where two
or more
courts have
concurrent
jurisdiction,
board to
direct to
which court
applications
shall be
made.

Board may
direct
applications
within the
jurisdiction
of a county
court to be
made before
a judge of

34. Where two or more county courts shall concurrently have jurisdiction under this Act with respect to any charity, it shall be lawful for the said board to order to which of such courts any application with respect to such charity shall be made ; and every such order shall be conclusive as to the jurisdiction with respect to the application referred to in such order.

35. It shall be lawful for the said board to direct that any application as to any charity within the jurisdiction of any county court shall be made before a judge of the Court of Chancery, or as to any charity within the jurisdiction of the Court of Chancery of the county palatine of Lancaster, either before the chancellor or the vice-chancellor of the same county palatine, or before a judge of the High Court of Chancery, according to the provisions herein contained applicable to a charity the gross annual income whereof exceeds 50l. ; and in such case such application shall be made and

may be heard and determined accordingly, in like manner as if the gross annual income of such charity exceeded 50*l.* ; and upon the production of the order or certificate containing such direction, or of a copy thereof, the application with respect to which such order or certificate shall have been made shall not be entertained or proceeded with by such district or county court.

Section 35.

the Court of
Chancery,
&c.

36. Whenever any order or decision is made by any county court for the appointment or removal of any trustee of any charity, or approving of any scheme for regulating or directing the administration of any charity, or the estate, funds, property or income thereof, a copy of every such order or decision shall immediately upon the making thereof be delivered or transmitted by the clerk of the county court, as the case may be, together with all requisite particulars, to the said board, for the purpose of being considered by them ; and no such order or decision shall be valid or effectual until the same shall have been approved by the said board, such approval to be testified by a certificate in writing, signed by the secretary of the said board, and no such approval shall issue from the said board until one calendar month shall have elapsed after the receipt by the board of such copy and particulars.

Orders of
county court
for the ap-
pointment
or removal
of trustees
or approving
of a scheme
to be trans-
mitted to
the board,
and not to
be valid
until ap-
proved by
them.

37. In case any such order or decision as last aforesaid of any county court shall not be approved by the said board, it shall be lawful for such board to remit the same for reconsideration and decision by such district or county court, with such remarks and recommendations thereon (if any) as shall seem fit and expedient to such board, or in the discretion of the board, to order and direct that the subject-matter to which such order or decision relates, together with such order or decision, shall be submitted to the consideration and decision of a judge of the Court of Chancery, and in such last-mentioned case no further proceedings shall be had or taken in the district county court with respect to the matter in question ; and in case the order or decision of the county court, on the reconsideration of any order or decision so remitted for reconsideration, be disapproved as aforesaid by the said board, such board shall refer such orders and decisions, and the subject-matter thereof, to a judge of the Court of Chancery, or as to any charity within the jurisdiction of the Court of Chancery of the county palatine of Lancaster, either to the chancellor or vice-chancellor of the same county palatine, or to a judge of the High Court of Chancery ; and where any order or decision is referred to a judge of the Court of Chancery or of the Court of Chancery of the said county palatine of Lancaster, under this provision, such judge shall have and exercise all such jurisdiction, power and authority in relation thereto as in the case of a charity the gross annual

Board, if
dissatisfied
with the
order of
the county
court, may
remit the
same for
reconsidera-
tion, or may
transfer the
matter to a
judge of the
Court of
Chancery,
&c.

Section 37.

Proceedings
in county
courts
under this
Act.

income whereof exceeds 50*l.*, and may make such order in relation to the matter of such order or decision as to him may seem proper.

38. Subject to any orders to be made by the Lord Chancellor as hereinbefore mentioned, and to the other provisions of this Act, all proceedings to be taken in any county court, and all orders and directions to be made or given by any such district court or county court by virtue of the jurisdiction hereby created and conferred on such court, shall respectively be subject to the same rules and regulations, and have the same effect, and be registered, enforced and executed in the same manner as the other proceedings, orders, judgments and directions of the same court under its ordinary jurisdiction, and it shall be lawful for any county court, with the consent of the board, to rescind or vary any order which shall have been previously made by such court, without prejudice to any act or matter in the meantime done under such order; and for executing and putting in force any order to be made by any county court under this Act, every judge of any such court shall and may have and exercise all such powers as by the Act of the session holden in the ninth and tenth years of Her Majesty, chapter ninety-five, are given for enforcing the payment of any debt, damages or costs under the said Act.

Appeal
from order
of county
court.

39. Where any person authorised to make any application under this Act (other than Her Majesty's Attorney-General acting *ex officio*), or any other person who may have been made a party to any proceeding upon any application under this Act, is aggrieved by or dissatisfied with any order made by any county court upon any such application or any proceeding thereon, he may, within one calendar month after the making of such order, give notice in writing to the said court, and also to the said board, that he is desirous to appeal against the same; and if the said board think it reasonable and proper that such appeal should be entertained and give a certificate to that effect, such county court shall suspend any proceedings upon the order appealed against during such time as the circumstances may require; and the said board, if they so think fit, may require the person giving any such notice of appeal to become bound with two sufficient sureties, to be approved by the registrar of the county court, to the treasurers of the said courts respectively, or such other person as the said board may see fit, in such sum as to the said board shall seem reasonable, to pay such costs of the proceedings on the appeal as shall be ordered to be paid by such appellant, and also (if the said board so think fit) to indemnify the charity against the costs and expenses of or attending such appeal; and every bond executed under this provision shall be exempt from stamp duty; provided always,

that it shall be lawful for Her Majesty's Attorney-General (acting *ex officio*), at any time within three calendar months after the making of any order by a county court under this Act, to lodge and commence and prosecute an appeal against such order, without giving any such notice or becoming bound as aforesaid, and every such last-mentioned appeal shall thereupon be allowed by the order of such county court, and shall have such other effect as any other appeal under this Act.

Section 39.

40. Where any order allowing an appeal has been made as aforesaid, the person thereby allowed to appeal shall within three calendar months present a petition to the Court of Chancery, setting forth the order appealed against and the order allowing such appeal, and praying such relief as the case may require; and upon the hearing of such petition the court may confirm, vary or reverse the order appealed against, or may remit such order to the county court by which the same was made, with or without any declaration or directions of the Court of Chancery in relation thereto, or may proceed in relation to the charity to which such order relates as in the case of an application under this Act to a judge of the Court of Chancery at chambers, and any judge of such court sitting at chambers or in open court may make or give any such orders or directions in relation to the matter of such order as he may see fit, or the court may make such other order in relation to the matter of any such appeal as to the court may seem just, and as might be made in the case of a suit regularly instituted, or a petition, as the case may require; and in case the party allowed to appeal do not within such three calendar months present such petition of appeal, the order against which such appeal was allowed shall be final; and in case any costs adjudged on any such appeal to be paid by the party allowed to appeal be not paid, such bond as aforesaid may be put in suit, and the money to be recovered on every such bond shall be applied to indemnify the charity estate or the person damnified, or otherwise in such manner as the justice of the case may require, and the court or judge by whom such appeal may have been heard shall think fit.

Proceedings on appeal.

Bond to prosecute appeal may be put in suit.

41. Provided always, that no judge of the Court of Chancery, nor any county court, shall upon any proceedings under this Act have jurisdiction to try or determine the title at law or in equity to any real or personal property, or any term or interest therein, as between any charity or the trustee thereof, and any person holding or claiming such real or personal property, term or interest adversely to such charity, or to try and determine any question as to the existence or extent of any charge or trust.

No Chancery judge, or county court in proceedings under this Act shall try titles to property, &c.

For what are proceedings under the Act see *Bassano v. Bradley*, (1896) 2 Q. B. 645; 65 L. J. Q. B. 479.

THE CHARITABLE TRUSTS ACT, 1860.

[23 & 24 VICT. c. 136.]

Acts to be
construed
together.

1. The Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, and this Act shall be construed together as one Act, and any provisions of the said former Acts inconsistent with this Act are hereby repealed.

* * * *

Jurisdiction
of county
courts
enlarged.

11. The jurisdiction vested by the Charitable Trusts Act, 1853, in the county courts over charities not possessing a larger gross yearly income than thirty pounds, shall be exercisable by the said courts respectively, for the like purposes and under the like provisions over charities of which the gross yearly income for the time being, to be calculated in manner aforesaid, shall not exceed fifty pounds, in the same manner as if the last-mentioned limit to the jurisdiction of the said courts had been fixed by the said former Act.

THE COUNTY COURTS CHARITABLE TRUSTS, RULES, 1903.

ORDER XLVIII.

CHARITABLE TRUSTS (a).

Record.

1. The registrar of every court shall keep a book, to be called "The Charitable Trusts Book," in which all proceedings taken in that court in matters of charitable trusts shall be recorded according to the form in the appendix.

Form 437.

Proceedings
by private
persons.

2. Where any person has obtained the required order or certificate from the charity commissioners, and is desirous of taking proceedings in the court, he shall produce such order or certificate to the registrar, who shall retain and file the same in numerical order in his office, and the party producing such order or certificate shall be deemed to be the plaintiff in such proceedings: and the parties summoned under Rule 4 of this Order shall be deemed to be the defendants.

Proceedings
by Attorney
General.

3. When the Attorney-General proposes to take proceedings in the court, he shall cause to be delivered or transmitted to the registrar a written statement showing the nature and object of the proposed proceedings, and the registrar shall retain and file such statement in numerical order in his office, and the Attorney-General shall in such proceedings be deemed to be the plaintiff,

(a) No court fees are payable in respect of proceedings under the Charitable Trusts Acts, 1853 to 1891. See County Court Fees Order, 1925, sect. 4 (2), *ante*, Part II.

and the parties summoned under Rule 4 of this Order shall be deemed to be the defendants. Rule 3.

4. Upon the production of any order, certificate, or statement in this order before mentioned, the registrar shall at the instance of the plaintiff prepare a summons thereon according to the form in the appendix, in which shall be stated the substance of the order, certificate, or statement, and he shall make as many copies thereof as there are parties required by the plaintiff, in writing, to be summoned, and two additional copies, the one to be filed in his office, and the other to be transmitted to the charity commissioners. Summons.
Form 434.

5. The registrar, if required by the plaintiff, shall prepare a notice to attend proceedings, according to the form in the appendix, to be served on any persons indicated by the plaintiff in writing besides those summoned under the last preceding rule; and the registrar shall make as many copies thereof as there are persons to whom such notice is to be given, and two additional copies, one to be filed in his office, and the other to be transmitted to the charity commissioners. Notice to
attend pro-
ceedings.
Form 435.

6. The registrar shall forthwith transmit by post prepaid a copy of the summons to each of the parties required to appear, and a copy of the notice to attend proceedings to each of the persons indicated by the plaintiff, and such transmission shall be sufficient service, unless the judge in any case otherwise directs. Service of
summons
and notice
to attend.

7. Where the plaintiff does not require any summons or notice to attend proceedings to be issued, the registrar shall prepare a notice of hearing, according to the form in the appendix, and two additional copies thereof, one to be filed in his office, and the other to be transmitted to the charity commissioners, and shall either deliver such notice to the plaintiff, or cause it to be served on him by prepaid post letter, unless the judge in any case otherwise directs. Notice of
hearing
where no
summons or
notice to
attend
issued.
Form 436.

8. In all cases it shall be competent for the registrar, if required by the plaintiff, to summon some persons, and to serve others with either or both of the said notices; or to serve a notice of hearing on the plaintiff, and a notice to attend proceedings on any other person. Summons
and notices
to be issued
in certain
cases.

9. In all cases it shall be competent for the judge to direct in any case what persons, or additional persons, shall be served with a summons or notice to attend proceedings or notice of hearing. Service
by order
of judge.

Rule 10.

Transmis-
sion of
judge's note
to charity
commis-
sioners.

Transmis-
sion of
judge's note
to Attorney-
General.

Copy of pro-
ceedings to
be sent to
commis-
sioners.

Who may
appear at
hearing.

Effect of
commis-
sioners'
order or
certificate
or Attorney-
General's
statement.

General
practice, etc.,
of the courts
to be
adopted.

Registrar's
duties as to
trustees'
accounts.

Parties to
proceedings
under 54 & 55
Vict. c. 17.

10. Upon the requisition of the charity commissioners, the registrar shall transmit to them at their office by post or otherwise a copy of the judge's note of the evidence taken at the hearing, or such part thereof as may be required by the commissioners, sealed with the seal of the court.

11. Upon the requisition of the Attorney-General in proceedings instituted by him, the registrar shall transmit to him by post or otherwise, a copy of the judge's note of the evidence taken at the hearing, or such part thereof as may be required by the Attorney-General.

12. A copy of the summons, notice to attend proceedings, or notice to appear, together with a copy of the order made by the court, shall in all cases be transmitted by the registrar forthwith after the hearing by post or otherwise, as the judge shall direct, to the office of the commissioners.

Rules 13, 14, 15 and 16 annulled (County Court (No. 1) Rules, 1925, r. 17).

17. At the hearing, any person who has been summoned, or has received notice to attend proceedings, or who is authorised to apply under section forty-three of the Charitable Trusts Act, 1853, may appear and be heard in opposition to the application authorised by the order or certificate of the commissioners, or the statement of the Attorney-General, subject to the payment of such costs as the judge shall direct.

18. The order or certificate of the commissioners, or statement of the Attorney-General, as to the amount of the annual income, shall be conclusive, and the other statements contained in the certificate or order of the commissioners, or the statement of the Attorney-General shall, unless disputed, be taken as true.

19. The enactments, orders as to fees, practice, and forms in force and used in the county courts, shall, subject to the rules of this order, be adopted with reference to proceedings in matters of charitable trusts, so far as the same are applicable, *mutatis mutandis*.

20. The accounts of trustees of charities, when delivered to the registrar, shall be filed by him in numerical order, and annually indexed alphabetically according to the titles of such charities, or the names or descriptions by which they are known, or may be identified.

THE CHARITABLE TRUSTS (RECOVERY) ACT, 1891.

21. It shall not be necessary to make the trustees (if any) or persons acting in the administration of the charity, or the official

trustee of charity lands, or the official trustees of charitable funds, parties to any proceeding under the Charitable Trusts (Recovery) Act, 1891, unless the judge before or at the trial otherwise orders; and for the purposes of proceedings under the said Act the board shall be deemed to represent all parties interested in the charity.

Rule 21.

22. The notice in sect. 5, sub-sect. 1 of the said Act mentioned shall be a two days' notice in writing, and shall be served on the opposite party, but the court may give leave for shorter or substituted or other notice.

Notice under
54 & 55 Vict.
c. 17, s. 5.

23. Any order for production of documents or other discovery against the board shall be made upon their secretary for the time being.

Discovery.

COSTS.

24. Where costs are allowed in any proceeding under the Charitable Trusts Acts, 1853 to 1891, and this order, the judge may order the costs to be taxed under column A, B, or C, and in default of any such order they shall be taxed under column B, without prejudice to the privilege of the Attorney-General as to costs.

Costs.

FORMS.

434.

Summons.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of . . . holden at . . .

In the matter of [*title of charity*].

No. of charity.

[*Name, description, and address of party to be summoned.*]Order
XLVIII.,
Rule 4.

You are hereby summoned to appear at a county court to be holden at . . . on the . . . day of . . . 19 . . . at the hour of . . . in the . . . noon, upon the hearing of an application which has been made to the court in the matter of the above charity, by which it is suggested [*here state substance of order, certificate, or statement*].

And you are informed, that if you do not attend pursuant to the requisition of this summons, the court may proceed in the matter in your absence, and make such order as may appear just therein.

And you are further informed, that if you do not obey such order, you will be liable to be imprisoned by order of the court.

Registrar.

Dated this . . . day of . . . 19 . . .

435.

Notice to attend Proceedings.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of holden at .

In the matter of [*title of charity*].

Order
XLVIII.,
Rule 5.

No. of charity.

[*Name, description, and address of party to whom notice is to be given.*]
Take notice, that the hearing of an application in the matter of the above charity, by which it is suggested [*here state substance of order, certificate, or statement*], will take place on the day of 19 , at the above county court, to be holden at , at the hour of in the noon.

The object of this notice is that if you are desirous of attending the said hearing you are at liberty to do so, and you may be heard in support of any objection you have to such proceedings in respect of the above charity.

But if you do not attend at the hearing, you will not be subject to any costs or penalty in respect of such non-attendance.

Registrar.

Dated this day of 19 .

436.

Notice of Hearing.

The Charitable Trusts Acts, 1853 to 1887.

16 & 17 Vict.
c. 137.

In the county court of holden at .

In the matter of [*title of charity*].

No. of charity.

Order
XLVIII.,
Rule 7.

[*Name, description, and address of party to whom notice is to be given.*]
Take notice, that the hearing of the application in the matter of the above charity is appointed to take place at this court on the day of 19 , *at the hour of in the noon.

Registrar.

dated this day of 19 .

* This should be at the earliest convenient sitting of the court.

437.

Form of Charitable Trusts Book Record.

The Charitable Trusts Acts, 1853 to 1887.

16 & 17 Vict
c. 137.

ASHLEY, Lady, Charity of. In the matter of

No. 1.

XLVIII.,
Rule 1.

On the day of 19 an order [*certificate or statement, as the case may be*] was produced by [*state the party producing or transmitting it*] and the same has been numbered 1 [*or, as the case may be according to the priority of production to the clerk*].

On the day of 19 a summons [*or other process, as the case may be*] was issued and directed to be served by post [*or otherwise, as the case may be*] on [*state the parties*], requiring him [*her or them, as the case may be*] to appear at this court on the day of 19 .

At a court holden on the day of 19 appeared [*state parties appearing, or reasons for not appearing, and whether they appeared by*]

counsel or otherwise. If any adjournment takes place, state the cause thereof, and adjournment, and until when adjourned; then on the adjournment day, proceed in a similar manner as on the first day of hearing; and the same on every successive adjournment day. When the matter is finally disposed of, then proceed]—

The matter having been heard, the court made the following order: [Here state the order. If any other proceedings, whether before or after the final order, are taken in the matter, they must be recorded in a similar manner in their proper places. It will not be necessary to set forth on the record any of the evidence, as that will appear on the judge's notes; but any document produced, or any copy thereof, which the judge requires to be filed, should be filed along with the other papers relating to the matter.]

[When the record of proceedings in any charity occupies more than one page, the record may be continued on the next blank page, and a reference should be made from such previous page to such next page, and from such next page to such previous page. The book in which the record is kept should be paged throughout, and have an alphabetical index at the end. The names of the charities should be arranged in the index alphabetically, and the numbers of the pages in which any proceedings are recorded should be given at the end of the names.]

438.

Order for the Removal or Appointment of a Trustee, or Removal and Appointment of a Trustee; vesting the Estates of a Charity in a Trustee; and approving a Scheme.

The Charitable Trusts Acts, 1853 to 1887.

16 & 17 Vict.
c. 137, &c.

In the county court of holden at .

In the matter of [title of charity].

No. of charity.

Upon the application of [name, description, and address of applicant] to [here state the substance of the application authorised by the order or certificate; but in the case of a scheme only refer to it as "a certain scheme for regulating or directing the administration of the said charity"], and upon hearing the matter of the said application:

It is ordered that [name, description, and address] one of the trustees [or the trustee] of the above charity be removed [or that [name, description, and address] be appointed a trustee of the said charity] or that [name, description, and address] one of the trustees [or the trustee] of the said charity be removed, and that [name, description, and address] be appointed a trustee instead of the said [name of removed trustee]:

And it is further ordered that [state property and rights of the charity as described or indicated in the order or certificate] do vest in the said [names of trustees in whom the said property and rights are to vest]:

And it is further ordered that the scheme set forth in the schedule hereunto annexed for the regulating [or directing] the administration of the said charity be approved and established.

Given under the seal of the court this day of 19 .

By the court,
Registrar.

Schedule referred to in the foregoing order.

[Here insert scheme approved of.]

This is the schedule referred to in the above order.

[Registrar's signature.]

* * Where the application to the court does not embrace all the subjects of the above form, such part may be adopted as is applicable to the exigency of the case.

439.

Order under Section 48 of the Charitable Trusts Act, 1853.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of holden at
In the matter of [*title of charity*].

16 & 17 Vict.
c. 87, s. 48.

No. of charity.

Upon the application of [*name, description, and address of applicant*] to [*here state the substance of the application authorised by the order or certificate*] and upon hearing the matter of such application :

It is ordered that the [*here describe the estates of the charity as described or indicated in the order or certificate*] holden in trust for the above-mentioned charity do vest in "the treasurer of public charities," and his successors, in trust for the said charity.

[*Where any periodical or other payment is directed with respect to any copyhold land, add as to a periodical payment the following clause*] : And it is further ordered, with the consent of the [*name, description, and address of the lord of the manor wherein the estates are situated*] that the sum of £ be paid by [*name, description, and address of person ordered to pay*] to the said lord of the manor of on the day of next, and on the same day in each succeeding year [*as the case may be*] in compensation for fines or other profits which would have become due upon the death or admittance of the tenants of such land, being part of the said manor holden upon trust for the said charity.

Given under the seal of the court this day of 19 .

By the court, Registrar.

440.

Order under Section 51 of the Charitable Trusts Act, 1853.

The Charitable Trusts Acts, 1853 to 1887.

In the county court of holden at
In the matter of [*title of charity*].

No. of charity.

Upon the application of [*name, description, and address of applicant*] to [*here state the substance of the application authorised by the order or certificate*], and upon hearing the matter of the said application,

It is ordered that [*names, descriptions, and addresses*] [*where they are personal representatives, insert "the executors [or administrators] of [name, description, and address] deceased"*] do transfer the £ bank £2 15s. per cent. annuities, [*or Bank Stock, promissory note, bill of exchange, bond, debenture, or other security [as the case may be], standing in the name or names*] [*insert the names, descriptions, and addresses of the persons in whose names the stock is standing*], into the names of [*names of official trustees*].

[*Where securities are to be deposited, vary the preceding order, commencing with the words "do transfer," and substitute the following: "do deposit" the following Exchequer bills, dated, that is to say, No. 1,806 for £500, No. 772 for £50, &c., or any other Exchequer Bills, for which the same may be exchanged [as the case may be] with [names of official trustees].*]

Given under the seal of the court this day of 19 .

By the court, Registrar.

16 & 17 Vict.
c. 187, s. 51.

441.

Order for Payment of Money by any Trustee of any Charity or any Person holding Money belonging to any Charity.

The Charitable Trusts Acts, 1853 to 1887.

16 & 17 Vict.
c. 187.In the county court of holden at
In the matter of [*title of charity*].

No. of charity.

Upon the application of [*name, description, and address of applicant*] to
[*here state the substance of the application authorised by the order or certificate*], and upon hearing the matter of the said application,It is ordered that [*name, description, and address*] do on or before the
day of 19 , pay the sum of £ [*with interest thereon*
(*if any*)] to [*state party or account*].

Given under the seal of the court this day of 19 .

By the court,

Registrar.

442.

Notice of Sureties.

The Charitable Trusts Acts, 1853 to 1887.

16 & 17 Vict.
c. 187.In the county court of holden at
In the matter of [*title of charity*].Take notice, that the sureties whom I propose as my sureties on the appeal in the above matter are [*here state the full names and additions of the sureties, whether housekeepers or freeholders and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any*].**BOND.**Know all men by these presents that we [*name, description, and address*], and [*names, descriptions, and addresses*] are jointly and severally bound to [*name, description, and address of obligee*] in £ of good and lawful money of Great Britain, to be paid to the said [*name of obligee*] or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each (and every) of us, in the whole sum and each of our heirs, executors, and administrators, jointly and severally, by these presents.Sealed with our seals, and dated this day of one thousand
nine hundred and .Whereas an order, dated the day of 19 , was made in the matter of [*name*] charity by the county court of holden at and [*name, description, and address of appellant*] states himself to be aggrieved by [*or dissatisfied with*] the said order, and has given notice of appeal pursuant to the Charitable Trusts Act, 1853, and the practice of the court:And whereas the Charity Commissioners of England and Wales have required that the said [*appellant*] should, together with two sufficient sureties, become bound to [*person whom the commissioners direct to be obligee*] in the sum of £ to pay such costs of the proceedings on the appeal as shall be ordered to be paid by the said appellant [*if required by the commissioners*], and also to indemnify the charity against the costs and expenses of and attending such appeal].And whereas the above-named [*names, descriptions, and addresses of sureties*], at the request of the said [*name of appellant*], have agreed to enter into the above written obligation for the purpose aforesaid, and the security intended to be given has been approved of by the registrar of the said court, as appears by his allowance in the margin hereof.

I approve of
this bond
(L. S.) J. K.
This requires
a stamp.

Now the condition of this obligation is such, that if the above bounden [names], and any or either of them, shall pay unto the said [name of the obligee], his executors, administrators, or assigns, the costs of the said appeal, as the said Court of Appeal shall order [add, if so ordered, and indemnify the said charity against the costs or expenses of or attending such appeal], then this obligation shall be void, otherwise the same shall remain in full force and virtue.

A. B. (L. S.)

C. D. (L. S.)

E. F. (L. S.)

Signed, sealed, and delivered by the above bounden, in the presence of

CHECKWEIGHING IN VARIOUS INDUSTRIES ACT, 1919.

[9 & 10 GEO. V. c. 51.]

Provisions
as to
arbitrations.

6. Any matter required to be submitted to arbitration under this Act, or the regulations made thereunder, shall, in accordance with regulations as to procedure and costs made by the Secretary of State, be referred to the decision of a single arbitrator appointed, in default of agreement, by the judge of county courts for the district, or in Scotland by the sheriff of the county, in which the employer's premises are situate.

CLERGY DISCIPLINE ACT, 1892.

[55 & 56 VICT. c. 32.]

By sect. 9 of the Act a rule committee thereby constituted was given power to make rules for carrying the Act into effect, and particularly for regulating procedure, practice, costs, expenses and fees, and the liability to and recovery of costs and expenses.

The only matter in the Act or Rules which affects county courts is contained in Rules 48 and 49, of these rules, set out below.

Up to 20^l. the jurisdiction of the county court is exclusive, *infra*.

Application
for recovery
of costs.
Form 52.

48. Where any costs have been ordered by the court to be paid or are payable under these rules and the amount thereof has been taxed, the person to whom the same are payable may within fourteen clear days after the taxation lodge with the registrar of the diocese an application to issue an order for the recovery of the amount.

Mode of
enforcing
recovery of
costs.
Form 53.

49. The registrar on receipt of an application for the recovery of costs shall, if satisfied that the amount to which the application refers ought to be paid, send a precept for the recovery thereof—

(a) where the amount of the costs does not exceed twenty pounds, to the registrar of any county court within the

jurisdiction of which the person by whom the costs are payable possesses any goods and chattels ; and Section 49.

(b) where the amount of the costs exceeds twenty pounds, to the central office of the Supreme Court of Judicature ; and on the receipt of the precept the costs to which it relates, together with costs of the application for recovery as certified in the precept by the registrar, and together with the costs of recovery, may be recovered by the person to whom the same are payable, as if they were costs ordered to be paid by the county court or High Court, as the case may be.

COAL MINES ACT, 1911.

[1 & 2 GEO. V. c. 50.]

COAL MINES ACT, 1914.

[4 & 5 GEO. V. c. 22.]

By sect. 11 of the 1911 Act the county court judge may be appointed by the Secretary of State, either alone or with an assessor or assessors, as the court to hold an inquiry as to the competency of a manager or under-manager of a mine and his fitness to hold a certificate of competency, at such place as the Secretary of State may appoint ; extended by the Act of 1914 (4 & 5 Geo. 5, c. 22) to any owner or agent of a mine taking part in the technical management thereof.

The inquiry must be public.

See, as to relaxation of requirement of practical experience in case of soldiers who served in the war, 6 & 7 Geo. 5, c. 31, s. 10.

By sect. 77 the mine owner, under certain circumstances, has to provide washing and drying accommodation, one half cost of which is to be borne by the men. If any question arises as to the estimated cost of maintenance, it shall be referred to an arbitrator, who, failing agreement, is to be appointed by the judge of county courts of the district in which the mine is situate.

11.—(1) If at any time representation is made to the Secretary of State by an inspector or otherwise that any person holding a certificate of competency under this Act is, by reason of incompetency or gross negligence or misconduct in the capacity of, or while temporarily performing the duties of, manager or under-manager of a mine, unfit to continue to hold a certificate of competency, or has been convicted of an offence against this Act or any enactment repealed by this Act, the Secretary of State may, if he thinks fit, cause inquiry to be made into the conduct of that person, and with respect to every such inquiry the following provisions shall have effect :—

(a) The inquiry shall be public, and shall be held, at such place as the Secretary of State may appoint, by such county court judge, metropolitan police magistrate, stipendiary magistrate, or other person or persons (hereinafter in this section referred to as the court) as may be directed by the

Inquiry into
competency
of holders of
certificates

Section 11.

Secretary of State, and either alone or with the assistance of any assessor or assessors named by the Secretary of State :

- (b) The Secretary of State shall, before the commencement of the inquiry, furnish to the person into whose conduct inquiry is made a statement of the case on which the inquiry is instituted :
- (c) The person into whose conduct inquiry is made may attend the inquiry by himself, his counsel, solicitor, or agent, and may, if he thinks fit, be sworn and examined as an ordinary witness in the case :
- (d) The court shall, on the conclusion of the inquiry, send to the Secretary of State a report containing a full statement of the case, and the opinion of the court thereon, and such report of, or extracts from, the evidence as the court may think fit :
- (e) The court shall have power to cancel or suspend the certificate of the person into whose conduct inquiry is made, if it finds that he is, by reason of incompetency, or of such gross negligence or misconduct as aforesaid, or of his having been convicted of an offence against this Act or any enactment repealed by this Act, unfit to continue to hold a certificate of competency :
- (f) The court may require the person into whose conduct inquiry is made to deliver up his certificate. The court shall hold a certificate so delivered until the conclusion of the investigation, and shall then either restore, cancel, or suspend the certificate according to its judgment on the case :
- (g) The court shall have, for the purpose of the inquiry, all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of an inspector under this Act, and in addition the following powers :—
 - (i.) power, by summons signed by the court, to require the attendance of all such persons as it thinks fit to summon and examine for the purpose of the inquiry, and for that purpose to require answers or returns to such inquiries as the court thinks fit to make ;
 - (ii.) power to require the production of all books, papers, and documents which the court considers important for the purpose of the inquiry :
- (h) A person attending as a witness before the court shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record ; and in case of dispute as to the amount to be allowed, the same

shall be referred by the court to a Master of the Supreme Court, who, on request signed by the court, shall ascertain and certify the proper amount of such expenses.

Section 11.
—

(2) If any person without reasonable excuse (proof whereof shall lie upon him) fails to comply with any summons or requisition of the court or impedes the court in the execution of its duty, he shall be guilty of an offence against this Act, and a person who is guilty of such offence shall, in addition to any other fines to which he is liable under this Act, be liable to a fine not exceeding one pound for every day during which the offence continues.

(3) The court may make such order as it thinks fit respecting the costs and expenses of the inquiry, and such order shall, on the application of any party entitled to the benefit thereof, be enforced by any court of summary jurisdiction as if such costs and expenses were a fine imposed by that court.

(4) The Secretary of State may, if he thinks fit, pay to the person or persons constituting the court, including any assessors, such remuneration as he may, with the consent of the Treasury, determine.

77.—(1) Where a majority, ascertained by ballot of two-thirds of the workmen employed in any mine to whom this section applies, represent to the owner of the mine that they desire that accommodation and facilities for taking baths and drying clothes should be provided at the mine and undertake to pay half the cost of the maintenance of the accommodation and facilities to be provided, the owner shall forthwith provide sufficient and suitable accommodation and facilities for such purposes as aforesaid :

Provision of washing and drying accommodation if workmen pay half cost.

Provided that the owner shall not be bound to provide any such accommodation and facilities, if the estimated total cost of maintenance exceeds threepence per week for each workman liable to contribute under this section.

(2) General regulations shall be made under this Act for determining what are sufficient and suitable accommodation and facilities for the purposes of this section, and any such regulations may make different requirements as respects different classes or descriptions of mines.

Regulations.

(3) For the purposes of this section, cost of maintenance includes interest on capital expenditure (not exceeding five per cent. per annum), and if any question arises as to the estimated cost of maintenance that question shall, in accordance with regulations as to procedure and costs to be made by the Secretary of State, be referred to an arbitrator to be agreed upon between the parties, or, in default of agreement as to an arbitrator, to a person appointed by the judge of county courts for the district, or in Scotland by the sheriff of the county, in which the mine is

Cost of maintenance, how calculated.

Section 77.

Contribution
of workmen
may be
deducted
from wages.

situate, and the decision of the arbitrator or of the person so appointed, as the case may be, shall be final.

(4) Where any such accommodation and facilities have been provided, every workman at the mine to whom this section applies (whether he was or was not employed at the mine at the time when the ballot of the workmen for the purposes of this section was taken) shall be liable to contribute a sum equal to one-half of the cost of maintenance (but not exceeding three halfpence per man per week), and the owner shall be entitled to recover such contributions from the workmen liable to contribute by deduction from their wages, notwithstanding the provisions of any acts relating to truck or any contract to the contrary :

Provided that the obligation to contribute shall not apply to any workman who is exempted on the ground of health in accordance with the regulations of the mine.

Committee
appointed by
owner and
workmen to
control.

(5) The management of the accommodation and facilities provided under this section shall be under the control of a committee to be established in accordance with the regulations of the mine, and consisting as to one half of members appointed by the owner of the mine and as to the other half of members appointed by the workmen liable to contribute under this section. The powers and duties of the committee in relation to the management of the accommodation and facilities shall be such as may be laid down by general regulations, and the owner of the mine shall not be liable to any penalty as for failure to comply with the provisions of this section in respect of any act performed by the committee in pursuance of their powers or of any failure by the committee to perform any of their duties.

Workmen to
whom section
applies.

(6) The workmen to whom this section applies are all workmen employed underground, and all workmen engaged on the surface in handling tubs, screening, sorting, or washing coal, or loading coal into wagons.

Excepted
mines.

(7) This section shall not apply to any mine where the total number of the workmen employed at the mine to whom this section applies is less than one hundred, or to any mine held by the owner under a lease of which the unexpired term is less than ten years or to any mine as respects which the Secretary of State is satisfied that it will be worked out within ten years.

Offence.

(8) If the owner of any mine fails to comply with the provisions of this section, he shall be guilty of an offence against this Act.

Cessation.

(9) Where a majority, ascertained by ballot of two-thirds of the workmen at a mine, represent to the owner of the mine that they desire that this section should cease to have effect as respects the mine, this section shall, unless the owner by notice affixed at the mine within one month after the receipt by him of the representa-

tion declares that he does not assent thereto, cease to have effect accordingly as from a date to be agreed upon between the owner and the workmen. Section 77.

(10) A fresh representation shall not be made as respects any mine either under subsection (1) or under subsection (9) of this section before the expiration of five years from the date of any previous representation made with respect to that mine. Representations.

4 & 5 GEO. V. c. 22.

1. Section eleven of the Coal Mines Act, 1911, which relates to inquiries into the conduct of holders of certificates of competency, shall apply to any owner or agent of a mine taking part in the technical management thereof who is alleged, by reason of incompetency or gross negligence or misconduct in such management, to be unfit to continue to hold a certificate of competency. Extension of s. 11 of 1 & 2 Geo.V. c. 50 to owners and agents.

COMMON LAW PROCEDURE ACT, 1860.

[23 & 24 VICT. c. 126.]

13. When goods or chattels have been seized in execution by a sheriff or other officer under process of the above-mentioned courts, and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt, the court or a judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt, or otherwise, as they or he shall think fit, and may direct the application of the proceeds of such sale, in such manner and upon such terms as to such court or judge may seem just. Court or judge may direct sale of goods seized in execution.

(Applied to county courts by Order in Council dated August 4th, 1879.)

[The above section, though repealed by the Statute Law Revision and Civil Procedure Act, 1883, was preserved as to county courts by sect. 7 of that Act, and is now preserved by sect. 209 of the Supreme Court of Judicature (Consolidation) Act, 1925.]

NOTE.—*Quære* whether in county courts the proceedings should not now be taken under sects. 156 and 157 of the County Courts Act, 1888, and Order XXVII., r. 13. The case of *Scarlett v. Hanson*, (1884) 12 Q. B. D. 213, decided under the above sect. 13, does not appear to be applicable to a seizure by a county court bailiff, having regard to the express provisions of sect. 156 of the County Courts Act, 1888, that the bailiff "shall sell," and to the general terms of Order XXVII., rr. 1 to 3.

COMMONS ACT, 1876.

[39 & 40 VICT. c. 56.]

By sect. 37 "a common" means any land subject to be inclosed under the Inclosure Acts, 1845 to 1868.

Jurisdiction, by sect. 30, in addition to any then existing remedy, was given to the county court within whose jurisdiction any common or part of

a common is situate to grant an injunction against any illegal inclosure, encroachment or nuisance, or to make an order for the removal or abatement thereof.

Practice is provided for by Order L. r. 9, p. 1796.

An appeal to the High Court of Justice is given to any person aggrieved by the making or the refusal of an injunction or order. No rules of court have been made as to an appeal, which may be had in the same manner as in a case within the court's ordinary jurisdiction (see sect. 120 of the County Courts Act, *ante*, p. 144).

Jurisdiction
of county
court in
respect of
illegal
inclosures.

30. A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure, encroachment, or nuisance, or to make an order for the removal or abatement of such inclosure, encroachment, or nuisance.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the High Court of Justice in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the seventeenth section of the Supreme Court of Judicature Act, 1875.

The appellate court may on hearing the appeal reverse, modify, or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure, encroachment, or nuisance, such order shall be suspended during such time as such appeal is pending.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment on any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

COUNTY COURT RULES. ORDER L. RULE 9.

Proceedings under section 30 of the Commons Act, 1876, shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand must be filed in every such action, stating concisely the relief or order which the plaintiff claims.

Proceedings
under 39 & 40
Vict. c. 56.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

[8 Edw. VII. c. 69.]

EDITOR'S NOTE.—Numerous important amendments to the Companies (Consolidation) Act, 1908 are contained in the Companies Act, 1923 (18 & 19 Geo. V. c. 45). The new Act, with the exception of section 92, which places restrictions on offering of shares for subscription or sale, does not, however, come into operation until a day to be appointed by Order in Council and different days may be appointed for different purposes and for different provisions of the Act. At the time of going to press no Order in Council has been issued and the new Act cannot therefore be dealt with in this edition.

Jurisdiction.—Where the share capital of a company paid up, or credited as paid up, does not exceed 10,000*l.*, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, *i.e.*, a county court having bankruptcy jurisdiction, a petition to wind up the company shall be presented to that county court (sect. 131, sub-sect. 3).

"The Court."—By sect. 131, sub-sect. 5, the Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and has in fact by order dated May 19th, 1899 (*post*, p. 1975) excluded any county court not, for the time being, having bankruptcy jurisdiction from having jurisdiction under this Act, the district of such court so excluded from jurisdiction being attached to a county court having bankruptcy jurisdiction, hence "the court" (sect. 285) is the county court having bankruptcy jurisdiction within the district within which the registered office of the company is situated. The more important of the county courts have the bankruptcy jurisdiction within their respective districts.

Stannaries Court.—The county courts in Cornwall to which the jurisdiction of the Stannaries court has been transferred, are not, in the case of mining companies *carrying on business solely in Cornwall*, confined to companies whose capital does not exceed 10,000*l.*, but have exclusive jurisdiction whatever the amount of the capital (*Dunbar v. Harvey*, (1913) (C. A.) 2 Ch. 530; 82 L. J. Ch. 452; or wherever the registered office of the company is situate (sect. 131, sub-sect. 4), even when the company's powers were not confined to working mines in Cornwall (*Radium Ore Mines, Ltd.*, (1914) 110 L. T. 57).

Powers of the Court.—The court has all the powers of the High Court (*F. & E. Stanton, Ltd.*, (1928) 1 K. B. 464) and is not subject to prohibition when exercising such powers sect. 131, sub-sect. 6; *In re The New Par Consols, Ltd.* (No. 2), (1898) 1 Q. B. 669 (C. A.); 67 L. J. Q. B. 598; but has no jurisdiction to decide in the winding-up questions of title to property between a company and a stranger (*Re Ilkeley Hotel Co.*, (1893) 1 Q. B. 248; 62 L. J. Q. B. 333); the court must enforce its judgment by means of its own officers (*Re Bassett's Plaster Co.*, (1894) 2 Q. B. 96; 63 L. J. Q. B. 518).

Practice.—The Companies (Winding-up) Rules, 1909, govern the procedure in a winding-up by the court (see *post*, p. 1877); for the title of the proceedings and issue of summonses see Rules 11 *et seq.*; for service and execution of process see Rules 22 *et seq.*; for the form of a petition, the

advertisement, service, and verification thereof see Rules 25 *et seq.*; for appointment of official receiver as provisional liquidator see Rule 31; for notice by persons who intend to appear, affidavits in opposition and reply, and for hearing of the petition see Rules 32—35; for the notice of the making of an order to the official receiver, for the drawing up and settling of the order, and for the transmission and advertisement of the order see Rules 37 *et seq.* In matters other than winding-up the practice is governed by Ord. XLIA., *post*, p. 1876

Transfer.]—The powers of transfer are very large, from the county court to the High Court, and from one county court to another county court having jurisdiction in the winding-up of a company (see Rules 42—47).

Appeal to High Court.]—It is provided by sect. 181 of the Act that subject to rules of court, an appeal lies upon a question of law from any order or decision in the winding-up of a company in the same manner and under the same conditions as in ordinary cases. The appeal is heard by a Divisional Court of the Chancery Division. Rules 7, 8, 10, 11, 12, 14, 16 and 17 of Order LIX. apply to such appeals, the words “office of the registrar companies winding up” being deemed to be substituted in Rule 11 for the words “Crown Office Department of the Central Office” (R.S.C. Order LVC.). If any question arises in any winding-up proceeding, which all the parties to the proceeding, or one of them and the judge, wish to have determined in the first instance in the High Court, the judge must state the facts in the form of a special case for the opinion of the High Court. The case and such proceedings as may be required, must then be transmitted to the High Court (sect. 133, sub-sect. 3).

The registrar’s taxation of costs may, at the instance of the Board of Trade, be reviewed by a taxing-officer of the High Court (Rule 185).

Appeal to County Court from Official Receiver.]—In various cases mentioned in the Act and rules, an appeal is allowed to the court against the act or decision of the official receiver. Where the official receiver is acting otherwise than as liquidator the appeal must be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced or made (Rule 206).

No costs should be given against an official receiver personally, unless he has been guilty of misconduct; such an order is subject to an appeal to the divisional court (see *In re Raynes Park Golf Club, Ex parte Official Receiver*, (1899) 1 Q. B. 961; 68 L. J. Q. B. 529).

Matters to be heard in Court and Chambers.]—Rule 6 (1) provides what matters are to be heard in county courts in court, and Rule 6 (2) provides that any other matter or application may be heard and determined in chambers.

Public Examinations.]—An order for a public examination may be made *ex parte* (*Re Trust, etc., Corporation of South Africa* (C. A.), (1892) 3 Ch. 332; 62 L. J. Ch. 22); but not until the official receiver has made a report stating that in his opinion a fraud has been committed by some person in the promotion or formation of the company, or by some director or officer of the company in relation to the company since its formation, and the judge has, after consideration of the report, directed the attendance of such person (sect. 175).

The rules (see r. 62 and Form 31) provide that the examination shall be taken before the judge.

On any proceedings subsequently instituted under sect. 215, the verified notes of the examination are subject to all just exceptions admissible against those against whom the application is made, who, under sect. 175 and the judge’s order, could take part in the examination if fifteen days’ notice at least of the intention to use the notes be given before day of hearing. Every person against whom the application is made, shall be at liberty to cross-examine or re-examine the person whose examination is read (see Rule 70).

County Court Judges as Commissioners.]—County court judges who sit at places more than twenty miles from the General Post Office are commissioners for taking evidence in any winding-up (sect. 226).

Unregistered Companies.]—Part VIII., beginning at sect. 267, deals with the winding-up of unregistered companies.

Limited Partnerships established under the 7 Edw. VII. c. 24, are now treated as ordinary partnerships and fall under the Bankruptcy Act. The Limited Partnership (Winding-up) Rules, made under sect. 268 (1) (VII.) of the Companies (Consolidation) Act, 1908, are now obsolete.

Costs.]—In a winding-up by the county court, costs are allowed on the lower scale in Appendix N (see Annual Practice Supreme Court, Appendix N); taxation must be by the registrar in person (Rule 184).

Court Fees.]—See *post*, p. 1974.

PART I.

CONSTITUTION AND INCORPORATION.

9.—(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its main purpose by new or improved means; or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company (a); or

NOTE (a).—See *John Brown & Co., Ltd. v. Tredegar Iron and Coal Co., Ltd.*, (1915) 84 L. J. Ch. 245.

- (e) to restrict or abandon any of the objects specified in the memorandum (b).

NOTE (b).—As to true test of contract *ultra vires*, see *Dundee Harbour Trustees v. Nicol*, (1915) A. C. 550; 84 L. J. P. C. 74.

- (2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.

- (3) Before confirming the alteration the court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

- (b) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court:

Provided that the court may, in the case of any person or class,

Section 2. for special reasons, dispense with the notice required by this section.

See *In re Hearts of Oak Life and General Assurance Co., Limited and Reduced*, (1920) 1 Ch. 544.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.

(6) An office copy of the order confirming the alteration together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

* * * * *

PART II.

DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Inspection of register of members. **30.**—(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may

Section 30.

impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and, as respects companies registered in England or Ireland, any judge of the High Court, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

* * * * *

32.—(1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted (a) from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

Power of
court to
rectify
register.

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

See *Keith, Prowse & Co., Ltd., In re*, (1918) 87 L. J. Ch. 290.

(2) The application may be made, as respects companies registered in England or Ireland, by motion in the High Court, or by application to a judge of the High Court sitting in chambers, or by application to the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, and, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said courts may respectively direct; and the court may either refuse the application, or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved.

(a) See *Bede Steam Shipping Co., In re*, (1916) 85 L. J. Ch. 612. Affirmed on appeal. (1917) 86 L. J. Ch. 65; *In re Olympic Fire and General Reinsurance Co., Ltd. (Poles's Case)*, (1920) 2 Ch. 341.

Section 32.

(3) On any application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

See *Copal Varnish Co., Ltd., In re*, (1918) 87 L. J. Ch. 132.

* * * * *

Reorganisa-
tion of share
capital.

45.—(1) A company limited by shares may, by special resolution confirmed by an order of the court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the court may allow, and the resolution shall not take effect until such a copy has been so filed.

See *Nordberg, Ltd., In re*, (1915) 84 L. J. Ch. 830.

Reduction of Share Capital.

Special
resolution
for reduction
of share
capital.

46.—(1) Subject to confirmation by the court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

- (a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, Section 46.

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

See *Meux Brewery Co., In re*, (1919) 88 L. J. Ch. 14.

47. Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction. Application to court for confirming order.

48. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company : Addition to name of company of "and reduced."

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

49.—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction. Objections by creditors and settlement of list of objecting creditors.

(2) The court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that

Section 49. creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount ; (that is to say,)—

- (i.) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;
- (ii.) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

Order confirming deduction.

50. The court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

As to what is sufficient evidence of consent by debenture holders, see *Hydraulic Power and Smelting Co. Ltd., In re*, (1914) 2 Ch. 187; 83 L. J. Ch. 753.

Registration of order and minute of reduction.

51.—(1) The registrar of companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Minute to form part of memorandum.

52.—(1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein ; and must be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one

pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty. Section 52.

53. A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute: Liability of members in respect of reduced shares.

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

(i.) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii.) if the company is wound up, the court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

Nothing in this section shall affect the rights of the contributories among themselves.

54. If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour. Penalty on concealment of name of creditor.

55. In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information in regard thereto as the court may think expedient with a view to give proper information to the public, and, if the court thinks fit, the causes which led to the reduction. Publication of reasons for reduction.

Section 56.
 Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

56. A company limited by guarantee and registered on or after the first day of January nineteen hundred and one, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

* * * * *

PART III.

MANAGEMENT AND ADMINISTRATION.

Definitions of extraordinary and special resolution.

69.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given (a).

NOTE (a).—See *MacConnell v. E. Prill & Co.*, (1916) 2 Ch. 57; 85 L. J. Ch. 674.

(2) A resolution shall be a special resolution when it has been—

(a) passed in manner required for the passing of an extraordinary resolution; and

(b) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

See, where for *bonâ fide* reasons the meeting called within time is adjourned, *Neuschild v. British Equatorial Oil Co.*, (1925) 1 Ch. 346.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the

number of votes to which each member is entitled by the articles of the company. Section 69.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

Held, that this notice could be waived where there were only two shareholders who were both in fact present at the meeting (*Oxley Motor Co., In re*, (1921) 3 K. B. 22; 90 L. J. K. B. 1145).

70.—(1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same. Registration and copies of special resolutions.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.

(4) If the company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

* * * * *

101.—(1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe. Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

Section 101.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in England or Ireland, any judge of the High Court sitting in chambers, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register.

Right of
debenture
holders to
inspect the
register of
debenture
holders and
to have
copies of
trust deed.

102.—(1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

See *Lemon v. Austin Friars Investment Trust*, (1926) 95 L. J. K. B. 97.

* * * * *

Service and Authentication of Documents.

Service of
documents
on company.

116. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

See Rule 23 (*post*).

Authentica-
tion of
documents.

117. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

* * * * *

*Power to Compromise.***Section 120.**

120.—(1) Where a compromise or arrangement (a) is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company of or any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

Power to
compromise
with creditors
and members.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) In this section the expression “company” means any company liable to be wound up under this Act.

(a) As to what may be done under the words “Compromise or arrangement,” see *In re Guardian Assurance Co.*, (1917) 86 L. J. Ch. 214.

If proper provision is made for dissentient members, a reconstruction of an existing company by winding up and sale of the entire assets for shares in new company may be effected under this section (*In re Sandwell Park Colliery Co., Ltd.*, (1914) 1 Ch. 589).

* * * * *

PART IV.**WINDING UP.***Preliminary.*

122.—(1) The winding up of a company (a) may be either—

- (i.) by the court; or
- (ii.) voluntary; or
- (iii.) subject to the supervision of the court.

Modes of
winding up

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears to the winding up of a company in any of these modes.

See *Amalgamated Properties of Rhodesia*, (1917) 86 L. J. Ch. 530, also *Cedes Electric Traction Co.*, (1918) 87 L. J. Ch. 9.

(a) As to winding up an assurance company, see *Assurance Companies Act, 1909*, sect. 15.

Section 123.

Contributories.

Liability as
contribu-
tories of
present and
past mem-
bers.

123.—(1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say) :—

- (i.) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up :
- (ii.) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member :
- (iii.) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act :

NOTE.—This applies to past members of a company limited by guarantee (*In re Premier Underwriting Association, Ltd.* (No. 1), (1913) 2 Ch. 29 ; 82 L. J. Ch. 383).

- (iv.) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member :
 - (v.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up :
 - (vi.) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract :
 - (vii.) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.
- (2) In the winding up of a limited company, any director, or manager, whether past or present, whose liability is, in pursuance

of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: Provided that— Section 123.

- (i.) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up:
- (ii.) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:
- (iii.) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

124. The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory. Definition of contributory.

125. The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability. Nature of liability of contributory.

126.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly. Contributories in case of death of member.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for

Section 128. administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereof of the money due.

Contribu-
tories in
case of
bankruptcy
of member.

127. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

- (1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as
to married
women.

45 & 46 Vict.
c. 15.
44 & 45 Vict.
c. 21.

128.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

Winding up by Court.

Circum-
stances in
which com-
pany may be
wound up by
court.

129. A company may be wound up by the court—

- (i.) if the company has by special resolution resolved that the company be wound up by the court;
- (ii.) if default is made in filing the statutory report or in holding the statutory meeting;
- (iii.) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (iv.) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;
- (v.) if the company is unable to pay its debts;
- (vi.) if the court is of opinion that it is just and equitable that the company should be wound up (a).

(a) It may be "just and equitable" though opposed by a majority both in number and value of the creditors (*Clandown Colliery Co., In re.*

(1915) 1 Ch. 369; 84 L. J. Ch. 420). See also *Yenidje Tobacco Co., Ltd.*, *In re*, (1917) 86 L. J. Ch. 1. *American Leather Co., Ltd.*, *In re*, (1918) 87 L. J. Ch. 493.

Section 129
Note.

- 130.** A company shall be deemed to be unable to pay its debts—
- (i.) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
 - (ii.) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
 - (iii.) if, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made; or
 - (iv.) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Company
when
deemed
unable to pay
its debts.

131.—(1) The courts having jurisdiction to wind up companies registered in England shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, and the county courts.

Jurisdiction
to wind up
companies
in England.

(2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.

(4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for

Section 134. such working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

See Stannaries Acts, p. 817.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890.

53 & 54 Vict.
c. 63.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

59 & 60 Vict.
c. 45.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

See *F. & E. Stanton, Ltd.*, (1928), 1 K. B. 464; 97 L. J. K. B. 130.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

* * * * *

Transfer of
proceedings.

133.—(1) The winding up of a company by the court in England or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding-up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Section 133.

* * * * *

137.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately: Provided that

Provisions as to applications for winding up.

(a) A contributory shall not be entitled to present a petition for winding up a company unless—

(i.) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii.) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and

(b) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up

Section 137. or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

See *Steel Ring Co., In re, Petition of F. T. Lord*, (1921) 90 L. J. K. B. 116.

Effect of winding-up order.

138. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement of winding up by court.

139. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

See *Havana Exploration Co., In re*, (1916) 85 L. J. Ch. 174.

Power to stay or restrain proceedings against company.

140. At any time after the presentation of a petition for a winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may—

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and
- (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding:

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Powers of court on hearing petition.

141.—(1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

142. When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose. **Section 142.**
Actions stayed on winding-up order.

143. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company. Copy of order to be forwarded to registrar.

144. The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit. Power of court to stay winding up.

145. The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence. Court may have regard to wishes of creditors or contributories.

Official Receiver.

146.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term of “official receiver” shall mean the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade. Definition of official receiver.

(2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

147.—(1) Where the court in England has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require. Statement of company's affairs to be submitted to official receiver.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having

Section 147. taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Report by
official
receiver.

148.—(1) Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Liquidators.

Section 149.

149.—(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators. Appoint-
ment, re-
muneration
and title of
liquidators.

(2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.

(3) Where the proceedings are in England—

(a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed :

(b) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such :

(c) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.

(6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court. (a)

(a) As to what is sufficient cause see *Rubber and Produce Investment Trust, In re*, (1915) 1 Ch. 382; 84 L. J. Ch. 534.

(7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.

(8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

Section 149.

(9) A liquidator shall be described as follows (that is to say) :—

(a) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and

(b) in a winding up in Scotland or Ireland, by the style of the official liquidator,

of the particular company in respect of which he is appointed, and not by his individual name.

(10) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

150.—(1) In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

Powers of liquidator.

151.—(i) The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—

(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company :

(b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof :

(c) in the case of a winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself ; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction (a) :

(a) See *Consolidated Diesel Engine Co., In re*, (1915) 1 Ch. 192 ; 84 L. J. Ch. 325.

(d) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.

(2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—

(a) To sell the real and personal property, and things in action

of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels : Section 151.

(b) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal :

(c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors :

(d) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business :

(e) To raise on the security of the assets of the company any money requisite :

(f) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :

(g) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.

(5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

(6) In a winding up by the court in Scotland the liquidator

Section 151. shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate.

Meetings of
creditors
and con-
tributories
in English
winding up.

152.—(1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

- (a) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and
- (b) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.

(3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

Liquidator
to give
information
to official
receiver.

153. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Payments of
liquidator
in English
winding up
into bank.

154.—(1) Every liquidator of a company which is being wound up by the court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten

Section 154.

days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

155.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator. Audit of liquidator's accounts in English winding up.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

156. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books. Books to be kept by liquidator in English winding up.

157.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised Release of liquidators in England.

Section 157. without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Exercise and
control of
liquidator's
powers in
England.

158.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

NOTE.—See as to employment of solicitor when the committee of inspection objects, *Consolidated Diesel Engine Co.*, (1915) 1 Ch. 192; 84 L. J. Ch. 325.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up. Section 158.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

159.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient. Control of Board of Trade over liquidators in England.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Committee of Inspection, Special Manager, Receiver.

160.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court. Committee of inspection in English winding up.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

Section 160.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

Power in
England to
appoint
special
manager.

161.—(1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power in
England to
appoint
official
receiver
as receiver
for debenture
holders or
creditors.
Settlement
list of

162. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

Ordinary Powers of Court.

163.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the

register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities. **Section 163.**
 contributories
 and applica-
 tion of assets.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

164. The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *primâ facie* entitled. **Power to require delivery of property.**

165.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act. **Power to order payment of debts by contributory.**

(2) The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

166.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves. **Power of court to make calls.**

Section 166. (2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Power to order payment into bank.

167.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

Order on contributory conclusive evidence.

168.—(1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Power to exclude creditors not proving in time.

169. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories.

170. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Power to order costs.

171. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Dissolution of company.

172.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default. Section 172.

173. General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of— Delegation to liquidator of certain powers of court in England.

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories;
- (b) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
- (c) requiring delivery of property or documents to the liquidator;
- (d) making calls;
- (e) fixing a time within which debts and claims must be proved:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Extraordinary Powers of Court.

174.—(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs, or property of the company (a). Power to summon person suspected of having property of company.

(a) This power should only be exercised in very exceptional circumstances (*In re Property Insurance Co.*, (1914) 1 Ch. 775; 83 L. J. Ch. 525).

(2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

Section 174.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

Power in
England to
order public
examination
of promoters,
directors, etc.

175.—(1) When an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributor, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time. Section 175.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a palatine court, before a registrar of that court, and the powers of the court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

176. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him, and them, to be safely kept until such time as the court may order. Power to arrest absconding contributory.

177. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums. Powers of court cumulative.

Enforcement of and Appeal from Orders.

178.—(1) Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein. Power to enforce orders.

(2) For the purposes of this part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

* * * * *

180.—(1) Any order made by the Court in England for or in the course of winding up a company shall be enforced in Scotland and Enforcement of order

Section 180. Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts.

throughout
United
Kingdom.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

Appeals
from order.

181.—(1) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the bills in vacation, that—

- (i.) No order or judgment under the provisions of this Act specified in the first part of the fourth schedule to this Act shall be subject to review, reduction, suspension, or stay of execution; and
- (ii.) Every other order or judgment (except as hereinafter mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment:

Provided that orders or judgments under the provisions of this Act specified in the second part of the fourth schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

- (3) Provided also, in regard to orders or judgments pronounced

in Scotland by a permanent Lord Ordinary to whom a winding up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment. Section 181.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

Voluntary Winding Up.

182. A company may be wound up voluntarily—

- (1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily. Circumstances in which company may be wound up voluntarily.
- (2) If the company resolves by special resolution that the company be wound up voluntarily :
- (3) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

In re Oxted Motor Co., Ltd., (1921) 3 K. B. 32.

183. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up. Commencement of voluntary winding up.

See *Havana Exploration Co., In re*, (1916) 85 L. J. Ch. 174.

184. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof : Effect of voluntary winding up on status of company.

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

185. When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the *Gazette*. Notice of resolution to wind up voluntarily.

Section 186.

Consequences
of voluntary
winding up.

186. The following consequences shall ensue on the voluntary winding up of a company :—

- (i.) The property of the company shall be applied in satisfaction of its liabilities (a) *pari passu* and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company :

NOTE.—(a) *I.e.*, liabilities existing at the time of the passing of the resolution (*General Rolling Stock Co., In re, Joint Stock Discount Co.'s Claim*, (1872) L. R. 7 Ch. 646; 41 L. J. Ch. 732). As to debts already barred by the Statutes of Limitation, see *Fleetwood Electric Syndicate Co., In re*, (1915) 1 Ch. 486; 84 L. J. Ch. 374. As to Crown debts see *Food Controller and Others v. Cork*, (1923) A. C. 647; 92 L. J. Ch. 587.

See as to general rule that execution must be stayed against a company in liquidation, *Anglo-Baltic and Mediterranean Bank v. Barber*, (1924) 93 L. J. K. B. 1135.

- (ii.) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them :
- iii.) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof :
- (iv.) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court :
- (v.) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves :
- (vi.) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories :
- (vii.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :
- (viii.) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator :
- (ix.) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

Notice by
liquidator
of his

187.—(1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar of

companies a notice of his appointment in the form prescribed by **Section 187.** the Board of Trade.

(2) If the liquidator fails to comply with the requirements of **appoint-** this section he shall be liable to a fine not exceeding five pounds for **ment.** every day during which the default continues.

188.—(1) Every liquidator appointed by a company in a **Rights of** voluntary winding up shall, within seven days from his appoint- **creditors in** ment, send notice by post to all persons who appear to him to be **a voluntary** creditors of the company that a meeting of the creditors of the **winding up.** company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the *Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company (a), or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

NOTE.—(a) See *In re Karamelli & Barnett, Ltd.*, (1917) 86 L. J. Ch. 207.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the court upon an application under this section.

(5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

189.—(1) If a vacancy occurs by death, resignation, or other- **Power to fill** wise in the office of liquidator appointed by the company in a **vacancy in** **office of** **liquidator.**

Section 189. voluntary winding up, the company in general meeting may subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Delegation
of authority
to appoint
liquidators.

190.—(1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Arrange-
ment when
binding on
creditors.

191.—(1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

Power of
liquidator
to accept
shares, etc.,
as considera-
tion for sale
of property
of company.

192.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like

interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company. Section 192.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

NOTE.—The notice must expressly dissent and also expressly give the liquidator the option mentioned (*In re Demerara Rubber Co.*, (1913) 1 Ch. 331; 82 L. J. Ch. 220). “Member” includes executors of a deceased member (*Llewellyn v. Kasintoe Rubber Estates, Ltd.*, (1915) 2 Ch. 670; 84 L. J. Ch. 70).

(4) If the liquidator elects to purchase the member’s interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, 8 & 9 Vict. c. 16. in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; 8 & 9 Vict. c. 17. and in the construction of those provisions this Act shall be deemed to be the special Act, and “the company” shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

193.—(1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or Power to apply to court.

Section 193. any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

NOTE.—The costs of unsuccessful litigation are payable to the party entitled out of the assets of company in priority to the costs of the liquidation (*In re Pacific Coast Syndicate, Ltd.*, (1913) 2 Ch. 26; 82 L. J. 404).

Power of liquidator to call general meeting.

194.—(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

Final meeting and dissolution

195.—(1) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the *Gazette* specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues. **Section 195.**

196. All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims. **Costs of voluntary liquidation.**

197. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up. **Saving for rights of creditors and contributories.**

198. Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up. **Power of court to adopt proceedings of voluntary winding up.**

Winding up subject to Supervision of Court.

199. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just. **Power to order winding up subject to supervision.**

200. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court. **Effect of petition for winding up subject to supervision.**

201. The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence. **Court may have regard to wishes of creditors and contributories.**

202.—(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator. **Power for court to appoint or remove liquidators.**

Section 202.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of
supervision
order.

203.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except sub-section (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding up by the court.

* * * * *

Supplemental Provisions.

Avoidance
of transfers,
etc., after
commence-
ment of
winding up.

205.—(1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

See *In re Park Ward & Co.* (1926) 1 Ch. 828; 95 L. J. Ch. 584.

206. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value. **Section 206.**
Debts of all descriptions to be proved.

207. In the winding up of an insolvent company registered in England or Ireland the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the case may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section. Application of bankruptcy rules in winding up of insolvent English and Irish companies.

* * * * *

209.—(1) In a winding up there shall be paid in priority to all other debts— Preferential payments.

- (a) All parochial or other local rates (a) due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

NOTE.—(a) See *Westminster Corporation and United Travellers' Club v. Chapman*, (1916) 85 L. J. Ch. 334.

See *National Provincial Bank of England v. United Electric Theatres, Ltd.*, (1916) 1 Ch. 132. See as to Crown debts, *Food Controller and Others v. Cork*, (1923) A. C. 647; 92 L. J. Ch. 587.

- (b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and

See *In re Havana Exploration Co., Ltd., Nathan's claim*, (1916) 1 Ch. 8; *Ashley v. Smith, Ltd.*, (1919) 88 L. J. Ch. 6.

- (c) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a con-

Section 209.

tract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date ; and

- (d) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (*not exceeding in any individual case one hundred pounds (a)*) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act.

6 Edw. VII.
c. 58.

(a) Words in italics repealed by Workmen's Compensation Act, 1923, Sched. II. See sect. 7 of the Workmen's Compensation Act, 1925.

- (2) The foregoing debts shall—

- (a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions ; and

- (b) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

See *Westminster Corporation and United Travellers' Club Co., Ltd. v. Chapman*, (1916) 1 Ch. 161 ; 85 L. J. Ch. 334.

NOTE.—In addition to the preferential debts set out in this section, all contributions under the National Health Insurance Act, 1924, payable by the company in respect of employed contributors during the twelve months before the commencement of the winding-up or the winding-up order are included among the debts which are to be paid in priority to all other debts (National Health Insurance Act, 1924, sect. 106, as amended by National Health Insurance Act, 1928).

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

- (5) The date hereinbefore in this section referred to is—

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
- (b) in any other case, the date of the commencement of the winding up.

Section 209.

210.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

Fraudulent preference.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

See *G. Stanley & Co., In re*, (1925) 94 L. J. K. B. 187; *In re a Debtor*, (82 of 1926) (1927) 1 Ch. 410.

211. Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Avoidance of certain attachments, etc. in case of company registered in England or Ireland. Effect of on floating charge.

212. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time (a) of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

See *Gregory, Love & Co., In re*; *Francis v. The Company*, (1916) 1 Ch. 203; 85 L. J. Ch. 281.

(a) Past advances are not "Cash paid to the company at the time" See *Hayman, Christy and Lilley, Ltd., In re*; *Christy v. The Company*, (1917) 86 L. J. Ch. 255; 33 T. L. R. 167.

* * * * *

214.—(1) The liquidator may, with the sanction following (that is to say)—

General scheme of liquidation may be sanctioned.

- (a) in the case of a winding up by the court in England with the sanction either of the court or of the committee of inspection;
- (b) in the case of a winding up by the court in Scotland or Ire-

Section 214.

land, and in the case of any winding up subject to supervision, with the sanction of the court; and

(c) in the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,

do the following things or any of them :—

(i.) Pay any classes of creditors in full ;

(ii.) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable ;

(iii.) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Power of
court to
assess
damages
against
delinquent
directors,
etc

215.—(1) Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (g) of sub-section (1) of section four of the Bankruptcy Act, 1883. Section 215.
46 & 47 Vict.
c. 52.

(4) So much of this section as refers to promoters, and to property of a company other than money, shall not apply to a winding up in Scotland or Ireland.

As to the general meaning and scope of this section, and the liability of directors and officials under it, see *City Equitable Fire Insurance Co., In re*, (1925) 1 Ch. 407; 94 L. J. Ch. 445.

216. If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanor, and be liable to imprisonment for any term not exceeding two years, with or without hard labour. Penalty for
falsification
of books.

217.—(1) If it appears to the court in the course of a winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company. Prosecution
of delinquent
directors,
etc.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

218. Repealed. See Perjury Act, 1911 (1 & 2 Geo. 5, c. 6).

219.—(1) Where by this Act the court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court. Meetings to
ascertain
wishes of
creditors or
contribu-
tories.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

Section 219.

Books of
company to
be evidence.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

220. Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Inspection
of books.

221. After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Disposal of
books and
papers of
company.

222.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say) :—

- (a) In the case of a winding up by or subject to the supervision of the court in such way as the court directs ;
- (b) In the case of a voluntary winding up in such way as the company by extraordinary resolution directs.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Power of
court to
declare dis-
solution of
company
void.

223.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

See *Morris v. Hurris*, (1927) A. C. 252.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Information
as to
pending
liquidations
in England.

224.—(1) Where a company is being wound up in England, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the pre-

scribed particulars with respect to the proceedings in and position of the liquidation. Section 224.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(5) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section. 46 & 47 Vict. c. 52.

(6) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(7) Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

225. In all proceedings under this part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stannaries jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Session, or court exercising the stannaries jurisdiction, appended to or

Judicial
notice of
signature of
officers.

Section 225. impressed on any document made, issued, or signed under the provisions of this part of this Act, or any official copy thereof.

Special
commission
for receiving
evidence.

226.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the judge exercising the bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in any part of the United Kingdom, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding-up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of a county court, judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may
order
examination
of persons
in Scotland.

227.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(2) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(3) If any person so summoned fails to appear at the time and

place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland. Section 227.

(4) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(5) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

228.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this part of this Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions. Affidavits,
etc. in
United
Kingdom
and
colonies.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this part of this Act.

229.—(1) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connection with the winding up of companies in England shall be paid to that account. Companies
Liquidation
Account
defined.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

230.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account. Investment
of surplus
funds on
general
account.

Section 230.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

Separate
accounts of
particular
estates.

231.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

* * * * *

Returns by
officers in
English
winding up.

235. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

Proceedings
of Board of
Trade.

236.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act

and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown. Section 236.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Rules and Fees.

237.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the county palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge," and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

(5) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890, which are in force at the commencement of this Act. 53 & 54 Vict.
c. 63.

Section 238.

Powers to
make rules
of procedure.

238.—(1) Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made—

- (a) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England :
- (b) As regards the Court of Session, by act of sederunt :
- (c) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland :
- (d) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.

25 & 26 Vict.
c. 89.

(2) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Act, 1862, or any Act amending the same, which are in force at the commencement of this Act.

Special Provisions as to Stannaries.

Attachment
of debt due
to contrib-
utory on
winding up
in stannaries
court.

239. When several companies are in course of liquidation by or under the superintendence of the court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory ; and the amount thereof shall be applied to such payment in due course :

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person.

Preferential
payments in
stannaries
cases.

240. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments the following modifications shall be made :—

- (1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only,

instead of four months, and shall not extend to the principal agent, manager, purser, or secretary : Section 240.

- (2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts :
- (3) Wages of any miner, artizan, or labourer unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts (*not exceeding in any individual case one hundred pounds (a)*) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefor accrued before the commencement of the winding up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding up by the court) such costs of and incidental to the making of the winding-up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary, and, subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof ; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

(a) Words in italics repealed by Workmen's Compensation Act, 1923. See sect. 7 (4) of Workmen's Compensation Act, 1925.

241.—(1) On the winding up of a company within the stan-
naries, contributions of the miners, artizans, or labourers for the
purpose of a mine club, or accident, or sick, or benefit fund shall
not be deemed to be, or be applied as, part of the assets of the
company in liquidation of the debts of the company or otherwise,
but shall be accounted for by the pursuer or any other person

Provisions
as to mine
club funds.

Section 241. in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

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Registrar
may strike
defunct
company off
register.

242.—(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the registrar of companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

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PART VI.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

Application
of Act to
companies
formed
under former
Companies
Acts.

245. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company

other than a limited company, as if the company had been formed and registered under this Act as an unlimited company : **Section 245.**

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

246. This Act shall apply to every company registered but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act : **Application of Act to companies registered under former Companies Acts.**

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

247. This Act shall apply to every unlimited company registered in pursuance of the Companies Act, 1879, as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company : **Application of Act to companies re-registered under Companies Act, 1879.**

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the Companies Act, 1879. **42 & 43 Vict. c. 76.**

248. A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct. **Mode of transferring shares.**

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PART VII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

250. For the purposes of this part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons ; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares. **Definition of joint stock company.**

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Section 260.

Vesting of
property on
registration.

260. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving for
existing
liabilities.

261. Registration of a company in pursuance of this part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation
of existing
actions.

262. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

Effect of
registration
under Act.

263. When a company is registered in pursuance of this part of this Act—

- (i.) All provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles:
- (ii.) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—
 - (a) The regulations in Table A in the first schedule to this Act shall not apply unless adopted by special resolution;

(b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered ;

Section 263.
—

(c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company ;

(d) Subject to the provisions of this section the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company ;

(e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company ;

(f) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability ; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply :

(iii.) The provisions of this Act with respect to—

(a) the registration of an unlimited company as limited ;

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

(c) the power of a limited company to determine

Section 263.

that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company :

- (iv.) Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act :
- (v.) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

264.—(1) Subject to the provisions of this section, a company registered in pursuance of this part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications :—

- (a) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles ; and
- (b) On the registration of the alteration being certified by the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression “ deed of settlement ”

includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent. Section 264.

Braintree and Bocking Gas Co., In re, (1920) 89 L. J. Ch. 624.

265. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company. Power of court to stay or restrain proceedings.

266. Where an order has been made for winding up a company registered in pursuance of this part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose. Action stayed on winding-up order.

PART VIII.

WINDING UP OF UNREGISTERED COMPANIES.

267. For the purposes of this part of this Act the expression “unregistered company” shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863, and any limited partnership. Meaning of unregistered company.
13 & 14 Vict. c. 83.
32 & 33 Vict. c. 114.
26 & 27 Vict. c. 87.

Court has jurisdiction to wind up a friendly society which has not been registered under the Friendly Societies Acts or at all (*In re Victoria Society, Knottingley*, (1913) 1 Ch. 167; 82 L. J. Ch. 176).

268.—(1) Subject to the provisions of this part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:— Winding up of unregistered companies.

- (i.) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of

Section 268.

business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company:

(ii.) No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

(iii.) The circumstances in which an unregistered company may be wound up are as follows (that is to say):—

(a) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) If the company is unable to pay its debts;

(c) If the court is of opinion that it is just and equitable that the company should be wound up:

(iv.) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts:—

(a) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(b) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid,

secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same ;

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(c) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied ;

(d) If in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made ;

(e) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts :

- (v.) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867 :

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 36 & 37 Vict. 1873, and, as respects Ireland, under the authority of c. 66. the Supreme Court of Judicature (Ireland) Act, 1877, 40 & 41 Vict. the jurisdiction of the High Court in England or c. 57. Ireland under this provision shall be exercised by the Chancery Division of that court :

- (vi.) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company :
- (vii.) [*Repealed as to England, 3 & 4 Geo. V., c. 34, s. 24 (2).*]

Section 268.

(2) Nothing in this part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

See note to sect. 267.

Contribu-
tories in
winding up
of unregis-
tered com-
pany.

269.—(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid :

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

Power of
court to stay
or restrain
proceedings.

270. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions
stayed on
winding-up
order.

271. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Directions
as to pro-
perty in
certain
cases.

272. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent

order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property. Section 272.

273. The provisions of this part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions herein-before in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this part of this Act. Provisions of part of Act cumulative.

* * * * *

PART X.

SUPPLEMENTAL.

Legal Proceedings, Offences, etc.

276.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts. Prosecution of offences.

277. The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer. Applications of fines.

278. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient Costs in actions by certain limited companies.

Section 278. security to be given for those costs, and may stay all proceedings until the security is given.

This power may be exercised by a county court judge in the case of a remitted action (*Plasycod Collieries Co. v. Partridge*, (1911) 104 L. T. 807).

Power of court to grant relief in certain cases.

279. If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

This may include a transaction wholly *ultra vires* the powers of the company if the director, acting on counsel's opinion, honestly and reasonably thought it was *intra vires* (*In re Claridge's Patent Asphalte Co., Ltd.*, (1921) 1 Ch. 543; 90 L. J. K. B. 273).

Jurisdiction of stannaries court.

59 & 60 Vict. c. 45.

280.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the court of the vice-warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the court of the vice-warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

*Interpretation, etc.***Section 285.**

285. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):—

- “Existing company” means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862;
- “Company” means a company formed and registered under this Act or an existing company;
- “Articles” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B in the schedule annexed to the Joint Stock Companies Act, 1856, or in Table A in the first schedule annexed to the Companies Act, 1862, or in that table as altered in pursuance of section seventy-one of that Act, or in Table A in the first schedule to this Act; 19 & 20 Vict. c. 47.
- “Memorandum” means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act;
- “Document” includes summons, notice, order, and other legal process, and registers;
- “Share” means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied;
- “Debenture” includes debenture stock;
- “Books and papers” and “books or papers” include accounts, deeds, writings, and documents;
- “The registrar of companies,” or, when used in relation to registration of companies, “the registrar,” means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires;
- “The court” used in relation to a company means the court having jurisdiction to wind up the company;
- “Joint Stock Companies Acts” means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An

Section 235.

Act for the Registration, Incorporation, and Regulation of Joint Stock Companies ;

- “The *Gazette*” means, as respects companies registered in England, the *London Gazette* ; as respects companies registered in Scotland, the *Edinburgh Gazette* ; and, as respects companies registered in Ireland, the *Dublin Gazette* ;
- “Real and personal,” as respects Scotland, means heritable and moveable ;
- “General rules” means general rules made under this Act, and includes forms ;
- “Prescribed” means, as respects the provisions of this Act relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade ;
- “Company within the stannaries” means a company engaged in or formed for working mines within the stannaries ;
- “The court exercising the stannaries jurisdiction” used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested ;
- “Director” includes any person occupying the position of director by whatever name called ;
- “Prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

See *Lynde v. Nash*, (1928) W. N. 286 (H. of L.).

Repeal of Acts and Transitional Provisions.

Repeal of
Acts and
savings.

286.—(1) The repeal shall not affect—

- (a) The incorporation of any company registered under any enactment hereby repealed ; nor
- (b) Table B in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act ; nor
- (c) Table A in the first schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that schedule or as altered in pursuance of section seventy-one of that Act) so far as the same applies to any company existing at the commencement of this Act ; nor
- (d) The continuance in force of the enactments set out in the second part of the sixth schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.

(2) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals. Section 236.
52 & 53 Vict.
c. 63.

NOTE.—The repeal portion of this section and the 6th Schedule (Part I.) are repealed by the Statute Law Revision Act, 1927.

287. Repealed by Statute Law Revision Act, 1927.

288. Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force. Saving of
deeds.

289.—(1) The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act. Former
registration
offices,
registers,
official
receivers,
etc. con-
tinued.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall during the pleasure of the Board of Trade hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties.

(4) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.

(5) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive the salaries or remuneration hitherto received by them.

(6) The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890.

290. Until revoked and except as varied under the powers of this Act, the general rules and orders, and scale of fees, under the Companies (Winding Up) Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with re- Saving for
existing
rules of
procedure,
etc.

Section 290. spect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

Substitu-
tion of pro-
visions of
this Act for
provisions
of repealed
Acts.

Saving for
28 & 29 Vict.
c. 78, s. 3.

Saving for
Life Assur-
ance Com-
panies Acts.
33 & 34 Vict.
c. 61.

34 & 35 Vict.
c. 58.
35 & 36 Vict.
c. 41.

Saving for
34 & 35 Vict.
c. 31, s. 5.

Short title.

Commence-
ment of Act.

291. Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

292. Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865.

293. Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act.

294. Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

295. This Act may be cited as the Companies (Consolidation) Act, 1908.

296. This Act shall come into operation on the first day of April nineteen hundred and nine.

COMPANIES (PARTICULARS AS TO DIRECTORS) ACT, 1917.

[7 & 8 GEO. 5, c. 28.]

Obligation of
companies to
disclose
particulars
respecting
directors.
8 Edw. 7,
c. 69.

6 & 7 Geo. 5,
c. 58.

1. In addition to the particulars with respect to the persons who are the directors, or occupy the position of directors, which by section twenty-six of the Companies (Consolidation) Act, 1908, are required to be included in the annual summary, or, in the case of a company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom, are, by section two hundred and seventy-four of that Act, required to be included amongst the particulars to be filed with the Registrar of Companies, there shall be included such particulars with respect to those persons as would be required to be furnished

with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and the register required to be kept by a company under section seventy-five of the Companies (Consolidation) Act, 1908, shall include such particulars as aforesaid, and the obligation of the company under that section, or in the case of a company incorporated outside the United Kingdom under section two hundred and seventy-four of the said Act, from time to time to notify to the registrar any change among its directors shall include an obligation so to notify any change in any such particulars.

2.—(1) Every company which has been registered between the twenty-second day of November, nineteen hundred and sixteen, and the passing of this Act, and every company incorporated outside the United Kingdom which has before the passing of this Act established a place of business within the United Kingdom, shall, within one month after the passing of this Act, and every company registered after the passing of this Act shall, within one month of the registration of the company, send to the registrar of companies, in such form as may be prescribed by the Board of Trade, such particulars respecting the directors of the company and, except in the case of a company incorporated outside the United Kingdom, respecting the persons who since the registration of the company have been directors of the company, as would be required to be furnished with respect to them under the Registration of Business Names Act, 1916, if they were partners in a firm required to be registered under that Act, and if default is made in compliance with this section, the company shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and every director, secretary, and officer of the company who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

(2) Sections eighteen and nineteen of the Registration of Business Names Act, 1916, with respect to the publication in trade catalogues, trade circulars, show cards, and business letters of certain particulars, shall after the expiration of three months from the passing of this Act apply to every company which since the said twenty-second day of November, nineteen hundred and sixteen, has been registered or, in the case of a company incorporated outside the United Kingdom which has since the said twenty-second day of November, nineteen hundred and sixteen, established a place of business within the United Kingdom, or which may after the passing of this Act be registered or establish a place of business within the United Kingdom, as if the directors of the company were partners in a firm required to be registered under the first-mentioned Act :

Provided that if special circumstances exist which render it, in the opinion of the Board, expedient that such an exemption should be granted, the Board of Trade may by order grant, subject to such conditions as may be specified in the order, exemption from the obligations imposed by this subsection.

Meaning of director.

3. For the purposes of this Act and of sections twenty-six, seventy-five, and two hundred and seventy-four of the Companies (Consolidation) Act, 1908, as amended by this Act, the expression "director" shall include any person who occupies the position of a director and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

Short title and citation.
3 & 4 Geo. 5,
c. 25.
7 & 8 Geo. 5,
c. 18.

4. This Act may be cited as the Companies (Particulars as to Directors) Act, 1917; and the Companies Acts, 1908 and 1913, the Companies (Foreign Interests) Act, 1917, and this Act may be cited together as the Companies Acts, 1908 to 1917.

COUNTY COURT RULES, ORDER XLIA.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Proceedings under the Companies (Consolidation) Act, 1908, 8 Edw. VII. c. 69 (other than winding up proceedings).

1.—(1) The practice and rules of procedure for the time being in force in the High Court of Justice in relation to proceedings in the High Court under the Companies (Consolidation) Act, 1908, other than proceedings relating to the winding up of companies by the court shall, with the necessary modifications, apply to similar proceedings in the county courts having jurisdiction under the said Act; and the judges and registrars of such courts respectively shall in relation to any such proceedings have and exercise all the powers of a judge of the High Court having jurisdiction in such proceedings, and of a registrar, master, or other officer of the High Court exercising the powers of any such judge.

(2) Except and so far as by this rule provided, the County Court Rules for the time being in force, and the general practice of the county court in actions and matters under the equitable jurisdiction of the court, shall apply, as far as may be practicable, as regards all such proceedings as in this rule mentioned.

Costs.

(3) The costs of any such proceedings as in this rule mentioned may be taxed and allowed according to the scale of costs applicable to similar proceedings in the High Court.

Fees.

Rule 4 annulled (County Court (No. 1) Rules, 1925, r. 13). See now, as to court fees, County Court Fees Order, 1925, Fee No. 45, *ante*, Part II.

Application of rule to court exercising stannaries jurisdiction.

(5) This rule, and Rule 7 of Order LI., shall apply to such proceedings as in this rule mentioned in the court exercising the stannaries jurisdiction.

COMPANIES (WINDING-UP) RULES.

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THE COMPANIES (WINDING-UP) RULES, 1909, DATED MARCH 29, 1909, MADE PURSUANT TO THE COMPANIES (CONSOLIDATION, ACT, 1908 (8 EDW. VII. c. 69), AND THE JUDICATURE ACT) 1881 (44 & 45 VICT. c. 68).

Rule 1.

Application
of Rules.

PRELIMINARY.

1. Subject to the limitation hereinafter mentioned these rules shall apply to the proceedings in every winding-up under the Act of a company, which shall commence on and after the date on which these rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the court, apply to all proceedings which shall be taken or instituted after the said date, in the winding-up of a company which commenced on or after the first day of January, 1891. Rules which from their nature and subject-matter are, or which by the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding-up by the court, shall not apply to the proceedings in a voluntary winding-up, or winding-up under the supervision of the court.

2. In these rules, unless the context or subject-matter otherwise requires :—

Interpreta-
tion of
terms.

“ The Act ” means the Companies (Consolidation) Act, 1908.

“ The Company ” means a company which is being wound up, or against which proceedings to have it wound up have been commenced.

“ Court ” means the court which has jurisdiction to wind up the company.

“ Creditor ” includes a corporation, and a firm of creditors in partnership.

“ Gazetted ” means published in the *London Gazette*.

“ Judge ” means in the High Court the judge who for the time being exercises the jurisdiction of the High Court to wind up companies, and in any other court the judge thereof, or officer who exercises the powers of the judge thereof.

“ Liquidator ” includes an official receiver when acting as liquidator.

“ Official Receiver ” includes any officer appointed by the Board of Trade to discharge the duties of official receiver under the Act.

“ Palatine Court ” means one of the Chancery Courts of the counties Palatine of Lancaster and Durham.

“ Proceedings ” means the proceedings in the winding-up of a company under the Act.

Rule 2.

“Registrar” . . . in a county court, where there are joint registrars, means either of such registrars, or a deputy registrar, and in any court other than the High Court, means the officer of the court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a registrar or master.

“The Rules” means these rules, and includes the prescribed forms.

“Sealed” means sealed with the seal of the court.

“Taxing Officer” means the officer of the court whose duty it is to tax costs in the proceedings of the court under its ordinary jurisdiction.

Words importing the masculine gender shall include females.

Words in the singular shall include the plural and words in the plural shall include the singular.

The expression “person” shall include any body of persons corporate or unincorporate.

Expressions referring to writing shall include printing, lithography, photography, and other methods of representing or reproducing words in a visible form.

Use of
forms in
Appendix.

3.—(1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the court shall otherwise direct.

(2) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these rules, such altered or substituted form shall be published in the *London Gazette*.

COURT AND CHAMBERS.

[Rules 4 and 5 apply solely to the High Court.]

Proceedings
in courts
other than
High Court.

6.—(1) In courts other than the High Court the following matters and applications to the court shall be heard in open court:—

(a) Petitions.

(b) Public Examinations.

(c) Applications under sub-section (1) of section 217 of the Act.

(d) Applications to rectify the register.

(e) Appeals from the official receiver and Board of Trade.

(f) Appeals from any decision or act of the liquidator.

Rule 6.

- (g) Applications relating to the admission or rejection of proofs.
- (h) Proceedings under section 215 of the Act.
- (i) Applications under section 223 of the Act.
- (j) Applications for the committal of any person to prison for contempt.
- (k) Such matters and applications as the judge may from time to time by any general or special orders direct to be heard before him in open court.
- (2) Any other matter or application may be heard and determined in chambers.

7. Subject to the provisions of the Acts and rules in every court :— Applications in chambers.

- (1) The registrar may under the general or special directions of the judge hear and determine any application or matter which under the Acts and rules may be heard and determined in chambers.
- (2) Any matter or application before the registrar may at any time be adjourned by him to be heard before the judge either in chambers or in court.
- (3) Any matter or application may, if the judge or as the case may be, the registrar, thinks fit be adjourned from chambers to court, or from court to chambers.

8.—(1) Every application in court other than a petition, shall be made by motion, notice of which shall be served on every person against whom an order is sought, not less than two clear days before the day named in the notice for hearing the motion, which day must be one of the days appointed for the sittings of the court. Motions and summonses.
Form 3.

(2) Every application in chambers shall be made by summons, which, unless otherwise ordered shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

9. Subject to the orders of the Lord Chancellor the place of sitting of each county court having jurisdiction under the Act shall for the purposes of such jurisdiction, be the town and place in which the court holds its sittings for the general business of the court, under the County Courts Acts. Place of sitting of county court.

10. Subject to the provisions of the Act, the times of the sitting of each court, other than the High Court in matters of the winding-up of companies, shall be those which are appointed for the transaction of the general business of the court, unless the judge of any such court shall otherwise order. Times for holding courts other than the High Court.

PROCEEDINGS.

- Rule 11.** **11.**—(1) Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intituled as follows :—
- Title of proceedings.
Forms 1 and 2.
- IN THE COURT
COMPANIES (WINDING-UP)
In the Matter of the Companies
(Consolidation) Act, 1908.
- with the name of the matter to which it relates. Numbers and dates may be denoted by figures.
- (2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.
- Written or printed proceedings.
- 12.** All proceedings shall be written or printed, or partly written or partly printed on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin ; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.
- Process to be sealed.
- 13.** All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the court) and office copies in any winding-up matter shall be sealed.
- Issue of summonses.
- 14.** Every summons in a winding-up matter in the High Court shall be prepared by the applicant or his solicitor, and issued from the office of the registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the registrar's office a duplicate which shall be stamped with the prescribed stamp and filed.
- Orders.
- 15.** Every order, whether made in court or in chambers in the winding-up of a company shall be drawn up by the registrar, unless in any proceeding, or classes of proceedings, the judge or registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the judge or the registrar making the order, shall be sufficient evidence of the order having been made.
- See *In re Saul Moss & Son, Ltd.*, (1906) W. N. 142.
- [Rule 16 applies solely to High Court.]
- File of proceedings in
- 17.** In courts other than the High Court a file of proceedings in

every winding-up matter shall be kept on which, subject to the directions of the court, all petitions, affidavits, summonses, orders, proofs, notices, depositions, and other proceedings in the matter shall be placed and remain on record as far as possible in continuous order.

Rule 17.

—
courts other
than High
Court.

18. In every court all office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the official receiver or any liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken.

Office
copies.

19. Every person who has been a director or officer of a company which is being wound up, and every duly authorised officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of a fee of one shilling for each hour or part of an hour occupied, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or to be furnished with such copies or extracts at a rate not exceeding fourpence per folio of seventy-two words.

Inspection
of file.

20. Where, in the exercise of their functions under the Act or rules, the Board of Trade or the official receiver requires to inspect or use the file of proceedings the registrar shall (unless the file is at the time required for use in court or by him) on request, transmit the file of proceedings to the Board of Trade or official receiver, as the case may be.

Use of file
by Board of
Trade and
official
receiver.

21. Every officer of a court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt of the document deface the stamp thereon in the High Court in such manner as the Commissioners of Inland Revenue may from time to time direct, and in any other court by writing partly on the stamp and partly on the document the name of the matter, or in such other manner as the Commissioners of Inland Revenue may from time to time direct, and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid ; and it shall be the duty of the party presenting or receiving such document to see that the defacement hereby prescribed has been duly made.

Defacement
of stamps.

SERVICE AND EXECUTION OF PROCESS AND ENFORCEMENT OF ORDERS.

Rule 22.

Duties of
bailiff in
county
court.

22.—(1) It shall be the duty of the high bailiff of a county court to serve such orders, summonses, petitions and notices as the court may require him to serve ; to execute warrants and other process ; to attend any sittings of the court (but not sittings in chambers) ; and to do and perform all such things as may be required of him by the court.

(2) But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the court which is not specially by the Act or rules required to be so served, unless the court in any particular proceeding by order specially so directs.

Service.

23.—(1) All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith ; and the notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

(2) No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the court is satisfied that in other respects the service of the document has been sufficient.

Enforce-
ment of
orders.

24.—(1) Every order of a court having jurisdiction to wind up a company, made in the exercise of the powers conferred by the Acts and rules, may be enforced by such court as if it were a judgment or order of the court made in the exercise of its ordinary jurisdiction.

(2) Every such order of a county court, and every process issued therein may be enforced, executed and dealt with not only by such court, but by any county court, whether such county court has or has not jurisdiction to wind up a company, as if such order or process were made or issued for the enforcement of a judgment or order made by such last mentioned court in the exercise of its ordinary jurisdiction.

PETITION.

Form of
petition.
Forms 4
and 5.

25. Every petition for the winding-up of a company by the court, or subject to the supervision of the court, shall be in the Forms Nos. 4 and 5 in the Appendix with such variations as circumstances may require.

26. A petition shall be presented at the office or chambers of the registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the registrar may at any time before the petition has been advertised, alter the time appointed, and fix another time.

Rule 26.

Presentation of petition.

27. Every petition shall be advertised seven clear days before the hearing as follows:—

Advertisement of petition.
Form 6.

- (1) In the case of a company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice once in the *London Gazette*, and once at least in one London daily morning newspaper, or in such other newspaper as the court directs.
- (2) In the case of any other company, once in the *London Gazette*, and once at least in one local newspaper circulating in the district where the registered office, or principal or last known place of business, as the case may be, of such company is or was situate, or in such other newspaper as shall be directed by the court.
- (3) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any), and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitors or London agent, within the time and manner prescribed by Rule 33, and an advertisement of a petition for the winding-up of a company by the court which does not contain such a note shall be deemed irregular.

And if the petitioner or his solicitor does not within the time hereby prescribed or within such extended time as the registrar may allow duly advertise the petition in the manner prescribed by the said rule the appointment of the time and place at which the petition is to be heard shall be cancelled by the registrar and the petition shall be removed from the file in the Companies (Winding-up) Office unless the judge or registrar shall otherwise direct.

28. Every petition shall, unless presented by the company, be served upon the company at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any

Service of petition.
Forms 7 and 8.

Rule 28.

such can be found, by leaving a copy with any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member or members of the company as the court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the liquidator (if any), appointed for the purpose of winding-up the affairs of the company.

Verification
of petition.
Form 9.

29. Every petition for the winding-up of a company by the court, or subject to the supervision of the court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

Copy of
petition to
be furnished
to creditor
or contribu-
tory.

30. Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor of the petitioner, with a copy of the petition, within 24 hours after requiring same, on paying the rate of 4d. per folio of 72 words for such copy.

OFFICIAL RECEIVER AS PROVISIONAL LIQUIDATOR.

Appoint-
ment of
provisional
liquidator.

31.—(1) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient grounds for the appointment of the official receiver as provisional liquidator, the court, if it thinks fit, and upon such terms as in the opinion of the court shall be just and necessary may make the appointment.

Form 10.

(2) The order appointing the official receiver to be provisional liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the official receiver is ordered to take possession, and the duties to be performed by the official receiver.

(3) Subject to any order of the court, if no order for the winding-up of the company is made upon the petition, or if an order for the winding-up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding-up of the company subject to the supervision of the court, the official receiver as provisional liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges, and expenses properly incurred by him as provisional liquidator, including the fees payable to the

Board of Trade under the scale of fees in force for the time being, and may retain out of such property the amount of such costs, charges, expenses, and fees.

Rule 31.

HEARING OF PETITIONS AND ORDERS MADE THEREON.

32. After a petition has been presented, the petitioner, or his solicitor, shall, on a day to be appointed by the registrar, attend before the registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein, and the affidavit of service (if any) have been duly filed, and that the provisions of the rules as to petitions for winding-up companies have been duly complied with by the petitioner. No order for the winding-up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the registrar at the time appointed, and satisfied him in manner required by this rule.

Attendance before hearing to show compliance with rules.

33. Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner, or his solicitor or London agent at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person, and shall be signed by him or by his solicitor or London agent, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in Form 11 with such variations as circumstances may require. A person who has failed to comply with this rule shall not, without the special leave of the court, be allowed to appear on the hearing of the petition.

Notice by persons who intend to appear.

Form 11.

34. The petitioner, or his solicitor or London agent, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 12. On the day appointed for hearing the petition a fair copy of the list (or if no notice of intention to appear has been given a statement in writing to that effect) shall be handed by the petitioner, or his solicitor or London agent, to the court prior to the hearing of the petition.

List of names and addresses of persons who appear on the petition.

Form 12.

35.—(1) Affidavits in opposition to a petition that a company may be wound up under the order or subject to the supervision of the court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of

Affidavits in opposition and reply.

Rule 35. every affidavit in opposition to such a petition shall be given to the petitioner or the solicitor or London agent of the petitioner, on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or the solicitor or London agent of the petitioner.

Substitution
of creditor
or contri-
butory for
withdrawing
petitioner.

36. When a petitioner consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or, if appearing, does not apply for an order in the terms of the prayer of his petition, the court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who, in the opinion of the court would have a right to present a petition, and who is desirous of prosecuting the petition.

ORDER TO WIND UP A COMPANY.

Notice that
winding-up
order has
been pro-
nounced to
be given to
official
receiver.

37. When an order for the winding-up of a company, or for the appointment of the official receiver as provisional liquidator prior to the making of an order for the winding-up of the company, has been pronounced in court, the registrar shall, on the same day, send to the official receiver a notice informing him that the order has been pronounced.

Forms 13
and 14.

The notice may be in Forms 13 and 14 respectively, with such variations as circumstances may require.

Documents
for drawing
up order to
be left with
registrar.

38. It shall be the duty of the petitioner, or his solicitor or London agent, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding-up of a company is pronounced in court, to leave at the registrar's office all the documents required for the purpose of enabling the registrar to complete the order forthwith.

No appoint-
ment for
settling
order.

39. It shall not be necessary for the registrar to make an appointment to settle the order, unless in any particular case the special circumstances make an appointment necessary.

Contents of
winding-up
order.

Form 15.

40. An order to wind up a company shall contain at the foot thereof a notice stating that it will be the duty of the person who is at the time secretary or chief officer of the company, and of such of the persons who are liable to make out or concur in making out

the company's statement of affairs as the official receiver may require, to attend on the official receiver forthwith on the service of the order at the place mentioned therein.

Rule 40.

41.—(1) When an order that a company be wound up, or for the appointment of the official receiver as provisional liquidator has been made :

Transmis-
sion and
advertise-
ment of
winding-up
order.

- (a) Three copies of the order sealed with the seal of the court shall forthwith be sent by post or otherwise by the registrar to the official receiver.
- (b) The official receiver shall cause a sealed copy of the order to be served upon the secretary or other chief officer of the company at the registered office of the company (if any), or upon such other person or persons, or in such other manner as the court may direct, and if the order is that the company be wound up by the court, shall forward to the registrar of companies the copy of the order which by section 143 of the Act is directed to be so forwarded by the company.
- (c) The official receiver shall forthwith give notice of the order to the Board of Trade, who shall forthwith cause the notice to be gazetted.
- (d) The official receiver shall forthwith send notice of the order to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select.

Form 17.

(2) An order for the winding-up of a company, subject to the supervision of the court, shall before the expiration of twelve days from the date thereof be advertised by the petitioner, once in the *London Gazette*, and shall be served on such persons (if any) and in such manner as the court shall direct.

Form 16.

TRANSFERS OF ACTIONS AND PROCEEDINGS.

42.—(1) Where an order has been made in the High Court for the winding-up of a company the judge shall have power, without further consent, to order the transfer to him of any action, cause or matter pending in any other court or division brought or continued by or against the company, and any action or proceeding by a mortgagee or debenture holder of the company against the company, for the purpose of realising his security, or by any other person for the purpose of enforcing a claim against the company's assets or property, which is pending in the High Court or before any judge thereof shall without further order be transferred to the judge of the High Court. In the case of applications in chambers in actions so transferred where the practice in winding-up is

Transfer of
actions

Rule 42. different from the practice in the Chancery Division the practice in winding-up shall prevail.

(2) Where any action brought by or against a company against which a winding-up order has been made is transferred to the judge of the High Court, the registrar may, under the general or special directions of the judge, hear, determine and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in chambers. These provisions shall apply to the proceedings in any action in which by the rules of the Supreme Court or otherwise the chamber proceedings are directed to be dealt with by the registrar.

Transfer of proceedings by judge of High Court.
Form 18.

43. The judge of the High Court may at any time, for good cause shown, order the proceedings in any court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other court.

Transfer of proceedings by judge of court other than High Court or Palatine Court.
Form 18.

44. The judge of any court, other than the High Court or a Palatine Court, may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his court to be transferred to any court which has jurisdiction to order the winding up of a company, not being the High Court or a Palatine Court.

Notice of application to official receiver.

45. In a winding-up by the court, notice of an application for a transfer of proceedings shall before the hearing thereof, be served by the applicant on the official receiver of the court in which the proceedings are pending and on the official receiver of the court to which the proceedings are sought to be transferred.

Procedure where proceedings transferred.
Form 19.

46. When an order for the transfer of proceedings has been made :—

- (1) The person on whose application the transfer has been made shall lodge with the registrar of the court to which the proceedings are transferred a sealed copy of the order of transfer.
- (2) In a winding-up by the court the official receiver of the court to which the proceedings are transferred shall become the official receiver in the proceedings.
- (3) The records of the proceedings shall be transmitted to the registrar of the court to which the proceedings are transferred, and in a winding-up by the court such registrar, as soon as he has received the records, shall give notice of the transfer to the official receiver of his court, who shall give notice of the transfer to the Board of Trade.
- (4) The proceedings shall receive a new distinctive number.

47. Whenever the Lord Chancellor, by order under his hand, shall exclude any county court from having jurisdiction under the Act, or shall attach the district or any part of the district of a county court to the High Court, or any other county court, or shall detach the district or any part of the district of any county court from the district and jurisdiction of the High Court, any winding-up matters pending in the court or district to which the order relates shall become transferred to such court as shall be mentioned for the purpose in the order; and, thereupon, the rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a court having power to transfer proceedings.

Rule 47.

Transfer of jurisdiction of county court.

SPECIAL MANAGER.

48.—(1) An application by the official receiver for the appointment of a special manager shall be supported by a report of the official receiver, which shall be placed on the file of proceedings, and in which shall be stated the amount of remuneration which, in the opinion of the official receiver, ought to be allowed to the special manager. No affidavit by the official receiver in support of the application shall be required.

Appointment of special manager.

(2) The remuneration of the special manager shall, unless the court otherwise in any special case directs, be stated in the order appointing him, but the court may at any subsequent time for good cause shown make an order for payment to the special manager of further remuneration.

(3) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the official receiver.

49. Every special manager shall account to the official receiver, and the special manager's accounts shall be verified by affidavit, and, when approved by the official receiver, the totals of the receipts and payments shall be added by the official receiver to his accounts.

Accounting by special manager. Form 20.

STATEMENT OF AFFAIRS.

50.—(1) A person who under section 147 of the Act has been required by the official receiver to submit and verify a statement of affairs of the company shall be furnished by the official receiver with such forms (if any) as the official receiver shall in his discretion consider necessary. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The official receiver shall cause to be filed with the registrar the verified statement of affairs.

Preparation of statement of affairs. Form 26.

New rule, dated July 26th, 1921.

Rule 50.

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(2) The official receiver may from time to time hold personal interviews with every such person for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the official receiver at such time and place as the official receiver may appoint and give the official receiver all information that he may require.

Extension of
time for
submitting
statement
of affairs.

51. When any person requires any extension of time for submitting the statement of affairs, he shall apply to the official receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding-up and shall render an application to the court unnecessary.

Information
subsequent
to statement
of affairs.

52. After the statement of affairs of a company has been submitted to the official receiver it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the official receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the official receiver in relation to the statement of affairs.

Default.

53. Any default in complying with the requirements of section 147 of the Act, may be reported by the official receiver to the court.

Expenses of
statement of
affairs.

54. A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the official receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the official receiver.

APPOINTMENT OF LIQUIDATOR IN A WINDING-UP BY THE COURT.

Appoint-
ment of
liquidator
on report of
meetings of
creditors
and contri-
butories.
Form 27.

55.—(1) As soon as possible after the first meetings of creditors and contributories have been held the official receiver or the chairman of the meeting, as the case may be, shall report the result of each meeting to the court.

(2) Upon the result of the meetings of creditors and contributories being reported to the court, the court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the official receiver,

Rule 55.

forthwith make the appointments necessary for giving effect to such resolutions. In any other case the court shall, on the application of the official receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences (if any), and making such order as shall be necessary.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the official receiver in such manner as the court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings the court shall hear the official receiver and any creditor or contributory.

(5) If a liquidator is appointed a copy of the order appointing him shall be transmitted to the Board of Trade by the official receiver, and the Board of Trade shall, as soon as the liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment shall be paid by the liquidator, but may be charged by him on the assets of the company. Forms 28 and 103 (7).

(6) Every appointment of a liquidator or committee of inspection shall be advertised by the liquidator in such manner as the court directs immediately after the appointment has been made, and the liquidator has given the required security. Form 30.

(7) If a liquidator in a winding-up by the court shall die, or resign, or be removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the official receiver shall, on the request of not less than one tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the liquidator is released under section 157 of the Act, in which case the official receiver shall remain liquidator.

56. When the official receiver is liquidator of a company he shall be styled "official receiver and liquidator." Style of official receiver when he is liquidator.

SECURITY BY LIQUIDATOR OR SPECIAL MANAGER IN A WINDING-UP BY THE COURT.

57. In the case of a special manager or a liquidator other than the official receiver, the following provisions as to security shall have effect, namely:— Standing security to Board of Trade.

(1) The security shall be given to such officers or persons, and

Rule 57.

in such manner as the Board of Trade may from time to time direct.

- (2) It shall not be necessary that security shall be given in each separate winding-up; but security may be given either specially in a particular winding-up, or generally, to be available for any winding-up in which the person giving security may be appointed, either as liquidator or special manager.
- (3) The Board of Trade shall fix the amount and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general security which any person has given.
- (4) The certificate of the Board of Trade that a liquidator or special manager has given security to their satisfaction shall be filed with the registrar.
- (5) The cost of furnishing the required security by a liquidator or special manager, including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding-up.

Form 29.

Failure to
give or keep
up security.

58.—(1) If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the official receiver shall report such failure to the court, who may thereupon rescind the order appointing the liquidator or special manager.

(2) If a liquidator or special manager fails to keep up his security, the official receiver shall report such failure to the court, who may thereupon remove the liquidator or special manager, and make such order as to costs as the court shall think fit.

(3) Where an order is made under this rule rescinding an order for the appointment of or removing a liquidator, the court may direct that another liquidator is to be appointed and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a liquidator.

PUBLIC EXAMINATION.

Report of
official
receiver to
be filed.

59. A report made by the official receiver pursuant to section 148 of the Act shall state, in a narrative form, the facts and matters which the official receiver desires to bring to the notice of the court, and his opinion as required by the said section.

Appoint-
ment of
time for
considera-
tion of
report.

60. The official receiver may apply to the court to fix a day for the consideration of the report, and on such application the court shall appoint a day on which the report shall be considered.

61. The consideration of the report shall be before the judge of the court personally in chambers, and the official receiver shall personally, or by counsel or solicitor, attend the consideration of the report, and give the court any further information or explanation with reference to the matters stated in the report which the court may require. **Rule 61.**
Consideration of report.

62. Where the judge makes an order under section 175 of the Act, directing any person or persons to attend for public examination:— **Procedure consequent on order for public examination.**

- (a) The examination shall be held before the judge (a). **Form 31.**
- (b) The judge may, if he thinks fit, either in the order for examination or by any subsequent order, give directions as to the special matters on which any such person is to be examined.
- (c) Where on an examination held before the registrar, or one of the persons mentioned in sub-section 9 of the said section, he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person, or any part of the examination, to be held before the judge.

NOTE.—(a) Residue of sub-rule applies to High Court.

63. Upon an order directing a person to attend for public examination being made, the official receiver shall apply for the appointment of a day on which the public examination is to be held. **Application for day for holding examination.**

64. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the official receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address. **Appointment of time and place for public examination.**

65.—(1) The official receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspapers as the Board of Trade from time to time direct, or in default of any such direction as the official receiver thinks fit, and shall also forward notice of the appointment to the Board of Trade to be gazetted. **Forms 32 and 33.**
Notice of public examination to creditors and contributories.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the court, be advertised in any newspaper, but it shall be sufficient to publish in the *Gazette* a notice of the time and place fixed for the adjourned examination.

Rule 66.

Default in
attending.
Form 40.

66.—(1) If any person who has been directed by the court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the official receiver satisfies the court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the court, upon its being proved to the satisfaction of the court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the court shall think just.

Warrants of
arrest.

(2) A warrant of arrest issued by the High Court under this rule shall be issued in the central office of the Supreme Court pursuant to an order of the court directing such issue.

Notes of
examination
to be filed.

67. The notes of every public examination shall, after being signed as required by section 175 (7) of the Act, be filed with the registrar.

Forms 36
and 37.

PROCEEDINGS AGAINST DELINQUENT DIRECTORS, PROMOTERS AND OFFICERS.

Application
against
delinquent
directors,
officers, and
promoters.

68.—(1) An application under section 215 of the Act shall in any court other than the High Court be made by motion to the court (a). . . . Where the application is made by the official receiver or liquidator he may make a report to the court stating any facts and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the proceedings. Where the application is made by any other person it shall be supported by affidavit to be filed by him (a).

NOTE.—(a) Provisions applicable to High Court omitted.

Notice of
application.

69. Where the application is made by motion, notice of the intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

Neuschild v. British Equatorial Oil Co., (1925) 94 L. J. Ch. 201.

Use of
depositions
taken at
public
examina-
tions.

70. Where in the course of the proceedings in a winding-up by the court an order has been made for the public examination of persons named in the order pursuant to section 175 of the Act, and it appears from the examination that the persons examined,

Rule 70.

or some of them, have misapplied, or retained, or become liable, or accountable for moneys or property of the company, or been guilty of misfeasance or breach of trust in relation to the company, then in any proceedings subsequently instituted under section 215 of the Act, for the purpose of examining into the conduct of the said persons, or any of them, and compelling repayment or restoration to the company of any moneys or property, or contribution by way of compensation to the assets of the company by such persons or any of them, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made who, under section 175 of the Act, and the order for the public examination, was or had the opportunity of being present at and taking part in the examination. Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

WITNESSES AND DEPOSITIONS.

71. If the court or the officer of the court before whom any examination under the Acts and rules is directed to be held shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the court or officer aforesaid to make such appointment. The person at whose instance the examination is taken shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the court

Shorthand
notes.
Forms 34
and 35.

Rule 71.

or officer holding the examination shall otherwise order. Every person so appointed shall be paid a sum not exceeding one guinea a day, and a sum not exceeding 8*d.* per folio of ninety words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the company as may be directed by the court.

Committal
of contuma-
cious wit-
ness.

Form 38.

72.—(1) If a person examined before a registrar or other officer of the court who has no power to commit for contempt of court, refuses to answer to the satisfaction of the registrar or officer any question which he may allow to be put, the registrar or officer shall report such refusal to the judge, and upon such report being made the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the judge.

(2) The report shall be in writing, but without affidavit, and shall set forth the question put, and the answer (if any) given by the person examined.

(3) The registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the judge, and upon receiving the report the judge may take such action thereon as he shall think fit. If the judge is sitting at the time when the default in answering is made, such default may be reported immediately.

Depositions
at private
examina-
tions.

73.—(1) The official receiver may attend in person, or by an assistant official receiver, any examination of a witness under section 174 of the Act, on whosoever application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the court may allow.

(2) The notes of the depositions of a person examined under section 174 of the Act, or under any order of the court before the court, or before any officer of the court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 175 of the Act) shall not be filed, or be open to the inspection of any creditor, contributory, or other person, except the official receiver or liquidator, unless and until the court shall so direct, and the court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

ARRANGEMENTS WITH CREDITORS AND CONTRIBUTORIES IN A WINDING-UP BY THE COURT.

74. In a winding-up by the court if application is made to the court to sanction any compromise or arrangement the court may, before giving its sanction thereto, hear a report by the official receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the official receiver or the Board of Trade, ought to be brought to the attention of the court. The report shall not be placed upon the file, unless and until the court shall direct it to be filed.

Rule 74.

Report by official receiver on arrangements and compromises.

COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING-UP BY THE COURT.

75.—(1) The duties imposed on the court by section 163 (1) of the Act, in a winding-up by the court with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the liquidator as an officer of the court subject to the control of the court.

Collection and distribution of company's assets by liquidator.

(2) For the purpose of the discharge by the liquidator of the duties imposed by section 163 (1) of the Act, and sub-rule (1) of this rule, the liquidator in a winding-up by the court shall for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the High Court, and the court may, on his application, enforce such acquisition or retention accordingly.

76. The powers conferred on the court by section 164 of the Act, shall be exercised by the liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker, or agent, or officer of a company which is being wound up under order of the court shall, on notice from the liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the liquidator any sum of money or balance, books, papers, estate or effects which happen to be in his hands for the time being and to which the company is *primâ facie* entitled.

Power of liquidator to require delivery of property.
Form 41.

LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT.

77. The liquidator shall with all convenient speed after his appointment settle a list of contributories of the company, and shall appoint a time and place for that purpose. The list of

Liquidator to settle list of contributories.

Rule 77.

Form 42.

contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and shall distinguish the several classes of contributories. As regards representative contributories the liquidator shall, so far as practicable, observe the requirements of section 163 (2) of the Act.

Appointment of time and place for settlement of list.

Forms 43 and 44.

Settlement of list of contributories.

Form 45.

78. The liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list.

79. On the day appointed for settlement of the list of contributories the liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the company.

Notice to contributories.

Form 46.

80. The liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the court by summons within twenty-one days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

Application to the court to vary the list.

Form 49.

81.—(1) Subject to the power of the court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the court by any person who objects to the list of contributories as finally settled by the liquidator shall be entertained after the expiration of twenty-one days from the date of the service on such person of notice of the settlement of the list.

(2) The official receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

Variation of or addition to list of contributories.

Form 47.

82. The liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

See *In re Jubilee Cotton Mills, Ltd.*, (1922) 1 Ch. 100.

CALLS.

83. The powers and duties of the court in relation to making calls upon contributories conferred by section 166 of the Act, shall and may be exercised, in a winding-up by the court, by the liquidator as an officer of the court subject to the proviso to section 173 of the Act, and to the following regulations :—

Rule 83.

Calls by liquidator.

- (1) Where the liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a committee of inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call. Form 50.
- (2) The notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a London newspaper, or, where the winding-up is not in the High Court, in a newspaper circulating in the district of the court in which the proceedings are pending. The advertisement shall state the time and place of the intended meeting of the committee of inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the committee of inspection to be laid before the meeting, in reference to the said intended call.
- (3) At the meeting of the committee of inspection any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory shall be considered before the intended call is sanctioned.
- (4) The sanction of the committee shall be given by resolution, which shall be passed by a majority of the members present. Form 52.
- (5) Where there is no committee of inspection, the liquidator shall not make a call without obtaining the leave of the court.

84. In a winding-up by the court an application to the court for leave to make any call on the contributories of a company, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, which

Application to the court for leave to make a call.

Rule 84. summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call ; or if the court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Forms 54
to 57.

Document
making the
call.
Form 58.

85. When the liquidator is authorised by resolution or order to make a call on the contributories he shall file with the registrar a document in the Form 58 with such variations as circumstances may require making the call.

Service of
notice of a
call.
Forms 52, 53
and 59.

86. When a call has been made by the liquidator in a winding-up by the court, a copy of the resolution of the committee of inspection or order of the court (if any), as the case may be, shall forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the court so directs.

Enforce-
ment of
call.
Forms 60, 61
and 62.

87. The payment of the amount due from each contributory on a call may be enforced by order of the court, to be made in chambers on summons by the liquidator.

PROOFS.

Proof of
debt.

88. In a winding-up by the court every creditor shall prove his debt, unless the judge in any particular winding-up shall give directions that any creditors or class of creditors shall be admitted without proof.

Mode of
proof.

89. A debt may be proved in any winding-up by delivering or sending through the post an affidavit verifying the debt. In a winding-up by the court the affidavit shall be so sent to the official receiver or, if a liquidator has been appointed, to the liquidator ; and in any other winding-up the affidavit may be so sent to the liquidator.

Verification
of proof.

90. An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

Costs
of proof.
Form 63.

91. An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or liquidator to whom the proof is sent may at any time call for the production of the vouchers.

92. An affidavit proving a debt shall state whether the creditor is or is not a secured creditor. **Rule 92.**

93. An affidavit proving a debt may in a winding-up by the court be sworn before an official receiver, or assistant official receiver, or any officer of the Board of Trade or any clerk of an official receiver duly authorised in writing by the court or the Board of Trade in that behalf. **Statement of security. Proof before whom sworn.**

94. A creditor shall bear the cost of proving his debt unless the court otherwise orders. **Costs of proof.**

95. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. **Discount.**

96. When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the liquidator, of rent during the period of the company's or the liquidator's occupation. **Periodical payments.**

97. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order or resolution, the creditor may prove for interest at a rate not exceeding four per centum per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment. **Interest.**

98. A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted. **Proof for debt payable at a future time.**

Rule 99.

Workmen's
wages.

Form 64.

99. In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

Production
of bills of
exchange
and promis-
sory notes.

100. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the court made to the contrary, be produced to the official receiver, chairman of a meeting or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Transmis-
sion of
proofs to
liquidator.

101. Where a liquidator is appointed in a winding-up by the court, all proofs of debts that have been received by the official receiver shall be handed over to the liquidator, but the official receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

ADMISSION AND REJECTION OF PROOFS, AND APPEAL TO THE COURT.

Notice to
creditors to
prove.

102. Subject to the provisions of the Act, and unless otherwise ordered by the court, the liquidator in any winding-up may from time to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved, and the liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the court to every person mentioned in the statement of affairs as a creditor, and who has not proved his debt, and in any other winding-up to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor of the company and whose claim has not been admitted.

Examination
of proof.
Form 65.

103. The liquidator shall examine every proof of debt lodged with him, and the grounds of the debt, and in writing admit or

reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

Rule 103.

104. If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the court to extend the time, no application to reverse or vary the decision of the liquidator in a winding-up by the court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of rejection. Appeal by creditor.

105. If the liquidator thinks that a proof has been improperly admitted, the court may, on the application of the liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount. Expunging at instance of liquidator.

106. The court may also expunge or reduce a proof upon the application of a creditor or contributory if the liquidator declines to interfere in the matter. Expunging at instance of creditor.

107. For the purpose of any of his duties in relation to proofs, the liquidator, in a winding-up by the court, may administer oaths and take affidavits. Oaths.

108. In a winding-up by the court the official receiver, before the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal. Official receiver's powers.

109. In a winding-up by the court the official receiver, where no other liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected. Filing proofs by official receiver.

110. Every liquidator in a winding-up by the court other than the official receiver shall on the first day of every month, file with the registrar a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the registrar. Proofs to be filed.
Form 66.

Rule 111.
 Procedure
 where credi-
 tor appeals.

111. The liquidator in a winding-up by the court, including the official receiver when he is liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the registrar, with a memorandum thereon of his disallowance thereof.

Time for
 dealing with
 proofs by
 official
 receiver.

112. Subject to the power of the court to extend the time in a winding-up by the court, the official receiver as liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

Time for
 dealing with
 proofs by
 liquidator.

113. Subject to the power of the court to extend the time, the liquidator in a winding-up by the court, other than the official receiver, within twenty-eight days after receiving a proof which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it. Provided that where the liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission.

Costs of
 appeals
 from
 decisions as
 to proofs.

114. The official receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO A WINDING-UP BY THE COURT.

First meet-
 ings of
 creditors
 and con-
 tributories.

115. The meetings of creditors and contributories under section 152 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within twenty-one days, or if a special manager has been appointed then within one month after the date of the winding-up order or within such further time as the court may approve. The dates of such meetings shall be fixed and they shall be summoned by the official receiver.

116. The official receiver shall forthwith give notice of the days fixed by him for the first meetings of creditors and contributories to the Board of Trade, who shall gazette the same. **Rule 116.**

117. The first meetings of creditors and contributories shall be summoned as hereinafter provided. **Notice of first meetings to Board of Trade.**

118. The notices of first meetings of creditors and contributories may be in Forms 21 and 22 appended hereto, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting. **Summoning of first meetings. Form of notices of first meetings.**

119. The official receiver shall also give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the official receiver. **Forms 21 and 22. Notice of first meetings to officers of company. Form 23.**

120. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory of the company a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting. **Summary of statement of affairs.**

Magadi Soda Co., Ltd., In re; (1925) 94 L. J. Ch. 217.

121. In addition to the first meeting of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the court under section 219 of the Act (hereinafter referred to as court meetings of creditors and contributories), the liquidator may himself from time to time subject to the provisions of the Act and the control of the court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding-up. **Liquidator's meetings of creditors and contributories.**

122. Except where and so far as the nature of the subject-matter or the context may otherwise require the succeeding rules as to meetings hereinafter set out are intended to apply to first meetings, court meetings and liquidator's meetings of creditors and contributories, but so nevertheless that the said rules shall **Application of rules as to meetings.**

Rule 122. take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to court meetings subject and without prejudice to any express directions of the court.

Summoning
of meetings.

123. The official receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributories.

The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

Proof of
notice.
Forms 76
and 77.

124. A certificate by the official receiver or other officer of the court, or by the clerk of any such person, or an affidavit by the liquidator, or his solicitor, or the clerk of either of such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Place of
meetings.

125. The meetings shall be held at such place as is in the opinion of the official receiver or liquidator most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

Costs of
calling
meetings.

126. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the official receiver or liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the official receiver or liquidator (as the case may be) such sum as may be required by the official receiver or liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two

shillings per creditor or contributory for the first 20 creditors or contributories, one shilling per creditor or contributory for the next 30 creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first 50. The said costs shall be repaid out of the assets of the company if the court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct.

Rule 126.

127. Where a meeting is summoned by the official receiver or the liquidator, he or someone nominated by him shall be chairman of the meeting. At every other meeting of creditors and contributories the chairman shall be such person as the meeting by resolution shall appoint.

Chairman of meeting.

Form 79.

128. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

Ordinary resolution of creditors and contributories.

129. The official receiver, or, as the case may be, the liquidator shall file with the registrar a copy, certified by him, of every resolution of a meeting of creditors or contributories.

Copy of resolution to be filed.

NOTE.—See Rule 149A, *post*, which applies this part of the procedure to a voluntary winding up.

130. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them.

Non-reception of notice by a creditor.

131. The chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless in the resolution for adjournment another place is specified or unless the court otherwise orders.

Adjournment.

Form 78.

132.—(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat at least three creditors entitled to vote or three contributories or all

Quorum.

Rule 132. the creditors entitled to vote or all the contributories if the number of the creditors entitled to vote or the contributories as the case may be shall not exceed three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day as the chairman may appoint not being less than seven or more than twenty-one days.

Creditors
entitled to
vote.

133. In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the company. In the case of a court meeting or liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the official receiver or liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held. Provided that this and the next four following rules shall not apply to a court meeting of creditors held prior to the first meeting of creditors.

Cases in
which
creditors
may not
vote.

134. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

Votes of
secured
creditors.

135. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

136. The official receiver or liquidator may within twenty-eight days after a proof estimating the value of a security as aforesaid has been used in voting at a meeting require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent. Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent. shall not be made if the security is required to be given up.

Rule 136.
Creditor required to give up security.

137. The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether a proof should be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

Admission and rejection of proofs for purpose of voting.

138. The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

Minutes of meeting.

PROXIES IN RELATION TO A WINDING-UP BY THE COURT.

139. A creditor or a contributory may vote either in person or by proxy. The succeeding rules as to proxies shall not (unless otherwise directed by the court) apply to a court meeting of creditors or contributories prior to the first meeting.

Proxies.

140. Every instrument of proxy shall be in accordance with the form in the Appendix and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of a commissioner to administer oaths in the Supreme Court.

Form of proxies.
Forms 80 and 81.

141. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

Forms of proxy to be sent with notices.

142. A creditor or a contributory may give a general proxy to his manager or clerk or any other person in his regular employment. In any such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

General proxies to managers or clerks.

Rule 143.

Special
proxies.

143. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof :—

- (a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and
- (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

Solicitation
by liqui-
dator to
obtain
proxies.

144. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring his appointment as liquidator except by the direction of a meeting of creditors or contributories the court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

Proxies of
official
receiver or
liquidator.

145. A creditor or a contributory may appoint the official receiver or liquidator to act as his general or special proxy.

Holder of
proxy not
to vote on
matter in
which he is
financially
interested.

146. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as creditor rateably with the other creditors of the company. Provided that where any person holds special proxies to vote for an application to the court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

Proxies.
Forms 80
and 81.

147.—(1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the official receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the court otherwise directs.

(2) In every other case a proxy shall be lodged with the official receiver or liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

Rule 147.

(4) Where a limited company is a creditor, any person who is duly authorised under the seal of the creditor company to act generally on behalf of the creditor company at meetings of creditors and contributories and to appoint himself or any other person to be the creditor company's proxy, may fill in and sign the form of proxy on the creditor company's behalf and appoint himself to be the creditor company's proxy, and a proxy so filled in and signed by such a person shall be received and dealt with as the proxy of the creditor company.

148. Where an official receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf, and in such manner as he may direct. Use of proxies by deputy.

149. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark. Filling in where creditor blind or incapable.

149A.—(1) Except where and so far as the nature of the subject matter or the context may otherwise require, the preceding Rules 123 to 132 both inclusive, 134, and 138 to 149 both inclusive, so far as they relate to liquidator's meetings of creditors, shall apply to meetings of creditors held in pursuance of section 188 of the Act, but so nevertheless that the said rules shall take effect as to such last mentioned meetings subject and without prejudice to any express provisions of the Act. Meeting of creditors in a voluntary winding-up.

(2) The chairman of the meeting shall have power to adjudicate upon the right of a creditor to vote and the amount for which he should be allowed to vote, but the decision of the chairman of the meeting shall be subject to appeal of the court.

(3) For the purpose of voting, a secured creditor shall, unless he surrenders his security, lodge with the liquidator before the meeting a statement giving the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote in respect of the balance (if any) due to him after deducting the value of his security. The vote of a secured creditor who has not complied with this rule shall not be counted at the meeting.

(4) No solicitation shall be used by or on behalf of any person whom the court is asked to appoint liquidator under the provisions of section 188, in obtaining votes or proxies or in procuring his

Rule 149a. appointment, and on every application to the court to appoint a liquidator under that section, the applicant shall, unless the court otherwise directs, produce an affidavit by the proposed liquidator proving that no such solicitation has been used by or on behalf of such proposed liquidator.

The above rule was made July 26th, 1921.

DIVIDENDS IN A WINDING-UP BY THE COURT.

Dividends to
creditors.

Form 67.

150.—(1) Not more than two months before declaring a dividend the liquidator in a winding-up by the court shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal shall, subject to the power of the court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this rule, the liquidator shall exclude all proofs which have been rejected from participation in the dividend.

Form 71.

(3) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4) If it becomes necessary, in the opinion of the liquidator and the committee of inspection, to postpone the declaration of the dividend beyond the limit of two months, the liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted; but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(5) Upon the declaration of a dividend the liquidator shall

Forms 68
and 69.

forthwith transmit to the Board of Trade a list of the proofs filed with the registrar under Rule 110, which list shall be in the Form 68 or 69 in the Appendix as the case may be. If the winding-up is in a court other than the High Court the list shall, on payment of the prescribed fee, be examined by the registrar, with the proofs tendered for filing, and if found correct shall be certified by the registrar. . . .

Rule 150.

Residue of sub-rule applies to High Court.

(6) Dividends may at the request and risk of the person to whom they are payable be transmitted to him by post.

(7) If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the liquidator a document in the Form 72 which shall be a sufficient authority for payment of the dividend to the person therein named. Form 72.

151. Every order by which the liquidator in a winding-up by the court is authorised to make a return to contributories of the company, shall, unless the court shall otherwise direct, contain or have appended thereto a schedule or list (which the liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories. The schedule or list shall be in the Form 74 with such variations as circumstances shall require. Return of capital to contributories, Forms 73 and 74.

ATTENDANCE AND APPEARANCE OF PARTIES.

152.—(1) Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same. Attendance at proceedings.

(2) The court may from time to time appoint any one or more of the creditors or contributories to represent before the court, at the expense of the company, all or any class of the creditors or

Rule 152.

contributories, upon any question or in relation to any proceedings before the court, and may remove the person so appointed. If more than one person is appointed under this rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3) No creditor or contributory shall be entitled to attend any proceedings in chambers unless and until he has entered in a book, to be kept by the registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

Attendance
of liqui-
dator's
solicitor.

153. Where the attendance of the liquidator's solicitor is required on any proceeding in court or chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the court directs him to attend.

**LIQUIDATOR AND COMMITTEE OF INSPECTION IN A WINDING-UP
BY THE COURT.**

Remunera-
tion of
liquidator.

154.—(1) The remuneration of a liquidator, unless the court shall otherwise order, shall be fixed by the committee of inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If the Board of Trade is of opinion that the remuneration of a liquidator as fixed by the committee of inspection is unnecessarily large, the Board of Trade may apply to the court, and thereupon the court shall fix the amount of the remuneration of the liquidator.

(3) If there is no committee of inspection the remuneration of the liquidator shall, unless the court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the official receiver as liquidator.

Limit of
remunera-
tion.

155. Except as provided by the Act or the rules, a liquidator shall not under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding-up of the company, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act and the rules he is entitled as liquidator, nor shall he

make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person. **Rule 155.**

156. Neither the liquidator nor any member of the committee of inspection of a company shall, while acting as liquidator or member of such committee, except by leave of the court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this rule may be set aside by the court on the application of the Board of Trade or any creditor or contributory, and the court may make such order as to costs as the court shall think fit. Dealings with assets.

157. Where the liquidator carries on the business of the company, he shall not, without the express sanction of the court, purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator obtaining any portion of the profit (if any) arising out of the transaction. Restriction on purchase of goods by liquidator.

158. No member of a committee of inspection shall, except under and with the sanction of the court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the liquidator's accounts. Committee of inspection not to make profit.

159 In any case in which the sanction of the court is obtained under the last two preceding rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets. Costs of obtaining sanction of court.

160. Where the sanction of the court to a payment to a member of a committee of inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the court no remuneration shall, under any circumstances, be paid to a member of a committee for services rendered by him Sanction of payments to committee.

Rule 160. in the discharge of the duties attaching to his office as a member of such committee.

Discharge of costs before assets handed to liquidator.

161.—(1) Where a liquidator is appointed by the court, and has notified his appointment to the registrar of joint stock companies, and given security to the Board of Trade, the official receiver shall forthwith put the liquidator into possession of all property of the company of which the official receiver may have custody ; provided that such liquidator shall have, before the assets are handed over to him by the official receiver, discharged any balance due to the official receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company together with interest on such advances at the rate of four pounds per centum per annum ; and the liquidator shall pay all fees, costs, and charges of the official receiver, which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession.

(2) The official receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3) It shall be the duty of the official receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator.

Resignation of liquidator.

162. A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the liquidator, he shall file with the registrar a memorandum of his resignation, and shall send notice thereof to the official receiver, and the resignation shall thereupon take effect. In any other case the liquidator shall report to the court the result of the meetings and shall send a report to the official receiver and thereupon the court may, upon the application of the liquidator or the official receiver, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the court shall be necessary.

Office of liquidator vacated by his insolvency.

163. If a receiving order in bankruptcy is made against the liquidator, he shall thereby vacate his office, and for the purposes of the application of the Act and rules shall be deemed to have been removed.

PAYMENTS INTO AND OUT OF A BANK.

164. All payments out of the companies liquidation account shall be made in such manner as the Board of Trade may from time to time direct. **Rule 164.**

165.—(1) Where the liquidator in a winding-up by the court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator, and shall be countersigned by at least one member of the committee of inspection, and by such other person, if any, as the committee of inspection may appoint. Payments
out of Bank
of England.
Special bank
account.
Forms 82
and 83

(2) Where application is made to the Board of Trade to authorise the liquidator in a winding-up by the court to make his payments into and out of a special bank account, the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

Books.

166. The official receiver, until a liquidator is appointed by the court, and thereafter the liquidator, shall keep a book to be called the "Record Book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the "Record Book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the committee of inspection, or the official receiver, or the Board of Trade. Record
book.

167.—(1) The official receiver, until a liquidator is appointed by the court, and thereafter the liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Board of Trade may from time to time direct) in which he shall (subject to the provisions of the rules as to trading accounts) enter from day to day the receipts and payments made by him. Cash book.

(2) The liquidator shall submit the record book and cash book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months.

INVESTMENT OF FUNDS.

Rule 168.

Investment
of assets in
securities,
and realisa-
tion of
securities.
Forms 84
and 85.

168.—(1) Where the committee of inspection are of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the Board of Trade.

(2) Where the committee of inspection are of opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested they shall sign a certificate and request to that effect, and the liquidator shall transmit such certificate and request to the Board of Trade.

(3) Where in a winding-up by the court in which there is no committee of inspection, or in a voluntary winding-up, or winding-up under the supervision of the court, a case has in the opinion of the liquidator arisen under section 231 of the Act for an investment of funds of the company or a sale of securities in which the company's funds have been invested, the liquidator shall sign and transmit to the Board of Trade a certificate of the facts on which his opinion is founded, and a request to the Board of Trade to make the investment mentioned in the certificate, and the Board of Trade may thereupon, if it thinks fit, invest or sell the whole or any part of the said funds or securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Board of Trade for the said investment or sale.

ACCOUNTS AND AUDIT IN A WINDING-UP BY THE COURT.

Audit of
cash book.
Form 86.

169. The committee of inspection shall not less than once every three months audit the liquidator's cash book and certify therein under their hands the day on which the said book was audited.

Board of
Trade audit
of liqui-
dator's
accounts.

170.—(1) The liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the cash book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts a summary of the company's statement of affairs, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised. The liquidator shall also at the end of every six months forward to the Board of Trade, with his accounts, a report upon the position of the liquidation of the company in such form as the Board of Trade may direct.

(2) When the assets of the company have been fully realised

and distributed, the liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

Rule 170.
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(3) The accounts sent in by the liquidator shall be verified by him by affidavit. Form 87.

See *Collaroy Co., Ltd. v. Giffard*, (1928) 1 Ch. 144; 97 L. J. Ch. 69.

171.—(1) Where the liquidator carries on the business of the company, he shall keep a distinct account of the trading, and shall incorporate in the cash book the total weekly amount of the receipts and payments on such trading account. Liquidator carrying on business.

(2) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the liquidator shall thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same. Forms 88 and 88A.

172. When the liquidator's account has been audited, the Board of Trade shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the registrar. Copy of accounts to be filed.

173.—(1) The liquidator shall transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade may from time to time direct, and, on the approval of such summary by the Board of Trade, shall forthwith obtain, prepare, and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory. Summary of accounts.

(2) The cost of printing and posting such copies shall be a charge upon the assets of the company.

174. Where a liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments. Affidavit of no receipts.

175. (1) Upon a liquidator resigning, or being released or removed from his office, he shall deliver over to the official receiver, or, as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of liquidator. The release of a liquidator shall not take effect unless and until he has delivered over to the official receiver, or, as the case may be, to the Proceeding on resignation, etc., of liquidator.

Rule 175.

Disposal of books.

new liquidator, all the books, papers, documents, and accounts which he is by this rule required to deliver on his release.

(2) The Board of Trade may, at any time during the progress of the liquidation, on the application of the liquidator or the official receiver, direct that such of the books, papers, and documents of the company or of the liquidator as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of.

Expenses of sales.

176. Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator by whom such auctioneer or agent is employed, shall, unless the court otherwise orders, be accountable for the proceeds of every such sale.

TAXATION OF COSTS.

Taxation of costs payable by or to official receiver or liquidator or by company.

177. Every solicitor, manager, accountant, auctioneer, broker, or other person employed by an official receiver or liquidator in a winding-up by the court shall on request by the official receiver or liquidator (to be made a sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the official receiver or liquidator for the purpose of taxation; and if he fails to do so within the time stated in the request, or such extended time as the court may allow, the liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the court the claim shall be forfeited. The request by the official receiver or liquidator shall be in the Form No. 89.

Form 89.

Notice of appointment.

178. Where a bill of costs or charges in any winding-up has been lodged with the taxing officer, he shall give notice of an appointment to tax the same, in a winding-up by the court to the official receiver, and in every winding-up to the liquidator, and to the person to or by whom the bill or charges is or are to be paid (as the case may be).

Lodgment of bill.

179. The bill of charges, if incurred in a winding-up by the court prior to the appointment of a liquidator, shall be lodged with the official receiver, and if incurred after the appointment of a liquidator, shall be lodged with the liquidator. The official receiver or the liquidator, as the case may be, shall lodge the bill or charges with the proper taxing officer.

180. Every person whose bill or charges in a winding-up by the court is or are to be taxed shall, on application either of the official receiver or the liquidator, furnish a copy of his bill or charges so to be taxed, on payment at the rate of 4*d.* per folio, which payment shall be charged on the assets of the company. The official receiver shall call the attention of the liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

Rule 180.

Copy of the bill to be furnished.

181. Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding:—

Applica-
tion for
costs.

- (1) Such party or person shall serve notice of his intended application on the official receiver in a winding-up by the court and in every winding-up on the liquidator.
- (2) The official receiver (if any) and liquidator may appear on such application and object thereto.
- (3) No costs of or incident to such application shall be allowed to the applicant, unless the court is satisfied that the application could not have been made at the time of the proceeding.

182. Upon the taxation of any bill of costs, charges, or expenses being completed, the taxing officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges, and expenses, together with the allowance or certificate, shall be filed with the registrar.

Certificate
of taxation.
Form 90.

183. Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an official receiver or liquidator, is or are payable out of the assets of the company, a certificate in writing, signed by the official receiver or liquidator, as the case may be, shall on the taxation be produced to the taxing officer setting forth whether any, and if so, what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment.

Certificate
of employ-
ment.

184. In a county court all costs properly incurred in a winding up by the court shall be allowed on the lower scale in Appendix N to the Rules of the Supreme Court, and costs shall be taxed by the registrar in person.

Scale of
costs in a
county
court, and
taxation.

184B. The total of any items of costs (as distinct from payments) in respect of business done after the 31st day of December, 1919, in a winding-up in a County Court shall be increased by 33½ per centum, and such increase shall be allowed

Rule 134b. upon any taxation of costs whether as between party and party or as between solicitor and client:

Provided (a) that this rule shall not apply to items in respect of business the remuneration for which is regulated by the General Order made in pursuance of the Solicitors' Remuneration Act, 1881, or by the Solicitors' Remuneration Act General Order, 1919.

(b) That this Rule shall not affect the power to direct payment of a sum in lieu of costs under Order 65, rule 23, of the Rules of the Supreme Court, or the power to allow a fixed sum for costs under Order 65, rule 27 (38) of the said rules, or a gross sum under Order 65, rule 27 (38A) of the said rules, and

(c) that this rule shall not apply to bills of costs which have at the date on which this rule comes into operation already been delivered to the official receiver or liquidator for taxation or delivered to a client sought to be charged therewith, or to the person chargeable therewith or liable therefor, or to bills then already taxed and certified or allowed.

Rule 184A is hereby revoked except in respect of business done before the 1st day of January, 1920, and except as regards those bills of costs which are excluded from the operation of this rule by the last preceding proviso to this rule.

The increase hereby authorised shall not affect the question whether a bill of costs when taxed is or is not less by one-sixth part than the bill delivered, sent or left.

Rule dated 9th June, 1920.

Review of
taxation at
instance of
Board of
Trade.

185.—(1) Where any bill of costs, charges, fees or disbursements which are payable out of the assets of the company to any solicitor, manager, accountant, auctioneer, broker or other person has been taxed by a registrar of a court other than the High Court, the Board of Trade may require the taxation to be reviewed by the taxing officer of the High Court.

(2) In any case in which the Board of Trade require such a review of taxation as is above mentioned, they shall give notice to the person whose bill has been taxed, and shall apply to the taxing officer of the High Court to appoint a time for the review of such taxation, and thereupon such taxing officer shall appoint a time for the review of, and shall review, such taxation, and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3) Where any such review of taxation as is above mentioned is required to be made by the taxing officer of the High Court, the registrar whose taxation is to be reviewed shall forward to the said taxing officer the bill which is required to be reviewed.

Rule 185.

(4) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the official receiver or the liquidator, or other person entitled thereto. The certificate of the taxing officer shall in every case of a review by him under this rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5) The costs of and incidental to the review shall be paid out of the assets of the company or otherwise as the taxing officer or the court may direct; provided that the cost of the attendance of a principal shall not be allowed if in the opinion of the taxing officer he could have been sufficiently represented by his London agent.

COSTS AND EXPENSES PAYABLE OUT OF THE ASSETS OF THE COMPANY.

186.—(1) Where a liquidator or special manager in a winding-up by the court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself. Liquidator's charges.

(2) Where a liquidator is a solicitor he may contract that the remuneration for his services as liquidator shall include all professional services.

187.—(1) The assets of a company in a winding-up by the court, remaining after payment of the fees and actual expenses incurred in realising or getting in the assets, shall, subject to any order of the court, and, as regards a winding-up to which the provisions of the Stannaries Act, 1887, apply, subject to that Act, as modified 50 & 51 Vict. by the Act, be liable to the following payments, which shall be made in the following order of priority, namely:— Costs payable out of the assets. c. 43.

First. The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the court.

Next. The remuneration of the special manager (if any).

Next. The costs and expenses of any person who makes or concurs in making, the company's statement of affairs.

Next. The taxed charges of any shorthand writer appointed to take an examination. Provided that where the shorthand writer is appointed at the instance of the official

Rule 187.

receiver the costs of the shorthand notes shall be deemed to be an expense incurred by the official receiver in getting in and realising the assets of the company.

Next. The liquidator's necessary disbursements, other than actual expenses of realisation heretofore provided for.

Next. The costs of any person properly employed by the liquidator.

Next. The remuneration of the liquidator.

Next. The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

Costs.

(2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 54, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the registrar. The taxing officer shall satisfy himself before passing such bills or charges that the employment of the solicitor or other person in respect of the matters mentioned in the bills or charges has been duly sanctioned. Provided that the official receiver when acting as liquidator may without taxation pay and allow the costs and charges of any person other than a solicitor employed by him where such costs and charges are within the scale usually allowed by the court, and do not exceed the sum of £2; provided always that the Board of Trade may require such costs or charges to be taxed by the taxing officer.

(3) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the court, are ordered by the court in which such proceedings are pending or a judge thereof to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.

STATEMENTS BY LIQUIDATOR TO THE REGISTRAR OF JOINT STOCK COMPANIES.

Conclusion of winding-up.

188. The winding-up of a company shall, for the purposes of section 224 of the Act, be deemed to be concluded :—

- (a) In the case of a company wound up by order of the court, at the date on which the order dissolving the company has been reported by the liquidator to the registrar of companies, or at the date of the order of the Board of

Trade releasing the liquidator pursuant to section 157 of the Act. ule 188.

- (b) In the case of a company wound up voluntarily, or under the supervision of the court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the companies liquidation account at the Bank of England.

189. The statements with respect to the proceedings in and position of a liquidation of a company, the winding-up of which is not concluded within a year after its commencement, shall be sent to the registrar of companies twice in every year as follows :— Times for sending liquidator's statements, and regulations applicable thereto.

- (1) The first statement, commencing at the date when a liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, or within such extended period as the Board of Trade may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent.
- (2) Subject to the next succeeding rule, Form No. 92, with such variations as circumstances may require, shall be used, and the directions specified in the form shall (unless the Board of Trade otherwise direct) be observed in reference to every statement. Form 92.
- (3) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 93, with such variations as circumstances may require. Form 93.

190. Where a liquidator has not during any period for which a statement has to be sent received or paid any money on account of the company, he shall at the period when he is required to transmit his statement, send to the registrar of companies the prescribed statement in the Form No. 92, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93. Affidavit of no receipts or payments. Forms 92 and 93.

UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN THE HANDS OF A LIQUIDATOR.

Rule 191.

Payment of undistributed and unclaimed money into companies liquidation account.

191.—(1) All money in the hands or under the control of a liquidator of a company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the six months, be paid into the companies liquidation account.

(2) All other money in the hands or under the control of a liquidator of a company, representing unclaimed or undistributed assets, which under sub-section 4 of section 224 of the Act, the liquidator is to pay into the companies liquidation account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the registrar of companies is brought down, and the amount to be paid to the companies liquidation account shall be the minimum balance of such money which the liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the companies liquidation account within fourteen days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the liquidator at the date of the dissolution of the company shall forthwith be paid by him into the companies liquidation account.

(4) A liquidator whose duty it is to pay into the companies liquidation account at the Bank of England, money representing unclaimed or undistributed assets of the company shall apply in such manner as the Board of Trade shall direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

(5) Money at the credit of the account of the official liquidator of a company with the Bank of England shall be deemed to be money under the control of such official liquidator, and when such money has remained unclaimed or undistributed for six months after the date of receipt it shall be transferred to the companies liquidation account, and the official liquidator and master of the Chancery Division of the High Court attached to the judge in whose chambers the winding-up is proceeding shall draw and sign such cheques or orders as may be necessary for the

transfer of the money. An application to the Board of Trade for payment out of moneys so transferred shall be signed by the official liquidator and counter-signed by the said master.

Rule 191.

(6) Money invested or deposited at interest by a liquidator shall be deemed to be money under his control, and when such money forms part of the minimum balance payable into the companies liquidation account pursuant to clause (2) of this rule, the liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the companies liquidation account, provided that where the money is invested in Government securities, such securities may, with the permission of the Board of Trade, be transferred to the control of the Board of Trade instead of being forthwith realised and the proceeds thereof paid into the companies liquidation account. In the latter case, if and when the money represented by the securities is required wholly or in part for the purposes of the liquidation, the Board of Trade may realise the securities wholly or in part and pay the proceeds of realisation into the companies liquidation account and deal with the same in the same way as other moneys paid into the said account may be dealt with.

192. Every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the companies liquidation account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit.

Liquidator to furnish information to Board of Trade.

Form 97.

193.—(1) The Board of Trade may at any time order any such person to submit to them an account verified by affidavit of the sums received and paid by him as liquidator of the company and may direct and enforce an audit of the account.

Board of Trade may call for verified accounts.

(2) For the purposes of section 224 of the Act, and the rules, the court shall have, and, at the instance of the Board of Trade, may exercise all the powers conferred by the Bankruptcy Act, 1883, with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 224 of the Act.

Forms 92 and 93.

46 & 47 Vict. c. 52.

194. An application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 224 of the Act, shall be made by motion, and where the winding-up is by or under the supervision

Application to the court for enforcing an account, and getting in money.

Rule 194.

of the court shall be made to and dealt with by the judge, and in a voluntary winding-up shall be made to and dealt with by the judge of the High Court.

Application
for payment
out by
person
entitled.

195. An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 224 of the Act, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled and such further evidence as the Board of Trade may direct.

Application
by liqui-
dator for
payment
out.

196. A liquidator who requires to make payments out of money paid into the Bank of England in pursuance of section 224 of the Act, either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for payment to the liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the liquidator for transmission to the persons to whom the payments are to be made.

RELEASE OF LIQUIDATOR IN A WINDING-UP BY THE COURT.

Proceedings
for release of
liquidator.

Forms 98, 99
and 100.

197.—(1) A liquidator in a winding-up by the court before making application to the Board of Trade for his release, shall give notice of his intention so to do to all the creditors who have proved their debts, and to all the contributories, and shall send with the notice a summary of his receipts and payments as liquidator.

(2) When the Board of Trade have granted to a liquidator his release, a notice of the order granting the release shall be gazetted. The liquidator shall provide the requisite stamp fee for the *Gazette*, which he may charge against the company's assets.

OFFICIAL RECEIVERS AND BOARD OF TRADE.

Appoint-
ment.

198.—(1) Judicial notice shall be taken of the appointment of the official receivers appointed by the Board of Trade.

(2) When the Board of Trade appoints any officer to act as deputy for or in the place of an official receiver, notice thereof shall be given by letter to the court to which such official receiver is or was attached. The letter shall specify the duration of such acting appointment.

(3) Any person so appointed shall, during his tenure of office,

have all the status, rights, and powers, and be subject to all the liabilities of an official receiver. **Rule 198.**

199. Where an official receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the court to which the official receiver was attached. **Removal.**

200. The Board of Trade may, by general or special directions, determine what acts or duties of the official receiver in relation to the winding-up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control. **Personal performance of duties.**

201. An assistant official receiver, appointed by the Board of Trade, shall be an officer of the court, like the official receiver to whom he is assistant, and subject to the directions of the Board of Trade, he may represent the official receiver in all proceedings in court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant official receiver, and he may be removed in the same manner as is provided in the case of an official receiver. **Assistant official receivers.**

202. In the absence of the official receiver any officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the official receiver duly authorised by him in writing, may by leave of the court act on behalf of the official receiver, and take part for him in any public or other examination and in any unopposed application to the court. **Power of officers of Board of Trade and official receivers' clerks in certain cases to act for official receiver.**

203. Where a company against which a winding-up order has been made has no available assets, the official receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Board of Trade. **Duties where no assets.**

204.—(1) Where a liquidator is appointed by the court in a winding-up by the court, the official receiver shall account to the liquidator. **Accounting by official receiver.**

(2) If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient.

(3) The provisions of these rules as to liquidators and their accounts shall not apply to the official receiver when he is liquidator, but he shall account in such manner as the Board of Trade may from time to time direct.

Rule 205.

Official receiver to act for Board of Trade where no committee of inspection.
Appeals from Board of Trade and official receiver.

205. Where there is no committee of inspection any functions of the committee of inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the official receiver.

206. An appeal in the High Court against a decision of the Board of Trade, or an appeal to the court from an act or decision of the official receiver acting otherwise than as liquidator of a company, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced, or made.

Applications under s. 159 (2) of the Act.

207.—(1) An application by the Board of Trade to the court to examine on oath the liquidator or any other person pursuant to section 159 of the Act, shall be made *ex parte*, and shall be supported by a report to the court filed with the registrar, stating the circumstances in which the application is made.

(2) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade; and shall for the purposes of such application be *prima facie* evidence of the statements therein contained.

BOOKS TO BE KEPT, AND RETURNS MADE, BY OFFICERS OF COURTS.

Books to be kept by officers of courts.

208.—(1) (a) In a court other than the High Court, the registrar shall keep books according to the Forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

NOTE.—(a) Provisions applicable to High Court omitted.

Forms 101 and 102.

(2) The officers of the courts whose duty it is to keep the books prescribed by these rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

GAZETTING IN A WINDING-UP BY THE COURT.

Gazetting notices.
Form 103.

209.—(1) All notices subsequent to the making by the court of a winding-up order in pursuance of the Act or the rules requiring publication in the *London Gazette* shall be gazetted by the Board of Trade.

(2) Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been

amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Board of Trade may direct.

Rule 209.

210.—(1) Whenever the *London Gazette* contains any advertisement relating to any winding-up proceedings the official receiver or liquidator as the case may be shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

Filing memorandum of *Gazette* notices.

Form 104.

(2) In the case of an advertisement in a local paper, the official receiver or liquidator as the case may be shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the court is inserted, shall be left with the official receiver or liquidator as the case may be by the person who inserts the advertisement.

(4) A memorandum under this rule shall be *prima facie* evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* or newspaper mentioned in it.

ARRESTS AND COMMITMENTS.

211. A warrant of arrest, or any other warrant issued under the provisions of the Act and rules, may be addressed to such officer of the court, or to such high bailiff or officer of any county court, whether such county court has jurisdiction to wind up a company or not, as the court may in each case direct.

To whom warrants may be addressed.

212. Where the court issues a warrant for the arrest of a person under any of the provisions of the Act or rules, the prison (to be named in the warrant of arrest) to which the person shall be committed shall, unless the court shall otherwise order, be the prison used by the court in cases of orders of commitment made in the exercise by the court of its ordinary jurisdiction.

Prison to which person arrested on warrant is to be taken.

213. Where a warrant for the arrest of a person has been issued by a court other than the High Court under any of the provisions of the Act and rules, the High Bailiff of the court,⁵ or other officer of the court to whom the warrant is addressed, may send the warrant of arrest to the registrar of any other court (other than the High Court) within the ordinary jurisdiction or district of

Execution of warrants of arrest outside ordinary jurisdiction of court.

Forms 105 and 106.

Rule 213. which such person shall then be or be believed to be, with a warrant annexed thereto under the hand of the high bailiff or officer and seal of the court from which the warrant originally issued, requiring execution of the warrant by the court to which it is so sent; and the registrar of the last-mentioned court shall seal or stamp the warrant with the seal of his court, and issue the same to the high bailiff or other proper officer of his court, with an endorsement thereon in the Form 106; and thereupon such last-mentioned high bailiff or officer may, and shall in all respects execute the said warrant according to the requirements thereof, and all constables and peace officers shall aid and assist within their respective districts in the execution of such warrant.

Prison to which a person arrested is to be conveyed, and production and custody of persons arrested.

214.—(1) Where a person is arrested under a warrant of commitment issued under any of the provisions of the Acts and rules, other than sections 174 and 176 of the Act, and Rule 66 of the rules, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the court within the ordinary jurisdiction of which he is apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged by the order of the court which originally issued the warrant of commitment, or otherwise by law.

(2) Where a person is arrested under a warrant, issued under section 174 or section 176 of the Act, or under Rule 66 of the rules, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the court within the ordinary jurisdiction of which he is apprehended; and the governor or keeper of such prison shall produce such person before the court as it may from time to time direct, and shall safely keep him until such time as the court shall otherwise order, or such person shall be otherwise discharged by law. Provided that where any such person is conveyed to a prison other than the prison used by the court which originally issued the warrant in cases of orders of commitment made by such court in the exercise of its ordinary jurisdiction, the court may by order direct such person to be transferred to such last mentioned prison; and on receipt of such order the governor or keeper of the prison to which such person has been conveyed, shall cause such person to be conveyed in proper custody to the prison mentioned in such order, and the governor or keeper of such last mentioned prison shall, on production of such order and of the warrant of arrest, receive such person, and shall produce him before the court, as it may from time to time direct, and shall safely keep him until such time as the court shall otherwise order, or such person shall be otherwise discharged by law.

MISCELLANEOUS MATTERS.

215. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or the rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the King's printers, and purport to be issued under the authority of the Board of Trade. Rule 215.
Board of Trade orders.

216. The court may, in any case in which it shall see fit, extend or abridge the time appointed by the rules or fixed by any order of the court for doing any act or taking any proceeding. Enlargement or abridgment of time.

217.—(1) No proceedings under the Act or the rules shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court. Formal defect not to invalidate proceedings.

(2) No defect or irregularity in the appointment or election of a receiver, liquidator, or member of a committee of inspection shall vitiate any act done by him in good faith.

218. In all proceedings in or before the court, or any judge, registrar or officer thereof, or over which the court has jurisdiction under the Act and rules, where no other provision is made by the Act or rules, the practice, procedure and regulations shall, unless the court otherwise in any special case directs, be, in (a) a county court, in accordance, as far as practicable, with the existing rules and practice of the court in proceedings for the administration of assets by the court (b). Application of existing procedure.

NOTE.—(a) Provisions as to High Court omitted.

NOTE.—(b) Rule 219 applies to High Court.

220. The Companies (Winding-up) Rules, 1903, and the forms thereby prescribed are hereby revoked and annulled, provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which these rules come into operation under any rule or order which is hereby revoked and annulled and that no rule or practice which was annulled or repealed by the said rules and orders shall be revived by reason of the revocation and annulment hereby effected. Annulment.

Rule 221.
Short title
and com-
mencement.

221. These rules may be cited as the Companies (Winding-up) Rules, 1909. They shall come into operation on the 1st day of April, 1909.

APPENDIX—FORMS.

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No. 4. (Rule 25.)

Petition.

[Title.]

To [insert title of court].

The humble petition of [insert full name, title, &c., of petitioner] sheweth as follows :—

1. The _____ company, limited (hereinafter called the company) was in the month of _____, incorporated under the Companies Acts.

2. The registered office of the company is at [state the full address of the registered office so as sufficiently to show the district in which it is situate].

3. The nominal capital of the company is £ _____, divided into shares of £ _____ each. The amount of the capital paid up or credited as paid up is £ _____.

4. The objects for which the company was established are as follows :—

To _____, and other objects set forth in the memorandum of association thereof.

[Here set out in paragraphs the facts on which the petitioner relies, and conclude as follows] :—

Your petitioner therefore humbly prays as follows :—

(1.) That the _____ company, limited, may be wound up by the court under the provisions of the Companies (Consolidation) Act, 1908.

(2.) Or that such other order may be made in the premises as shall be just.

NOTE.—It is intended to serve this petition on _____ (This note will be unnecessary if the company is petitioner.)

No. 5. (Rule 25.)

Petition by unpaid Creditor on Simple Contract.

[Title.]

Paragraphs 1, 2, 3, and 4 as in No. 4.

5. The company is indebted to your petitioner in the sum of £ _____ for [state consideration for the debt, with particulars so as to establish that the debt claimed is due].

6. Your petitioner has made application to the company for payment of his debt, but the company has failed and neglected to pay the same or any part thereof.

7. The company is [insolvent and] unable to pay its debts.

8. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner therefore, &c. [as in No. 4].

No. 6. (Rule 27.)

Advertisement of Petition.

[Title.]

Notice is hereby given that a petition for the winding-up of the above-named company by [if the winding-up is to be subject to supervision, insert instead of "by" the words "subject to the supervision of"] the county court of _____ holden at _____ [or, as the case may be], was, on the _____ day of _____, 19____, presented to the said court by the said company [or

as the case may be]. And that the said petition is directed to be heard before the court sitting at _____ on the _____ day of _____, 19____; and any creditor or contributory of the said company desirous to support or oppose the making of an order on the said petition may appear at the time of hearing by himself or [in the county court add "his solicitor or"] his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same by the undersigned on payment of the regulated charge for the same.

[Signed] [to be signed by the solicitor to the petitioner, or by the petitioner if he has no solicitor].

[Name.]

[Address.]

NOTE.—Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named, notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or if posted, must be sent by post in sufficient time to reach the above named not later than six o'clock in the afternoon of the _____ of _____, 19____.

No. 7. (Rule 28.)

Affidavit of Service of Petition on Members, Officers, or Servants.

[Title.]

In the matter of a petition dated _____

I, _____, of _____, make oath and say:—

1. [In the case of service of petition on a company by leaving it with a member, officer, or servant at the registered office, or if no registered office at the principal or last known principal place of business of the company.]

That I did on _____ day, the _____ day of _____, 19____, serve the above named company with the above-mentioned petition by delivering to and leaving with [name and description] a member (or officer) (or servant) of the said company a copy of the above-mentioned petition, duly sealed with the seal of the court, at [office or place of business as aforesaid], before the hour of _____ in the _____ noon.

2. [In the case of no member, officer, or servant of the company being found at the registered office or place of business.]

That I did on _____ day, the _____ day of _____, 19____, having failed to find any member, officer, or servant of the above-named company at [here state registered office or place of business], leave there a copy of the above-mentioned petition, duly sealed with the seal of the court, before the hour of _____ in the _____ noon [add with whom such sealed copy was left, or where, e.g.; affixed to door of offices, or placed in letter-box, or otherwise].

3. [In the case of directions by the court as to the member or members of the company to be served.]

That I did on _____ day, the _____ day of _____, 19____, serve [name or names and description] with a copy of the above-mentioned petition, duly sealed with the seal of the court, by delivering the same personally to the said _____, at [place], before the hour of _____ in the _____ noon.

4. The said petition is now produced and shown to me, marked A.

Sworn at, &c.

No. 8. (Rule 28.)

Affidavit of Service of Petition on Liquidator.

[Title.]

In the matter of a petition, dated _____, for winding up the above company [by] *or* [under the supervision of] the court [*as the case may be*].

I, _____, of _____, make oath and say :

That I did, on _____ day, the _____ day of _____ 19____, serve [*name and description*] the liquidator of the above-named company with a copy of the above-mentioned petition, duly sealed with the seal of the court, by delivering the same personally to the said _____ at [*place*], before the hour of _____ in the _____ noon.

The said petition is now produced and shown to me, marked A.

Sworn at, &c.

No. 9. (Rule 29.)

Affidavit Verifying Petition.

[Title.]

I, A. B., of &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A., as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, &c.

No. 10. (Rule 31.)

Order appointing the Official Receiver as Provisional Liquidator after Presentation of Petition, and before Order to Wind up.

the _____ day of _____, 19____.

[Title.]

Upon the application, &c., and upon reading, &c., the court doth hereby appoint [one of] the official receiver[s] attached to the court to be provisional liquidator of the above-named company. And the court doth hereby limit and restrict the powers of the said official receiver as provisional liquidator to the following acts, that is to say [*describe the acts which the provisional liquidator is to be authorised to do and the property of which he is to take possession*].

No. 11. (Rule 33.)

Notice of Intention to appear on Petition.

[Title.]

Take notice that A. B., of [*state full name, or if a firm, the name of the firm and address*], a creditor for £ _____ of (or contributory holding [*state number and class of shares held*] shares in) the above company intends to appear on the hearing of the petition advertised to be heard on the _____ day of _____ 19____, and to support (or oppose) such petition.

(Signed) [*to be signed by the person or his solicitor*]

[*Name of person or firm.*]

[*Address.*]

To

COMPANIES (WINDING-UP) FORMS.

No. 12. (Rule 34.)

List of Parties attending the hearing of a Petition.

[Title.]

The following are the names of those who have given notice of their
intention to attend the hearing of the petition herein, on the day
19 .

Name.	Address.	Name and Address of Solicitor of party who has given notice.	Creditors. Amount of Debt.	Contributories. Number of Shares.	Opposing.	Supporting.

No. 13. (Rule 37.)

Notification to Official Receiver of Order pronounced on Petition for Winding-up.

[Title.]

To the official receiver of the court.

(Address.)

Order pronounced this day by the Honourable Mr. Justice
[or, as the case may be] on petition for winding-up the under-mentioned
company under the Companies (Consolidation) Act, 1908.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.	Date of Presentation of Petition.

No. 14. (Rule 37.)

Notification to Official Receiver of Order pronounced for appointment of Official Receiver as Provisional Liquidator prior to Winding-up Order being made.

[Title.]

To the official receiver of the court.

(Address.)

Order pronounced this day by the Honourable Mr. Justice [or, as the case may be] for the appointment of an official receiver as provisional liquidator prior to any winding-up order being made.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.	Date of Presentation of Petition.

No. 15. (Rule 40.)

Order for Winding-up by the Court.

day of , 19 .

[Title.]

Upon the petition of the above-named company [or A. B., of &c., a creditor [or contributory] of the above-named company], on the day of , 19 , preferred unto the court, and upon hearing for the petitioner, and for , and upon reading the said petition, and affidavit of (the said petitioner), filed, &c., verifying the said petition, an affidavit of L. M., filed the day of , 19 , the *London Gazette* of the day of , 19 , the newspaper of the day of [enter any other papers], each containing an advertisement of the said petition [enter any other evidence], this court doth order that the said company be wound up by this court under the provisions of the Companies (Consolidation) Act, 1908, and that [one of] the official receiver[s] attached to this court be constituted provisional liquidator of the affairs of the company.

NOTE.—It will be the duty of the directors and of the secretary or other chief officer of the company as the official receiver may require, to attend on the official receiver at [insert the place at which attendance is required] forthwith on the service of this order.

No. 16. (Rule 41.)

Order for Winding-up, Subject to Supervision.

day, the day of , 19 .

[Title.]

Upon the petition, &c., this court doth order that the voluntary winding-up of the said company, limited, be continued, but subject to the

supervision of this court; and any of the proceedings under the said voluntary winding-up may be adopted as the court shall think fit; and it is ordered that the liquidator appointed in the voluntary winding-up of the said company, do on the day of next, and thenceforth every three months, file with the registrar a report in writing as to the position of, and the progress made with, the winding-up of the said company, and with the realisation of the assets thereof, and as to any other matters connected with the winding-up as the court may from time to time direct. And it is ordered that no bills of costs, charges, or expenses, or special remuneration of any solicitor employed by the liquidator of the said company, or any remuneration, charges, or expenses of such liquidator, or of any manager, accountant, auctioneer, broker, or other person, be paid out of the assets of the said company, unless such costs, charges, expenses, or remuneration, shall have been taxed or allowed by the registrar. And it is ordered that all such costs, charges, expenses, and remuneration, be taxed and ascertained accordingly. And it is ordered that the costs of the petitioner and of [*here insert any directions as to allowance of costs of petitioner and of persons appearing*]. And the creditors, contributories, and liquidator of the said company, and all other persons interested, are to be at liberty to apply generally as there may be occasion.

No. 17. (Rule 41.)

Notice of Order to Wind up (for Newspaper).

The Companies (Consolidation) Act, 1908.

In the matter of , Limited.

Winding-up order made , 19 .

Date and place of first meetings :--

Creditors 19 , at .

Contributories 19 , at .

Official Receiver and Provisional Liquidator.

No. 18. (Rule 43.)

Order of Transfer.

[*Title.*]

Upon the application of [*name of applicant*] and upon hearing and upon reading it is ordered that the said proceedings be transferred from the [*court from which the transfer is to be made*] court to the [*court to which the transfer is to be made*] court.

Dated this day of 19 .

No. 19. (Rule 46.)

Notice of Transfer of Proceedings to the Board of Trade and Official Receiver.

[*Title.*]

The proceedings in the winding-up of the above-named company have been, by order dated the 19 , transferred to this court from the [*High Court*] or [*the county court of , holden at ,*] [*or as the case may be*] and have had the above letter and number allotted to them. The letter and number before transfer were .

Dated this day of 19 . Registrar.

No. 20. (Rule 49.)

Affidavit by Special Manager Verifying Account.

[Title.]

I, _____ of _____, make oath and say as follows:—

1. The account hereunto annexed, marked with the letter A. produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the above-named company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

Sworn, &c.

No. 21. (Rule 118.)

Notice to Creditors of First Meeting.

[Title.]

(Under the order for winding-up the above-named company, dated the _____ day of _____ 19__.)

Notice is hereby given that the first meeting of creditors in the above matter will be held at _____ on the _____ day of _____ 19__, at _____ o'clock in the _____ noon.

To entitle you to vote thereat your proof must be lodged with me not later than _____ o'clock on the _____ day of _____ 19__.

Forms of proof and of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than _____ o'clock on the _____ day of _____ 19__.

Official Receiver.

[Address.]

(The statement of the company's affairs [Here insert "has not been lodged," or "has been lodged, and summary is enclosed".])

NOTE.

At the first meetings of the creditors and contributories they may amongst other things:—

1. By resolution determine whether or not an application is to be made to the court to appoint a liquidator in place of the official receiver.

2. By resolution determine whether or not an application shall be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

NOTE.—If a liquidator is not appointed by the court the official receiver will be the liquidator.

No. 22. (Rule 118.)

Notice to Contributories of First Meeting.

[Title.]

Notice is hereby given that the first meeting of the contributories in the above matter will be held at _____ on the _____ day of _____ 19__, at _____ o'clock in the _____ noon.

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than o'clock on the day of 19 .
Dated this day of 19 .

Official Receiver.

(The company's statement of affairs [*Here insert "has not been lodged" or "has been lodged, and summary is enclosed"*].)

NOTE.

At the first meetings of creditors and contributories they may amongst other things:—

1. By resolution determine whether or not an application shall be made to the court to appoint a liquidator in place of the official receiver.

2. By resolution determine whether or not an application shall be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

NOTE.—If a liquidator is not appointed by the court the official receiver will be the liquidator.

No. 23. (Rule 119.)

Notice to Directors and Officers of Company to Attend First Meeting of Creditors or Contributories.

[*Title.*]

Take notice that the first meeting of creditors [*or contributories*] will be held on the day of 19 , at o'clock at [*here insert place where meeting will be held*] and that you are required to attend thereat, and give such information as the meeting may require.

Dated this day of 19 .

To [*Insert name of person required to attend*].

Official Receiver.

No. 24.

Memorandum of Proceedings at adjourned First Meeting.

(No quorum.)

[*Title.*]

Before at on the day of 19 , at o'clock.

Memorandum.—The adjourned meeting of [*insert "creditors" or "contributories," as the case may be*] in the above matter was held at the time and place above-mentioned; but it appearing that there was not a quorum of [*insert "creditors" or "contributories," as the case may be*] qualified to vote present or represented, no resolution was passed, and the meeting was not further adjourned.

Chairman.

No. 25.

(a) Or "contributories."

List of Creditors (a) assembled to be used at every Meeting.

No. 26. (Rule 50.)

Statement of Affairs.

No. 27. (Rule 55.)

Report of Result of Meeting of Creditors or Contributories.

No. 28. (Rule 55.)

Order appointing Liquidator.

[Title.]

the day of 19 .

Upon the application of the official receiver and provisional liquidator of the above-named company, by summons dated and upon hearing the applicant in person and reading the order to wind up the said company dated 19 , and the reports of the official receiver of the results of the meetings of creditors and contributories made to the court and respectively dated the , and upon reading the affidavit of as to the fitness of the liquidator hereinafter named filed .

It is ordered that of be appointed liquidator of the above-named company.

[To be struck out if no committee of inspection appointed]. It is also ordered that the following persons be appointed a committee of inspection to act with the said liquidator, namely :—

And it is ordered that the said liquidator do within seven days from the date of this order give security to the satisfaction of the Board of Trade as provided by the Companies (Winding-up) Rules, 1909.

And notice of this order is to be gazetted and advertised in the .

By the Court.

No. 29. (Rule 57.)

Certificate that Liquidator or Special Manager has given Security.

[Title.]

This is to certify that A. B., of , who was on the day of , 19 , appointed liquidator [or special manager] of the above-named company, has duly given security to the satisfaction of the Board of Trade.

Dated this day of , 19 .

By the Board of Trade
(Signed) J. S.

No. 30. (Rule 55.)

Advertisement of Appointment of Liquidator.

In the matter of , limited.

By order of the , dated the day of 19 , Mr.

has been appointed liquidator of the above-named company with [or without] a committee of inspection:

Dated this day of 19 .

COMPANIES (WINDING-UP) FORMS.

No. 31. (Rules 60-62.)

Order Directing a Public Examination.

[Title.]

Upon reading the reports of the official receiver in the above matter dated respectively the day of 19 , the day of 19 , and

It is ordered that the several persons whose names and addresses are set forth in the schedule hereto do attend before the court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to their conduct and dealings as directors or officers of the company.

THE SCHEDULE REFERRED TO.

Name.	Address.	Connection with the Company.

No. 32. (Rule 64.)

Order appointing a Time for Public Examination.

[Title.]

Upon the application of the official receiver in the above matter, it is ordered that the public examination of who, by the order of the court dated the day of 19 , was directed to attend before to be publicly examined, be held at [insert the place for the examination] on the day of 19 , at o'clock in the noon.

And it is ordered that the above-named do attend at the place and time above mentioned.

Dated this day of 19 .

NOTE.—Notice is hereby given that if you, the above-named fail without reasonable excuse, to attend at the time and place aforesaid, you will be liable to be committed to prison without further notice.

No. 33. (Rule 64.)

Notice to attend Public Examination.

[Title.]

Whereas by an order of this court, made on the day of , 19 it was ordered that you, the under-mentioned should attend before the court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the company, and as

to the conduct of the business of the company, and as to your conduct and dealings as [insert director or officer [or as the case may be]].

And whereas the day of 19 , at o'clock, in the noon, before the sitting at has been appointed as the time and place for holding the said examination.

Notice is hereby given that you are required to attend at the said time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writings and other documents in your custody or power in any way relating to the above-named company.

And take notice that if you fail, without reasonable excuse, to attend at such time and place, and at the adjournments of the said public examination which may be ordered, you will be liable to be committed to prison without further notice.

Dated the day of 19 .

To

Official Receiver.

No. 34. (Rule 71.)

Application for Appointment of Shorthand Writer to take down Notes of Public Examination and Order thereon.

[Title.]

Ex parte the official receiver.

I, the official receiver herein, do hereby, pursuant to Rule 71 of the Companies Winding-Up Rules, 1909, apply to the court for an order for the appointment of of in the county of to take down in shorthand the notes of examination of at their public examination, the costs of taking such notes, and of making a transcript thereof, to be paid in accordance with Rule 71.

Dated this day of 19 .

Official Receiver.

Before

Upon the application of the official receiver the court hereby appoints of in the county of to take down in shorthand the notes of examination of the persons mentioned in the above application at their public examination, or at any adjournment thereof, pursuant to Rule 71 of the Companies Winding-up Rules, 1909, the costs of taking such notes, and of making a transcript thereof, to be paid in accordance with Rule 71.

Dated this day of 19 .

No. 35. (Rule 71.)

Declaration by Shorthand Writer.

[Title.]

Before

I, of in the county of , the shorthand writer appointed by this court to take down the examination of , do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put to and given by the said in this matter, and will deliver true and faithful transcripts thereof as the court may direct.

Dated this day of 19 .

[Declared before me at the time and place above-mentioned.]

No. 36. (Rule 67.)

Notes of Public Examination where a Shorthand Writer is Appointed.

[Title.]

Public examination of [Mr. _____ an officer [or as the case may be] of the above-named company.]

Before _____ at the court _____ this _____ day of _____ 19 ____.

The above-named _____ being sworn and examined at the time and place above-mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say :—

A

These are the notes of the public examination referred to in the memorandum of public examination of _____, taken before me this _____ day of _____ 19 ____.

No. 37. (Rule 67.)

Notes of Public Examination where a Shorthand Writer is not Appointed.

[Title.]

Public examination of [Mr. _____ an officer [or as the case may be] of the above-named company].

Before _____ at the court _____, this _____ day of _____ 19 ____.

The above-named _____ being sworn and examined at the time and place above-mentioned, upon his oath saith as follows :—

A.

These are the notes of the public examination referred to in the memorandum of public examination of _____, taken before me this _____ day of _____ 19 ____.

No. 38. (Rule 72.)

Report to the Court where Person examined refuses to answer to Satisfaction of Registrar or Officer.

[Title.]

At the [public] examination of [e.g., A. B., a person ordered to attend for examination], held before me this _____ day of _____, 19 ____, the following question was allowed by me to be put to the said [person].

Q. [Here state question.]

The [witness] refused to answer the said question.

[or] The [witness] answered the said question as follows :—

A. [Here insert answers (if any).]

I thereupon named the _____ day of _____, 19 ____, at _____ as the time and place for such [refusal to] answer to be reported to the Hon. Mr. Justice

[or His Honour Judge _____].

Dated this _____ day of _____, 19 ____.

Registrar

[or as the case may be].

No. 39.

Order on Persons to attend at Chambers to be Examined.

[Title.]

A. B. of &c., and E. F. of &c., are hereby severally ordered to attend at [state place of examination], in the county of _____ on the _____ day of _____, at _____ of the clock in the _____ noon, to be examined on the part of the official receiver [or the liquidator], for the purpose of proceedings directed by the court to be taken in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, the documents mentioned in the schedule hereto, and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named company.]

Dated this _____ day of _____ 19__.

This order was made on the application of Messrs. C. and D., of _____ in the county of _____, Solicitors for _____.

THE SCHEDULE ABOVE REFERRED TO.

No. 40. (Rule 66.)

Warrant against Person who fails to attend Examination.

[Title.]

To X. Y., the officer of this court [or where warrant issues from a county court, to the high bailiff and others the bailiffs of the said court] and all peace officers within the jurisdiction of the said court, and to the governor or keeper of the [here insert the prison].

Whereas by evidence taken upon oath, it hath been made to appear to the satisfaction of the court that by order of the court, dated the _____ day of _____ 19__, and directed to [name of person required to attend] he was directed to attend personally at the [place of examination], and be examined before [name or title of officer before whom examination is directed to be held], which order was afterwards, as hath been duly proved on oath, duly served upon the said [name of person required to attend] [or, that there is probable reason to suspect and believe that the said [name of person required to attend], has absconded and gone abroad, [or quitted his place of residence, or] is about to go abroad [or quit his place of residence] with a view of avoiding examination under the Companies (Consolidation) Act, 1908].

And whereas the said [name of person required to attend] did without good cause fail to attend on the said _____ day of _____ 19__, for the purpose of being examined, according to the requirements of the said order of this court made on the _____ day of _____ 19__, directing him so to attend.

These are therefore to require you the said [or high bailiff, bailiffs, and others], to take the said [name of person required to attend] and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said [name of person required to attend] and him safely to keep in the said prison until such time as this court may order.

Dated this _____ day of _____ 19__.

No. 41. (Rule 76.)

Notice by Liquidator requiring Payment of Money or Delivery of Books, &c., to Liquidator.

[Title.]

Take notice that I, the undersigned [name of liquidator], have been appointed liquidator of the above-named company, and that you, the under-

mentioned [*name of person to whom notice is addressed*], are required, within days after service hereof, to pay to me [*or deliver, convey, surrender, or transfer to or into my hands*] as liquidator of the said company at my office, situate at [*address of liquidator's office*], &c., the sum of £ , being the amount of debt appearing to be due from you on your account with the said company [*or any sum or balance, books, papers, estate, or effects*], [*or specifically describe the property*] now being in your hands, and to which the said company is entitled [*or otherwise as the case may be*].

Dated this day of , 19 Signed .

Liquidator.

To [*name of person to whom notice is addressed*].
(*Address*)

No. 42. (Rule 77.)

Provisional List of Contributories to be made out by Liquidator.

[*Title.*]

The following is a list of members of the company liable to be placed on the list of contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares [*or extent of interest*] to be attributed to each, so far as I have been able to make out or ascertain the same.

In the first part of the list, the persons who are contributories in their own right are distinguished.

In the second part of the said list, the persons who are contributories as being representatives of, or being liable to the debts of others, are distinguished.

First Part.—Contributories in their own Right.

Serial No.	Name.	Address.	Description.	Number of Shares [<i>or extent of Interest</i>].

Second Part.—Contributories as being Representatives of, or liable to the Debts of, Others.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [<i>or extent of Interest</i>].

No. 43. (Rule 78.)

Notice to Contributories of Appointment to settle List of Contributories.

[Title.]

Take notice that I, _____, the liquidator of the above-named company, have appointed the _____ day of _____ 19____, at _____ of the clock in the _____ noon, at [insert place of appointment], in the county of _____, to settle the list of the contributories of the above-named company, made out by me, pursuant to the Companies (Consolidation) Act, 1908, and the rules thereunder, and that you are included in such list in the character and for the number of shares [or extent of interest] stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled, including you therein.

Dated this _____ day of _____, 19____.

Liquidator.

To Mr. A. B. [and to Mr. C. D.,]
his solicitor.]

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

No. 44

Affidavit of Postage of Notices of Appointment to settle List of Contributories.

[Title.]

I, _____ a [state the description of the deponent] make oath and say as follows:—

1. That I did on the _____ day of _____ 19____, send to each contributory mentioned in the list of contributories made out by the [official receiver and] liquidator on the _____ day of _____ 19____, and now on the file of proceedings of the above-named company, at the address appearing in such list, a notice of the time and place of the appointment to settle the list of contributories in the form hereunto annexed, marked "A," except that in the tabular form at the foot of such copies respectively I inserted the number, name, address, description, in what character included and ["number of shares" or "extent of interest"] of the person on whom such copy of the said notice was served.

2. That I sent the said notices by putting the same prepaid into the post office at _____ before the hour of _____ o'clock in the _____ noon on the said day.

Sworn, &c.

In the matter of _____ limited.

Second Part.—Contributories as being Representatives of or liable to the Debts of Others.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].	Date when included in the List.

In the matter of _____, limited.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	Number of Shares [or extent of Interest].	Date when excluded from the List.

No. 46. (Rule 80.)

Notice to Contributory of Final Settlement of List of Contributories and that his Name is included.

[Title.]

Take notice that I, _____, the liquidator of the above-named company, have, by certificate, dated the _____ day of _____, 19____, under my hand, finally settled the list of contributories of the said company, and that you are included in such list in the character and for the number of shares [or extent of interest] stated below.

Any application by you to vary the said list of contributories, or that your name may be excluded therefrom, must be made by you to the court within 21 days from the service on you of this notice, or the same will not be entertained.

COMPANIES (WINDING-UP) FORMS.

The said list may be inspected by you at the chambers of the registrar at [state address], on any day between the hours of and .
Dated this day of , 19 .

(Signed) Liquidator.

To Mr. [or to Mr. , }
his solicitor.] }

No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

No. 47. (Rule 82.)

Supplemental List of Contributories.

[Title.]

1. The following is a list of persons who, since making out the list of contributories herein dated the day of 19 , I have ascertained are, or have been, holders of shares in [or members of] the above-named company, and to the best of my judgment are contributories of the said company.
2. The said supplemental list contains the names of such persons, together with their respective addresses and the number of shares [or extent of interest] to be attributed to each.
3. In the first part of the said list such of the said persons as are contributories in their own right are distinguished.
4. In the second part of the said list such of the said persons as are contributories as being representatives of or being liable to the debts of others are distinguished.

[The supplemental list is to be made out in the same form as the original list.]

No. 48.

Affidavit of Service of Notice to Contributory.

[Title.]

- I, [state full description of the deponent] of , make oath and say as follows:—
1. I did on the day of 19 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked “A.” upon each of the respective persons whose names, addresses and descriptions appear in the second, third, and fourth columns of the first schedule to the list of contributories of the said company made out by the [official receiver and] liquidator of the company on the day

of 19 , and now on the file of proceedings of the said company, except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and ["number of shares" or "extent of interest"] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule.

2. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively, according to their respective names and addresses appearing in the said schedule, by placing the same prepaid in the post office at before the hour of o'clock in the noon of the said day of 19 .
Sworn, &c.

No. 49. (Rule 81.)

Order on Application to vary List of Contributories.

[Title.]

Upon the application of W. N., by summons dated the day of 19 , for an order that the list of contributories of the company and the liquidator's certificate finally settling the same be varied by excluding the name of the applicant therefrom [or as the case may be], and upon hearing, &c., and upon reading, &c., It is Ordered, That the list of contributories of the company and the liquidator's certificate finally settling the same be varied by excluding the name of the said W. N. from the said list of contributories, or by including the name of the said W. N. as a contributory in the said list for shares [or as the case may be] [or the Court doth not think fit to make any order on the said application, except that the said W. N. do pay to the liquidator of the said company his costs of this application, to be taxed in case the parties differ].

No. 50. (Rule 83 (1).)

Notice to each Member of Committee of Inspection of Meeting for Sanction to proposed Call.

[Title.]

Take notice that a meeting of the committee of inspection of the above company will be held at on the [to be a date not less than seven days from the date when the notice will in course of post reach the person to whom it is addressed] day of 19 , at o'clock in the noon, for the purpose of considering and obtaining the sanction of the committee to a call of £ per share proposed to be made by the liquidator on the contributories.

Annexed hereto is a statement showing the necessity for the proposed call and the amount required.

Dated this day of 19 .

(Signed)

Liquidator.

STATEMENT.

1. The amount due in respect of proofs admitted against the company, and the estimated amount of the costs charges, and expenses of the winding-up, form in the aggregate the sum of £ or thereabouts.

2. The assets of the company are estimated to realise the sum of £ . There are no other assets, except the amounts due from certain of the contributories to the company, and in my opinion it will not be possible to realise in respect of the said amounts more than £ .

3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of _____ shares.

4. For the purpose of satisfying the several debts and liabilities of the company, and of paying the costs, charges, and expenses of the winding up, I estimate that a sum of £ _____ will be required in addition to the amount of the company's assets herein-before mentioned.

5. In order to provide the said sum of £ _____ it is necessary to make a call on the contributories, and having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realising the amount required it is necessary that a call of £ _____ per share should be made.

(Annex tabular statement showing amounts of debts, costs, &c., and of assets.)

No. 51. (Rule 83 (2).)

Advertisement of Meeting of Committee of Inspection to Sanction proposed Call.

[Title.]

Notice is hereby given that the undersigned liquidator of the above-named company proposes that a call should be made "on all the contributories of the said company," or, as the case may be, of £ _____ per share, and that he has summoned a meeting of the committee of inspection of the company, to be held at _____ on the _____ day of _____ 19____, at _____ o'clock in the _____ noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting, and be heard or make any communication in writing to the liquidator or the members of the committee of inspection in reference to the intended call.

A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to the liquidator at his office at [insert address].

Dated this _____ day of _____ 19____.

Liquidator.

No. 52. (Rule 83 (4).)

Resolution of Committee of Inspection sanctioning Call.

Resolved, that a call of £ _____ per share be made by the liquidator on all the contributories of the company [or, as the case may be].

(Signed)

Members of the Committee
of Inspection.

Dated this _____ day of _____ 19____.

No. 53. (Rule 86.)

Notice of Call sanctioned by Committee of Inspection to be sent to Contributory.

[Title.]

Take notice that the committee of inspection in the winding up of this company have sanctioned a call of £ _____ per share on all the contributories of the company.

The amount due from you in respect of the call is the sum of £
 This sum should be paid by you direct to me at my office [*state address*] on
 or before the day of 19 .
 Dated this day of 19 .

Liquidator.

To Mr.

No. 54. (Rule 84.)

Summons for Leave to make a Call.

[*Title.*]

Let these several persons whose names and addresses are set forth in the second column of the schedule hereto, being contributories of the above-named company, as shown in the third column of the said schedule, attend at on the day of 19 , at o'clock in the noon, on the hearing of an application on the part of the [official receiver and] liquidator of the company for an order that he may be at liberty to make a call to the amount of per share on all the contributories [*or as the case may be*] of the said company.

Dated the day of 19 .

This summons was taken out by of , Solicitors for the [official receiver and] liquidator.

To

NOTE.—If you do not attend either in person or by your Solicitor, at the time and place above-mentioned, such order will be made and proceedings taken as the court may think just and expedient.

SCHEDULE.

Number on List.	Name and Address.	In what character included.

No. 55. (Rule 84.)

Affidavit of Liquidator in support of proposal for Call.

[*Title.*]

I, , of, &c., the liquidator of the above-named company, make oath and say as follows:—

1. I have in the schedule now produced and shown to me, and marked with the letter A., set forth a statement showing the amount due in respect of the debts proved and admitted against the said company, and the estimated amount of the costs, charges and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said

company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

3. persons have been settled by me on the list of contributories of the said company in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company and of paying the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required in addition to the amount of the assets of the said company mentioned in the said schedule A. and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that, for the purpose of realising the amount required as before-mentioned, it is necessary that a call of £ per share should be made.

Sworn, &c.

No. 56. (Rule 84.)

Advertisement of Intended Call.

In the matter of .

Notice is hereby given that the [name of court] court has appointed the day of 19 , at o'clock in the noon, at [state place of appointment], to sanction a call on all the contributories of the said company [or as the case may be] and that the liquidator of the said company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 19 .

Liquidator.

No. 57. (Rule 84.)

Order giving leave to make a Call.

The day of 19 .

[Title.]

Upon the application of the [official receiver and] liquidator of the above-named company, and upon reading the affidavit of the said [official receiver and] liquidator, filed the day of 19 , and the exhibit marked "A." therein referred to, and an affidavit of filed the day of 19 .

It is ordered that leave be given to the [official receiver and] liquidator to make a call of £ per share on all the contributories of the said company [or as the case may be].

And it is ordered that each such contributory do on or before the day of 19 , pay to the [official receiver and] liquidator of the company, the amount which will be due from him or her in respect of such call.

No. 58. (Rule 85.)

Document making a Call.

[Title.]

I, the [official receiver and] liquidator of the above-named company, in pursuance of [an order of court or resolution of the committee

[of inspection], made (or passed) this day of 19 , hereby
make a call of per share on all the contributories of the company,
which sum is to be paid at my office [insert address], on the day of
19 .

Dated this day of 19 .

No. 59. (Rule 86.)

Notice to be served with the Order sanctioning a Call.

[Title.]

The amount due from you, A. B., in respect of the call made pursuant to
leave given by the above [or within] order is the sum of £ , which sum
is to be paid by you to me as the liquidator of the said company at my office,
No. Street, in the county of .
Dated this day of 19 .

To Mr. A. B. Liquidator.

No. 60. (Rule 87.)

Affidavit in support of Application for Order for Payment of Call.

[Title.]

I, of, &c., the liquidator of the above-named company, make oath
and say as follows:—

1. None of the contributories of the said company, whose names are set
forth in the schedule hereto annexed, marked A., have paid or caused to
be paid the sums set opposite their respective names in the said schedule,
which sums are the amounts now due from them respectively under the call
of per share, duly made under the Companies (Consolidation) Act,
1908, dated the day of 19 .

2. The respective amounts or sums set opposite the names of such con-
tributories respectively in such schedule are the true amounts due and owing
by such contributories respectively in respect of the said call.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.		
					£	s.	d.

Sworn, &c.

NOTE.—In addition to the above affidavit, an affidavit of the service of
the application for the call will be required in cases in which the committee
of inspection or the court has authorised a call to be made.

No. 61. (Rule 87.)

Order for Payment of Call due from a Contributory.

The day of 19 .

[Title.]

Upon the application of the liquidator of the above-named company, and upon reading an affidavit of , filed the day of , 19 , and an affidavit of the liquidator, filed the day of , 19 , it is ordered that C. D., of, &c. [or E. F., of, &c., the legal personal representative of L. M., late of, &c., deceased], one of the contributories of the said company [or, if against several contributories, the several persons named in the second column of the schedule to this order, being respectively contributories of the said company], do, on or before the day of , 19 , or within four days after service of this order, pay to the liquidator of the said company at his office, No. Street, in the county of , the sum of £ [if against a legal personal representative add, out of the assets of the said L. M., deceased, in his hands as such legal personal representative as aforesaid, to be administered in due course of administration, if the said E. F. has in his hands so much to be administered, or, if against several contributories, the several sums of money set opposite to the respective names in the sixth column of the said schedule hereto], such sum [or sums] being the amount [or amounts] due from the said C. D. [or L. M., or the said several persons respectively], in respect of the call of £ per share duly made, dated the day of , 19 .

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.		
					£	s.	d.

NOTE.—The copy for service of the above order must be endorsed as follows:—

“If you, the under-mentioned A. B., neglect to obey this order by the time mentioned therein you will be liable to process of execution, for the purpose of compelling you to obey the same.”

No. 62. (Rule 87.)

Affidavit of Service of Order for Payment of Call.

[Title.]

I, J. B., of, &c., make oath and say as follows:—

1. I did on the day of , 19 , personally serve G. F., of in the county of , &c., with an order made in this matter by this court, dated the day of , 19 , whereby it was ordered [set out the order] by delivering to and leaving with the said G. F., at , in the county of , a true copy of the said order, and at the same time producing and showing unto him, the said G. F., the said original order.

2. There was indorsed on the said copy when so served the following words, that is to say, “If you, the under-mentioned G. F., neglect to obey

COMPANIES (WINDING-UP) FORMS.

No. 67. (Rule 150.)

Notice to Creditors of Intention to Declare Dividend.

[Title.]

A [Insert here "first" or "second," or "final," or as the case may be] dividend is intended to be declared in the above matter. You are mentioned in the statement of affairs, but you have not yet proved your debt.

If you do not prove your debt by the _____ day of _____ 19____, you will be excluded from this dividend.

Dated this day of 19

To X. Y.

Liquidator,
[Address.]

No. 68. (Rule 150 (5).)

Certified List of Proofs under Rule 150 (5) Companies (Winding-up) Rules, and Application for Issue of Cheques for Dividend on Companies Liquidation Account.

Companies Liquidation Account.
Ledger Folio .

Re Court No. 1

I hereby certify that the following list has been compared with the proofs filed, and that the names of the creditors and the amounts for which the proofs are admitted are correctly stated.

(Signature) [If the proceedings are in a county court, to be signed by the Registrar. If the proceedings are in the High Court, to be signed by the Liquidator.]

Dated the day of 19

I certify that by my books the sum of £ stands to the credit of the above company with the Companies Liquidation Account at the Bank of England, and that the sum of £ is required to meet the under-mentioned dividends, on proofs which have been duly made and admitted to rank for dividend upon the company, and I have to request that orders for payment may be issued to me.

The dividend is payable on the day of 19 , and notice of declaration thereof was forwarded to the Board of Trade for insertion in *London Gazette*, on the day of 19 .

Liquidator.

Date . . . 19 . . .

Address to which Cheques
and Money Orders should
be sent.

To the Board of Trade.

No.	Surname.	Christian Name.	Trade on which Post Office Money Order should be drawn.	Amount of Proof.	Sums under £2.	Sums of £2 and above.

No. 69. (Rule 150 (5).)

**Certified List of Proofs Filed under Rule 150 (5) Companies (Winding-up)
Rules, Special Bank Case.**

[Title.]

I hereby certify that the following list has been compared with the proofs filed, and that the names of the creditors and the amounts for which the proofs are admitted are correctly stated.

(Signature) *[If the proceedings are in a county court, to be signed by the Registrar. If the proceedings are in the High Court, to be signed by the Liquidator.]*

Dated the day of 19 .

I hereby certify that a dividend of in the £ has been declared, and that the creditors whose names are set forth below are entitled to the amounts set opposite their respective names.

Liquidator.

Dated the day of 19 .
To the Board of Trade.

Surname.	Christian Name.	Amount of Proof.			Amount of Dividend.		

No. 70.

Notice to Persons Claiming to be Creditors of Intention to declare Final Dividend.

[Title.]

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the court on or before the day of , 19 , or such later day as the court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of , 19 .

Liquidator,
[Address.]

To X. Y.

No. 71. (Rule 150 (3).)

Notice of Dividend.

No. 72. (Rule 150 (7).)

Authority to Liquidator to Pay Dividends to Another Person.

COMPANIES (WINDING-UP) FORMS.

No. 73. (Rule 151.)

Notice of Return to Contributories.

No. 74. (Rule 151.)

Schedule or List of Contributories Holding Paid-up Shares to whom a Dividend or Return is to be Paid.

No. 75. (Rule 121.)

Notice of Meeting [General Form].

[Title.]

Take notice that a meeting of creditors [or contributories] in the above matter will be held at on the day of 19 , at o'clock in the noon.

Agenda.

[Here insert purpose for which meeting called.]

Dated this day of 19 .

(Signed) ["Liquidator" or "Official Receiver."]

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged not later than o'clock on the day of 19 .

No. 76. (Rule 124.)

Affidavit of Postage of Notices of Meeting.

No. 77. (Rule 124.)

Certificate of Postage of Notices (General).

No. 78. (Rule 131.)

Memorandum of Adjournment of Meeting.

No. 79. (Rule 127.)

Authority to Deputy to act as Chairman of Meeting and use Proxies.

No. 80. (Rule 147.)

General Proxy.

No. 81. (Rule 147.)

Special Proxy.

No. 82. (Rule 165.)

Application to Board of Trade to Authorise a Special Bank Account.

No. 83. (Rule 165.)

Order of Board of Trade for Special Bank Account.

No. 84. (Rule 168.)

Certificate and Request by Committee of Inspection as to Investment of Funds.

No. 85. (Rule 168.)

Request by Committee of Inspection to Board of Trade to Sell Securities.

No. 86. (Rule 169.)

Certificate by Committee of Inspection as to Audit of Liquidator's Accounts.

No. 87. (Rule 170.)

Affidavit Verifying Liquidator's Account under Section 155.

No. 88. (Rule 171.)

Liquidator's Trading Account under Section 155.

No. 88A. (Rule 171.)

Affidavit Verifying Liquidator's Trading Account under Section 155.

No. 89. (Rule 177.)

Request to Deliver Bill for Taxation.

[Title.]

I hereby request that you will, within days of this date, or such further time as the court may allow, deliver to me for taxation by the proper officer your bill of costs [*or charges*] as [*here state nature of employment*], failing which, I shall, in pursuance of the Companies (Consolidation) Act and Rules, proceed to declare and distribute a dividend without regard to any claim which you may have against the assets of the company, and your claim against the assets of the company will be liable to be forfeited

Dated this day of , 19 .

COMPANIES (WINDING-UP) FORMS.

No. 90. (Rule 182.)

Certificate of Taxation.

[Title.]

I hereby certify that I have taxed the bill of costs [or charges] [or expenses] of Mr. C. D. [here state capacity in which employed or engaged] [where necessary add "pursuant to an order of the court dated the day of , 19 "], and have allowed the same at the sum of pounds shillings and pence [where necessary add "which sum is to be paid to the said C. D. by as directed by the said order"].

Dated this day of , 19

Taxing Master [or Registrar].

£ : :

No. 91. (Rules 177-184.)

Register to be kept by Taxing Officer.

No. 92. (Rules 189 and 190.)

Statement of Receipts and Payments and General Directions as to Statements.

Liquidator's Statement of Account.

Pursuant to Section 224 of the Companies (Consolidation) Act, 1908.

No. 93. (Rules 189 and 190.)

Affidavit verifying Statement of Liquidator's Account under Section 224.

No. 94.

Liquidator's Trading Account under Section 224.

No. 95.

List of Dividends or Composition.

No. 96.

List of Amounts Paid or Payable to Contributories.

No. 97. (Rule 192.)

Affidavit verifying Account of Unclaimed and Undistributed Funds.

No. 98. (Rule 197.)

Notice to Creditors and Contributories of intention to apply for Release.

COMPANIES (WINDING-UP) FORMS.**1973****No. 99. (Rule 197.)****Application by Liquidator to Board of Trade for Release.****No. 100. (Rule 197.)****Statement to accompany Notice of Application for Release.****No. 101. (Rule 208.)****Register of Winding-up Orders to be kept in the Courts**

Number of Winding-up Order.	Number of Petition.	Date of Petition.	Date of Winding-up Order.	Dates of Public Examinations (if any).	Liquidator.

No. 102. (Rule 208.)**Register of Petitions to be kept in the Courts.**

No. of Petition.	Name of Company.	Address of Registered Office.	Description of Company.	Date of Petition.	Petitioner.	Date of Winding-up Order.

No. 103. (Rule 209.)**Notices for London Gazette.**

COMPANIES (WINDING-UP) FORMS.

No. 104. (Rule 210.)

Memorandum of Advertisement or Gazetteing.

No. 105. (Rule 213.)

**Warrant to Registrar of Court in whose District a Person against whom
a Warrant of Arrest has been issued is believed to be.**

Whereas the warrant of arrest hereto annexed has been issued by this court against the person named therein, namely, *_____* of *_____* under the provisions of the Companies (Consolidation) Act, 1908, and Companies (Winding-up) Rules, 1909.

And whereas he is outside the ordinary jurisdiction of this court, and is believed to be within the jurisdiction or district of the court of which you are the registrar.

These are therefore to require you to cause the said warrant to be executed within the ordinary jurisdiction of the *_____* court [*insert name of court*].

Dated this *_____* day of *_____*, 19 *_____*.

(Signed) [*to be signed by the high bailiff or other proper officer of the court*].

To the registrar of the court.

No. 106. (Rule 213.)

**Endorsement of Warrant of Arrest issued by a Court to which the same
has been sent for execution by the Court which originally issued it.**

To the governor of the prison [*insert name of prison of the court to which the warrant has been sent*].

Take notice that in accordance with the Companies (Winding-up) Rules, 1909, this warrant of arrest has been sent to and issued by me to the high bailiff (or other officer) of this court, and that the person named in the warrant, if apprehended within the jurisdiction thereof, is to be conveyed to the prison of this court, and is to be there kept until otherwise directed by the order of the court which originally issued the warrant of arrest, or until discharged by that court, or otherwise by law.

Dated the *_____* day of *_____*, 19 *_____*.

Registrar.

COURT FEES.

The scale of fees prescribed by Order dated December 2nd, 1903, and the amending Orders has been repealed, so far as it relates to proceedings in county courts, by the County Court Fees Order, 1925, and the fees payable are now set out in the table to that Order.

The following are the fees in the table referred to which relate to the winding-up of companies:—

	£	s.	d.
Fee No. 2. On filing a petition—			
(iii.) For winding-up a company	1	10	0
„ 20. On hearing a petition—			
(iii.) For winding-up a company	1	10	0
„ 45 (i.) On an application to sanction a compromise or arrangement	5	0	0
(This fee includes the petition and the hearing.)			
(ii.) On every other application	0	5	0
(iii.) On the hearing of an application by the judge	1	0	0

NOTE.—No fees are payable for filing affidavits or on proofs of debts.

COUNTY COURTS HAVING BANKRUPTCY AND
WINDING-UP JURISDICTION.

NOTE.—By sect. 96 (4) of Bankruptcy Act, 1914 (4 & 5 Geo. V. c. 59), a county court which at commencement of Act (January 1st, 1915) is excluded and the districts then existing shall respectively be excluded and subsist until the Lord Chancellor otherwise orders.

THE COUNTY COURTS (BANKRUPTCY AND COMPANIES
WINDING-UP) JURISDICTION ORDER, 1899, DATED
MAY 19TH, 1899.

1. This order may be cited as “The County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899.”

2. In and for the purposes of this order :—

“Court district” means the district of a county court as constituted by “The County Courts (Districts) Order in Council, 1899,” or any order amending the same.

3. The county courts specified in the first column of the first schedule hereto shall be and they are hereby excluded from having jurisdiction in bankruptcy in respect of any matter or proceeding had or taken under the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), the Bankruptcy Act, 1883, or any Acts amending the same.

4. For the purposes of bankruptcy jurisdiction the districts of such last-named courts shall be attached to the county courts the names of which are respectively specified in the second column of the first schedule opposite to the names of the respective county courts excluded hereby from bankruptcy jurisdiction.

5. Such county courts as are by this order excluded from having jurisdiction in bankruptcy shall be excluded from having jurisdiction under the Companies (Winding-up) Act, 1890, and the district of any such court shall for the purposes of jurisdiction under the Companies (Winding-up) Act, 1890, be attached to the court to which that district is by this order attached for the purposes of jurisdiction in bankruptcy.

6. The orders specified in the second schedule hereto are hereby repealed as regards each county court and court district to which the said orders apply as from the coming into operation of this order as to such county court or court district.

7. Nothing in this order shall affect or alter the limits of the London Bankruptcy District or the jurisdiction therein of the High Court in bankruptcy or in the winding-up of companies, and nothing in this order shall confer any jurisdiction on county courts within the said London Bankruptcy District.

Rule 8.

8. This order shall, as regards each county court or court district, come into operation at the day on which "The County Courts (Districts) Order in Council, 1899," comes into operation as to such county court or court district: Provided that where any order of the Lord Chancellor is made under Article 7 of the said County Courts (Districts) Order in Council, 1899, this article shall have effect subject to any such order of the Lord Chancellor.

SCHEDULE I. (revised).

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Northumberland, held at Alnwick, Berwick, Hexham and Bellingham, Morpeth and Blyth, and North Shields; and the County Court of Durham, held at Consett, and Gateshead.	The County Court of Northumberland, held at Newcastle-upon-Tyne, in Circuit 1.
The County Court of Durham, held at Seaham-Harbour; and South-Shields and Jarrow.	The County Court of Durham, held at Sunderland, in Circuit 2.
The County Court of Durham, held at Bishops Auckland.	The County Court of Durham, held at Durham, in Circuit 2.
The County Court of Durham, held at Barnard Castle, Darlington, and West Hartlepool.	The County Court of Durham, held at Stockton-on-Tees, in Circuit 2.
The County Court of Northumberland, held at Haltwhistle and Alston; and the County Court of Cumberland, held at Brampton, Penrith, and Wigton and Silloth.	The County Court of Cumberland, held at Carlisle, in Circuit 3.
The County Court of Cumberland, held at Keswick.	
The County Court of Westmoreland, held at Appleby, and Kirkby-Lonsdale.	The County Court of Cumberland, held at Workington and Cockermouth, in Circuit 3.
The County Court of Lancashire, held at Lancaster.	The County Court of Westmoreland, held at Kendal, in Circuit 3.
The County Court of Lancashire, held at Accrington.	The County Court of Lancashire, held at Preston, in Circuit 4.
The County Court of Lancashire, held at Bury, Chorley, and Leigh.	The County Court of Lancashire, held at Blackburn and Clitheroe, in Circuit 4.
The County Court of Lancashire, held at Rawtenstall.	The County Court of Lancashire, held at Bolton, in Circuit 5.
The County Court of Lancashire, held at Southport and Ormskirk, and St. Helens and Widnes; and the County Court of Cheshire, held at Runcorn.	The County Court of Lancashire, held at Rochdale, in Circuit 5.
The County Court of Flintshire, held at Mold and Holywell, and Flint.	The County Court of Lancashire, held at Liverpool, in Circuit 6.
	The County Court of Cheshire, held at Chester, in Circuit 7.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Cheshire, held at Altrincham.	The County Court of Lancashire, held at Manchester, in Circuit 8.
The County Court of Cheshire, held at Hyde; and the County Court of Derbyshire, held at Glossop.	The County Court of Lancashire, held at Ashton-under-Lyne and Stalybridge, in Circuit 10.
The County Court of Cheshire, held at Northwich; and the County Court of Shropshire, held at Market-Drayton, and Whitechurch.	The County Court of Cheshire, held at Nantwich and Crewe, in Circuit 7.
The County Court of Derbyshire, held at Buxton, Chapel-en-le-Frith and New Mills.	The County Court of Cheshire, held at Stockport, in Circuit 10.
The County Court of Cheshire, held at Congleton and Sandbach; and the County Court of Staffordshire, held at Leek.	The County Court of Cheshire, held at Macclesfield, in Circuit 10.
The County Court of Yorkshire, held at Keighley, and Skipton and Settle.	The County Court of Yorkshire, held at Bradford, in Circuit 11.
The County Court of Lancashire, held at Colne; and the County Court of Yorkshire, held at Todmorden.	The County Court of Lancashire, held at Burnley, in Circuit 11.
The County Court of Yorkshire, held at Doncaster, Rotherham, and Thorne; and the County Court of Nottinghamshire, held at Worksop.	The County Court of Yorkshire, held at Sheffield, in Circuit 13.
The County Court of Yorkshire, held at Goole, and Pontefract.	The County Court of Yorkshire, held at Wakefield, in Circuit 14.
The County Court of Yorkshire, held at Otley.	The County Court of Yorkshire, held at Leeds, in Circuit 14.
The County Court of Yorkshire, held at Stokesley and Guisborough.	The County Court of Yorkshire, held at Middlesbrough in Circuit 15.
The County Court of Yorkshire, held at Tadcaster.	The County Court of Yorkshire, held at Harrogate, in Circuit 15.
The County Court of Yorkshire, held at Easingwold, Pocklington, and Selby.	The County Court of Yorkshire, held at York, in Circuit 15.
The County Court of Yorkshire, held at Helmsley, Leyburn, Richmond, Ripon, and Thirsk.	The County Court of Yorkshire, held at Northallerton, in Circuit 15.
The County Court of Yorkshire, held at Bridlington, New Malton, and Whitby.	The County Court of Yorkshire, held at Scarborough, in Circuit 16.
The County Court of Yorkshire, held at Beverley, Great Driffield, and Howden.	The County Court of Yorkshire, held at Kingston-on-Hull, in Circuit 16.
The County Court of Lincolnshire, held at Barton-on-Humber, Brigg and Scunthorpe, and Louth.	The County Court of Lincolnshire, held at Great Grimsby, in Circuit 17.
The County Court of Nottinghamshire, held at East Retford; and the County Court of Lincolnshire, held at Gainsborough, and Market Rasen and Caistor.	The County Court of Lincolnshire, held at Lincoln and Horncastle, in Circuit 17.

SCHEDULE—*continued*.

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Lincolnshire, held at Sleaford, and Spilsby.	The County Court of Lincolnshire, held at Boston, in Circuit 17.
The County Court of Nottinghamshire, held at Mansfield, and Newark; and the County Court of Lincolnshire, held at Grantham.	The County Court of Nottinghamshire, held at Nottingham, in Circuit 18.
The County Court of Derbyshire, held at Alfreton, Bakewell, and Ilkeston, and Wirksworth and Matlock.	The County Court of Derbyshire, held at Derby and Long Eaton, in Circuit 19.
The County Court of Derbyshire, held at Ashbourne; and the County Court of Leicestershire, held at Ashby-de-la-Zouch; and the County Court of Staffordshire, held at Uttoxeter.	The County Court of Staffordshire, held at Burton-on-Trent, in Circuit 19.
The County Court of Leicestershire, held at Hinckley, Loughborough, Market-Harborough, and Melton-Mowbray; and the County Court of Rutlandshire, held at Oakham.	The County Court of Leicestershire, held at Leicester, in Circuit 20.
The County Court of Warwickshire, held at Atherstone; the County Court of Staffordshire, held at Tamworth; and the County Court of Worcestershire, held at Redditch.	The County Court of Warwickshire, held at Birmingham, in Circuit 21.
The County Court of Warwickshire, held at Nuneaton, and Rugby.	The County Court of Warwickshire, held at Coventry, in Circuit 23.
The County Court of Warwickshire, held at Alcester, and Stratford-on-Avon.	The County Court of Warwickshire, held at Warwick, in Circuit 23.
The County Court of Worcestershire, held at Tenbury.	The County Court of Worcestershire, held at Kidderminster, in Circuit 22.
The County Court of Worcestershire, held at Bromsgrove, Evesham, Great Malvern, and Pershore; and the County Court of Herefordshire, held at Bromyard.	The County Court of Worcestershire, held at Worcester, in Circuit 22.
The County Court of Glamorganshire, held at Barry.	The County Court of Glamorganshire, held at Cardiff, in Circuit 24.
The County Court of Monmouthshire, held at Chepstow, Monmouth, and Pontypool.	The County Court of Monmouthshire, held at Newport, in Circuit 24.
The County Court of Monmouthshire, held at Abergavenny and Blaenavon; and the County Court of Brecknockshire, held at Crickhowell.	The County Court of Monmouthshire, held at Tredegar, Abergillery and Bargoed, in Circuit 24.
The County Court of Staffordshire, held at Lichfield.	The County Court of Staffordshire, held at Walsall, in Circuit 25.

SCHEDULE—*continued*.

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Staffordshire, held at Burslem, and Newcastle-under-Lyme.	The County Court of Staffordshire, held at Hanley and Stoke-upon-Trent, in Circuit 26.
The County Court of Staffordshire, held at Stone.	The County Court of Staffordshire, held at Stafford, in Circuit 26.
The County Court of Shropshire, held at Bridgnorth, Wellington, and Madeley.	The County Court of Shropshire, held at Shrewsbury, in Circuit 28.
The County Court of Brecknockshire, held at Hay; and the County Court of Herefordshire, held at Ross and Ledbury.	The County Court of Herefordshire, held at Hereford, in Circuit 22.
The County Court of Shropshire, held at Bishops-Castle, and Ludlow; the County Court of Herefordshire, held at Kington; and the County Court of Radnorshire, held at Knighton and Presteigne.	The County Court of Herefordshire, held at Leominster, in Circuit 22.
The County Court of Brecknockshire, held at Builth; the County Court of Radnorshire, held at Llandrindod-Wells; and the County Court of Montgomeryshire, held at Llanfyllin, Llanidloes, and Welshpool.	The County Court of Montgomeryshire, held at Newtown, in Circuit 28.
The County Court of Cardiganshire, held at Aberayron; the County Court of Merionethshire, held at Dolgelly; and the County Court of Montgomeryshire, held at Machynlleth.	The County Court of Cardiganshire, held at Aberystwith, in Circuit 31.
The County Court of Carnarvonshire, held at Pwllheli; and the County Court of Denbighshire, held at Llanrwst.	The County Court of Carnarvonshire, held at Portmadoc and Festiniog, in Circuit 29.
The County Court of Flintshire, held at Rhyl; the County Court of Carnarvonshire, held at Carnarvon, and Conway, Llandudno and Colwyn Bay; and the County Court of Anglesey, held at Holyhead, Llanegfni and Menai Bridge.	The County Court of Carnarvonshire, held at Bangor, in Circuit 29.
The County Court of Merionethshire, held at Bala, and Corwen; the County Court of Denbighshire, held at Denbigh and Ruthin; and the County Court of Shropshire, held at Oswestry.	The County Court of Denbighshire, held at Wrexham, in Circuit 29.
The County Court of Brecknockshire, held at Brecknock.	The County Court of Glamorgan-shire, held at Merthyr Tydfil, in Circuit 30.

SCHEDULE—*continued*.

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Carmarthenshire, held at Llandovery, Llanelly, and Newcastle - in - Emlyn; and the County Court of Cardiganshire, held at Cardigan, and Lampeter.	The County Court of Carmarthenshire, held at Carmarthen, Llandilofawr and Ammanford, in Circuit 31.
The County Court of Norfolk, held at Aylsham, East - Dereham, Holt, Fakenham, North-Walsham, Thetford, and Wymondham.	The County Court of Norfolk, held at Norwich, in Circuit 32.
The County Court of Norfolk, held at Downham-Market, and Swaffham; the County Court of Cambridgeshire, held at Wisbech; and the County Court of Lincolnshire, held at Holbeach.	The County Court of Norfolk, held at King's Lynn, in Circuit 32.
The County Court of Suffolk, held at Mildenhall, and Stowmarket.	The County Court of Suffolk, held at Bury St. Edmunds, in Circuit 33.
The County Court of Suffolk, held at Diss and Eye, Halesworth and Saxmundham, and Woodbridge and Felixstowe; and the County Court of Norfolk, held at Harleston.	The County Court of Suffolk, held at Ipswich, in Circuit 33.
The County Court of Suffolk, held at Beccles and Bungay, and Lowestoft.	The County Court of Norfolk, held at Great Yarmouth, in Circuit 32.
The County Court of Lincolnshire, held at Bourne, Spalding, and Stamford; the County Court of Northamptonshire, held at Thrapston and Oundle; the County Court of Cambridgeshire, held at March; and the County Court of Huntingdonshire, held at Huntingdon.	The County Court of Northamptonshire, held at Peterborough, in Circuit 35.
The County Court of Cambridgeshire, held at Ely, and Newmarket; the County Court of Hertfordshire, held at Royston; the County Court of Essex, held at Saffron Walden.	The County Court of Cambridgeshire, held at Cambridge, in Circuit 35.
The County Court of Bedfordshire, held at Biggleswade; and the County Court of Huntingdonshire, held at St. Neots.	The County Court of Bedfordshire, held at Bedford, in Circuit 20.
The County Court of Northamptonshire held at Daventry, Kettering, and Wellingborough; and the County Court of Buckinghamshire, held at Newport-Pagnell.	The County Court of Northamptonshire, held at Northampton and Towcester, in Circuit 23.
The County Court of Oxfordshire, held at Chipping-Norton, and Witney; and the County Court of Berkshire, held at Wallingford, and Wantage.	The County Court of Oxfordshire, held at Oxford, in Circuit 23.

SCHEDULE—continued.

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Buckinghamshire, held at Buckingham; and the County Court of Worcestershire, held at Shipston-on-Stour.	The County Court of Oxfordshire, held at Banbury, in Circuit 23.
The County Court of Oxfordshire, held at Thame; and the County Court of Buckinghamshire, held at Chesham, and High Wycombe.	The County Court of Buckinghamshire, held at Aylesbury, in Circuit 36.
The County Court of Bedfordshire, held at Leighton Buzzard; and the County Court of Hertfordshire, held at Hitchin.	The County Court of Bedfordshire, held at Luton, in Circuit 35.
The County Court of Hertfordshire, held at Watford.	The County Court of Hertfordshire, held at St. Albans, in Circuit 37.
The County Court of Middlesex, held at Uxbridge.	The County Court of Berkshire, held at Windsor, in Circuit 36.
The County Court of Essex, held at Dunmow and Braintree, Brentwood, Maldon, and Romford and Ilford.	The County Court of Essex, held at Chelmsford, in Circuit 33.
The County Court of Essex, held at Harwich; and the County Court of Suffolk, held at Sudbury.	The County Court of Essex, held at Colchester, Clacton and Halstead, in Circuit 33.
The County Court of Essex, held at Waltham Abbey; and the County Court of London, held at Clerkenwell, in respect of the business arising outside the London Bankruptcy District.	The County Court of Middlesex, held at Edmonton and Wood Green, in Circuit 38.
The County Court of Essex, held at Grays Thurrock.	The County Court of Essex, held at Southend, in Circuit 38.
The County Court of Hertfordshire, held at Bishop's Stortford.	The County Court of Hertfordshire, held at Hertford, in Circuit 38.
The County Court of Kent, held at Bromley; and the County Court of Surrey, held at Dorking, Epsom, and Redhill.	The County Court of Surrey, held at Croydon, in Circuit 45.
The County Court of Surrey, held at Farnham and Aldershot.	The County Court of Surrey, held at Guildford, in Circuit 45.
The County Court of Berkshire, held at Hungerford.	The County Court of Berkshire, held at Newbury, in Circuit 52.
The County Court of Oxfordshire, held at Henley-on-Thames.	The County Court of Berkshire, held at Reading, in Circuit 36.
The County Court of Kent, held at Sevenoaks, and Tonbridge; and the County Court of Sussex, held at East Grinstead.	The County Court of Kent, held at Tunbridge Wells, in Circuit 48.
The County Court of Kent, held at Ashford, Deal, Dover, Faversham, Folkestone, Hythe and New Romney, Margate, and Ramsgate.	The County Court of Kent, held at Canterbury, in Circuit 49.
The County Court of Kent, held at Dartford, Gravesend, Sheerness, and Sittingbourne.	The County Court of Kent, held at Rochester, in Circuit 49.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Sussex, held at Arundel, Chichester, Haywards Heath, Horsham, Midhurst, Petworth, and Worthing.	The County Court of Sussex, held at Brighton and Lewes, in Circuit 50.
The County Court of Kent, held at Tenterden and Cranbrook.	The County Court of Sussex, held at Hastings, in Circuit 50.
The County Court of Hampshire, held at Petersfield.	The County Court of Hampshire, held at Portsmouth, in Circuit 51.
The County Court of Hampshire, held at Bishop's-Waltham, Lymington, and Romsey.	The County Court of Hampshire, held at Southampton, in Circuit 51.
The County Court of Hampshire, held at Basingstoke.	The County Court of Hampshire, held at Winchester, in Circuit 51.
The County Court of Wiltshire, held at Warminster.	The County Court of Somersetshire, held at Frome, in Circuit 52.
The County Court of Wiltshire, held at Calne, Malmesbury, and Marlborough; the County Court of Gloucestershire, held at Cirencester.	The County Court of Wiltshire, held at Swindon, in Circuit 52.
The County Court of Wiltshire, held at Trowbridge, Chippenham, Devizes, and Melksham.	The County Court of Somersetshire, held at Bath, in Circuit 52.
The County Court of Gloucestershire, held at Northleach, Stow-on-the-Wold, Tewkesbury, and Winchcomb.	The County Court of Gloucestershire, held at Cheltenham, in Circuit 53.
The County Court of Gloucestershire, held at Dursley, Newent, Newnham, and Stroud.	The County Court of Gloucestershire, held at Gloucester, in Circuit 53.
The County Court of Gloucestershire, held at Thornbury.	The County Court of Gloucestershire, held at Bristol, in Circuit 54.
The County Court of Dorsetshire, held at Blandford, Bridport, and Weymouth.	The County Court of Dorsetshire, held at Dorchester, in Circuit 55.
The County Court of Dorsetshire, held at Swanage, and Wimborne-Minster.	The County Court of Dorsetshire, held at Poole and Bournemouth, in Circuit 55.
The County Court of Hampshire, held at Andover, and Ringwood; and the County Court of Dorsetshire, held at Shaftesbury.	The County Court of Wiltshire, held at Salisbury, in Circuit 55.
The County Court of Somersetshire, held at Crewkerne, Langport, and Wincanton.	The County Court of Somersetshire, held at Yeovil, in Circuit 58.
The County Court of Somersetshire, held at Weston-super-Mare.	The County Court of Somersetshire, held at Bridgewater, in Circuit 57.
The County Court of Somersetshire, held at Chard, Wellington, and Williton.	The County Court of Somersetshire, held at Taunton, in Circuit 57.

SCHEDULE—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Devonshire, held at Bideford, Holsworthy, South-Molton, and Torrington.	The County Court of Devonshire, held at Barnstaple, in Circuit 57.
The County Court of Devonshire, held at Axminster, Honiton, Tiverton, Newton Abbot and Torquay.	The County Court of Devonshire, held at Exeter, in Circuit 58.
The County Court of Devonshire, held at Kingsbridge, Okehampton, Tavistock, and Totnes; and the County Court of Cornwall, held at Launceston, and Liskeard.	The County Court of Devonshire, held at Plymouth, in Circuit 59.
The County Court of Cornwall, held at Bodmin, Camelford, Helston, Penzance, Redruth, and St.-Austell.	The County Court of Cornwall, held at Falmouth and Truro, in Circuit 59.

NOTE.

The following county courts, not having had attached to them the district of any county court excluded from jurisdiction in bankruptcy or in winding-up under the Companies Act, and not being themselves excluded from such jurisdictions, are not mentioned in the foregoing order; but as they have jurisdiction in bankruptcy, and in winding-up under the Companies Act, their names are here given. (An alphabetical list of all courts having bankruptcy jurisdiction will be found, *ante*, p. 256.)

The County Court of Cumberland, held at Whitehaven and Millom, in Circuit 3.

The County Court of Lancashire, held at Barrow-in-Furness and Ulverston, in Circuit 3.

The County Court of Lancashire, held at Blackpool, in Circuit 4.

The County Court of Lancashire, held at Oldham, in Circuit 5.

The County Court of Lancashire, held at Salford, in Circuit 5.

The County Court of Lancashire, held at Wigan, in Circuit 6.

The County Court of Cheshire, held at Birkenhead, in Circuit 7.

The County Court of Lancashire, held at Warrington, in Circuit 7.

The County Court of Yorkshire, held at Halifax, in Circuit 12.

The County Court of Yorkshire, held at Huddersfield, in Circuit 12.

The County Court of Yorkshire, held at Barnsley, in Circuit 13.

The County Court of Yorkshire, held at Dewsbury, in Circuit 14.

The County Court of Derbyshire, held at Chesterfield, in Circuit 19.

The County Court of Worcestershire, held at Stourbridge, in Circuit 22.

The County Court of Worcestershire, held at Dudley, in Circuit 25.

The County Court of Staffordshire, held at West Bromwich, in Circuit 25.

The County Court of Staffordshire, held at Wolverhampton, in Circuit 25.

The County Court of Glamorganshire, held at Bridgend, in Circuit 30.

The County Court of Glamorganshire, held at Swansea, in Circuit 30.

The County Court of Glamorganshire, held at Aberdare and Mountain Ash, in Circuit 30.

The County Court of Glamorganshire, held at Pontypridd, Ystradfydwg and Porth, in Circuit 30.

The County Court of Glamorganshire, held at Neath and Port Talbot, in Circuit 31.

The County Court of Pembrokeshire, held at Pembroke Dock, Narberth and Haverfordwest, in Circuit 31.

- The County Court of Hertfordshire, held at Barnet, in Circuit 38.
 The County Court of Surrey, held at Kingston, in Circuit 45.
 The County Court of Surrey, held at Wandsworth, in Circuit 45.
 The County Court of Middlesex, held at Brentford, in Circuit 46.
 The County Court of Kent, held at Greenwich and Woolwich, in Circuit 47.
 The County Court of Kent, held at Maidstone, in Circuit 48.
 The County Court of Sussex, held at Eastbourne, in Circuit 50.
 The County Court of Hampshire, held at Newport and Ryde, in Circuit 51.
 The County Court of Somersetshire, held at Wells, in Circuit 54.

[For DEBTORS ACT, 1869, see *ante*, p. 266.]

DEEDS OF ARRANGEMENT ACT, 1914.

[4 & 5 GEO. 5, c. 47.]

As amended by Administration of Justice Act, 1925
 (15 & 16 Geo. V., c. 28, s. 22).

Jurisdiction.—Copies of deeds of arrangement, when the party resides outside the London bankruptcy district, must be transmitted to the county court where the party resides, sect. 10, *infra*. As to applications to the court with reference to such a deed, see sect. 23 (*infra*).

As to power of the court to appoint a new trustee, see Trustee Act, 1925, s. 41 (2), *post*, p. 2480.

Section 10.

Local registration of copy of deeds.

10.—(1) Where the place of business or residence of the debtor, who is one of the parties to a deed of arrangement, or who is referred to therein, is situate in some place outside the London bankruptcy district, the registrar shall, within three clear days after registration, and in accordance with the prescribed directions, transmit a copy of such deed to the registrar of the county court in the district of which such place of business or residence is situate.

(2) Every copy so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of, the registered copy, in the like manner and upon the like terms as to payment or otherwise, as near as may be, as in the case of deeds registered under this Act.

Whether a deed must be registered depends upon whether it is for the benefit of all the creditors, or only of a named part of the same (*In re Allix*, (1914) 2 K. B. 77; 83 L. J. K. B. 665).

Security by trustee.

11.—(This section provides that the trustee under a deed of arrangement shall give security to the registrar of the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, unless such security is dispensed with by a majority in number and value of the debtor's creditors. See Rules 24, 25, and 26, *post*.)

* * * * *

Courts in which application for enforcement of trusts to be made.

23. Any application by the trustee under a deed of arrangement which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement

for the enforcement of the trusts or the determination of questions under it, shall be made to the Court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed; provided that any question as to whether any person claiming to be a creditor entitled to the benefit of a deed of arrangement is so entitled may, subject to rules made under this Act, be decided either by the court having such jurisdiction as aforesaid or by the High Court.

Section 23.
—

See *Ellis, In re; Myllenaere, Ex parte*, (1925) 94 L. J. Ch. 239.

NOTE.—A county court judge exercising bankruptcy jurisdiction has no power under this section to declare a deed of arrangement void (*Wilson's Deed, In re*, (1916) 85 L. J. K. B. 329).

See as to what may be sufficient recognition of a deed of arrangement by creditors sufficient to prevent them acting upon it as an act of bankruptcy, *A Debtor, In re; Petitioning Creditors, Ex parte* (No. 24 of 1924), (1925) 94 L. J. K. B. 42.

* * * * *

DEEDS OF ARRANGEMENT RULES, 1925. DATED AUGUST 10TH 1925, SO FAR AS THEY AFFECT REGISTRATION IN COUNTY COURTS.

3. In these rules unless the context or subject-matter otherwise requires:— Interpretation.

"The Act" means the Deeds of Arrangement Act, 1914, as amended by the Administration of Justice Act, 1925.

"Debtor" means any person by for or in respect of whose affairs a deed of arrangement as defined by the Act shall be made or entered into, and includes a firm of persons in co-partnership.

"Deed" means any deed of arrangement as defined by the Act.

"Judge" means in the case of the High Court the judge to whom bankruptcy business is for the time being assigned, and in the case of a county court the judge of the county court having bankruptcy jurisdiction in the district in which the debtor resided or carried on business at the date of the execution of the deed.

"Registrar of the Court" means a registrar in bankruptcy of the High Court if the debtor resided or carried on business in the London bankruptcy district at the date of the execution of the deed, or if he did not then reside or carry on business within that district the registrar or deputy registrar of the county court having bankruptcy jurisdiction in the district in which the debtor resided or carried on business at the said date.

"County Court Registrar" means any registrar of a county court to whom a copy of a registered deed is transmitted pursuant to sect. 10 of the Act.

"Registrar" means the Registrar of Deeds of Arrangement appointed by the Board of Trade.

Searches and Extracts.

9. Extracts from the filed copy of a deed shall be limited to Extracts the date of execution and registration, the names, addresses, and from filed descriptions of the debtor and the parties to the deed, and a copy of deed, short statement of the nature and effect of the deed.

Rule 10.

Search and
inspection in
County
Court.

10. The county court registrar shall allow any person to search the index kept by him at any time during which he is required by the County Court Rules for the time being in force to keep his office open, and to make the same extracts as are permitted by the last preceding rule upon payment by such person of the prescribed fee. The county court registrar shall also, if required, cause an office copy to be made of any copy of a deed filed in his office, and shall mark and seal the same upon payment of the prescribed fee.

Transmission of Copies to County Courts.

Indorsement
to be made
on copies
transmitted
to County
Court
Registrars.
Transmission
of copy by
post.

11. Upon every copy of a deed which pursuant to the Act is transmitted to a county court registrar there shall be written copies of every indorsement or certificate written on the original deed or on the filed copy thereof. Such copies shall be signed by the registrar or by some other person duly authorised by him.

12. The copy of a deed which pursuant to the Act is required to be transmitted to a county court registrar may be transmitted to him by post.

Copies to be
numbered
and filed in
County
Court Office.

13. The county court registrar shall number the copies of deeds received by him in the order in which they shall respectively be received, and shall file and keep them in his office.

Extra copies
of deed to
be furnished
in certain
cases.

14. Where a debtor who is one of the parties to a deed of arrangement or who is referred to therein has a place of business or residence situate in some place outside the London bankruptcy district, there shall be furnished to the registrar sufficient copies of the deed of arrangement to enable him to transmit a copy to the registrar of the county court of each district in which such place of business or residence is situate.

Index to be
kept in
County
Court Office.

15. The county court registrar shall keep an index, alphabetically arranged, in which he shall enter, under the first letter of the surname of the debtor, such surname, with his christian name, address, and description, and the number which has been affixed to the copy.

Office copy
and searches.

16. The Provisions of sections 9 and 25 of the Act shall apply to all documents filed with the registrar pursuant to the Act or these rules.

PART III.*Procedure.*

Applications,
how to be
made.

17. All applications other than applications under section 7 of the Act which by the Act or these rules are directed or allowed to be made to the High Court or the county court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed shall be deemed to be proceedings in bankruptcy, and subject to the Act and these rules shall be made in accordance with and in the manner prescribed for proceedings under the Bankruptcy Act, 1914, and the Bankruptcy Rules for the time being in force, with such variations as the circumstances may require, and shall be supported by affidavit. Provided that applications for extension of time for procuring the assent of creditors to a deed under section 3 (1) or for filing the statutory declaration required by section 3 (4) may be made *ex parte* and without affidavit unless the court shall in any case otherwise order.

13. The application (except in cases within the proviso to section 23 of the Act) shall be made to the registrar of the court who shall cause the same, together with the affidavits in support, to be filed, and shall appoint a day for the hearing not earlier than 14 days from the filing of the application. In cases within such proviso the application may be made as in these rules provided either to the registrar of the court or to a registrar of the High Court. The registrar to whom the application is made may direct notice of the application to be served on such person or persons as he thinks fit, but in the absence of any special direction by him, the notice, together with copies of the affidavits in support, shall be served, when the application is made by the trustee, on the debtor and any creditor or other person to be affected thereby, and, when made by the debtor, on the trustee and on any creditor or other person to be affected thereby, and, when made by a creditor, on the trustee and the debtor.

Rule 13

Applications,
to whom to
be made.

19. The evidence to be used on the application shall, unless the court otherwise orders, be given by affidavit, but any opposite party may require, by notice in writing addressed to any deponent or his solicitor, the attendance of such deponent for cross-examination.

Evidence.

20. All affidavits intended to be used by any party to such application, other than the applicant, shall be filed in the court, and copies served on the applicant not less than four days before the day appointed for the hearing of the application.

Affidavits
by parties
other than
applicant.

21. All such applications as are referred to in the preceding rules shall be heard and determined by the registrar of the court in chambers, but he may in any case, and shall at the request of any party thereto, adjourn the application to be heard and determined by the judge in court.

Chambers,
and ad-
journment
to Court.

22. Notice of any application under section 11 (2) of the Act to declare a deed void, or appoint another trustee, shall be served on the trustee named in the deed not less than eight days before the day appointed for the hearing.

Service of
application
under
s. 11 (2).

23. If a trustee fails to pay to a guarantee society, party to a bond given by him under rule 24, the annual premium payable by him within fourteen days of the date when such premium becomes payable, or if the society refuses to accept such premium, the society may apply to the registrar of the court to determine its liability under the bond, and the registrar of the court, if satisfied by affidavit that default in payment of the premium has been made by the trustee, or that the refusal of the society to accept the premium in order that its liability may be determined is reasonable, may order that, as from the date of expiration of the year for which the last premium was paid, or as from the date of the order, whichever may be the later date, all further liability of the society shall cease and determine, save and except in respect of any loss or damage occasioned by any act or default of the said trustee in relation to his duties as such trustee as aforesaid previously to such cesser and determination of liability, and the registrar of the court may exercise any of the powers conferred by section 11 (2) of the Act. Notice of any application under this rule shall be served on the three largest creditors named in the affidavit filed on registration of the deed not less than eight days

Form (of
order) 12.
Application
to determine
liability on
bond.

procedure
in applica-
tion under
section II.
(2).

- Rule 23.** before the day appointed for hearing the application, and any of such creditors may appear and be heard thereon, and rules 17 to 21 inclusive shall, so far as applicable, be observed.

PART IV.

Trustees.

Security by
trustee.
Form 9.
Form 10.

24. The security to be given by the trustee under a deed of arrangement pursuant to section 11 (1) of the Act shall be by bond of a guarantee society. The guarantee society named in such bond shall be a society whose bonds are accepted by the registrar of the court to whom security is given. Pending the preparation of the bond, a cover note shall be accepted by the registrar of the court as temporary security.

Copy
affidavit of
debtor to be
filed on
giving
security.

25. Every trustee on giving security for the due administration of the deed and for accounting fully for the assets pursuant to section 11 (1) of the Act, shall produce and hand to the registrar of the court to whom the security is to be given an office copy of the affidavit of the debtor filed on the registration of the deed and the registrar of the court shall file such office copy.

Certificate
that security
given and
copy order
to be sent to
Registrar
Forms 11, 12.

26. When security has been given by a trustee pursuant to section 11 (1) of the Act, the registrar of the court to whom it is given shall, within three days after receipt thereof, send to the registrar a certificate signed by him certifying that the security has been given and the registrar shall forthwith file the same. The registrar of the court shall also send to the registrar within three days after any order made under section 11 (2) has been perfected a copy of such order.

FORMS.

No. 8.

STATUTORY DECLARATION BY TRUSTEE TO BE FILED WITH REGISTRAR
THAT CREDITORS HAVE DISPENSED WITH HIS GIVING SECURITY.

(Title.)

I , of , being the trustee under the above-mentioned Deed of Arrangement, do solemnly and sincerely declare that the requisite majority in number and value of the creditors of , so far as the same are known to me, by resolution passed at a meeting convened by notice to all the creditors and duly held on the day of (or by writing addressed to me) dispensed with my giving the security directed to be given by Section (11 (1) of the Deeds of Arrangement Act, 1914, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at
in the of
this day of

Before me,

A Commissioner for Oaths.

No. 9.

SECURITY BY TRUSTEE UNDER SECTION 11 (1) OF THE ACT.

No.

Amount of guarantee, £ Annual premium, £

KNOW ALL MEN by these Presents, that we (trustee) and the
(a guarantee society) (hereinafter called the said Society), are jointly

and severally held and firmly bound to the Senior Registrar of the High Court of Justice in Bankruptcy (or Registrar of the County Court of holden at) in the sum of £ to be paid to the said Registrar, his successors and assigns, for which payment to be made I, the said or myself, my heirs, executors, and administrators, and we, the said Society for ourselves and our successors, jointly and severally bind ourselves firmly by these presents.

Sealed with our seals, and dated this day of , 19 .

Whereas on the day of , 19 , of , executed a Deed of Arrangement for the benefit of his (her or their) creditors, which was duly registered on the day of , 19 .

And whereas the said (hereinafter called the said trustee) is the trustee under the aforesaid Deed of Arrangement. And whereas the estimated assets available for distribution among the unsecured creditors, as shown by the Affidavit filed on registration of the Deed, amount to the sum of £ . Now, therefore, the condition of this Bond or Obligation is such that if the said trustee shall administer the trust deed properly and account fully for the assets which come to his hands, and shall and do from time to time well and sufficiently perform and execute all and singular the duties required of him under the Deed of Arrangement of which he is trustee, and by any Statutes and Rules relating to such trusteeship, or if the said trustee shall fail therein and the said Society shall make good any loss or damage occasioned by any such default made on or after the date hereof to the estate of the said debtor to the extent of £ , this Obligation shall be void or otherwise shall remain in full force and virtue.

Provided always, and it is hereby agreed and declared, that this Bond is entered into by the said Society on the condition that the capital stock and funds for the time being of the said Society shall alone be liable to answer and make good all claims or demands in respect of this Bond, and that no director or other proprietor or holder of shares of the said Society shall in any manner be personally liable or subject to any claims or demands by reason of such bond, beyond his or her particular share or shares of such capital stock and funds.

Provided always, and it is further agreed between the said trustee and the said Society, that the said trustee on ceasing to act as such trustee as aforesaid shall forthwith give notice thereof in writing to the said Society.

Provided always that the said trustee, his heirs, executors or administrators shall and will form time to time and at all times save, defend, and keep harmless the said Society and their successors and the capital stock, funds, or property of the said Society from and against all loss or damage, costs, and expenses which the said Society or the capital, stock, funds, or property thereof shall or may or otherwise might at any time sustain or be put unto for or by reason or in consequence of the said Society having entered into the above written Bond for him and at his request.

And the said trustee hereby covenants that he will, on the day of each successive year during the continuance of his administration of the estate, under the Deed, pay or cause to be paid to the said Society the annual premium of £ .

In witness whereof the said trustee hath hereunto set his hand and seal, and the said Society have hereunto caused their seal to be affixed the day and year first above written.

Signed, sealed, and delivered by the
said

in the presence of—

The Seal of the said Society was hereunto affixed in the presence of—

} Directors.

Secretary.

No. 10.

COVER NOTE.

Bond No.

, 19 .

Mr. . . . , of . . . , having this day effected a Guarantee for £ . . . in favour of the Registrar of the . . . Court, as trustee under a Deed of Arrangement executed by . . . on the terms and conditions contained in the Society's Bonds (according to the form prescribed under the Deeds of Arrangement Rules, a Bond will be prepared and delivered to the said Registrar within fourteen days of this date

Manager of the said Society.

No. 11.

CERTIFICATE OF SECURITY.

(Title.)

(a) or cover
note.

I hereby certify that Mr. . . . , of . . . , the trustee under the above-mentioned Deed of Arrangement, has given security to me in the sum of £ . . . by Bond (a) of the . . . Society for the due performance of his duties under the Deed pursuant to Section 11 (1) of the Deeds of Arrangement Act, 1914.

Dated the . . . day of . . . , 19 .

Registrar of the High Court or of
the County Court of
holden at

No. 12.

ORDER DECLARING DEED VOID OR APPOINTING NEW TRUSTEE.

(Title.)

WHEREAS . . . is the trustee under the above-mentioned Deed of Arrangement and whereas it has been proved to the satisfaction of the Court that the said . . . has failed to comply with the requirements of Section 11 (1) of the Deeds of Arrangement Act, 1914. Now, on the application of . . . a creditor and upon hearing . . . and upon reading this Court doth declare the said Deed of Arrangement to be void [or doth order that . . . , of . . . , be appointed trustee under the said Deed in place of the said . . . , but this Order shall take effect unless the said . . . shall give security as provided by Section 11 (1) of the Deeds of Arrangement Act, 1914, within . . . days after this date (or as the Court may order with reference to security)].

By the Court,

Registrar

COURT FEES.

The court fees payable under the Deeds of Arrangement Act, 1914, are prescribed by the County Court Fees Order, 1925, as follows:—

The Deeds of Arrangement Act, 1914.

	£	s.	d.
(86) (i.) For taking security and giving certificate—			
(a) where the estimated assets available for distribution amongst the unsecured creditors as shown by the affidavit filed on registration are less than 100%	0	10	0
(b) in all other cases	1	0	0
(ii.) On an application to the court under the Deeds of Arrangement Act or Rules	0	7	6
(iii.) On searching the register (for every name inspected) and on inspecting the filed copy, including the limited extract to be taken pursuant to the Act and Rules	0	2	6
(iv.) On setting down a motion for hearing before the judge	1	0	0

LAW OF DISTRESS AMENDMENT ACTS,
1888, 1895, AND 1908.

[51 & 52 VICT. C. 21 ; 58 & 59 VICT. C. 24 ; 8 EDW. VII., C. 53.]

Jurisdiction.—By sect. 7 of the 1888 Act no person shall act as a bailiff to levy any distress for rent unless authorised so to act by either a general certificate, *i.e.*, a certificate authorising the bailiff to levy at any place in England or Wales (Rules of 1920), or by a special certificate, *i.e.*, a certificate specifying the particular distress or distresses to which it applies.

The applicant, whether for a general or special certificate must satisfy the County Court judge that he is a fit and proper person to hold a certificate.

Where the applicant is not a ratepayer rated on a rateable valuation of not less than 25*l.*, he may be required to give security in the case of a general certificate for 20*l.*, and in the case of a special certificate for 5*l.*, for the due performance of his duties.

Expiration and Renewal of certificates is provided for by the Rules of August 11, 1920, *post*, p. 1996.

Fees, Charges and Expenses which may be demanded by bailiffs are settled by Appendix II. to the Rules of 1920, *post*, p. 1999.

Fees to be taken by the Registrar are governed by the County Court Fees Order, 1925. Fee No. 87, *post*, p. 2000.

Power to Cancel the certificate is in the discretion of the judge (Act of 1895, s. 1), and he may forfeit the security, either in whole or in part, and direct the amount forfeited to be paid to the party aggrieved (Rules 16–20, p. 1997).

A general certificate can only be granted by a judge ; a special certificate may be granted either by a judge or by a registrar (Rules 3 and 4, *post*, p. 199).

The Act of 1908 (Law of Distress Amendment Act) (8 Edw. VII. c. 53) contains important general provisions exempting the goods of an under-tenant, a lodger, or any other person having no beneficial interest in the premises from liability to distraint at the instance of the superior landlord subject to complying with certain conditions (see Act, *post*, p. 1992).

As to rights of the Crown to distraint, see *Macgregor v. Clamp*, (1914) 83 L. J. K. B. 240 ; 1 K. B. 288.

51 & 52 VICT. C. 21.

7. No person shall act as a bailiff to levy any distress for rent unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of a county court judge ; and such certificate may be general or apply to a particular distress or distresses, and may be granted at any time after the passing of this Act in such manner as may be prescribed by rules under this Act. (Residue of clause repealed, 58 & 59 Vict. c. 24.)

Section 7.

Distress to be levied by certified bailiffs.

A county court registrar may exercise the power of granting certificates hereby conferred upon a county court judge in cases in which he may be authorised to do so by rules made under this Act.

If any person not holding a certificate under this section shall levy a distress contrary to the provisions of this Act, the person so levying, and any person who has authorised him so to levy, shall be deemed to have committed a trespass.

Section 8.

Power to
make rules.

8. The Lord Chancellor may from time to time make, alter, and revoke rules—

- (1) For regulating the security (if any) to be required from bailiffs;
- (2) For regulating the fees, charges, and expenses in and incidental to distresses; and
- (3) For carrying into effect the objects of this Act.

58 & 59 VICT. C. 24.

Power to
cancel
bailiffs'
certificates.

1. A certificate granted to a bailiff by the judge of a county court under the Law of Distress Amendment Act, 1888, may at any time be cancelled or declared void by a judge of that county court.

Penalty for
acting with-
out certificate.

2. If any person not holding a certificate for the time being in force under the Law of Distress Amendment Act, 1888, levies a distress contrary to the provisions of that Act, he shall without prejudice to any civil liability be liable on summary conviction to a fine not exceeding 10*l*.

Duration of
certificates.

3. The power to make rules under the Law of Distress Amendment Act, 1888, shall extend to making provision for fixing the duration of certificates granted, or to be hereafter granted, to bailiffs.

A distress made by the manager of a company on behalf of the company and without a certificate is illegal (*Hogarth v. Jennings* (C. A.), (1892) 1 Q. B. 907; 61 L. J. Q. B. 601).

The Acts apply to distresses under the Agricultural Holdings Act, 1923; a general appointment will authorise a bailiff to act in any part of England and Wales (see *Re Sanders*, (1885) 54 L. J. Q. B. 331; and Rule 4).

If an uncertificated bailiff, in levying a distress, seizes the goods of a third party, the landlord who authorised the distress is liable in damages to the owner (*Perring v. Emerson*, (1906) 1 K. B. 1; 75 L. J. K. B. 12).

LAW OF DISTRESS AMENDMENT ACT, 1908.

[8 EDW. 7, c. 53.]

Section 1.

Under tenant,
or lodger, if
distress
levied, to
make decla-
ration that
immediate
tenant has
no property
in goods
distrained.

1. If any superior landlord shall levy, or authorise to be levied, a distress on any furniture, goods, or chattels of—

- (a) any under tenant liable to pay by equal instalments not less often than every actual or customary quarter of a year a rent (a) which would return in any whole year the full annual value of the premises or of such part thereof as is comprised in the under tenancy, or
- (b) any lodger, or
- (c) any other person whatsoever not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof,

for arrears of rent due to such superior landlord by his immediate tenant, such under tenant, lodger, or other person aforesaid may

serve such superior landlord, or the bailiff or other agent employed by him to levy such distress, with a declaration in writing made by such under tenant, lodger, or other person aforesaid, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture goods or chattels are the property or in the lawful possession of such under tenant, lodger, or other person aforesaid, and are not goods or live stock to which this Act is expressed not to apply; and also, in the case of an under tenant or lodger, setting forth the amount of rent (if any) then due to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, and containing an undertaking to pay to the superior landlord any rent so due or to become due to the immediate landlord, until the arrears of rent in respect of which the distress was levied or authorised to be levied have been paid off, and to such declaration shall be annexed a correct inventory, subscribed by the under tenant, lodger, or other person aforesaid, of the furniture, goods, and chattels referred to in the declaration.

Section 1.

Remainder of section repealed, see Perjury Act, 1911.

NOTE (a) —The word "rent" here means money, not another or contingent source of profit though it arises from the tenancy (*Parsons v. Hambridge*, (1916) 33 T. L. R. 117).

2. If any superior landlord, or any bailiff or other agent employed by him, shall, after being served with the before-mentioned declaration and inventory, and in the case of an under tenant or lodger after such undertaking as aforesaid has been given, and the amount of rent (if any) then due has been paid or tendered in accordance with that undertaking, levy or proceed with a distress on the furniture, goods, or chattels of the under tenant, lodger, or other person aforesaid, such superior landlord, bailiff, or other agent shall be deemed guilty of an illegal distress, and the under tenant, lodger, or other person aforesaid, may apply to a justice of the peace for an order for the restoration to him of such goods, and such application shall be heard before a stipendiary magistrate, or before two justices in places where there is no stipendiary magistrate, and such magistrate or justices shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him or them may seem just, and the superior landlord shall also be liable to an action at law at the suit of the under tenant, lodger, or other person aforesaid, in which action the truth of the declaration and inventory may likewise be inquired into.

Penalty.

Section 3.

Payments by
under tenant
or lodger to
superior
landlord.

3. For the purposes of the recovery of any sums payable by an under tenant or lodger to a superior landlord under such an undertaking as aforesaid, or under a notice served in accordance with section six of this Act, the under tenant or lodger shall be deemed to be the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent; but, where the under tenant or lodger has, in pursuance of any such undertaking or notice as aforesaid, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorised to be levied) from whose rent a deduction has been made in respect of such a payment may make the like deductions from any rent due or which may become due from him to his immediate landlord.

4. This Act shall not apply—

Exclusion of
certain goods.

8 Edw. 7,
c. 28.

- (1) to goods belonging to the husband or wife of the tenant whose rent is in arrear, nor to goods comprised in any bill of sale, hire purchase agreement, or settlement made by such tenant, nor to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof, nor to any live stock to which section twenty-nine of the Agricultural Holdings Act, 1908, applies;
- (2) (a) to goods of a partner of the immediate tenant; (b) to goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under tenant have an interest; (c) to goods (not being goods of a lodger) on premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in like manner as a notice to quit) to remove the goods and vacate the premises; (d) to goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment of such company or corporation;

Provided that it shall be competent for a stipendiary magistrate, or where there is no stipendiary magistrate for two justices, upon application by the superior landlord or any under tenant or other such person as aforesaid, upon hearing the parties to determine whether

any goods are in fact goods covered by sub-section (2) of this section. Section 4.

5. This Act shall not apply to any under tenant where the under tenancy has been created in breach of any covenant or agreement in writing between the landlord and his immediate tenant, or where the under tenancy has been created under a lease existing at the date of the passing of this Act contrary to the wish of the landlord in that behalf, expressed in writing and delivered at the premises within a reasonable time after the circumstances have come, or with due diligence would have come, to his knowledge. Exclusion of certain under tenants.

6. In cases where the rent of the immediate tenant of the superior landlord is in arrear it shall be lawful for such superior landlord to serve upon any under tenant or lodger a notice (by registered post addressed to such under tenant or lodger upon the premises) stating the amount of such arrears of rent, and requiring all future payments of rent, whether the same has already accrued due or not, by such under tenant or lodger to be made direct to the superior landlord giving such notice until such arrears shall have been duly paid, and such notice shall operate to transfer to the superior landlord the right to recover, receive, and give a discharge for such rent. To avoid distress.

7. Repealed by Statute Law Revision Act, 1927.

8. The Lodgers' Goods Protection Act, 1871, shall, wherever and so far as this Act applies, be repealed. Repeal of 34 & 35 Vict. c. 79.

9. In this Act the words "superior landlord" shall be deemed to include a landlord in cases where the goods seized are not those of an under tenant or lodger; and the words "tenant" and "under tenant" do not include a lodger. Definitions.

10. This Act shall not extend to Scotland and shall only apply in Ireland to a rent issuing out of lands or tenements situate wholly within the boundaries of a municipality or of a township having town commissioners. Act not to extend to Scotland.

11. This Act may be cited as the Law of Distress Amendment Act, 1908. Short title.

THE DISTRESS FOR RENT RULES, 1920.

DATED AUGUST 11TH, 1920.

[Rules made pursuant to section 8 of the Law of Distress Amendment Acts, 1888 and 1895.]

Preliminary.

- Rule 1. 1. These rules may be cited as the Distress for Rent Rules, 1920, and shall come into operation on the first day of October, 1920.
2. In these rules—
- “Judge” means a judge of county courts.
- “Certificate” means a certificate to act as a bailiff granted or renewed under the Law of Distress Amendment Act, 1888, as amended by the Law of Distress Amendment Act, 1895.
- “Registrar” means the registrar of a county court, and each registrar when there are more than one, and includes a deputy registrar.

Certificates.

3. Certificates may be either general or special. A special certificate shall specify the particular distress or distresses to which it applies. Certificates shall be in the Forms Nos. 1 and 2 in Appendix I. to these rules, with such variations as circumstances may require; and the date at which a general certificate will become terminable shall be added at the foot thereof.
4. A special certificate may be granted by a judge or registrar, but a general certificate shall only be granted by a judge in person.
5. A general certificate shall authorise the bailiff named in it to levy at any place in England or Wales.
6. No certificate shall be granted to any officer of a county court except by way of renewal of a certificate granted to an officer appointed before the 31st day of August, 1888.
7. Any practising solicitor of the Supreme Court shall, on application, and on payment of the prescribed fee, be entitled to a general or special certificate.
8. Subject to the two last preceding rules, a general or special certificate may, on payment of the prescribed fee, be granted to any applicant who satisfies the authority granting the same that he is a fit and proper person to hold a certificate.
9. An applicant for a general certificate shall satisfy the judge that he is resident or has his principal place of business in the district of the court, and shall state whether he has ever been refused a certificate, or had a former certificate cancelled or declared void.

Security.

10. Where an applicant for a certificate is not a ratepayer, rated on a rateable value of not less than 25*l.* per annum, he may, if the authority applied to thinks fit, be required to give security for the due performance of his duties.
11. The security shall be security to the satisfaction of the registrar. In the case of a general certificate the amount shall be 20*l.*, and in the case of a special certificate the amount shall be 5*l.*

12. The security shall be given to the registrar. It may be given by deposit, or by bond, or by guarantee, as the registrar may think fit.

Rule 12.
—*Duration and Renewal of Certificates.*

13. A general certificate shall (unless previously cancelled or declared void) have effect until the 1st of February next after the expiration of twelve months from the granting thereof, provided that the judge of the court where the certificate was granted may renew the same from time to time for the like period.

14. On an application for the renewal of a certificate the registrar shall be satisfied that the security (if any) required under these rules or the rules hereby annulled is subsisting.

15. A renewed certificate shall be in the Form No. 3 in Appendix I. to these rules, and the date at which the renewed certificate will become terminable shall be added at the foot thereof.

Cancellation of Certificates.

16. On any application to cancel or declare void a certificate the judge may, whether he cancels the certificate or not, order that the security shall be forfeited either wholly or in part, and that the amount directed to be forfeited shall be paid to the party aggrieved.

17. Where the judge orders that the security shall be forfeited, either wholly or in part, but does not cancel or declare void the certificate, he may direct that the bailiff shall give fresh security as a condition of retaining his certificate.

18. Subject to Rule 16, where a certificate is cancelled or declared void by the judge, the security shall also be cancelled, and the deposit (if any) returned.

19. Where a certificate is cancelled or declared void the Form No. 4 in Appendix I. to these rules shall be used.

20. Where a certificate is cancelled or declared void or expires in consequence of non-renewal, it shall nevertheless continue to have effect for the purpose of any distress where the bailiff has entered into possession before the date on which the certificate is cancelled or declared void or expires.

List of Certificates.

21. There shall be made and signed by the registrar of every court on the 1st of February in every year, and exhibited in the office of the court a list of the bailiffs holding certificates for the time being, and if any such certificate is cancelled or declared void the fact of it having been cancelled or declared void shall be notified by the registrar on such list and published by him in some local newspaper.

Fees, Charges and Expenses.

22. No person shall be entitled to any fees, charges or expenses for levying a distress, or for doing any act or thing in relation thereto other than those specified in and authorised by the table in Appendix II. to these rules.

23. Where the rent demanded and due exceeds 20*l.* the fees, charges and expenses specified in Scale I. shall be allowed, and

Rule 23.

where the rent demanded and due does not exceed 20l. the fees, charges and expenses specified in Scale II. shall be allowed.

24. In case of any difference as to fees, charges and expenses between the parties, or any of them, the fees, charges and expenses shall be taxed by the registrar of the county court in the district of which the distress is levied. The registrar may make such order as he thinks fit as to the costs of such taxation.

25. A copy of the table of fees, charges and expenses authorised by these rules shall be posted up by the registrar of every court in a conspicuous place in his office.

26. Every bailiff levying a distress shall on the request of the tenant produce to him his certificate and a copy of the table of fees, charges and expenses authorised by these rules.

Repeal.

27. On the coming into operation of these rules the Distress for Rent Rules, 1888, and the rules made under the Law of Distress Amendment Act, 1895, shall be annulled, except as to distresses levied before that date, to which the said rules shall continue to apply: and these rules shall apply to distresses levied after that date, and shall apply to certificates granted or renewed before that date as if these rules had been in force when such certificates were granted or renewed.

APPENDIX I.**FORMS.****FORM 1.****General Certificate.**

[Date.]

In the county court of . . . holden at . . .

Pursuant to section seven of the Law of Distress Amendment Act, 1888, and section three of the Law of Distress Amendment Act, 1895, and the rules made thereunder, I hereby authorise A. B., of . . ., to act as a bailiff to levy distresses for rent in England and Wales.

Signed

L. S.

Judge.

This certificate will become terminable on the . . . day of February, 19 . . .

FORM 2.**Special Certificate.**

[Date.]

In the county court of . . . holden at . . .

Pursuant to section seven of the Law of Distress Amendment Act, 1888, I hereby authorise A. B., of . . ., to act as a bailiff to levy distress on the premises of C. D., of . . ., for rent alleged to be due to E. F., of . . .

Signed

L. S.

Judge

or Registrar.

FORM 3.

Renewed General Certificate.

[Date.]

In the county court of holden at .

Pursuant to section seven of the Law of Distress Amendment Act, 1888, and section three of the Law of Distress Amendment Act, 1895, and the rules made thereunder, I by this renewed certificate authorise A. B., of , to act as a bailiff to levy distresses for rent in England and Wales.

Signed

L. S.

Judge.

This certificate will become terminable on the day of February, 19 .

FORM 4.

Cancellation of Certificate.

[Date.]

In the county court of holden at .

In pursuance of section one of the Law of Distress Amendment Act, 1895, I hereby cancel and declare void the certificate granted to A. B., of , to act as a bailiff to levy distresses for rent in England and Wales, save and except as to any distress where the said A. B. has entered into possession before the date hereof [or to act as a bailiff to levy a distress on the premises of C. D., of for rent alleged to be due to E. F., of .]

Signed

L. S.

Judge.

APPENDIX II.

TABLES OF FEES, CHARGES AND EXPENSES.

SCALE I.

Distresses for Rent where the Sum demanded and due exceeds 20l.

1. For levying distress. Three per cent. on any sum exceeding 20l., and not exceeding 50l. Two and a half per cent. on any additional sum up to 200l., and one per cent. for any additional sum.
2. For man in possession, 7s. per day, to provide his own board in every case.
3. For appraisement, where the tenant or owner of the goods and chattels by writing requires such appraisement to be made, 6d. in the pound on the value as appraised, whether by one broker or more, in addition to the amount for the stamp, with a minimum fee of 5s. for each broker, the costs of the appraisement to be borne by the tenant or owner requiring the same.
4. For removal, at the request in writing of the tenant or owner of the goods and chattels distrained, the reasonable costs and charges attending such removal, to be borne and paid by such tenant or owner, and to be subject to taxation under Rule 24.
5. For advertisements, the sum actually and necessarily paid.
6. For commission to the auctioneer on sale by auction, ten per cent. on the sum realised not exceeding 100l., five per cent. on the next 200l., four per cent. on the next 200l., and on any additional sum three per cent. up to 1,000l., and two and a half per cent. on any sum exceeding 1,000l.

7. Reasonable fees, charges and expenses where distress is withdrawn, or where no sales takes place, and for negotiations between landlord and tenant respecting the distress, subject to taxation under Rule 24.

8. A fraction of 1*l.* to be in all cases for the purpose of calculating poundage reckoned as 1*l.*

SCALE II.

*Distresses for Rent where the Sum demanded and due does not exceed 20*l.**

1. For levying distress, where the sum demanded and due does not exceed 10*l.*, 5*s.* ; exceeds 10*l.*, 7*s.* 6*d.*

2. For man in possession, 6*s.* per day ; to provide his own board in every case.

3. For appraisement, where the tenant or owner of the goods and chattels by writing requires such appraisement to be made, 6*d.* in the pound on the value as appraised, whether by one broker or more, in addition to the amount for the stamp, with a minimum fee of 5*s.* for each broker ; the costs of appraisement to be borne and paid by the tenant or owner requiring the same.

4. For removal, at the request in writing of the tenant or owner of the goods and chattels distrained, the reasonable costs and charges attending such removal, to be borne and paid by such tenant or owner, and to be subject to taxation under Rule 24.

5. For all expenses for advertisements, if any, 10*s.*

6. For catalogues, sale and commission and delivery of goods, seven and a half per cent. on the sum realised.

7. Reasonable fees, charges and expenses, where distress is withdrawn, or where no sale takes place, and for negotiations between landlord and tenant respecting the distress, not to exceed in any event five per cent. on the sum demanded and due for rent, and to be subject to taxation under Rule 24.

8. A fraction of 1*l.* to be in all cases for the purpose of calculating poundage reckoned as 1*l.*

COURT FEES.

The court fees payable under the Law of Distress Amendment Acts, 1888 and 1895, are prescribed by the County Court Fees Order, 1925, as follows :—

	£	s.	d.
(87) (i.) On an application for a general certificate	0	5	0
(ii.) On an application for a special certificate	0	2	6
(iii.) On an application for the renewal of a general certificate	0	2	6
(iv.) For approving of security by bond	0	10	0
(v.) For receiving deposit in lieu of bond	0	5	0

Where taxation is required under Rule 24 of the Distress for Rent Rules, 1920, the taxing fee payable will be 6*d.* for every £ or fraction of a £ allowed, minimum fee 2*s.* (C. C. Fees Order, 1925, Fee No. 51).

ECCLESIASTICAL DILAPIDATIONS MEASURE, 1923.

(14 & 15 GEO. 5, No. 3.)

Jurisdiction.—By s. 49 of this Measure any person aggrieved by an order of the Central Authority relating to the fixtures and things belonging to a benefice in or about any buildings of the benefice, may appeal to the County Court having jurisdiction over the place where the buildings are, on any ground of fact or law relating to the ownership of the fixtures and things. A further appeal lies from the County Court to the High Court.

Procedure.—Procedure in the County Court is regulated by the Ecclesiastical Dilapidations (County Court) Rules, 1927, *post*, p. 2002. For Court fees, see C. C. Fees Order, 1925, Fee No. 45A.

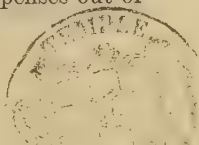
49.—(1) The Surveyor, if at any time so required by the Board, shall make to the Board a report upon the fixtures and things belonging to a benefice which are in or about any buildings belonging to the benefice; and such report shall include a complete schedule or inventory of all such fixtures and things.

(2) On the receipt of the report by the Board a copy of it shall be forthwith sent to the person who is incumbent of the benefice at the date of such receipt, or to his executors or administrators, or, if the benefice be vacant at that date, to the preceding incumbent or his executors or administrators; and any person to whom the report is accordingly sent may state in writing to the Board any objection to the report on any ground of fact or law in regard to the ownership of the aforesaid fixtures and things or any of them.

(3) The Board after due consideration of all such objections shall transmit the report to the Surveyor to the Central Authority with such conclusions concurring with or varying from such report as the Board may think fit, and the Central Authority may thereupon make an order confirming the conclusions of the Board with such variation, if any, as the Central Authority may determine, and such order shall decide every question involved and shall be binding on the incumbent of the benefice and any other person concerned in respect to the ownership of the fixtures and things subject only to such appeal as is in this section provided.

(4) Any person aggrieved by an order of the Central Authority under this section may appeal to the County Court having jurisdiction over the place where the buildings concerned are, on any ground of fact or law relating to the ownership of the fixtures and things aforesaid; and from the County Court a further appeal shall lie to the High Court of Justice. Every appeal under this section shall be made and pursued in accordance with rules which shall be framed by the Lord Chancellor after consultation with the Central Authority.

(5) The cost of defending any such appeal by the Board, and all expenses incurred by the Board in connection with such appeals, may be defrayed by the Board as administrative expenses out of the moneys applicable for such expenses.



THE ECCLESIASTICAL DILAPIDATIONS (COUNTY COURT) RULES, 1927.

DATED FEBRUARY 28, 1927.

Interpreta-
tion.

1. In these Rules—

(a) “the Measure” shall mean the Ecclesiastical Dilapidations Measure, 1923;

“the County Courts Acts” shall mean the County Courts Acts, 1888 to 1924, as amended by any future enactment;

“County Court Rules” shall mean the Rules for the time being in force under section 164 of the County Courts Act, 1888;

“the Appendix” shall mean the Appendix to these Rules;

(b) the expressions

“The Central Authority”;

“The Diocesan Dilapidations Board”;

“The Board”;

“The Surveyor”;

“Benefice”

shall have the same respective meanings as in the Measure;

(c) “buildings” shall include the houses, buildings, walls, fences and other things to which the provisions of the Measure respecting buildings belonging to a benefice apply by virtue of subsection (2) of section 4 of the Measure; and

(d) the Interpretation Act, 1889, shall apply to the interpretation of these Rules in like manner as it applies to the interpretation of an Act of Parliament.

Notice of
appeal.

2. An appeal to a County Court from an Order of the Central Authority under section 49 of the Measure shall be brought by giving notice of the appeal to the respondent in accordance with the form in the Appendix, and by requesting the Registrar of the County Court having jurisdiction in the matter to enter the appeal.

Form 1.

Time for
appeal.

3. An appeal to a County Court shall be brought within four teen days of the day on which the Order of the Central Authority is served on the appellant, subject to the provisions of Rule 12 of Order LIV. of the County Court Rules.

Venue.

4. If the buildings referred to in subsection (4) of section 49 of the Measure are situated in more than one County Court district, the appeal may be brought in the County Court of either district

Parties.

5.—(1) Where the appeal is brought by the incumbent or a preceding incumbent or his executors or administrators, the Board shall be the respondent. Where the appeal is brought by the Board, the incumbent or the preceding incumbent or his executors or administrators, as the case may be, shall be the respondent or

respondents. The Central Authority shall not be a party to the appeal:

Rule 5.

(2) Provided that the Court may give leave to add any person as appellant or respondent, and may order any person to be added as a respondent.

6. The request for entry of the appeal shall be in accordance with the form in the Appendix, and shall be delivered to the Registrar of the Court in which the appeal is to be brought, and shall be accompanied by the prescribed fee on entering an appeal under the Measure, a copy of the notice of appeal, a copy of so much of the Surveyor's Report as is relevant to the subject-matter of the appeal, and a copy of each of the following documents, namely, the Objections to the Surveyor's Report, the Conclusions of the Board, and the Order of the Central Authority appealed against. Entry of
Form 2.

7. Any notice, summons, order or warrant, which is required to be served on or delivered to any party or the Registrar, may be served or delivered in accordance with the provisions of Rule 2 of Order LIV. of the County Court Rules: Service by
post.

Provided that if the notice of appeal is sent by post, it shall be sent by registered post.

8.—(1) The Board, whether it be an incorporated body of persons or not, may bring an appeal or be made respondent to an appeal in its statutory name, viz.: "The Diocesan Dilapidations Board for (the area in which the benefice is situated)": The Board.

Provided that where the Board is not an incorporated body of persons, the court may, on application by any party to the appeal, order a statement of the names and places of residence of the persons who were members of the Board at the date of the notice of appeal to be furnished in such manner, and verified on oath or otherwise, as the court may direct.

(2) The Board may act by its Secretary for the purpose of signing any document or swearing any affidavit, and any notice, summons, order or warrant directed to the Board shall be sufficiently served or delivered, if served on or delivered to the Secretary of the Board.

9. Notices of appeal received by the Registrar shall be entered by him in a Minute Book and numbered as if they were complaints, and when a notice of appeal has been so numbered, all subsequent notices and documents relating to the appeal shall bear the same number. Number of
appeal.

10. On receipt of a notice of appeal the Registrar shall enter it according to the preceding Rule, and shall as soon as conveniently may be fix a time and place for the hearing of the appeal, and shall give not less than fourteen days' notice thereof to the parties and to the Central Authority according to the form in the Appendix. Notice of
hearing.
Form 3.

11.—(1) The Registrar shall, on the application of any party to an appeal and on payment of the prescribed fee, furnish him with a copy of any document sent to the Registrar under Rule 6 of these Rules. Documents
as evidence.

Rule 11.

(2) Any of the documents, copies of which have been sent to the Registrar under Rule 6 of these Rules, may be admitted in evidence on the hearing of the appeal without further proof, and the Surveyor's Report and the Objections thereto shall be *prima facie* evidence of the facts stated therein; but any party to the appeal may tender further evidence, or may apply to the Court for an order for the attendance for cross-examination of the Surveyor making the Report on the person objecting thereto.

Procedure
on hearing.

12. The procedure on the hearing of an appeal shall be the same *mutatis mutandis* as on the trial of an action before the Judge alone without a jury.

Right of
audience.

13. A party to an appeal, other than the Board, may appear in person or by a solicitor or Counsel, and the Board may appear by a Solicitor or Counsel, or, with the leave of the Judge, by its Secretary.

The decision.

14. The Order of the County Court may affirm, set aside, or vary the Order of the Central Authority appealed against, and shall take the form of a declaration as to the rights of the parties in respect of the fixtures and things the subject-matter of the appeal; and the Judge may make such Order as to costs as he shall think fit, and shall have power to direct on what County Court Scale and under what column in the Scale costs are to be allowed, and in default of any such Order, costs shall be taxed under column B of the Higher Scale of costs.

The Order.

15. When the Judge has given judgment on an appeal, the Registrar shall, as soon as conveniently may be, draw up an Order in accordance with the decision, and a sealed copy of the Order shall be sent to the Central Authority and to every party to the appeal.

Enforcement
of Order.

16. An Order of the County Court for costs, or so far as it relates to costs, may be enforced as if it were an Order for payment of a sum of money made under the County Courts Acts.

County
Court Rules
to apply.

17. Subject to the special provisions of the Measure and these Rules, the Court shall have all the powers attaching to the exercise of its ordinary jurisdiction, including discovery and inspection of documents and of any article the subject-matter of the appeal and the transfer of a matter from one Court to another and the hearing of a matter which ought to have been commenced in another Court; and the Rules governing the practice of the Court shall, with the necessary modifications, apply accordingly.

Appeal to
High Court.
Form 4.

18.—(1) A person intending to appeal to the High Court of Justice from an Order of the County Court shall give notice of his intention, according to the form in the Appendix, to every other party to the appeal, to the Central Authority, and to the Registrar of the County Court, within ten days from the date of the Order.

(2) The provisions of the County Court Acts and Rules and of the Rules of the Supreme Court relating to appeals from a County Court to the High Court, shall apply to any such appeal with such

modifications as may be necessary having regard to the express provisions of the Measure and of these Rules. **Rule 18.**

19. These Rules may be cited as the Ecclesiastical Dilapidations (County Court) Rules, 1927.

Dated the 28th day of February, 1927.

Cave, C.

APPENDIX.

FORM 1.

Notice of Appeal.

In the County Court of held at
In the Matter of the Ecclesiastical Dilapidations Measure, 1923,
and
In the Matter of an Appeal against an Order of the Central Authority
relating to the Benefice of
Between

A.B.
of (address)
(or the Diocesan Dilapidations
Board for) Appellant
and

The Diocesan Dilapidations
Board for
(or C.D.
of) Respondent.

TAKE NOTICE that I intend to appeal to the County Court of
held at from the Order of the Central Authority dated the
day of , 19 , relating to the benefice of whereby (state the effect
of the Order appealed against).

The grounds of my appeal are (state the grounds).

Dated the day of , 19 .

A.B.

Appellant, or

X.Y.

Secretary of the above-men-
tioned Board (Appellant).
(add address)

to which address all notices and other documents are to be sent.

To (the above-mentioned Board (Respondent)
or C.D.).

FORM 2.

Request by Appellant for Entry of Appeal.

(Heading as in Form 1.)

Sir,

I herewith forward to you a copy of the notice of appeal in the above-mentioned matter given to the above-named Board (or C.D.).

I request the Court to enter the appeal for hearing, and to fix a time for the hearing.

I enclose the sum of £1 for the fee payable on the entry of the appeal.

THE ECCLESIASTICAL DILAPIDATIONS (COUNTY COURT) RULES, 1927.

and a copy of the relevant extract from the Surveyor's Report, and a copy of each of the following documents, namely. the Objections to the Surveyor's Report, the Conclusions of the Board, and the Order of the Central Authority.

Dated this day of 19 A.B.

Appellant.
(add address)

to which address all notices and other documents are to be sent.

FORM 3.

Notice of Time and Place for Hearing an Appeal.

(Heading as in Form 1.)

TAKE NOTICE that the above-mentioned appeal will be heard at a Court to be held at on the day of 19 , at the hour of in the noon; and that if you do not attend either in person or by your solicitor at the time and place above-mentioned, such proceedings will be taken and Order made as the Judge may think just.

Dated this day of 19 .

Registrar.

To (the Secretary to the Diocesan Dilapidations Board and to every other party, whether appellant or respondent).

FORM 4.

Notice of Intention to Appeal to High Court.

(Heading as in Form 1.)

TAKE NOTICE that I intend to appeal to the High Court of Justice from the decision of the Judge on the hearing of the above-mentioned appeal on the day of , 19 , whereby (state the decision appealed against).

The grounds of my appeal are (state the grounds).

Dated the day of 19 .

A.B.
Appellant, or
C.D.
Respondent.
(add address).

To (every other party) and
To (the Registrar of the Court).

[FOR EMPLOYERS' LIABILITY ACT, 1880, see PART IV.,
CHAPTER III.]

EMPLOYERS AND WORKMEN ACT, 1875.

[38 & 39 VICT. c. 90.]

Jurisdiction.]—In any proceeding before the county court in relation to any dispute between an employer and a workman (as defined by sect. 10) arising out of their relationship as such, the court may, in addition to any other jurisdiction, exercise all or any of the powers given by sect. 3 of the Act. But although the court may adjust and set off claims, there is no obligation on either party to bring them forward, and they may be dealt with in separate proceedings (*Hindly v. Haslam*, (1878) 3 Q. B. D. 481; see *Stanton v. Styles*, (1850) 5 Ex. 578; 19 L. J. Ex. 336; *Jones v. Jones*, (1874) 22 W. R. 577).

Practice will follow the ordinary procedure commenced by plaint and summons.

An employer whose workman absents himself from work may treat the contract of service as broken, or as subsisting and claim damages, but he cannot suspend the workman from work by way of penalty (*Hanley v. Pease*, (1915) 1 K. B. 698; 84 L. J. K. B. 532).

3. In any proceeding before a county court in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act) the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers; that is to say, Power of county court as to ordering of payment of money, set-off, and rescission of contract and taking security.

(1) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman arising out of or incidental to the relations between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and,

(2) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,

(3) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where

Section 3.

such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

* * * * *

Mode of
giving
security.

8 A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules with respect to giving security under this Act.

* * * * *

10. In this Act—

Definitions.

“Workman”

The expression “workman” does not include a domestic or menial servant, but, save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

See *Squire v. Midland Lace Co.*, (1905) 2 K. B. 448 ; 74 L. J. K. B. 614. See as to meaning of “workman” cases under Employers’ Liability Act, 1880, Part 4.

Set-off in
case of
factory
workers

11. In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874, any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

The following is the Form of Undertaking prescribed by the County Court Rules, 1903 :—

COUNTY COURT FORMS. FORM 432.

Undertaking in Writing by Defendant to Perform Contract.

The Employers and Workmen Act, 1875.

[Not to be printed.]

In the county court of holden at .

Between A. B., plaintiff,
and
C. D., defendant.

(Seal.)

Whereas it has been found by this court, on the day of 19

that the defendant had broken the contract for the breach of which he was summoned. Section 11.

And whereas the court would have awarded to the plaintiff the sum of £ by way of damages suffered by him in consequence of such breach, and would have ordered the defendant to have paid such sum, but that the defendant was willing to give security for the performance by him of so much of the contract as remains unperformed. 38 & 39 Vict.
c. 90, s. 3.

Now, therefore, I, the undersigned defendant and we the undersigned sureties [or the undersigned surety], do undertake that the said defendant will perform so much of the said contract as remains unperformed, that is to say, [here set out so much of the contract as remains to be performed].

And I, the said defendant, and we [or I], the said sureties [or surety], hereby severally acknowledge ourselves bound to forfeit to A. B., the plaintiff, the sum of pounds and shillings, in case the said defendant fails to perform what he has hereby undertaken to perform.

(Signed, when not taken orally) C. D., defendant.

E. F.,
G. H., } Sureties.

Taken [orally] before me this day of 19 .

Registrar.

NOTE.—Where the undertaking is given orally, strike out the words “undersigned” where they occur, and insert the word “orally” after “taken.”

EXPLOSIVES ACT, 1875.

(38 & 39 VICT. c. 17.)

PETROLEUM (CONSOLIDATION) ACT, 1928.

(18 & 19 GEO. 5, c. 32.)

By sect. 66 of the Explosives Act, 1875, the Secretary of State is empowered to appoint a county court judge, or such person as is named in the Act, to make, with the assistance of a government inspector or other assessor as a court, a formal investigation in cases of serious explosions.

Similar provisions are contained in sect. 14 of the Petroleum (Consolidation) Act, 1928, and apply to accidents involving loss of life or personal injury due to explosion or fire in or about premises licensed for the storage of petroleum spirit, or in or about the loading or unloading or conveyance of petroleum spirit (see Petroleum (Consolidation) Act, 1928, sects. 13 and 14).

The inquiry under these Acts must be held in open court, and the court has all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against the Acts as well as special powers in regard to the enforcing of the attendance of witnesses, production of documents and other matters; it has also power to enter and inspect any place or building.

THE FACTORY AND WORKSHOP ACT, 1901.

[1 EDW. VII. c. 22.]

Jurisdiction of the county court is founded on sect. 14, sub-s. 4, and is exclusive. This section, sect. 14, makes provision for factories being provided with adequate means of escape in case of fire. The jurisdiction of the county court is, as between the owner and occupier of the factory, to decide who should bear this expense, or the proportions in which it should be borne between them.

Section 14. Practice is governed by Order L., rule 34, *post*, p. 2011.

Appeal is by sect. 120 of the County Courts Act, 1888 (see *ante*, p. 144).

Provision of
means of
escape in
case of fire.

14.—(1) Every factory of which the construction was not commenced on or before the first day of January one thousand eight hundred and ninety-two, and in which more than forty persons are employed, and every workshop of which the construction was not commenced before the first day of January one thousand eight hundred and ninety-six, and in which more than forty persons are employed, must be furnished with a certificate from the district council of the district in which the factory or workshop is situate that the factory or workshop is provided with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case, and if the factory or workshop is not so furnished it shall be deemed not to be kept in conformity with this Act; and it shall be the duty of the council to examine every such factory and workshop, and, on being satisfied that the factory or workshop is so provided, to give such a certificate as aforesaid. The certificate must specify in detail the means of escape so provided.

(2) With respect to all factories and workshops to which the foregoing provisions of this section do not apply, and in which more than forty persons are employed, it shall be the duty of the district council of every district from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape as aforesaid, and, in the case of any factory or workshop which is not so provided, to serve on the owner of the factory or workshop a notice in writing specifying the measures necessary for providing such means of escape as aforesaid, and requiring him to carry them out before a specified date, and thereupon the owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements, and unless the requirements are complied with, the owner shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

(3) In case of a difference of opinion between the owner of the factory or workshop and the council under the last foregoing subsection, the difference shall, on the application of either party, to be made within one month after the time when the difference arises, be referred to arbitration, and thereupon the provisions of the first schedule to this Act shall have effect, and the award on the arbitration shall be binding on the parties thereto, and the notice of the council shall be discharged, amended, or confirmed in accordance with the award.

(4) If the owner alleges that the occupier of the factory or workshop ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court having jurisdiction where the factory or workshop is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the court just and equitable under all the circumstances of the case.

[The residue of the section does not concern county court jurisdiction.]

The same words in sect. 7, sub-s. 2, of the 1891 Act have been held to give the county court jurisdiction, whatever may be the legal effect of the covenants, to apportion the expenses as between the owner and occupier as may seem just and equitable under all the circumstances of the case (*Monk v. Arnold*, (1902) 1 K. B. 761; 71 L. J. K. B. 441). Where the tenant covenants to pay "all parliamentary, parochial and other rates, assessments and impositions which may be imposed during the term," the landlord's remedy is restricted to a proceeding in the county court under this section, and he cannot sue in the High Court on the covenant (*Horner v. Franklin* (C. A.), (1905) 1 K. B. 479; 74 L. J. K. B. 291; impliedly overruling *Shephard v. Barber*, (1903) 67 J. P. 239).

Section 14.
Note.

The following rule of practice has been made:—

COUNTY COURT RULES. ORDER L., RULE 34.

An application to the court under sect. 14, sub-sect. 4, of the Factory and Workshop Act, 1901, shall be made by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed with every such application, stating concisely the relief or order which the plaintiff claims.

Application under 1 Edw. VII. c. 22, s. 14, sub-s. 4

FINANCE ACTS, 1894 AND 1896.

[57 & 58 VICT. c. 30; 59 & 60 VICT. c. 28.]

Jurisdiction.—By sect. 10 (5) of the 1894 Act, an appeal from the Commissioners is given to a person aggrieved as to the amount of estate duty claimed, to the county court for the county or place where the appellant resides, or the property is situate, in cases where the value of the property in respect of which the dispute arises, is alleged by the Commissioners not to exceed 10,000*l.*

The sole effect, so far as county courts are concerned, of the 1896 Act is by sect. 22 to add to sect. 10, sub-s. 5 of the 1894 Act a proviso giving, as of right, an appeal from the county court to the Court of Appeal under this section.

By sect. 14 of the same Act, any dispute as to the proportion of estate duty to be borne by any property or person may, where the amount is less than 50*l.*, be determined by the county court for the county or place where the person who is authorised or required to pay the estate duty under the circumstances mentioned in sect. 14, sub-s. 1 resides, or the property in respect of which the duty has been paid is situate.

Practice.—Any person who desires to appeal under sect. 10, sub-s. 5, must within one month from the date of the notification to him or his solicitor of the decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal as provided by Order XLII. r. 2. By Rule 3 the Commissioners must deliver their reply within one month; if the Commissioners maintain their decision or claim in whole or in part, within one month from the date of the notification of such determination by the Commissioners, the appellant may proceed by filing a petition (see as to the proceedings, Order XLII., *infra*).

As to proceedings to determine a dispute under sect. 14, see Order XLII., r. 12, *infra*.

Appeal.—The appeal from the county court under sect. 10, sub s. 5. is direct to the Court of Appeal. but that does not seem to apply to sect. 14; the appeal as to matters under sect. 14 will be according to sect. 120 of the County Courts Act, 1888. For Act of 1910, see *post*, p. 2013.

Order 42.

COUNTY COURT RULES. ORDER XLII.

THE SUCCESSION DUTY ACT, 1853, SECT. 50. THE FINANCE ACT, 1894, SECTS. 10 AND 14.

- Appeal under 16 & 17 Vict. c. 51, s. 50. 1. An appeal against any assessment of the Commissioners under sect. 50 of the Succession Duty Act, 1853, shall be by petition intituled in the matter of the Succession Duty Act, 1853, and the Acts amending the same, and in the matter of the particular succession, and Rules 5 to 9 and 11 of this Order shall apply to the service of and proceedings on such petition.
- Delivery of statement of grounds of appeal under 57 & 58 Vict. c. 30, s. 10. 2. Any aggrieved person within the meaning of section 10, sub-section (1) of the Finance Act, 1894, who desires to appeal to the court under sub-section (5) in any of the cases mentioned in the said sub-section (1), shall, within one month from the date of the notification to him or his solicitor of the decision or claim of the Commissioners, deliver to them a written statement of the grounds of such appeal.
- Reply thereto. The statement shall state specifically the several grounds upon which the appellant contends that the decision or claim of the Commissioners was erroneous, and if he contends that the value put upon any property by the Commissioners is excessive, he shall therein identify such property, and state the value which he contends should be put upon the same.
- Appeal by petition. 3. The Commissioners shall, within one month from the delivery to them of the statement of the grounds of appeal, notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same either in whole or in part.
- Title and service of petition. 4. At any time thereafter, not exceeding one month from the date of the notification by the Commissioners of their determination to maintain their decision or claim, either in whole or in part, the appellant may proceed with his appeal by filing a petition.
5. Such petition shall be intituled "In the matter of the Finance Act, 1894, and in the matter of the Estate Duty on the property passing on the death of *John Doe*, late of *London*, deceased," and a copy thereof, with a notice of the day and hour on which the petition will be heard, shall be served on the Commissioners in accordance with Rules 3 and 4 of Order XXXVIII.
- Limitation of grounds of appeal. 6. Subject to the provisions of these rules, the appellant shall not in his petition state or at the hearing be allowed to rely upon any grounds of appeal not specifically set forth in the statement of the grounds of appeal.
- Oral evidence. 7. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.
- Interrogatories, etc. 8. The Crown shall have the same right as an ordinary suitor of administering interrogatories and of obtaining discovery and inspection of documents.
- Amendment. 9. The judge may, at any time before or at the hearing, allow the appellant to amend his petition, upon such terms as the judge may think right.
- Application for leave to 10. An application for leave to bring an appeal without payment or on part payment only of the duty, under the provisions of sub-

section (4) of section 10 of the Finance Act, 1894, shall be made to the judge in accordance with the rules as to interlocutory applications, subject to the following modifications:—

Rule 10.

appeal without payment of duty.

(1) the application shall be made on notice in writing, and on affidavit;

2) the appellant shall serve notice of the application on the Commissioners three clear days before the day of the hearing of the application, and shall deliver to the Commissioners, with such notice, a copy of any affidavit which he intends to use at the hearing of the application.

11. Where the judge makes an order upon a petition under this Order the registrar shall, as soon thereafter as conveniently may be drawn up, seal, and file such order. **Order on petition.**

12. Proceedings for the determination of a dispute as to the proportion of estate duty to be borne by any property or person under section 14 of the Finance Act, 1894, shall be commenced by plaint and summons in the ordinary way, in which the person claiming to recover the amount in dispute shall be plaintiff, and the person resisting such payment shall be defendant. Particulars of demand shall be filed in every such proceeding, and shall state concisely the nature of the dispute and the relief or order which the plaintiff claims. **Proceedings for determination of disputes under 57 & 58 Vict. c. 30, s. 14.**

FINANCE (1909-10) ACT, 1910.

[10 EDW. VII. c. 8.]

As soon as might be after the passing of the said Act, the Commissioners must cause a valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land.

Jurisdiction.—By sect. 33, sub-s. 1, any person aggrieved may appeal against the determination by the Commissioners of the total or site value of any land, and also against the determination of such Commissioners as to other matters, to a referee appointed under the Act. Where the total or site value as alleged by the Commissioners does not exceed 500l., any person aggrieved by the decision of the referee may appeal to the county court for the county or place in which the appellant resides or the property is situate.

Practice.—The appellant must within one month from the date of the decision of the referee file a petition setting forth specifically the facts and contentions of law upon which he alleges the decision of the referee was erroneous, and giving an address at which documents may be served on him (Order XLII. r. 13, *post*, p. 2015). Rule 15 contains provisions as to the title of the petition and its service. By Rule 16, the respondent must, within ten days, state to what extent he admits the facts stated in the petition, and giving an address where documents may be served. By Rule 17, the respondent must, within twenty-eight days after service of the petition, serve upon the appellant a further notice stating the facts and the contentions of law upon which he intends to rely, and (if he thinks fit) requiring the appellant to admit those facts; when so required, the appellant must, within ten days, state to what extent he admits such facts; after ten days from the service of respondent's notice, all matters (except to the extent respectively admitted) shall be deemed to be at issue (Rule 18). The parties without leave of the judge cannot rely upon any facts or contentions of law

other than those stated in such notice (Rule 20). Other rules provide for discovery and inspection of documents (Rule 21); for admission of certain material as *prima facie* evidence (Rule 22); for extension of time and for amendment of petition and notices (Rules 23, 24); and service of documents (Rule 26).

Security for Duty.—Where the Commissioners are respondents, and claim that duty is due from the appellant, they may apply (in accordance with rules as to interlocutory applications) for security for the duty claimed.

Appeal.—By sect. 33, sub-s. 4, any party has the right of appeal from the county court to the Court of Appeal.

Appeals to
referees.

33.—(1) Except as expressly provided in this part of this Act any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have the power to make such allowance under this part of this Act; or against any apportionment of the value of land or of the duty or of any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this part of this Act:

Provided that:

- (a) An appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and
 - (b) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.
- (2) An appeal under this section shall be referred to such one of the panel of referees appointed under this part of this Act as may be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the court under this section, be final.

(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

Whether the person assessed is the owner of the land in respect of which

the assessment is made is a matter of appeal (*Allen v. Commrs. of Inland Revenue*, [1914] 2 K. B. 327; 83 L. J. K. B. 649). **Section 33.**

Costs.—To enable costs to be ascertained by taxation an order of the referee "that costs of appellant . . . be borne by the Commissioners" is good and can be made a rule of Court (*Matthews v. Commissioners of Inland Revenue*, [1914] 3 K. B. 192; 83 L. J. K. B. 1552).

(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by rules of court (including conditions enabling the court to require the payment of or the giving of security for any duty claimed), and sub-sections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal: 57 & 58 Vict. c. 30.

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court, and in every such case any party shall have a right of appeal to the Court of Appeal.

(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

COUNTY COURT RULES. ORDER XLII.

[April 7th, 1913.]

THE FINANCE (1909-10) ACT, 1910, SECT. 33 (4).

13. Any person aggrieved by the decision of a referee under the Appeal under Finance (1909-10) Act, 1910, who desires to appeal to the court 10 Edw. VII. against the decision, shall proceed by filing a petition setting c. 8, s. 33 (4), forth specifically the several facts and contentions of law upon to be by which he alleges that the decision of the referee was erroneous, and petition. stating an address at which documents may be served on him.

14. Subject to the provisions of these rules, a petition of appeal Time for must be filed within one month from the date of the decision of appealing. the referee.

15. —(1) The petition shall be intitled "in the matter of the Title, date of Finance (1909-10) Act, 1910, and in the matter of an appeal hearing, and by , under section 33 of the said Act." service of petition.

(2) On the filing of a petition the registrar shall fix a day and hour on and at which the petition will be heard, the day to be

Rule 15.

fixed at a date not less than 60 days from the filing of the petition, so as to allow time for the provisions of these rules to be complied with.

[See Form 341.]

(3) On the day of hearing being fixed, the registrar shall seal a copy of the petition, and shall deliver to the appellant two copies of a notice according to the form in the Appendix, signed by the registrar and under the seal of the court; and the sealed copy of the petition, with one of such notices annexed thereto, shall within seven days after the filing of the petition be served by the appellant upon the respondent.

(4) Where the Commissioners of Inland Revenue are respondents, a copy of the petition shall be deemed to have been duly served if served upon the Solicitor of Inland Revenue, Somerset House, London, W.C.

Notice of admissions by respondent.

16. Within ten days after service of a copy of the petition upon the respondent, the respondent shall serve upon the appellant a notice stating whether, and to what extent, he admits the facts stated in the petition, and stating an address at which documents may be served upon him.

Notice to be given by respondent of facts and contentions of law relied on.

17.—(1) Within twenty-eight days after service of a copy of the petition upon the respondent, the respondent shall serve upon the appellant a further notice stating the facts and the contentions of law upon which he intends to rely at the hearing, and (if he so thinks fit) requiring the appellant to admit those facts.

(2) The appellant, if he is so required to admit facts shall, and in any case may, within ten days after service upon him of the notice required to be served by the respondent under this rule, serve upon the respondent a notice stating whether, and to what extent, he admits the facts stated in the notice served by the respondent.

Matters, when deemed to be at issue.

18. Upon the expiration of ten days after the service of the notice required to be served by the respondent under the last preceding rule all matters shall, except to the extent admitted by both parties, be deemed to be at issue.

Oral evidence.

19. Unless by consent, or otherwise ordered, only oral evidence shall be admitted at the hearing.

Parties limited to grounds stated in petition and notice.

20. The appellant shall not without the leave of the judge be entitled to rely upon any facts or contentions of law other than those stated in the petition, and the respondent shall not without the leave of the judge be entitled to rely upon any facts or contentions of law other than those stated in the notice required to be served by him under these rules.

Discovery and inspection of documents.

21.—(1) It shall be the duty of the appellant and the respondent respectively to exchange lists of all documents in their possession relating to the matter at issue, and to give to each other inspection at all reasonable times of any of those documents which may not be protected by any privilege, and, if so required, to provide copies thereof on the usual terms.

(2) If the Commissioners are dissatisfied with the list so supplied by the appellant or by the respondent, as the case may be, they may apply to the court for an order for discovery of documents

in the same manner and to the same extent as a party to an action in the court, but in considering any such application the court shall take into account the willingness or otherwise of the Commissioners to disclose or allow inspection of any documents in their possession.

Rule 21.

22. The judge may, at any stage of the proceedings, either upon Admission or without the application of either party, order that any material, of certain whether strictly admissible as evidence or not, which in the opinion material as of the judge ought, having regard to the question of costs or *prima facie* evidence. otherwise, fairly to be admitted as *prima facie* evidence of any evidence. fact, shall be *prima facie* evidence of that fact so as to shift the burden of proving the contrary on to the other party.

23. The judge may extend the time for filing or serving a petition Extension of of appeal, or for serving any notice, under these rules upon such time for terms (if any) as the justice of the case may require, and any such appealing extension may be ordered although the application for the same and for is not made until after the expiration of the time allowed under serving these rules. documents.

24. The judge may at any stage of the proceedings allow the Amendment amendment of the petition, or of any notices under these rules, of petition upon such terms as the judge may think right. or notices.

25.—(1) Where the Commissioners are respondents, and claim Power to that any sum is due from the appellant by way of duty, they may stay proceedings till apply for an order that proceedings on the appeal shall be stayed duty paid or until the appellant has paid, or has given security for, the duty secured. claimed.

(2) Any such application shall be made to the judge in accordance with the rules as to interlocutory applications, subject to the following modifications:—

(i.) the application shall be made on notice in writing, and on affidavit;

(ii.) the Commissioners shall serve notice of the application on the appellant three days at least before the hearing of the application, and shall deliver to the appellant, together with such notice, a copy of any affidavit which they intend to use at the hearing of the application.

(3) The judge shall make such order on any such application as seems to him reasonable in the circumstances of the case, and any order so made may, on an application made in accordance with this rule either by the Commissioners or by the appellant, be subsequently varied or discharged.

26. Any notice or other document required or authorised to be Service of served upon or sent to the appellant or respondent under these documents. rules shall be sufficiently served or sent if sent by post in a prepaid letter addressed to him at his address for service as stated, in the case of the appellant, in his petition, and in the case of the respondent, in his notice under Rule 16, and unless the contrary is proved, any notice or document sent as aforesaid shall be deemed to have been served at the time at which the letter would be delivered in the ordinary course of post.

Rule 27.

Order on
petition.

Saving for
right of
Crown.

27. Where the judge makes an order upon a petition under these rules, the registrar shall as soon thereafter as conveniently may be, draw up, seal, and file such order.

28. Nothing in these rules shall be construed to affect any right vested in the Crown by virtue of the Royal Prerogative.

THE FRIENDLY SOCIETIES ACTS, 1896 AND 1908.

[59 & 60 VICT. c. 25; 8 EDW. VII. c. 32.]

All future copies of the Act of 1896 are directed to be printed with the corrections made by the 1908 Act. The necessary corrections have been made in the Act of 1896.

Jurisdiction is conferred in the following matters by the 1896 Act: (1) default of officers (sect. 55); (2) disputes (sect. 68); (3) amalgamation of registered societies (sect. 70); (4) dissolution of registered societies (sect. 78); (5) enforcing awards of dissolution (sect. 80, sub-s. 5); (6) recovery of moneys from members (sect. 31).

The Court in which to proceed is, as to a member claiming relief from an order of amalgamation, by sect. 70, sub-s. 7, the county court of the district within which the chief place of business of the society is situate, and this practice had better be followed in all cases where the society is sued; where the society sues, the safest course would be to sue in the court within the district of which the defendant dwells (*Shea v. Society of St. Patrick*, (1867) L. R. 3 C. P. 21; 37 L. J. C. P. 50).

Practice is determined by Order XLI. (see Building Societies Rules, *ante*, p. 1778), and by sect. 94, which provides for the description of both plaintiffs and defendants, and the service of the summons or other proceedings. The proceedings are to be by plaint and summons.

Trade Unions.—The provisions of The Friendly Societies Act, 1896, other than sects. 62 to 67, which replace sect. 28 of the 1875 Act, do not extend to any trade union; and the attempted registration of any trade union, either under that Act or The Industrial and Provident Societies Act, to be presently noticed, would be absolutely void (34 & 35 Vict. c. 31, s. 5). No application can be entertained, under the foregoing provisions, by the county court for the settlement of any dispute in any such society, nor can certain of their contracts be enforced in any court (*Ib.* sect. 4; *Rigby v. Connol*, (1880) 14 Ch. D. 482; 49 L. J. Ch. 328. (Provisions for the benefit of trade unions are made by 34 & 35 Vict. c. 31, 39 & 40 Vict. c. 22, and 46 & 47 Vict. c. 47)).

Where a society is registered as a trade union, and its main object is in restraint of trade, it would appear that no provisions of its rules for the benefit of members, similar to those of a friendly society, are enforceable in any courts (*Old v. Robson*, (1890) 59 L. J. M. C. 41; *Burke v. Amalgamated Society of Dyers*, (1906) 2 K. B. 583; 75 L. J. K. B. 533). Even the nomination provisions of 39 & 40 Vict. c. 22, do not enable the courts to enforce them (*Crocker v. Knight*, (1892) 1 Q. B. 702; 61 L. J. Q. B. 466). If the general objects of an unregistered society are for the relief of members, the mere fact that some of the rules are in restraint of trade will not make it illegal (*Swaine v. Wilson* (C. A.), (1889) 24 Q. B. D. 252; 59 L. J. Q. B. 76).

An action will not lie against a trade union, or any of its members or officials on behalf of themselves and all other members of the union, in respect of torts alleged to have been committed by or on behalf of the union (6 Edw. VII. c. 47, s. 4 (Trade Disputes Act, 1906)).

Appeal from County Court not provided for in the Act, but there is an appeal which is by motion (*Wilkinson v. Jagger*, (1887) 20 Q. B. D. 423; 57 L. J. Q. B. 254). A special case may be stated by the court (sect. 68, sub-s. 7).

59 & 60 VICT. C. 25.

[The first sixteen sections of the Act relate to the Registry Office.]

REGISTRY OF SOCIETIES.

[Section 8, which is amended by section 1 of the Friendly Societies Act, 1908, enumerates the societies which may be registered.]

SOCIETIES WITH BRANCHES.

17.—(1) Where a society has branches, the application for registry shall be accompanied with—

Registry of societies with branches.

- (a) a list of all the branches, and notice of the place where the registered office of each branch is situate; and
- (b) if any branch is to have trustees or officers authorised to sue and be sued on its behalf, other than the trustees or officers authorised to sue and be sued on behalf of the society, a list of the names of all such trustees or officers, distinguishing the branches for which they are authorised to sue and be sued; and
- (c) if the rules of all the branches (in this Act called branch rules) are or are intended to be identical, a statement to that effect, and copies of those rules; and
- (d) if the branch rules are not or are not intended to be identical, a statement to that effect, and copies of all branch rules.

(2) A society having a fund under the control of a central body to which every branch is bound to contribute may be registered as a single society, and where any such society has branches in more than one part of the United Kingdom the provision of this Act as to the registry of societies doing business in more than one such part shall apply to that society.

18.—(1) There shall be sent under the hand of the secretary of a registered society to the registrar—

Establishment of new branches.

- (a) notice of the establishment of every new branch of the society; and
- (b) notice of the place where the registered office of the branch is situate; and
- (c) if the branch is to have trustees or officers authorised to sue and be sued on its behalf other than the trustees or officers authorised to sue and be sued on behalf of the society, a list of the names of such trustees or officers; and
- (d) a statement whether or not the rules of the branch are identical with those of the other branches of the society, and, if not so, a copy of the rules of the branch.

(2) Where the rules of the new branch are not identical with those of the other branches of the society, the society shall not be entitled to any of the privileges of this Act in respect of that

Section 18. branch until that branch has been registered in the part of the United Kingdom in which the registered office of the branch is to be situate.

Application of previous provisions to branches.

19. The provisions of this Act as to—

- (a) the acknowledgment of registry of societies and amendments of rules ; and
- (b) appeals from refusals to register societies and amendments of rules and the result thereof ; and
- (c) the registry of amendments of rules ; and
- (d) evidence of registry and of the appointment of trustees and officers

shall apply to branches and amendments of branch rules.

Requisites for registry of branches as societies.

20.—(1) A body which has been registered as a branch of a society shall not be registered as a society except on production to the registrar of a certificate under the hand of the chief secretary or other principal officer of the society of which it was a branch, that the body has wholly seceded or has been expelled from the society.

(2) An appeal shall lie from the refusal of the chief secretary or other principal officer of the society, or his omission after three months from the receipt of a request in writing made on behalf of the body to grant a certificate, to the High Court in England or Ireland or to the Court of Session in Scotland.

Name of seceding or expelled branch.

21. A body which, having been a branch of a society, has wholly seceded or been expelled from that society shall not thereafter use the name of that society or any name implying that it is a branch thereof, or the number by which it was designated as such branch.

Contributions from one society to another.

22.—(1) A registered society or branch may contribute to the funds and take part by delegates or otherwise in the government of any other registered society or registered branch of a society, as provided in the rules of that first-named society or branch, without becoming a branch under this Act of that other society or branch.

(2) This section shall in respect of contributing to the funds and taking part in the government of a medical society, that is to say, a society for the purpose of relief in sickness by providing medical attendance and medicine, extend to any registered trade union or branch of a registered trade union.

(3) A registered society or trade union or branch shall not withdraw from contributing to the funds of any such medical society except on three months' notice to the society and on payment of all contributions accrued or accruing due to the date of the expiration of the notice.

CONSEQUENCES OF REGISTRY.

Subscriptions not recoverable at law.

23. Save as provided by section thirty-one of this Act, the subscription of a person being or having been a member of a registered society or branch shall not be recoverable at law.

Registered office.

24.—(1) Every registered society and branch shall have a registered office to which all communications and notices may be addressed, and shall send to the registrar notice of the situation of that office, and of every change therein.

(2) In the case of a branch the notice shall be sent to the registrar through an officer appointed in that behalf by the society of which the branch forms part. Section 24.
—

[Sections 25 to 30 inclusive relate to appointment of trustees, audit, annual returns, etc., etc.]

31.—(1) The rules of a registered cattle insurance society or branch, and of such specially authorised societies or branches thereof as the Treasury may allow to take the benefit of this section, shall bind the society or branch and the members thereof, and all persons claiming through them respectively, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the rules contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to the rules subject to the provisions of this Act. Registered cattle insurance and other societies.

(2) All sums of money payable by a member to such society or branch as aforesaid shall be deemed to be a debt due from the member to the society or branch, and shall be recoverable as such in the county court of the district in which the member resides.

[Sections 32 to 37 relate to the privileges of registered societies.]

[Section 36 is amended by s. 2 of the Act of 1908.]

RIGHTS OF MEMBERS.

38. Every registered society and branch shall deliver to every person on demand, on payment of a sum not exceeding one shilling, a copy of the rules of the society or branch. Right to supply of copies of the rules.

39. Every registered society and branch shall supply gratuitously to every member or person interested in its funds, on his application, either Right to supply of copies of annual return.

- (a) a copy of the last annual return of the society or branch; or
- (b) a balance sheet or other document duly audited containing the same particulars as to the receipts and expenditure, funds, and effects, of the society or branch as are contained in the annual return.

40. A member or person having an interest in the funds of a registered society or branch may inspect the books at all reasonable hours at the registered office of the society or branch, or at any place where the books are kept, except that the member or person shall not, unless he is an officer of the society or branch, or is specially authorised by a resolution of the society or branch to do so, have the right to inspect the loan account of any other member without the written consent of that member. Inspection of books by members.

41.—(1) A member, or person claiming through a member, of a registered friendly society or branch, shall not be entitled to receive more than three hundred pounds by way of gross sum, together with any bonuses or additions declared upon assurances not exceeding that amount, or (except as provided by this Act) fifty-two pounds a year by way of annuity, from any one or more such societies or branches. Limitation of benefits.

The old limitations to 200*l.* gross sum, and 50*l.* a year, have been altered to 300*l.* and 52*l.* by sect. 3 of the Friendly Societies Act, 1908.

(2) Any such society or branch may require a member, or person claiming through a member, to make and sign a statutory

Section 41. declaration that the total amount to which that member or person is entitled from one or more such societies or branches does not exceed the sums aforesaid.

Accumulation of surplus of contributions.

42. The rules of a registered society or branch may provide for accumulating at interest, for the use of any member, any surplus of his contributions to the funds of the society or branch which may remain after providing for any assurance in respect of which they are paid and for the withdrawal of the accumulations.

Militiamen and volunteers.

43.—(1) A person shall not, by reason of his enrolment or service in the militia or as a naval coast volunteer, Royal Naval volunteer, naval artillery volunteer, or in any corps of yeomanry or volunteers whatsoever, lose or forfeit any interest in a friendly society or branch whether registered or unregistered which he possesses at the time of his being so enrolled or serving, or be fined for absence from or non-attendance at any meeting of the society or branch, if his absence or non-attendance is occasioned by the discharge of his military or naval duty as certified by his commanding officer, any rules of the society or branch to the contrary notwithstanding.

(2) A dispute between any such society or branch and person by reason of that enrolment or service shall be decided by a court of summary jurisdiction.

(3) If the rules of a society or branch certified before the twenty-third day of July, one thousand eight hundred and fifty-five, and in force at the time of the enrolment or service, provide that a member shall be deprived of any benefit by reason of that enrolment or service, the society or branch may require of the member a contribution exceeding the rate of contribution otherwise payable by him to an amount not exceeding one tenth of that rate during the time the member is serving out of the United Kingdom, or may suspend all claim of the member to any benefits assured by the society or branch, and all claim of the society or branch to any contributions payable by the member, during the time only he is serving out of the United Kingdom, but so that if he returns to the United Kingdom he shall forthwith be replaced on the same footing as before he went abroad on service.

[Sections 44 to 50 relate to property, funds, and investments, and the vesting and devolution thereof. The powers of investment contained in s. 44 are widened by s. 4 of the Act of 1908.]

See, as to unauthorised loan under sect. 46, *Lougher and ors. v. Molyneux*, (1916) 85 L. J. K. B. 911.

Description in legal proceedings.

51. In all legal proceedings whatsoever concerning any property vested in the trustees of a registered society or branch, the property may be stated to be the property of the trustees in their proper names as trustees for the society or branch without further description.

[Sections 52 and 53 relate to investments and discharge of mortgages.]

OFFICERS IN RECEIPT OR CHARGE OF MONEY.

Security by officers.

54. Every officer of a registered society or branch having receipt or charge of money shall, if the rules of the society or branch so require, before taking upon himself the execution of his office, become bound with one sufficient surety at the least in a bond or give the security of a guarantee society, in such sum as the

society or branch directs, conditioned for his rendering a just and true account of all sums of money received and paid by him on account of the society or branch at such times as its rules appoint, or as the society or branch or the trustees or committee thereof require him to do, and for the payment by him of all sums due from him to the society or branch.

Section 54.

55.—(1) Every officer of a registered society or branch having receipt or charge of money shall, at such times as by the rules of the society or branch he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society or branch, or by the trustees or committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all sums of money and deliver all property in his hands or custody to such person as the society or branch, or the committee or the trustees, appoint.

Accounts of officers.

(2) In case of any neglect or refusal to deliver the account, or to pay over the sums of money or to deliver the property in manner aforesaid, the trustees or authorised officers of the society or branch may sue upon the bond or security before mentioned, or may apply to the county court or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

PAYMENTS ON DEATH GENERALLY.

56.—(1) A member of a registered society (other than a benevolent society or working-men's club) or branch thereof, not being under the age of sixteen years, may, by writing under his hand delivered at or sent to the registered office of the society or branch, or made in a book kept at that office, nominate a person to whom any sum of money payable by the society or branch, on the death of that member, not exceeding one hundred pounds, shall be paid at his decease.

Power of member to dispose of sums payable on death by nomination.

Life policy is assignable by deed as well as by nomination (*In re Griffin*, (1902) 1 Ch. 135; 71 L. J. Ch. 112; overruling *Caddick v. Highton*, (1901) 2 Ch. 476, n.; 68 L. J. Q. B. 281; *Re Redman*, (1901) 2 Ch. 471; 70 L. J. Ch. 669).

(2) The sum of money payable by the society or branch on the death of a member, shall include sums of money contributed to or deposited in the separate loan account and the sums of money accumulated for the use of the member under the provisions of this Act with interest thereon.

(3) The person so nominated must not be an officer or servant of the society or branch, unless that officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator.

(4) A nomination so made may be revoked and varied by any similar document under the hand of the nominator, delivered, sent, or made as aforesaid.

Cannot be revoked otherwise than as prescribed by the sub-section *Bennett v. Slater*, (1899) 1 Q. B. 45; 68 L. J. Q. B. 45).

(5) The marriage of a member of a society or branch shall operate as a revocation of any nomination theretofore made by that member under this section.

Section 56.

(6) A nomination or a variation or revocation of a nomination by writing under the hand of a member of a registered branch and delivered at or sent to the registered office of that branch, or made in a book kept at that office, shall be effectual notwithstanding that the money to which the nomination relates or some part thereof is not payable by that branch, but is payable by the society or some other branch.

Sub-s. 6 added by sect. 5 of the Act of 1908.

Proceedings
on death of
a nominator.

57.—(1) On receiving satisfactory proof of the death of a nominator, the society or branch shall pay to the nominee the amount due to the deceased member, not exceeding the said sum of one hundred pounds.

(2) The receipt of a nominee over sixteen years of age for any amount so paid shall be valid.

(3) If the total sum in respect to which a nomination may be made under this Act by a member, after deducting any sums of money payable under the rules of the society or branch, or otherwise, for the purpose of defraying funeral expenses, exceeds at the time of the death of that member eighty pounds, the society or branch shall before making any payment require the production of a duly stamped receipt for the succession or legacy duty payable thereon, or a letter or certificate from the Commissioners of Inland Revenue stating that no such duty is payable.

(4) The Commissioners shall give such receipt, letter, or certificate on the payment of the duty or satisfactory proof of no duty being payable, as the case may be.

Intestacy.

58.—(1) If any member of a registered society or branch entitled from the funds thereof to a sum not exceeding one hundred pounds, dies intestate and without having made any nomination thereof then subsisting, the society or branch may, without letters of administration, distribute the sum among such persons as appear to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled by law to receive that sum, subject if that sum, after making such deductions as aforesaid, exceeds eighty pounds, to the obtaining from the Commissioners of Inland Revenue a receipt for the succession or legacy duty payable thereon, or a letter or certificate stating that no such duty is payable.

(2) If any such member is illegitimate, the trustees may pay the sum of money which that member might have nominated to or among the persons who, in the opinion of a majority of them, would have been entitled thereto if that member had been legitimate, or if there are no such persons, the society or branch shall deal with the money as the Treasury may direct.

Estate duty
to be paid
when the
whole estate
exceeds
100*l*.

59. When the principal value of the estate in respect of which estate duty is payable of any person entitled to make a nomination under this Act exceeds one hundred pounds, any sum paid under this Act without probate or letters of administration shall, notwithstanding such nomination or payment, be liable to estate duty as part of the amount on which that duty is charged, and the trustees of the society or branch may before making any such payment require a statutory declaration by the claimant, or by one of the claimants, that the principal value of that estate, including the sum in question, does not after deduction of debts and funeral expenses exceed the value of one hundred pounds.

60.—(1) A payment made by a registered society or branch, under the foregoing provisions of this Act with respect to payments on death generally to the person who at the time appears to a majority of the trustees to be entitled thereunder, shall be valid and effectual against any demand made upon the trustees or the society or branch by any other person, but the next-of-kin or lawful representative of the deceased member shall have remedy for recovery of the money, so paid as aforesaid, against the person who has received that money. Section 60.
Validity of payments.

(2) Where the society or branch has paid money to a nominee in ignorance of a marriage subsequent to the nomination, the receipt of the nominee shall be a valid discharge to the society or branch.

61.—(1) A registered society or branch shall not pay any sum of money upon the death of a member or other person whose death is or ought to be entered in any register of deaths, except upon the production of a certificate of that death under the hand of the registrar of deaths or other person having care of the register of deaths in which that death is or ought to be entered. Certificates of death.

(2) This section shall not apply to deaths at sea, nor to a death by colliery explosion or other accident where the body cannot be found, nor to any death certified by a coroner or procurator fiscal to be the subject of a pending inquest or inquiry.

PAYMENTS ON DEATH OF CHILDREN.

62. A society or branch, whether registered or unregistered shall not insure or pay on the death of a child under five years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds six pounds, or on the death of a child under ten years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds ten pounds. Limitation of amount payable.

See now Friendly Societies Act, 1924, s. 2.

63. A society or branch, whether registered or unregistered, shall not pay any sum on the death of a child under ten years of age except to the parent of the child, or to the personal representative of the parent, and upon production by the parent or his personal representative of a certificate of death issued by the registrar of deaths, or other person having the care of the register of deaths, containing the particulars mentioned in this Act. Person to whom payment may be made.

64.—(1) Where application is made for a certificate of the death of a child for the purpose of obtaining a sum of money from a society or branch, the name of the society or branch, and the sum sought to be obtained therefrom shall be stated to the registrar of deaths. Particulars of certificates.

(2) The registrar of deaths shall write on or at the foot of the certificate the words "to be produced to the society or branch (naming the same) said to be liable for payment of the sum of £. (stating the same)."

(3) All certificates of the same death shall be numbered in consecutive order.

Section 65.

Cases in which certificates may be given.

65.—(1) A registrar of deaths shall not give any one or more certificates of death for the payment in the whole of any sum of money exceeding six pounds on the death of a child under five years, or for the payment in the whole of a sum exceeding ten pounds on the death of a child under ten years.

(2) A registrar of deaths shall not grant any such certificate unless the cause of death has been previously entered in the register of deaths on the certificate of a coroner, or of a registered medical practitioner who attended the deceased child during its last illness, or except upon the production of a certificate of the probable cause of death under the hand of a registered medical practitioner, or of other satisfactory evidence thereof.

See now Friendly Societies Act, 1924, s. 2.

Inquiries by societies.

66. A society or branch, whether registered or unregistered, to which is produced a certificate of the death of a child which does not purport to be the first shall, before paying any money thereon, inquire whether any and what sums of money have been paid on the same death by any other society or branch.

Saving as to insurable interests, etc.

67. Nothing in this Act respecting payments on the death of children shall apply to insurances on the lives of children of any age, where the person insuring has an interest in the life of the person insured.

DISPUTES.

Decision of disputes.

68.—(1) Every dispute between—

- (a) a member or person claiming through a member or under the rules of a registered society or branch, and the society or branch or an officer thereof; or
- (b) any person aggrieved who has (a) ceased to be a member of a registered society or branch, or any person claiming through such person aggrieved, and the society or branch, or an officer thereof; or

NOTE.—(a) The words “for not more than six months” were repealed by sect. 6 of the Act of 1908.

- (c) any registered branch of any society or branch, and the society or branch of which it is a branch; or
- (d) an officer of any such registered branch and the society or branch of which that registered branch is a branch (a); or

NOTE.—(a) But notwithstanding this sub-section, an action can be maintained by the trustees of the society, against the trustees, secretary and treasurer of an unregistered branch for breach of trust in applying the trust funds in an unauthorised way (*Winter v. Wilkinson*, (1915) 1 Ch. 317; 84 L. J. Ch. 237).

(e) any two or more registered branches of any society or branch, or any officers thereof respectively, shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court.

(2) The parties to a dispute in a registered society or branch may, by consent (unless the rules of the society or branch expressly forbid it), refer the dispute to the chief registrar, or in Scotland or Ireland to the assistant registrar.

Section 68.
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(3) The chief or other registrar to whom a dispute is referred shall, with the consent of the Treasury, either by himself or by any other registrar, hear and determine the dispute, and shall have power to order the expenses of determining the dispute to be paid either out of the funds of the society or branch, or by such parties to the dispute as he may think fit, and his determination and order shall have the same effect, and be enforceable in like manner as a decision made in the manner directed by the rules of the society or branch.

(4) The chief or other registrar to whom a dispute is referred may administer oaths, and may require the attendance of all parties concerned, and of witnesses, and the production of all books and documents relating to the matter in question.

(5) Where the rules of a registered society or branch direct that disputes shall be referred to justices, the dispute shall be determined by a court of summary jurisdiction, or, if the parties thereto consent, by the county court.

(6) Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society or branch for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, and the court to which application is so made, may hear and determine the matter in dispute; but in the case of a society with branches, the said forty days shall not begin to run until application has been made in succession to all the bodies entitled to determine the dispute under the rules of the society or branch, so, however, that no rules shall require a greater delay than three months between each successive determination.

When the right to make such an application to the county court to recover a benefit under the rules has once become vested, the society cannot, by an amendment of its rules, take away that vested right (*Ritson v. Dobson*, (1911) 104 L. T. 808).

In the case of a society with branches, the forty days do not begin to run until application has been made in succession to all the bodies entitled to determine the dispute under the rules of the society or branch, so, however, that no rules shall require a greater delay than three months between each successive determination (for form of order, see Form 167) (*Jessop v. The Huddersfield Industrial Society*, (1899) 80 L. T. 598).

See, as to jurisdiction of county court where the rules of the society were uncertain, and the decision contrary to natural justice (*Wayman v. Perseverance Lodge of Cambridgeshire Order of United Brethren Friendly Society*, (1917) 1 K. B. 677; 86 L. J. K. B. 243).

(7) Notwithstanding anything contained in the Arbitration 52 & 53 Vict. Act, 1889, or in any other Act, the court and the chief or other c. 49.
registrar or any arbitrator or umpire to whom a dispute is referred under the rules of a registered society or branch, shall not be compelled to state a special case on any question of law arising in the case, but the court, or chief or other registrar, may, at the request of either party, state a case for the opinion in England or Ireland of the Supreme Court, and in Scotland of either division of the Inner House of the Court of Session, on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, and in Scotland, may grant warrant for the recovery of documents and examination of havers, as might be granted by any court

Section 68. of law or equity, and the discovery shall be made on behalf of the society or branch by such officer thereof as the court or registrar may determine.

(8) In this section the expression "dispute" includes any dispute arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member or to be reinstated as a member, but, save as aforesaid, in the case of a person who has ceased to be a member, does not include any dispute other than a dispute on a question between him and the society or branch or an officer thereof which arose whilst he was a member, or arises out of his previous relation as a member to that society or branch.

Sub-s. 8 was added by sect. 6 of the Act of 1908.

The decision of an arbitration committee is not binding if given without jurisdiction, as where a member was summoned before a committee for a breach of rules and was in his absence expelled upon a different charge (one of fraud and disgraceful conduct); in such a case the jurisdiction of the courts is not ousted (*Andrews v. Mitchell*, (1905) A. C. 78; 74 L. J. K. B. 333).

Under sect. 22 of the 1875 Act, and sect. 10, sub-s. 1 of the 1895 Act, repealed but practically re-enacted in sect. 68, sub-s. 1, of the 1896 Act, it was held that the provisions of those sections did not extend to disputes as to the title of a person to be a member of the society, and that as to such disputes the jurisdiction of the courts was not ousted (*Palliser v. Dale* (C. A.), (1897) 1 Q. B. 257; 66 L. J. Q. B. 236); this case since the passing of the 1908 Act is no longer law. Questions about sick pay and expenses are disputes (*Catt v. Wood*, (1910) A. C. 404; 79 L. J. K. B. 782).

CHANGE OF NAME, AMALGAMATION, AND CONVERSION OF SOCIETIES.

Power to change name. **69.**—(1) A registered society may, by special resolution, with the approval in writing of the chief registrar, or in the case of societies registered and doing business exclusively in Scotland or Ireland, the assistant registrar for Scotland or Ireland respectively, change its name, and shall not change its name in any other manner.

(2) Any such change of name shall not affect any right or obligation of the society, or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the society, or any other officer who may sue or be sued on behalf of the society, notwithstanding its new name.

Amalgamation and transfer of engagements. **70.**—(1) Any two or more registered societies may, by special resolution of both or all such societies, become amalgamated together as one society, with or without any dissolution or division of the funds of those societies or either of them.

(2) A registered society may, by special resolution, transfer its engagements to any other registered society which may undertake to fulfil the engagements of that society.

(3) A special resolution by a registered friendly society for an amalgamation or transfer of engagements under this Act shall not be valid without—

(a) the assent thereto of five-sixths in value of the members, given either at the meetings at which the resolution is,

Section 70

according to the provisions of this Act, passed and confirmed, or at one of them, or, if the members were not present thereat, in writing; and

- (b) the written consent of every person receiving or entitled to any relief, annuity, or other benefit from the funds of the society, unless the claim of that person is first duly satisfied, or adequate provision is made for satisfying that claim.

(4) Provided that on application of the trustees or committee of a registered friendly society desiring to amalgamate or transfer its engagements, and upon notice of that application being published in the *Gazette*, the chief registrar, after hearing the trustees or committee and any other persons whom he considers entitled to be heard upon the application, may, with the consent of the Treasury, order that any of the assents, consents, and conditions required by this Act, or by any regulations made under this Act, be dispensed with, and may confirm the amalgamation or transfer.

(5) A registered society, consisting wholly of members under twenty-one years of age, and a registered society or branch or branches of a society having members above twenty-one years of age, may, by resolution registered in the manner required for the registration of an amendment of rules, become amalgamated together as one society or branch, or provide for distributing among several branches the members of a society consisting wholly of members under twenty-one years of age, and the other provisions of this section shall not apply to that amalgamation.

(6) The value of members shall be ascertained by giving one vote to every member, and an additional vote for every five years that he has been a member, but to no one member more than five votes in the whole.

(7) If any member of a friendly society which has amalgamated or transferred its engagements, or if any person claiming any relief, annuity, or other benefit, from the funds thereof, is dissatisfied with the provision made for satisfying his claim, that member or person may apply to the county court of the district within which the chief or any other place of business of the society is situate for relief or other order, and that court shall have the same powers in the matter as in regard to the settlement of disputes under this Act.

71.—(1) A registered society may, by special resolution, determine to convert itself into a company under the Companies Acts, 1862 to 1890, or to amalgamate with or transfer its engagements to any such company. Conversion of society into company.

(2) If a special resolution for converting a society into a company contains the particulars required by the Companies Acts, 1862 to 1890, to be contained in the memorandum of association of a company, and a copy thereof has been registered at the central office, a copy of that resolution under the seal or stamp of the central office shall have the same effect as a memorandum of association duly signed and attested under the said Acts.

(3) If a society is registered as, or amalgamates with, or transfers all its engagements to, a company, the registry of the society under this Act shall thereupon become void, and shall be cancelled by the chief registrar or by the assistant registrar for Scotland or

Section 71. Ireland under his direction ; but the registration of a society as a company shall not affect any right or claim subsisting against that society, or any penalty incurred by that society : and for the purpose of enforcing any such right, claim, or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company ; and every such right or claim, or the liability to any such penalty, shall have priority, as against the property of the company, over all other rights or claims against or liabilities of the company.

On conversion of a friendly society under this section into a limited company the members of the society are not simultaneously converted into members of the company (*Blackburn Philanthropic Assurance Co., Ltd., In re*, (1915) 2 Ch. 430 ; 84 L. J. Ch. 145).

Saving for
right of
creditors.

72. An amalgamation or transfer of engagements in pursuance of this Act shall not prejudice any right of a creditor of either or any society party thereto.

Conversion
of society
into branch.

73.—(1) A registered society may, by a resolution passed by a majority of the members or delegates present and entitled to vote at any general meeting, of which notice specifying the intention to propose any such resolution has been duly given according to the rules, determine to become a branch of any other registered society, and also, if thought fit, of any registered branch thereof.

(2) If the rules of the society do not comply with all the provisions of this Act and of the Treasury regulations in respect of the registry of branches, the meeting at which any such resolution is passed, may amend the rules, so as to bring the rules into compliance with this Act and with the Treasury regulations.

(3) A copy of the rules of the society marked to show the amendments, if any, made at the meeting, and two copies of the resolution and of such amendment of rules, if any, as aforesaid, each signed by the chairman of the meeting, and by the secretary of the society, so determining to become a branch of another society, and countersigned by the secretary of that other society, shall be sent to the registrar.

(4) If the registrar finds that the rules, with or without such amendment as aforesaid, comply with the provisions of this Act and of the Treasury regulations, he shall cancel the registry of the first-mentioned society, and register it as a branch of that other society, and also, if so specified in the resolution before mentioned, of any branch of that other society, without further request or notice, and shall register such amendment of rules without further application or evidence, and until such registry as aforesaid the resolution shall not take effect.

(5) An advertisement of any cancelling of registry under this section shall not be requisite.

(6) The rules of a society which becomes a branch under this section shall, so far as they are not contrary to any express provision of this Act or of the Treasury regulations, and subject to any such amendment thereof as aforesaid, continue in force as the rules of the branch until amended.

(7) This section shall apply only to societies registered before the first day of January, one thousand eight hundred and seventy-six.

74. For the purposes of this Act, a special resolution shall mean **Section 74.**
a resolution which is—

- (a) passed by a majority of not less than three-fourths of such **Meaning of**
members of a registered society, entitled under the rules **special**
to vote as may be present in person or by proxy (where **resolution.**
the rules allow proxies) at any general meeting of which
notice specifying the intention to propose that resolution
has been duly given according to the rules; and
- (b) confirmed by a majority of such members entitled under
the rules to vote as may be present in person or by proxy
(where the rules allow proxies), at a subsequent general
meeting of which notice has been duly given, held not
less than fourteen days nor more than one month from
the day of the meeting at which such resolution was
first passed.

At any meeting mentioned in this section a declaration by the
chairman that the resolution has been carried shall be conclusive
evidence of the fact.

75. A copy of every special resolution for any of the purposes **Registration**
mentioned in this Act, signed by the chairman of the meeting of **special**
and countersigned by the secretary, shall be sent to the central **resolutions.**
office and registered there, and until that copy is so registered
the special resolution shall not take effect.

[Sections 76 and 77 relate to inspection: cancelling (a) and
suspension of registry.]

NOTE.—(a) See *Middle Age Pension Friendly Society, In re*, (1915)
1 K. B. 432; 84 L. J. K. B. 378.

78.—(1) Subject to the provision of this Act as to the dissolution **Dissolution**
of societies with branches, a registered society or branch may **of societies.**
terminate or be dissolved in any of the following ways:—

- (a) upon the happening of any event declared by the rules to
be the termination of the society or branch; or
- (b) as respects societies or branches other than friendly societies
or branches, by the consent of three-fourths of the
members, testified by their signatures to the instrument
of dissolution; or
- (c) as respects friendly societies or branches, by the consent
of five-sixths in value of the members (including honorary
members, if any), testified by their signatures to the
instrument of dissolution, and also by the written con-
sent of every person receiving or entitled to receive any
relief, annuity, or other benefit from the funds of the
society or branch, unless the claim of that person is first
duly satisfied, or adequate provision made for satisfying
that claim, and, in the case of a branch, with the con-
sent of the central body of the society or in accordance
with the general rules of the society; or
- (d) by the award of the chief registrar or assistant registrars
in the cases specified in this Act.

(2) The provisions of this Act as to the method of calculating
the value of members and the remedy of members and persons
dissatisfied with the provisions made for satisfying their claims
in the case of the amalgamation or transfer of engagements of

Section 78. a registered friendly society shall apply to the dissolution of a registered friendly society or branch.

Instrument
of dissolu-
tion.

79. When a registered society or branch is terminated by an instrument of dissolution :—

- (1) The instrument shall set forth—
 - (a) the liabilities and assets of the society or branch in detail ; and
 - (b) the number of members and the nature of their interests in the society or branch ; and
 - (c) the claims of creditors (if any), and the provision to be made for their payment ; and
 - (d) the intended appropriation or division of the funds and property of the society or branch, unless the appropriation or division is stated in the instrument of dissolution to be left to the award of the chief registrar.
- (2) Alterations in the instrument of dissolution may be made with the like consents as are in this Act required for the dissolution of a society or branch, testified in the same manner.
- (3) A statutory declaration shall be made by one of the trustees, or by three members and the secretary of the society or branch, that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution.
- (4) The instrument shall not in the case of a registered friendly society or branch direct or contain any provision for a division or appropriation of the funds of the society or branch, or any part thereof, otherwise than for the purpose of carrying into effect the objects of the society or branch as declared in the rules thereof, unless the claim of every member or person claiming any relief, annuity, or other benefit from the funds thereof is first duly satisfied, or adequate provisions are made for satisfying those claims.
- (5) The instrument of dissolution and all alterations therein shall be registered in manner in this Act provided for the registry of amendments of rules, and shall be binding upon all the members of the society or branch.
- (6) The registrar shall cause a notice of the dissolution to be advertised at the expense of the society or branch, and, unless within three months from the date of the *Gazette* in which the advertisement appears, a member or other person interested in or having any claim on the funds of the society or branch commences proceedings to set aside the dissolution of the society or branch, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of that advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto.

Dissolution
by award.

80. — (1) Upon the application made in writing under their hands—

- (a) of one-fifth of the whole number of members of a registered society or branch ; or

Section 80.

(b) in the case of a registered society or branch of one thousand members and not exceeding ten thousand, of one hundred members ; or

(c) in the case of a registered society or branch of more than ten thousand members, of five hundred members, the chief registrar may by himself or by any assistant registrar, or by any actuary or public auditor whom the chief registrar may appoint in writing under his hand, investigate the affairs of the society or branch, but shall give, not less than one month previous notice in writing to the society or branch whose affairs are to be investigated.

One month substituted for two months by sect. 8 of the Act of 1908.

(2) The application shall—

(a) state that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured ; and

(b) set forth the grounds on which the insufficiency is alleged ; and

(c) request an investigation into the affairs of the society or branch with a view to the dissolution thereof.

(3) If upon the investigation it appears that the funds of the society or branch are insufficient to meet the existing claims thereon, or that the rates of contribution fixed in the rules of the society or branch are insufficient to cover the benefits assured to be given by the society or branch, the chief registrar may, if he considers it expedient so to do, award that the society or branch be dissolved, and its affairs wound up, and shall direct in what manner the assets of the society or branch shall be divided or appropriated : Provided always, that the chief registrar may suspend his award for such period as he may deem necessary to enable the society or branch to make such alterations and adjustments of contributions and benefits as will in his judgment prevent the necessity of the award of dissolution being made.

(4) A registrar proceeding under this section shall have all the same powers and authorities, enforceable by the same penalties, as in the case of a dispute referred to him under this Act.

(5) Every award under this section, whether for dissolution or distribution of funds, shall be final and conclusive on the society or branch in respect of which the award is made, and on all members of the society or branch and on all other persons having any claim on the funds of the society or branch, without appeal, and shall be enforced in the same manner as a decision on a dispute under this Act.

(6) The expenses of every investigation and award, and of publishing every notice of dissolution, shall be paid out of the funds of the society or branch before any other appropriation thereof is made.

(7) Notice of every award for dissolution shall, within twenty-one days after the award has been made, be advertised by the central office, and unless, within three months from the date on which that advertisement appears, a member or person interested in or having any claim on the funds of the society or branch

Section 80. commences proceedings to set aside the dissolution of the society or branch consequent upon such award, and the dissolution is set aside accordingly, the society or branch shall be legally dissolved from the date of the advertisement, and the requisite consents to the application to the registrar shall be considered to have been duly obtained without proof of the signatures thereto.

Advertisement of notices. 81. A notice required by this Act to be advertised shall be published in the *Gazette* and in some newspaper in general circulation in the neighbourhood of the registered office of the society or branch.

Dissolution of societies having branches. 82. The provisions of this Act respecting the dissolution of societies shall not apply to any society having branches except with the consent of the central body of the society.

Notices of proceeding or order to set aside dissolution. 83.—(1) Where a person takes any proceeding to set aside the dissolution of a society or branch, he shall give notice of the proceeding to the central office not less than seven days before the proceeding is commenced.

(2) Where an order is made setting aside the dissolution of a society or branch, the society or branch shall give notice of the order to the central office within seven days after the order has been made.

[Sections 84 to 93 relate to offences and penalties.]

Legal proceedings. 94.—(1) The trustees of a registered society or branch, or any other officers authorised by the rules thereof, may bring or defend, or cause to be brought or defended, any action or other legal proceeding in any court whatsoever, touching or concerning any property, right, or claim of the society or branch, and may sue and be sued in their proper names, without other description than the title of their office.

(2) In legal proceedings brought under this Act by a member, or person claiming through a member, a registered society or branch may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society or branch within the jurisdiction of the court in which the legal proceeding is brought, with the addition of the words "on behalf of the society or branch" (naming the same).

(3) A legal proceeding shall not abate or be discontinued by the death, resignation, or removal from office of any officer, or by any act of any such officer after the commencement of the proceedings.

(4) The summons, writ, process, or other proceeding, to be issued to or against the officer or other person sued on behalf of a registered society or branch, shall be sufficiently served by personally serving that officer or other person, or by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business.

(5) In all cases where the said summons, writ, process, or other proceeding is not served by means of such personal service, or by leaving a true copy thereof at the registered office of the

society or branch as aforesaid, a copy thereof shall be sent in a registered letter addressed to the committee at the registered office of the society or branch, and posted at least six days before any further step is taken on the proceeding. Section 94.

(6) Where proceedings are taken against a society or branch for the recovery of any fine under this Act the summons or other process shall be sufficiently served by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch, within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business.

(7) Where the person against whom the proceedings are to be taken is himself a trustee of the society or branch the proceedings may be brought by the other trustees or trustee of the society or branch.

Sub-ss. 6 and 7 added by sect. 11 of the Act of 1908. By sect. 91 of the Act of 1896, fines under that Act are only recoverable in a court of summary jurisdiction.

FEES: FORMS: REGULATIONS: EVIDENCE.

95. The registrars and high bailiffs of the county courts shall be remunerated for the duties to be performed by them under this Act in such manner as the Treasury, with the consent of the Lord Chancellor, may direct. Remuneration of county court officers.

96.—(1) The Treasury may determine a scale of fees to be paid for matters to be transacted, or for the inspection of documents under this Act. Fees.

(2) A fee shall not be payable on the registry of any friendly, benevolent, or cattle insurance society, or working-men's club, or of any amendment of the rules thereof.

(3) All fees which may be received by any registrar under or by virtue of this Act shall be paid into the exchequer.

97.—(1) For the purpose of this Act, a certificate of the birth or death of any member of or person insured or to be insured with a registered friendly society or branch shall, on application being made as in this Act provided, be given under his hand by the registrar of births or deaths, for a sum not exceeding one shilling, in place of all fees or payments otherwise payable in respect thereof. Fees payable to registrar of births and deaths.

(2) Whenever application is made at one time to any such registrar for more certificates than one of the same birth or death for the purposes of and in the manner prescribed by this Act, the sum charged for every such certificate other than the first shall not exceed sixpence.

(3) Whenever the registrar is required by the person applying for any certificate of birth or death to fill up the form of application, he may demand a sum not exceeding threepence for so doing.

(4) For the purposes of this section, the expression "registrar of births or deaths" shall include any person having the care of the register of births or deaths in which the birth or death is entered.

Section 98.
Forms.

98.—(1) The forms to be used for registry shall be those contained in Part I. of the second schedule to this Act, or such other forms as are prescribed by Treasury regulations.

(2) The acknowledgment of registry of a branch and of any amendment of the rules of a branch shall be in the forms provided in Part II. of the same schedule.

(3) Every annual or other return, abstract of valuation, and other document required for the purposes of this Act shall be made in such form, and shall contain such particulars as the chief registrar prescribes.

(4) A receipt under this Act endorsed upon or annexed to a mortgage or other assurance shall be in the form set forth in Part III. of the same schedule, or in any form specified in the rules of the society or branch or any schedule thereto, and a bond to be given by an officer in receipt or charge of money shall be in one of the forms set forth in the said part.

(5) Applications for certificates of births and deaths under this Act shall be in such form and under such regulations as may be approved of by the Registrar-General of Births, Deaths, and Marriages for England, Scotland, and Ireland respectively.

Regulations
for carrying
out Act.

99.—(1) The Treasury may make regulations respecting registry and procedure under this Act, and the seal to be used for registry, and the duties and functions of the registrar, and the inspection of documents kept by the registrar under this Act, and generally for carrying this Act into effect.

(2) All such regulations shall forthwith be laid before both Houses of Parliament.

Evidence of
documents.

100. Every document bearing the seal or stamp of the central office shall be received in evidence without further proof; and every document purporting to be signed by the chief or any assistant registrar, or any inspector, or public auditor or valuer under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature.

APPLICATION OF ACT.

Application
to existing
societies.

101.—(1) This Act shall apply to societies and branches subsisting at the commencement of this Act which, or the rules of which have been registered, enrolled, or certified, under any Act relating to friendly societies or cattle insurance societies, as if they had been registered under this Act, and the rules of those societies and branches shall, so far as they are not contrary to any express provision of this Act, continue in force until altered or rescinded.

(2) Where the contingent annual payments to which the members or the nominees of the members of friendly societies or branches, established before the fifteenth day of August, one thousand eight hundred and fifty, may become entitled exceed the limit fixed by this Act, the rules of those societies and branches shall continue to be valid, anything in this Act to the contrary notwithstanding.

[Sections 102 to 105 relate to the application of the Act to Scotland, Isle of Man, etc.]

SUPPLEMENTAL.

Section 106.

Definitions.

106. In this Act unless a contrary intention appears :
 The expression "the registrar" shall mean for England the central office, and for Scotland or Ireland the assistant registrar for Scotland or Ireland :
 The expression "land" shall include any interest in land :
 The expression "property" shall extend to all property whether real or personal (including books and papers) :
 The expression "registered society" shall mean a society registered under this Act, and shall include societies subsisting at the commencement of this Act to which the provisions of this Act apply :
 The expression "amendment of rule" shall include a new rule, and a resolution rescinding a rule :
 The expression "branch" shall mean any number of the members of a society, under the control of a central body, having a separate fund, administered by themselves, or by a committee or officers appointed by themselves, and bound to contribute to a fund under the control of a central body :
 The expression "committee" shall mean the committee of management or other directing body of a society or branch :
 The expression "persons claiming through a member" shall include the nominees of the member where nomination is allowed :
 The expression "officer" shall include any trustee, treasurer, secretary, or member of the committee of management of a society or branch, or person appointed by the society or branch to sue and be sued on its behalf :
 The expression "meeting" shall include (where the rules of a society or branch so allow) a meeting of delegates appointed by members :
 The expression "*Gazette*" shall mean the *London Gazette* for England, the *Edinburgh Gazette* for Scotland, and the *Dublin Gazette* for Ireland :
 The expression "Treasury regulations" shall mean any regulations made and approved by the Treasury and in force under this Act.
 The expression "signed" in relation to a body corporate shall mean sealed.

Added by sect. 13 of the Act of 1908. That Act provides that in future the Act of 1896 is to be printed with the corrections made by the Act of 1908, and with the omissions of the parts expressly repealed.

* * * * *

108. This Act shall extend to the whole of the British Islands. Extent of Act.
 109. This Act may be cited as the Friendly Societies Act, 1896. Short title.

SCHEDULES.

THE FIRST SCHEDULE.

MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES
REGISTERED UNDER THIS ACT.

- 38 & 39 Vict. c. 60, Schedule II. ;
50 & 51 Vict. c. 56, ss. 14,
59 Vict. c. 26, s. 18.
1. The name and place of office of the society.
 2. The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, the terms of admission of members, the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member, and the consequences of non-payment of any subscription or fine.
 3. The mode of holding meetings and right of voting, and the manner of making, altering, or rescinding rules.
 4. The appointment and removal of a committee of management (by whatever name), of a treasurer and other officers, and of trustees, and in the case of a society with branches, the composition and powers of the central body, and the conditions under which a branch may secede from the society.
 5. The investment of the funds, the keeping of the accounts, and the audit of the same once a year at least.
 6. Annual returns to the registrar of the receipts, funds, effects, and expenditure and numbers of members, of the society.
 7. The inspection of the books of the society by every person having an interest in the funds of the society.
 8. The manner in which disputes shall be settled.
 9. In case of dividing societies, a provision for meeting all claims upon the society existing at the time of division before any such division takes place. And also in the case of friendly and cattle insurance societies :—
 10. The keeping separate accounts of all moneys received or paid on account of every particular fund or benefit assured for which a separate table of contributions payable shall have been adopted, and the keeping separate account of the expenses of management, and of all contributions on account thereof.
 11. (Except as to cattle insurance societies) a valuation once at least in every five years of the assets and liabilities of the society, including the estimated risks and contributions.
 12. The voluntary dissolution of the society by consent in a friendly society of not less than five-sixths in value of the members, and of every person for the time being entitled to any benefit from the funds of the society, unless his claim be first satisfied or adequately provided for; and in a cattle insurance society by consent of three-fourths in number of the members.
 13. The right of one-fifth of the total number of members, or of one hundred members in the case of a society of one thousand members and not exceeding ten thousand, or of five hundred members in the case of a society of more than ten thousand members, to apply to the chief registrar, or in case of societies registered and doing business exclusively in Scotland or Ireland to the assistant registrar for Scotland or Ireland, for an investigation of the affairs of the society, or for winding up the same.

THE SECOND SCHEDULE.

Sect. 98.

FORMS.

PART I.

Acknowledgment of Registry of Society.

38 & 39 Vict.

c. 60,

Schedule IV.

The Society is registered as a [friendly society, cattle insurance society, benevolent society, working-men's club, or specially authorised society] under the Friendly Societies Act, 1896, this day of
[Seal or stamp of central office, or signature of Assistant Registrar for Scotland or Ireland.]

Acknowledgment of Registry of Amendment of Rules.

The foregoing amendment of the rules of the Society is registered under the Friendly Societies Act, 1896, this day of
[Seal or stamp of central office, or signature of Assistant Registrar for Scotland or Ireland.]

PART II.

Acknowledgment of Registry of Branch.

50 & 51 Vict.

c. 56,

Schedule I.

The is registered as a branch of the Society [and of the branch of the same] under the Friendly Societies Act, 1896, this day of

[Seal of central office, or signature of Assistant Registrar for Scotland or Ireland.]

Acknowledgment of Registry of Amendment of Branch Rules.

The foregoing amendment of the branch rules of the is registered under the Friendly Societies Act, 1896, this day of
[Seal of central office, or signature of Assistant Registrar for Scotland or Ireland.]

PART III.

Form of Bond.

38 & 39 Vict.

c. 60,

Schedule III.

(1.)—In England or Ireland.

Know all men by these presents, that we, A. B., of , one of the officers of the Society [or of the branch of the Society] having its registered office at , in the county of , and C. D. of (as surety on behalf of the said A. B.), are jointly and severally held and firmly bound to E. F., of , G. H., of , and I. K., of , the trustees of the said society [or branch], in the sum of , to be paid to the said E. F., G. H., and I. K., as such trustees or their successors, trustees for the time being, or their certain attorney; for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord .

Whereas the above-bounden A. B. has been duly appointed to the office of of the Society [or of the branch of the Society] having its registered office situate as aforesaid, and he, together with the above-bounden C. D. as his surety, have entered into the above-written bond, subject to the condition hereinafter contained: Now therefore the condition of the above-written bond is such, that if the said A. B. do render a just

and true account of all moneys received and paid by him on account of the said society [or branch], at such times as the rules thereof appoint, and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all property (including books and papers) belonging to the said society [or branch] in his hands or custody to such person or persons as the said society [or branch], or the trustees or committee of management thereof, shall appoint, according to the rules of the said society [or branch], together with the proper and legal receipts or vouchers for such payments, then the above-written bond shall be void, otherwise shall remain in full force.

Sealed and delivered in the presence of [two witnesses.]

[By this Act and the Collecting Societies and Industrial Assurance Companies Act, 1896, the Friendly Societies Acts, 1875, 1887, 1889, 1893, and 1895 were repealed.]

For Order XLI., see p. 1778, *ante*.

For Forms 167-169, see p. 1781, *ante*.

THE GUARDIANSHIP OF INFANTS ACTS, 1886 AND 1925.

[49 & 50 VICT. c. 27; 15 & 16 GEO. 5, c. 45.]

Jurisdiction of the county court is co-extensive with that of the High Court, and consists in power to appoint a guardian or guardians where the father or mother of an infant is dead (sect. 4 of 1925 Act); in deciding differences when testamentary guardian appointed (sect. 5 of 1925 Act); in making orders as to the custody and maintenance of infants (sect. 5 of 1886 Act as amended by sect. 3 of 1925 Act); in dealing with disputes between joint guardians (sect. 6 of 1925 Act); power to remove guardian (sect. 6 of 1886 Act); and in giving consent to the marriage of an infant (sect. 9 of 1925 Act). Further, sect. 8 of the 1925 Act contains special provisions as to the enforcement of orders for the payment of money.

Removal of Proceedings to the High Court shall (on terms as to costs) be made on the application of either party (sect. 10 of 1886 Act: see Rules 7, 8).

Practice.—Applications are to be by petition. Order XLVII. (*post*, p. 2047) determines the persons upon whom the petition is to be served, and the Rules of the Supreme Court (*post*, p. 2047) provide for the removal of petitions to the High Court and for appeals to that court.

Appeal to High Court is by sect. 10 of the 1886 Act to a judge of the Chancery Division of the High Court (see R. S. C., Order LV.A. (*post*, p. 2047), and Order LIX. rr. 10-17).

Short title.

1. This Act may be cited as the Guardianship of Infants Act, 1886.

Sections 2 and 3 repealed by Guardianship of Infants Act, 1925.

* * * * *

Court may
make orders
as to cus-
tody.

5. The court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or after the death of either parent, of any guardian under this Act, and in every case may make such order respecting the costs of the

mother and the liability of the father for the same or otherwise as to costs as it may think just. Section 5.

See Act of 1925, sect. 3, *post*, p. 2042.

NOTE.—The powers of a court under this section, as amended by the Act of 1925, to make orders regarding the custody of an infant and the right of access thereto of either parent, may be exercised upon the application of the father of an infant in like manner as those powers may be exercised upon the application of the mother of the infant (Administration of Justice Act, 1928 (18 & 19 Geo. V. c. 26), s. 16).

6. In England and Ireland the High Court of Justice, in any Power to division thereof, and in Scotland either division of the Court of court to Session, may, in their discretion, on being satisfied that it is for remove the welfare of the infant, remove from his office any testamentary guardian. guardian, or any guardian appointed or acting by virtue of this Act, and may also, if they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

* * * * *

9. In the construction of this Act the expression "the court" shall mean— Interpretation of terms.

In England the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside.

10. In England and Ireland when any application has been made under this Act to a county court the High Court of Justice shall, at the instance of any party to such application, order such application to be removed to the High Court of Justice and there proceeded with before a judge of the Chancery Division, on such terms as to costs as it may think proper. As to removing proceedings and appeals.

In England and Ireland an appeal shall lie to the High Court of Justice from any order made by a county court under this Act; and, subject to any rules of court made after the passing of this Act, any such appeal shall be heard by a judge of the Chancery Division of the High Court of Justice at chambers or in court, as he shall direct.

11. Rules for regulating the practice and procedure in any proceedings under this Act, and the forms in such proceedings may from time to time be made— Rules as to procedure.

(a) so far as respects any county court in England or Ireland and the Sheriff Court in Scotland in like manner as rules and orders respecting those courts can respectively for the time being be made.

THE GUARDIANSHIP OF INFANTS ACT, 1925.

[15 & 16 GEO. 5, c. 45.]

Whereas Parliament by the Sex Disqualification (Removal) Act, 1919, and various other enactments, has sought to establish equality in law between the sexes, and it is expedient that this principle should obtain with respect to the guardianship of infants and the rights and responsibilities conferred thereby:

Be it therefore enacted, etc. :—

1. Where in any proceeding before any court (whether or not a court within the meaning of the Guardianship of Infants Act, 1886) the custody or upbringing of an infant, or the administration of the custody, Principle on which questions relating to custody,

Section 1.
 ———
 upbringing,
 &c. of
 infants are to
 be decided.
 49 & 50 Vict.
 c. 27.

Equal right
 of mother to
 apply to
 court.

Amendment
 of 49 & 50
 Vict. c. 27,
 s. 5, with
 respect to
 the custody
 and mainten-
 ance of
 infants.

Rights of
 surviving
 parent as to
 guardianship.

Power of
 father and
 mother to
 appoint
 testamen-
 tary
 guardians.

tion of any property belonging to or held on trust for an infant, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

2. The mother of an infant shall have the like powers to apply to the court in respect of any matter affecting the infant as are possessed by the father.

3.—(1) The power of the court under section five of the Guardianship of Infants Act, 1886, to make an order as to the custody of an infant and the right of access thereto may be exercised notwithstanding that the mother of the infant is then residing with the father of the infant.

(2) Where the court under the said section as so amended makes an order giving the custody of the infant to the mother, then, whether or not the mother is then residing with the father, the court may further order that the father shall pay to the mother towards the maintenance of the infant such weekly or other periodical sum as the court, having regard to the means of the father, may think reasonable.

(3) No such order, whether for custody or maintenance, shall be enforceable and no liability thereunder shall accrue while the mother resides with the father, and any such order shall cease to have effect if for a period of three months after it is made the mother of the infant continues to reside with the father.

(4) Any order so made may, on the application either of the father or the mother of the infant, be varied or discharged by a subsequent order.

See note to s. 5 of the Act of 1886 *ante*, p. 2041.

4.—(1) On the death of the father of an infant, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the father. When no guardian has been appointed by the father or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the mother.

(2) On the death of the mother of an infant, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the mother. When no guardian has been appointed by the mother or if the guardian or guardians appointed by the mother is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the father.

(3) Section two of the Guardianship of Infants Act, 1886, is hereby repealed.

5.—(1) The father of an infant may by deed or will appoint any person to be guardian of the infant after his death.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant so long as the mother

or father remains alive unless the mother or father objects to his so acting. Section 5.

(4) If the mother or father so objects, or if the guardian so appointed as aforesaid considers that the mother or father is unfit to have the custody of the infant, the guardian may apply to the court, and the court may either refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the infant, and in the latter case may make such order regarding the custody of the infant and the right of access thereto of its mother or father as, having regard to the welfare of the infant, the court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

(5) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly.

(6) If under the preceding section a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

(7) Section three of the Guardianship of Infants Act, 1886, is hereby repealed.

6. Where two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper. Disputes between joint guardians.

7.—(1) For the purposes of the Guardianship of Infants Act, 1886, as amended by this Act, the expression "the court" shall include a court of summary jurisdiction: Extension of jurisdiction to courts of summary jurisdiction.

Provided that a court of summary jurisdiction shall not be competent—

(a) to entertain any application other than an application for variation or discharge of an existing order under the Guardianship of Infants Act, 1886, as so amended, relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self support; or

(b) to entertain any application involving the administration or application of any property belonging to or held in trust for an infant, or the income thereof; or

(c) to award the payment of sums towards the maintenance of any infant exceeding twenty shillings a week.

(2) The Lord Chancellor may make rules regulating the procedure in courts of summary jurisdiction under this section, and may by those rules make provision for enabling of applications to be heard and determined otherwise than in open court.

(3) Where on an application to a court of summary jurisdiction under the Guardianship of Infants Act, 1886, as amended by this

Section 7. Act, the court makes or refuses to make an order, an appeal shall, in accordance with rules of court, lie to the High Court :

Provided that, where any such application is made to a court of summary jurisdiction, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the court of summary jurisdiction may refuse to make an order, and in such case no appeal shall lie to the High Court.

(4) An order of a court of summary jurisdiction for the payment of money under the Guardianship of Infants Act, 1886, as amended by this Act, shall be enforceable in like manner as an order for the payment of a civil debt recoverable summarily.

(5) Where an order made by a court of summary jurisdiction under the Guardianship of Infants Act, 1886, as amended by this Act, contains a provision committing to the applicant the legal custody of any infant a copy of the order may be served on any person in whose actual custody the infant may for the time being be, and thereupon the provision may, without prejudice to any other remedy open to the applicant, be enforced under subsection (2) of section thirty-four of the Summary Jurisdiction Act, 1879, as if it were an order of the court requiring that person to give up the infant to the applicant.

(6) This section shall not extend to Scotland.

42 & 43 Vict.
c. 49.

Enforcement
of orders for
payment of
money.

8.—(1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under the Guardianship of Infants Act, 1886, as amended by this Act, shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding two pounds.

(2) Where the court has made any such order, the court shall, in addition to any other powers for enforcing compliance with the order, have power, in any case where there is any pension or income payable to the person against whom the order is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as the court may think fit of any such pension or income, be attached and paid to the person named by the court, and such further order shall be an authority to the person by whom such pension or income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

(3) In the application of this section to Scotland, the expression "arrested" shall be substituted for the expression "attached."

Consents
required to
marriage of
infants.

9.—(1) The consent required to the marriage of an infant, in the case of a marriage intended to be solemnised or contracted on the issue of any certificate by a superintendent registrar whether by licence or without licence, shall be that of the persons or person mentioned in the Schedule to this Act :

Provided that—

(a) if the superintendent registrar is satisfied that the consent of any person whose consent is so required cannot be obtained by reason of absence or inaccessibility or by reason of his being under any disability, the necessity for the consent of that person shall be dispensed with,

Section 9.

if there is any other person whose consent is also required; and if the consent of no other person is required, the Registrar-General may dispense with the necessity of obtaining any consent, or the court may, on application being made, consent to the marriage, and the consent of the court so given shall have the same effect as if it had been given by the person whose consent cannot be so obtained;

- (b) if any person whose consent is required refuses his consent, the court may, on application being made, consent to the marriage, and the consent of the court so given shall have the same effect as if it had been given by the person whose consent is so refused.

(2) The foregoing subsection shall apply to marriages intended to be solemnised on the issue of a licence by an ecclesiastical authority having power to issue such a licence, with the substitution of references to that authority for references to the superintendent registrar, and with the substitution of a reference to the Master of the Faculties for the reference to the Registrar-General.

(3) The persons whose consent is required to such marriage as aforesaid shall, in the case of a marriage intended to be solemnised after the declaration of banns, be the persons entitled to give notice of dissent under section eight of the Marriage Act, 1823. 4 Geo. 4, c. 76.

(4) For the purposes of this section, "the court" has the same meaning as in the Guardianship of Infants Act, 1886, as amended by this Act, and rules of court may be made for enabling applications under this section—

- (a) if made to the High Court to be heard in chambers;
 (b) if made to the county court to be heard and determined by the registrar subject to appeal to the judge;
 (c) if made to a court of summary jurisdiction to be heard and determined otherwise than in open court;

and shall provide that, where an application is made in consequence of a refusal to give consent, notice of the application shall be served on the person who has so refused consent.

(5) Sections sixteen and seventeen of the Marriage Act, 1823, are hereby repealed.

(6) Nothing in this section shall dispense with the necessity of obtaining the consent of the High Court to the marriage of a ward of court.

(7) This section shall not extend to Scotland.

10. In Scotland a father or mother acting as tutor of a pupil child by virtue of the common law or of the Guardianship of Infants Act, 1886, or of this Act, shall be deemed to be and always to have been a trustee within the meaning of the Trusts (Scotland) Act, 1921. Tutors. 11 & 12 Geo. 5, c. 58.

11.—(1) This Act may be cited as the Guardianship of Infants Act, 1925. Short title, construction, commencement and extent.

(2) This Act shall (except so far as it amends the law relating to the marriage of infants) be construed as one with the Guardianship of Infants Act, 1886, and that Act and this Act may be cited together as the Guardianship of Infants Acts, 1886 and 1925.

(3) This Act shall come into operation on the expiration of two months after the passing thereof.

(4) This Act shall not extend to Northern Ireland.

Section 9.

SCHEDULE.

CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT.
I. WHERE THE INFANT IS LEGITIMATE.

Circumstances.	Person or Persons whose consent is required.
1. Where both parents are living : (a) if parents living together ; (b) if parents are divorced or separated by order of court or by agreement ;	Both parents. The parent to who the custody of the infant is committed by order of any court or by the agreement, or, if the custody of the infant is so committed to one parent during part of the year and to the other parent during the rest of the year, both parents ;
(c) if one parent has been deserted by the other ; (d) if both parents deprived of custody of infant by order of court.	The parent who has been deserted. The person to whose custody the infant is committed by order of the court.
2. Where one parent is dead : (a) if there is no other guardian ; (b) if a guardian has been appointed by the deceased parent.	The surviving parent. The surviving parent and the guardian if acting jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the infant.
3. Where both parents are dead	The guardians or guardian appointed by the deceased parents or by the court under section four of this Act.

II. WHERE THE INFANT IS ILLEGITIMATE.

Circumstances.	Person whose consent is required.
If the mother of the infant is alive	The mother, or if she has by order of the court been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by order of the court.
If the mother of the infant is dead	The guardian appointed by the mother.

RULES OF THE SUPREME COURT, GUARDIANSHIP OF INFANTS ACTS, 1886 AND 1925.

ORDER LVA.

4. All matters relating to removals or appeals from county Removals courts or courts of summary jurisdiction in respect of which and appeals, jurisdiction is given to the High Court by either the Act of 1886 or the Act of 1925 shall be transacted and disposed of in court or in chambers by or under the direction of any judge of the Chancery Division (in this Order called the judge) named for that purpose by the Lord Chancellor.

5. Upon any application under section 10 of the Act of 1886 Removal for an order of removal from a county court to the High Court from county it shall not (unless otherwise ordered) be necessary to serve the court. summons upon any person. When the judge upon hearing the summons shall (on such terms as to costs as he may think proper) have ordered the application to be removed to the High Court, the application shall be proceeded with before such judge; and the applicant shall serve a copy of the order upon the registrar of the county court, who shall forthwith transmit all documents (if any) in the matter filed or lodged in the county court to such officer as the judge may direct.

6.—(1) Subject to the rules of this Order, rules 7, 8, 10, 11, 12, 16, and 17 of Order LIX. (a) shall apply to appeals to the Chancery Division of the High Court from county courts and courts of summary jurisdiction under either the Act of 1886 or the Act of 1925, the words "the Chancery Registrar's Office" being deemed to be substituted for the words "Crown Office Department of the Central Office" in rule 11.

(2) The appeal shall not operate as a stay of proceedings under the decision appealed from unless the county court or the court of summary jurisdiction shall so order.

7. The judge may, after an appeal has been entered, make such orders, either *ex parte* or otherwise, with regard to the custody or maintenance of the infant pending the appeal and otherwise as he may think proper.

(a) See these Rules, *ante*, p. 264.

GUARDIANSHIP OF INFANTS.—THE COUNTY COURT RULES, 1903 (AS AMENDED DEC. 4, 1925).

ORDER XLVII.

1.—(1) In this Order "the Act of 1886" means the Guardianship of Infants Act, 1886, and "the Act of 1925" means the Guardianship of Infants Act, 1925.

(2) An application under any section of either of the said Acts, Petition. other than section 9 of the Act of 1925, shall be made by a petition.

2. A petition under section four of the Act of 1925, may be Under s. 4 of filed by any next friend of the infant, and shall be served upon 1925 Act by the surviving parent of the infant. next friend.

3. A petition under section five of the Act of 1925 may be Under s. 5 of filed by the guardian of the infant, and shall be served upon the 1925 Act by surviving parent of the infant. guardian.

- Under s. 6 of 1925 Act by guardian. 4. A petition under section six of the Act of 1925 may be filed by any guardian of the infant, and shall be served upon the other guardian or guardians.
- Under s. 5 of 1886 Act by mother. 5. A petition under section five of the Act of 1886 filed by the mother of any infant shall be served upon the father of the infant, or, if he be dead, upon the guardian or guardians of the infant, if any such there be, other than the mother.
- Under s. 5 of 1886 Act by father. 6. A petition under section five of the Act of 1886 filed by the father of any infant shall be served upon the mother of the infant, or, if she be dead, upon the guardian or guardians of the infant, if any such there be, other than the father.
- Under s. 5 of 1886 Act by guardian. 7. A petition under section five of the Act of 1886 filed by any guardian of an infant, other than a parent, shall be served upon the other guardian or guardians of the infant, if any such there be, other than a surviving parent, and also upon the surviving parent, if any.
- Service by order of judge. What petition must show. 8. The judge may direct such persons, other than those above mentioned, to be served with the petition as he may think fit.
- Procedure and costs. 9. A petition for the appointment of a guardian of an infant shall show—
The age of the infant; the nature and amount of the infant's fortune and income; and what relations the infant has.
10. On a petition under either of the said Acts, the same procedure shall be followed and costs allowed as on any other petition to the court, regard being had to the amount of the property of the infant.
- Consent to marriage of minor. 11.—(1) An application under sect. 9 of the Act of 1925 may be made by any next friend of an infant on payment of the prescribed fee (if any) and in accordance with the rules for the time being in force as to interlocutory applications.
- Provided that if the application is made in consequence of a refusal of consent by any person whose consent is required to the marriage, then seven clear days' notice in writing of the application shall be served on every person who has refused such consent.
- (2) The application shall be intitled in the matter of sect. 9 of the Guardianship of Infants Act, 1925, and in the matter of a marriage intended between A.B. of and C.D. of .
- (3) An official sealed copy of an order made by the court shall be supplied to any party to the application on payment of the prescribed fee (if any).

HIGHWAYS AND LOCOMOTIVES AMENDMENT ACT, 1878.

LOCOMOTIVES ACT, 1898.

[41 & 42 VICT. C. 77; 61 & 62 VICT. C. 29.]

Jurisdiction.—By the Highways and Locomotives Amendment Act, 1878, s. 23, the authority liable for the repair of any highway might recover in a *summary manner* extraordinary expenses, shown by the certificate of

their surveyor to have been incurred in repairing any highway by reason of damage caused by excessive weight passing along the same, or extraordinary traffic thereon from the person by whose orders the same had been conducted. Under that Act the county court had no jurisdiction, but by sect. 12, sub-s. 1 (a), of the Locomotives Act, 1898, expenses were made to be no longer recoverable in a summary manner, but when not exceeding 250*l.* might be sued for in the county court; if exceeding that amount, in the High Court. by sect. 12, sub-s. 1 (c), of the last mentioned Act, the words "by or in consequence of whose order" were substituted for "by whose order," an amendment no doubt made with the object of imposing liability on the originator of any work requiring the carriage of heavy materials, and avoiding the effect given to the words "by whose orders" in *Kent County Council v. Gerard (Lord)*, (1897) A. C. 633; 66 L. J. Q. B. 677. "In consequence of whose order" has been held to mean "as a necessary consequence of whose order" (*Egham Rural District Council v. Gordon*, (1902) 2 K. B. 120; 71 L. J. K. B. 523).

The expenses of extraordinary traffic not exceeding 250*l.* caused by light locomotives within sect. 1 of the Locomotives on Highways Act, 1896, as extended by the Heavy Motor Car Order, 1904 (see 1898 Act, sect. 17, sub-s. 2), can be recovered in the county court (*Rex v. Judge James*, (1908) 1 K. B. 958; 77 L. J. K. B. 402).

Practice.—Proceedings must be commenced within twelve months of the damage done, or, when the damage is in consequence of any particular building contract or work extending over a long period, must be commenced not later than six months after the completion of the contract or work; as to what is "work extending over a long period," and when the six months' limit begins to run, see *Bromley Rural District Council v. Croydon Corporation* (C. A.), (1908) 1 K. B. 353; 77 L. J. K. B. 335, and *Lancaster Rural District Council v. Fisher*, (1907) 2 K. B. 516; 76 L. J. K. B. 1070. The proceeding will be by plaint and summons in the ordinary way.

Appeal as in an ordinary case under sect. 120 of the County Courts Act, 1888 (see Part I.).

41 & 42 VICT. C. 77.

EXTRAORDINARY TRAFFIC.

23. Where by a certificate of their surveyor it appears to the authority which is liable or has undertaken to repair any highway, whether a main road or not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid.

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

Extraordinary traffic. What is? If the road was adapted to the traffic and the traffic was such as might be expected on the road in the ordinary

course, such traffic was in its character not extraordinary (*Hill v. Thomas*, (1893) 2 Q. B. 333; 62 L. J. M. C. 161; *Ledbury Rural District Council v. Somerset*, (1914) W. N. 16th May, 1914, p. 222), and traffic caused by a recognized local industry could not be called extraordinary (*Wallington v. Hoskins*, 1880) 6 Q. B. D. 206; 50 L. J. M. C. 19); though the same traffic might be extraordinary if the road was not adapted to or generally used for such traffic (*Geirionydd Rural District Council v. Green*, (1909) 2 K. B. 845; 78 L. J. K. B. 1039; *Worsborough Urban District Council v. Barnsley British Co-operative Society*, (1916) 1 A. C. 291; 85 L. J. K. B. 103).

On the other hand the fact that a class of traffic has grown up to meet the demands of a district, such as motor omnibuses, will not prevent such traffic being "extraordinary traffic" if in view of other circumstances the traffic is in fact extraordinary (*Abingdon Rural District Council v. City of Oxford Electric Tramways, Ltd.*, (1917) 86 L. J. K. B. 286; C. A. (1917) 2 K. B. 318).

Whether traffic is "extraordinary traffic" or not is a question of fact. Traffic due to a normal increase of traffic in consequence of the development of the district is not "extraordinary traffic." Continued user of a road for traffic, which at the time of its first user is extraordinary traffic, may in time convert such traffic into ordinary traffic. No rule can be laid down as to what such length of time must be. Ordinary traffic on a particular road if diverted, though by the action of the local authority, to another road may be "extraordinary traffic" upon such other road (*Barnsley British Co-operative Society v. Worsborough Urban Council*, (1916) 85 L. J. K. B. (H. L.) 103; *Butt & Co. v. Weston-super-Mare Urban Council*, (1922) 1 A. C. 340; 91 L. J. (H. L.) 305).

The local authority must prove that the expenses of repair were extraordinary and to do so regard must be had to the average expense of repairing similar highways in that neighbourhood (*Billerica Rural District Council v. Poplar Guardians* (C. A.), (1911) 2 K. B. 801; 80 L. J. K. B. 124; *Colchester Corporation v. Gepp* (C. A.), (1912) 1 K. B. 477; 81 L. J. K. B. 356).

61 & 62 VICT. C. 29.

Amendments
as to pro-
ceedings for
extra-
ordinary
traffic
damage.

12. Section twenty-three of the Highways and Locomotives (Amendment) Act, 1878 (which relates to the recovery of expenses of extraordinary traffic), shall be amended as follows:—

- (a) Expenses under that section shall cease to be recoverable in a summary manner, but may be recovered if not exceeding two hundred and fifty pounds in the county court, and if exceeding that sum in the High Court.
- (b) Proceedings for the recovery of any expenses incurred after the passing of this Act shall be commenced within twelve months of the time at which the damage has been done, or where the damage is the consequence of any particular building contract, or work extending over a long period, shall be commenced not later than six months after the completion of the contract or work.
- (c) There shall be substituted for the words "by whose order" the words "by or in consequence of whose order."

Ripon Rural District Board v. Armitage, (1919) 88 L. J. K. B. 728.

Interpreta-
tion and
saving.

17.—(1) In this Act, unless the context otherwise requires,—
The expression "locomotive" means a locomotive propelled by steam or other than animal power;
The expression "waggon" includes any truck, cart, carriage, or other vehicle;

59 & 60 Vict.
c. 36.

(2) Nothing in this Act shall affect light locomotives within the meaning of the Locomotives on Highways Act, 1896.

Proceedings under the above section are in the nature of an action for personal tort, so cannot be taken against an executor (*Story v. Sheard*, (1892) 2 Q. B. 515; 65 L. J. M. C. 178); as to when the six months' limit begins to run, see *Bromley Rural District Council v. Croydon Corporation* (C. A.), (1908) 1 K. B. 353; 77 L. J. K. B. 335, and *Lancaster Rural District Council v. Fisher*, (1907) 2 K. B. 516; 76 L. J. K. B. 1070. "Completion of the work" means completion so far as the constructional work is concerned, and if that consists of several parts so closely connected that each would be useless without the others, the six months' period runs from the completion of the whole work (*Carlisle Rural District Council v. Carlisle Corporation*, (1909) 1 K. B. 471; 78 L. J. K. B. 307; see also *Reigate Rural District Council v. Sutton District Water Co.*, 78 L. J. K. B. 315).

Sect. 17, sub-s. 2, does not relieve a light locomotive which causes extraordinary expenses from liability (*Rex v. Judge James*, (1908) 1 K. B. 958; 77 L. J. K. B. 402).

THE HOSIERY MANUFACTURE (WAGES) ACT, 1874.

[37 & 38 VICT. C. 48.]

Jurisdiction and Practice.—The county court of the district within which the offence is committed has jurisdiction (sects. 3, 4). The fines are to be recovered by plaint and summons according to the ordinary practice of the court (see C.C. Rules, Order L. rr. 35, 36).

Appeal will be under sect. 120 of the County Courts Act, 1888 (see Part I.).

WHEREAS a custom has prevailed among the employers of artificers in the hosiery manufacture of letting out frames and machinery to the artificers employed by them, and it is desirable to prohibit such letting of frames and machinery, and the stoppage of wages for frame rents and charges in the hosiery manufacture :

Be it enacted . . . as follows :

Section 1.

1. In all contracts for wages the full and entire amount of all wages the earnings of labour in the hosiery manufacture shall be paid be actually and positively made payable in net, in the current without any coin of the realm, and not otherwise, without any deduction or stoppages stoppage of any description whatever, save and except for bad whatever. and disputed workmanship.

2. All contracts to stop wages, and all contracts for frame rents Contracts and charges, between employer and artificers, shall be and are to stop hereby declared to be illegal, null, and void. wages and for frame rents illegal.

3. If any employer shall bargain to deduct or shall deduct, directly or indirectly, from the wages of any artificer in his employ any part of such wages for frame rent and standing or other charges, or shall refuse or neglect to pay the same or any part thereof in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said artificer or any other person suing for the same in the county court in the district where the offence is committed, with full costs of suit. Penalty for bargaining to deduct and for deducting from wages.

A deduction of a fine from a workman's wages, in accordance with the rules of a factory, for absenting himself from work, is not within this section (*Willis v. Thorp*, (1875) L. R. 10 Q. B. 383; 44 L. J. Q. B. 137).

Section 4.

— —
Penalty for using frame otherwise than for the purpose for which same lent.

4. If any frame or machine which shall have been entrusted to any artificer or other person by his employer for the purpose of being used in the hosiery manufacture for such employer, or in any process incident to such manufacture, shall, whilst the same shall be so entrusted, be worked, used, or employed without the consent in writing of such employer or other person so entrusting such frame or machine, in the manufacture of any goods or articles whatever for any other person than the person by whom such frame or machine shall have been so entrusted, then and in every such case the artificer or other person to whom the same shall have been so entrusted shall forfeit and pay the sum of ten shillings for every day on any part of which any such frame or machine shall have been so worked, used, or employed, to be recoverable by and for the benefit of the person who shall have so entrusted the same, in the county court for the district where the offence shall have been committed, with full costs of suit.

No action to be allowed in respect of any such bargaining. Not to prevent the recovery by employer of any debt due to him from artificer.

5. No action, suit, or set-off between employer and artificer shall be allowed for any deduction or stoppage of wages, nor for any contract hereby declared illegal.

6. Nothing in this Act contained shall extend to prevent the recovery in the ordinary course of law, by suit brought or commenced for the purpose, of any debt due from the artificer to the employer.

Terms.

7. Within the meaning and for the purposes of this Act, all workmen, labourers, and other persons in any manner engaged in the performance of any employment or operation, of what nature soever, in or about the hosiery manufacture, shall be and be deemed "artificers"; and within the meaning and for the purposes aforesaid, all masters, foremen, managers, clerks, contractors, sub-contractors, middlemen, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers shall be and be deemed to be "employers"; and, within the meaning and for the purposes of this Act, any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or for an amount uncertain, shall be deemed and taken to be the wages of such labour; and, within the meaning and for the purposes aforesaid, any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificers are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

THE HOUSING ACT, 1925.

(15 GEO. V. c. 14.)

NOTE.—The Housing of the Working Classes Acts, 1890 and 1903, and the Housing and Town Planning Act, 1909, are repealed by the above Act in so far as they were dealt with here. The provisions giving jurisdiction to the county court formerly in these statutes now appear in the Housing Act, 1925, and are set out, *post*, pp. 2054—2058.

Sect. 1 of the above Act makes it an implied condition that in the letting of houses of certain rentals, the house is in all respects fit for human habitation and will be so kept by the landlord during the tenancy. This section, and sect. 2 (which applies the provisions of sect. 1 to houses occupied by workmen engaged in agriculture) give no special jurisdiction to the county court, but as the sections are quoted in many cases coming into county courts it has been thought expedient to set them out below :—

1.—(1) In any contract for letting for habitation a dwelling-house at a rent not exceeding—

(a) in the case of a house situate in the administrative county of London, forty pounds ;

(b) in the case of a house situate elsewhere, twenty-six pounds ; there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house is at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, in all respects reasonably fit for human habitation :

Provided that the condition and undertaking aforesaid shall not be implied when a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for habitation, and the lease is not determinable at the option of either party before the expiration of three years.

(2) The landlord, or any person authorised by him in writing, may at reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier, enter any premises to which this section applies for the purpose of viewing the state and condition thereof.

(3) In this section the expression " landlord " means any person who lets for habitation to a tenant any house under any contract referred to in this section, and includes his successors in title, and the expression " dwelling-house " includes part of a dwelling-house.

(4) This section applies to a contract made either before or after the commencement of this Act :

Provided that, in the case of a house situate elsewhere than in the administrative county of London, or a borough or an urban district with a population according to the last census for the time being of fifty thousand or upwards, the rent whereof exceeds sixteen pounds, this section shall not apply if the contract was made before the thirty-first day of July, nineteen hundred and twenty-three.

2.—(1) Notwithstanding any agreement to the contrary, where under any contract of employment of a workman employed in agriculture the provision of a house or part of a house for the occupation of the workman forms part of the remuneration of the workman, and the provisions of the foregoing section are inapplicable by reason only of the house or part of the house not being

Conditions to be implied on letting houses for habitation.

Application to houses occupied by workmen engaged in agriculture.

let to the workman, there shall be implied as part of the contract of employment, the like condition and undertaking as would be implied under those provisions if the house or part of the house were so let, and those provisions shall apply accordingly as if incorporated in this section, with the substitution of "employer" for "landlord," and such other modifications as may be necessary :

Provided that this section shall not affect the obligation of any person other than the employer to repair a house to which this section applies, or any remedy for enforcing any such obligation.

(2) This section shall apply whether the contract of employment was entered into before or after the commencement of this Act, but shall not apply in respect of any period during which the house was occupied under any such contract before the first day of January, nineteen hundred and twenty-one.

A tenant cannot usually recover from his landlord under this section unless he has given notice of the defect to the landlord (*Murphy v. Hurley*, (1922) A. C. 369; *Morgan v. Liverpool Corporation*, (1927) 96 L. J. K. B. 234). A possible exception may arise if the defect is a latent one. See *Fisher v. Walters*, (1926) 2 K. B. 315; 95 L. J. K. B. 846.

In *Stanton v. Southwick*, (1920) 89 L. J. K. B. 1066, a divisional court held that where the dwelling-house was infested by rats coming from a sewer this was not a breach of the above sections.

In *Ryall v. Kidwell & Son*, C. A. [1914] 3 K. B. 135; 83 L. J. K. B. 1140, the court held that a stranger to the contract of tenancy has no remedy for a breach of the undertaking mentioned in the above sect. 1 (see *Cavalier v. Pope*, (1906) A. C. 428; 75 L. J. K. B. 690), hence the infant daughter of tenant cannot recover damages for injuries caused by landlord's default (*Dobson v. Horsely*, (1915) 1 K. B. 634; 84 L. J. K. B. 399, distinguishing *Miller v. Hancock*, (1893) 2 Q. B. 177. See also *Groves v. Western Mansions, Ltd.*, (1916) 33 T. L. R. 76, and *Fairman v. Perpetual Investment Building Society*, (1922) A. C. 74).

On taking furnished lodgings no warranty is implied that the proposed tenant is a fit and proper person to occupy them (*Humphrey v. Miller and Others*, (1917) 2 K. B. 122).

PROVISIONS OF HOUSING ACT, 1925, GIVING JURISDICTION TO COUNTY COURTS.

The county court is given jurisdiction under this Act in five cases.

(1) Under sect. 7 (4), where bye-laws have been made by a local authority imposing obligations in respect of houses intended or used for occupation by the working classes under sect. 6 (1) of the Act, and the person who has to obey them, alleges that he holds the premises under a lease or agreement and that compliance with such bye-laws is contrary to the provisions of the lease or agreement, or that a part of the expenses ought to be borne by the lessor or superior landlord. In such a case the local authority may apply to the county court, which after hearing the parties may order (a) that the provisions of the lease or agreement be relaxed so far as they interfere with the carrying out of the bye-laws; (b) grant to the person who carries out the bye-laws, when properly carried out, a charging order charging on the premises an annuity to repay the expenses, or such part of the expenses as the court considers ought to be so charged. The annuity is to be of such amount and extend over such number of years as the court may determine. For form of application and order, see Forms 454 and 457.

(2) Under sect. 13, where default is made in obeying a closing order under the Act, possession may be obtained in the county court by the owner or the local authority under sects. 138 to 145 of the County Courts Act, 1888, whatever may be the value or rent of the house.

(3) Under sect. 30 where the court is satisfied, on the application of any person entitled to an interest in any land used wholly or partly as a site for houses for the working classes, that the premises on the land are, or are likely to become, dangerous, or injurious to health or unfit for habitation, and that the applicant's interests are thereby prejudiced, the court may make an order empowering the applicant to enter on the land, and within a fixed time carry out the necessary work, and order also that any lease, or agreement for lease, held from the applicant, and any derivative underlease shall be determined subject to such conditions and payment of such compensation as the court thinks just.

The order of the court must include provisions to secure that the work is carried out, and may authorise the local authority where the land is situate, to exercise such supervision or take such action as may be necessary for the purpose. For form of application, see Form 456.

(4) Under sect. 53, similar powers are given to the court to authorise the superior landlord to enter and execute works for carrying out a scheme of improvement or reconstruction approved by the local authority. For form of application, see Form 456.

(5) Under sect. 102, upon the application of the local authority or any person interested in a house, the court may vary the terms of a lease, or restrictive covenant affecting such house, so as to enable it to be converted from a single tenement into two or more tenements, on such conditions and terms as the court may think just. The application must be founded on the allegation that the character of the neighbourhood has changed, and an opportunity of being heard must be given to all parties interested. For form of application, see Form 455.

Rules have been made (which are to stand as Order L., r. 59) to enable the county courts to carry out the duties imposed upon them by the statute.

See these rules, *post*, p. 2058, and Forms 454, 455, 456 and 457, C.C. Forms.

6.—(1) The power of making and enforcing bye-laws under the Public Health Act, 1875, and the Public Health (London) Act, 1891, shall include the making and enforcing by local authorities of bye-laws in the case of houses intended or used for occupation by the working classes :—

Bye-laws respecting houses divided into separate tenements.

(a) For fixing and from time to time varying the number of persons who may occupy a house which is let in lodgings or occupied by members of more than one family, and for separation of the sexes therein :—

15 Geo 5, c. 14.

(b) For the registration and inspection of such houses ;

(c) For enforcing drainage and promoting cleanliness and ventilation of such houses ;

(d) For requiring provision adequate for the use of and readily accessible to each family of—

(i.) Closet accommodation ;

(ii.) Water supply and washing accommodation ;

(iii.) Accommodation for the storage, preparation, and cooking of food ;

and, where necessary, for securing separate accommodation as aforesaid for every part of such house which is occupied as a separate dwelling ;

(e) For the keeping in repair and adequate lighting of any common staircase in such houses ;

(f) For securing stability, and the prevention of and safety from fire ;

(g) For the cleansing and redecoration of the premises at stated times, and for the paving of the courts and courtyards ;

- (h) For the provision of handrails, where necessary, for all staircases of such houses ;
- (i) For securing the adequate lighting of every room in such houses ;
- (j) As respects houses situate in the administrative county of London, for the taking of precautions in the case of infectious disease ;

and any such bye-laws, in addition to any other penalty, may prohibit the letting for occupation by members of more than one family of any such house unless the same are complied with, subject in the case of houses so let or occupied at the time when such bye-laws come into force to the allowance of a reasonable time for the execution of any works necessary to comply therewith.

7.—(4) Where the person on whom obligations are imposed by any bye-laws made for the purposes specified in sub-section (1) of the preceding section with respect to houses intended or used for occupation as therein mentioned holds the premises under a lease or agreement and satisfies the local authority that compliance with the bye-laws is contrary to the provisions of the lease or agreement, or that the whole or any part of the expenses of carrying out the obligations ought to be borne by his lessor or other superior landlord, the local authority may make application to the county court, and the county court may, after giving the lessor or any such superior landlord an opportunity of being heard,—

- (a) In the first case, order that the provisions of the lease or agreement be relaxed so far as they are inconsistent with the requirements of the bye-laws ;
- (b) In the second case, grant to the person who carries out the works necessary for compliance with the bye-laws, on proof to the satisfaction of the local authority that the works have been properly carried out, a charging order charging on the premises an annuity to repay the expenses properly incurred in carrying out the works or such part of those expenses as the county court consider ought to be so charged.

(5) The annuity shall be of such amount and extend over such number of years as the county court may determine.

Recovery of possession of houses in respect of which closing orders made.

13.—(1) Where default is made as respects any dwelling-house in obeying a closing order, possession of the house may be obtained whatever may be the value or rent of the house, by or on behalf of the owner or local authority, either under sections one hundred and thirty-eight to one hundred and forty-five of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, and in either case may be obtained as if the owner or local authority were the landlord.

(2) Any expenses incurred by a local authority under this section may be recovered from the owner of the house summarily as a civil debt.

As to the manner in which the Local Government Board are entitled to conduct an appeal to them from an order to close premises, see *Local Government Board v. Arlidge*, (1915) A. C. 120; 84 L. J. K. B. (H. L.) 72. As to power of Local Government Board to quash or alter the order of the local authority, although the local authority had no option but to make the demolition order, see *Lancaster v. Burnley Corporation*, (1915) 1 K. B. 259; 84 L. J. K. B. 181. As to date at which

value has to be ascertained, see *London County Council v. Wilson's Executors*, (1916) 1 K. B. 837.

Practice.—The owner or local authority may recover possession as if they were landlord of the premises. Sect. 13 seems to make the closing order equivalent to a notice to quit and a determination of any tenancy, it will therefore be expedient to be in a position to prove the making of and the default in obeying the closing order. Notice of a closing order, if owner cannot be found, is sufficiently served by leaving a sealed copy of the order addressed to the owner at the premises in manner directed by sect. 121 of the Act (*Arlidge v. Hampstead Borough Council*, (1916) 85 L. J. Ch. 91). The Increase of Rent Act, 1920, does not affect closing orders under the Act, see sect. 128, *post*, and *Parry v. Harding*, (1925) 1 K. B. 111; 94 L. J. K. B. 37.

30.—(1) Where it is proved to the satisfaction of the court, on an application in accordance with rules of court of any person entitled to any interest in any land used in whole or in part as a site for houses for the working classes, that the premises on the land are or are likely to become dangerous or injurious to health or unfit for human habitation, and that the interests of the applicant are thereby prejudiced, the court may make an order empowering the applicant forthwith to enter on the land and within the time fixed by the order to execute such works as may be necessary, and may order that any lease or agreement for a lease held from the applicant and any derivative underlease shall be determined, subject to such conditions and to the payment of such compensation as the court may think just.

Power to
authorise
superior
landlord to
enter and
execute
works.

(2) The court shall include in its order provisions to secure that the proposed works are carried out and may authorise the local authority in whose area the land is situated to exercise such supervision or take such action as may be necessary for the purpose.

(3) For the purposes of this section, "court" means the High Court of Justice, and the Court of Chancery of the county palatine of Lancaster or Durham, or the county court, where those courts respectively have jurisdiction.

Supplemental.

53.—(1) Where it is proved to the satisfaction of the court, on an application in accordance with rules of court of any person entitled to any interest in any land used in whole or in part as a site for dwelling-houses for the working classes, that the applicant should be entrusted with the carrying out of a scheme of improvement or reconstruction approved by the local authority of the district in which the land is situate, the court may make an order empowering the applicant forthwith to enter on the land and within the time fixed by the order to execute such works as may be necessary, and may order that any lease or agreement for a lease held from the applicant and any derivative underlease shall be determined, subject to such conditions and to the payment of such compensation as the court may think just.

Power to
authorise
superior
landlord to
enter and
execute
works.

(2) The court shall include in its order provisions to secure that the proposed works are carried out and may authorise the local authority in whose area the land is situated or which has approved a scheme of improvement or reconstruction under this section, to exercise such supervision or take such action as may be necessary for the purpose.

(3) For the purposes of this section "court" means the High Court, and the Court of Chancery of the county palatine of Lancaster or Durham or the county court, where those courts respectively have jurisdiction.

Power to
authorise
conversion of
house into
several
tenements.

102 Where it is proved to the satisfaction of the county court on an application by the local authority or any person interested in a house that, owing to changes in the character of the neighbourhood in which such house is situate, the house cannot readily be let as a single tenement but could readily be let for occupation if converted into two or more tenements, and that, by reason of the provisions of the lease or of any restrictive covenant affecting the house or otherwise, such conversion is prohibited or restricted, the court, after giving any person interested an opportunity of being heard, may vary the terms of the lease or other instrument imposing the prohibition or restriction so as to enable the house to be so converted subject to such conditions and upon such terms as the court may think just.

This section is of general application and does not apply only to tenements which, if converted, could be let for occupation by persons of the working class (*Johnston v. Maconochie and Others*, (1920) 3 K. B. 417; (1921) 1 K. B. 239; 89 L. J. K. B. 1045; 90 L. J. K. B. 83).

As to the specific findings which, in an application under this section, it is necessary that the county court should make, see *Alliance Investment Co. v. Berton*, (1923) 92 L. J. K. B. 750.

Exclusion
of applica-
tion of
10 & 11
Geo. 5, c. 17.

128. Nothing in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, or in the enactments amending that Act, shall be deemed to affect the provisions of Part I. of this Act relating to the obtaining possession of a house with respect to which a closing order has been made, or to prevent a local authority from obtaining possession of any house the possession of which is required by them for the purpose of exercising their powers under this Act or under any scheme made under this Act or any enactment repealed by this Act.

COUNTY COURT RULES. ORDER L.

(Amended Dec. 4th, 1925.)

Applications
under 15
Geo. 5, c. 14,
ss. 7 (4), 30,
53, 102.

59.—(1) Applications to the county court under sub-section (4) of section 7 or section 30, 53 or 102 of the Housing Act, 1925 (15 Geo. V., c. 14), shall be made in accordance with the provisions of this rule.

(2) An application shall be made by action commenced by plaint and summons in the ordinary way, and the action shall be entitled "The Housing Act, 1925, section 7" [or "section 30, 53 or 102," as the case may be].

(3) The action shall be commenced in the court in the district of which the premises or house or land to which the action relates are or is situate.

(4) In an application under section seven the local authority shall be the plaintiff, and the person on whom obligations are imposed by any bye-laws made for the purposes specified in section six shall, if he consents in writing, be joined as a plaintiff, and shall, if he does not so consent, be made a defendant: and his lessor or other superior landlord shall be made a defendant.

(5) In an application under section one hundred and two, the local authority or any person interested in the house who desires to apply to the court shall be the plaintiff, and the local authority (if not made plaintiffs) and all other persons interested in the house whose presence is necessary to

enable the judge effectually and completely to adjudicate upon and settle all the questions involved in the action shall be made defendants.

(6) In an application under section thirty or section fifty-three any person entitled to any interest in the land who desires to apply to the court shall be the plaintiff, and the local authority may with their consent in writing be joined as plaintiffs, and shall if they do not so consent be made defendants: and the persons holding under any lease or agreement for a lease from the applicant and all other persons interested in the land whose presence is necessary to enable the judge effectually and completely to adjudicate upon and settle all the questions involved in the action shall be made defendants.

(7) Where leave to enter the plaint is required under section seventy-four of the County Courts Act, 1888, the plaintiff may apply for such leave on affidavit, and if leave is granted a copy of the affidavit, with a copy thereon of the order granting leave, shall be annexed to the summons and served herewith. 51 & 52 Vict. c. 43, s. 74.

(8) Particulars of demand shall be filed with every application, stating concisely the relief or order which the plaintiff claims, and a copy thereof shall be annexed to the summons to be served on each defendant.

(9) The forms in the Appendix, with such modifications as may be necessary, may be used on applications. Forms 454, 455, 456.

(10) It shall be the duty of the court before making any order on any application to be satisfied that all persons interested whose presence is necessary to enable the judge effectually and completely to adjudicate upon and settle all the questions involved in the application are before the court, and if necessary to adjourn the hearing of the application to enable any such persons who are not already parties to the action to be joined as defendants.

(11) The costs of any application shall be in the discretion of the court, and any costs allowed shall be taxed on such scale as the court shall direct.

(12) A charge granted by the court pursuant to sub-section 4 (b) of section seven shall be according to the form in the Appendix, or as near thereto as the circumstances of the case will admit. Form 457.

For Forms 454 to 457 see *ante* Part I., C.C. Forms.

HOUSING (RURAL WORKERS) ACT, 1926.

(16 & 17 GEO. 5, c. 56.)

This Act was passed to promote the provision of housing accommodation for agricultural workers and the like, and the improvement of such accommodation, by authorising financial assistance towards the reconstruction and improvement of houses and other buildings.

Sect. 3 of the Act attaches certain conditions to dwellings in respect of which assistance has been given by way of grant, and by sub-section 5 of that section the County Court of the district in which the dwelling is situate, on the application of the local authority, notwithstanding anything to the contrary in any enactment or rule of law relating to the jurisdiction of county courts, may (1) grant an injunction restraining the breach or apprehended breach of any such condition (except the condition as to supplying information to the local authority) or (2) order payment to the authority of any sum which has become payable to it by reason of the breach of any such condition.

Procedure will be by plaint in the ordinary way. See Order L. rr. 35, 36.

Ord. L.
r. 59.

INCLOSURE, EXCHANGE, ETC., EXPENSES ACT, 1868.

[31 & 32 VICT. c. 89.]

Jurisdiction is given to the county court under sects. 3 and 4. By sect. 3 the Commissioners may by an order under their hands and seal, declare by whom and what costs shall be paid to them, and have power by application to any county court, to recover the same from the person liable, together with all costs. By sect. 4, the Commissioners may by an order under their hands and seal require persons in possession of documents relating to an inclosure, to deliver the same to them, and in default, to summons such person before the judge of the county court for the county in which the lands or any part thereof authorised to be inclosed shall be situate. Note that the court having jurisdiction under sect. 3 is any court, whilst under sect. 4 it is limited to the judge of the court within the district of which the inclosure is situated.

Practice is governed by Order L. rr. 1, 2, 3, *post*, p. 2061, and should be commenced by plaint and summons; by sect. 3 the order of the Commissioners is made conclusive evidence of the debt, and by sect. 4 the judge upon production of the order, shall enforce such order at the expense of the person in default by attachment (see Rule 3).

Costs in default of any direction by the judge shall be taxed on Scale B, Order L. r. 2, *post*, p. 2061.

Costs of taxation, how to be recovered. 3. In all cases in which any dispute as to the expenses incidental to an enfranchisement, or as to the compensation to be paid to the steward, shall be referred to the Commissioners for their certificate, the costs incurred by them in ascertaining the same shall be paid to the Commissioners, either by the person making such reference or applying for such certificate, or by the person whose costs are so taxed, as the Commissioners, by order under their hands and seal, may direct, and such order shall state the amount of such costs; and the Commissioners shall have power, by application to any county court, to recover the same from the person liable under such order, together with all costs of such application, and such order shall be conclusive evidence of such debt.

Power to Commissioners to enforce production of documents belonging to inclosure. 4. In any case in which an inclosure has been authorised by Parliament, and a valuer appointed, it shall be lawful for the Commissioners, at any time they shall see occasion, by an order under their hands and seal, to require such valuer, or any other person who shall have charge of or be in possession of any schedule, valuation, plan, report, award, or other document relating to such inclosure, to deliver the same to them at their office; and in default of such delivery within the time named in such order it shall be lawful for the Commissioners to summons such valuer or other person before the judge of the county court for the county in which the lands or any part thereof authorised to be inclosed shall be situate; and the judge of such court shall, upon production of the order of the Commissioners, give such direction to enforce such order, at the expense of the person neglecting or refusing to obey the same, as he is now by law enabled to give to compel the production of papers and documents before such court.

COUNTY COURT RULES.—ORDER L.

THE INCLOSURE, &c., EXPENSES ACT, 1868.

1. An application to the court under s. 3 or s. 4 of the Inclosure, Application &c., Expenses Act, 1868, shall be made by action commenced under 31 & by plaint and summons in the ordinary way. Particulars of 32 Vict. c. 89, demand shall be filed with every such application, stating concisely ss. 3, 4, the relief or order which the plaintiff claims.

2. The costs in any action under the said s. 4 shall be taxed Costs in actions on such scale as the judge shall direct, and in default of such direction shall be taxed under column B. under 31 & 32 Vict. c. 89, s. 4.

3. If the defendant in any action under s. 4 fails to comply with an order for delivery made in such action, he shall be liable to attachment. Non-compliance with order for delivery under 31 & 32 Vict. c. 89, s. 4.

INDUSTRIAL ASSURANCE ACT, 1923.

(13 & 14 GEO. V., c. 8.)

This statute, which came into force on January 1st, 1924, consolidates and amends the law relating to Industrial Assurance, and repeals the Collecting Societies and Industrial Assurance Companies Act, 1896, gives (sect. 32) jurisdiction to the county court in all disputes between the society or company, and (a) member or person assured; (b) a person claiming through a member or person assured or under or in respect of any policy or under the rules, or under this Act; (c) a person aggrieved who has ceased to be a member, or person claiming through such person. The court is that court where the member or person resides, and such court may settle the dispute according to the provisions of the Friendly Societies Act, 1896.

32.—(1) In all disputes between a collecting society or industrial assurance company, and Disputes.

(a) any member or person assured; or

(b) any person claiming through a member or person assured, or under or in respect of any policy, or under the rules, or under this Act; or

(c) any person aggrieved who has ceased to be a member or any person claiming through such person aggrieved,

that member or person may, notwithstanding any provisions of the rules of the society or company to the contrary, apply to the county court, or to a court of summary jurisdiction for the place where that member or person resides, and the court may (but in the case of a court of summary jurisdiction only if the amount of the claim does not exceed twenty-five pounds and not less than fourteen days' notice of the application has been given to the society or company) settle that dispute according to the provisions of the Friendly Societies Act, 1896, and, where a dispute is settled under this section by a court of summary jurisdiction, the court may make such order as to costs as it considers fair and reasonable:

Provided that any such dispute may be referred to the Commissioner—

(a) by such collecting society, industrial assurance company, member or person as aforesaid, if the amount of the claim does not exceed fifty pounds and the legality of the policy is not questioned, and fraud or misrepresentation is not alleged; and

(b) in any case, by both parties, without restriction as to the amount of claim or the nature of the question to be decided;

and, where a dispute is so referred, the Commissioner may deal with the dispute as if it were a dispute referred to him under the provisions of section sixty-eight of the Friendly Societies Act, 1896, and the consent of the Treasury to his dealing therewith had been given.

(2) In any case where a doubt arises as to the continued existence of the person on whose life a policy of industrial assurance was taken out, the Commissioner may, on the application of the owner of the policy or of the society or company which issued the policy, award that the society or company shall pay to the owner of the policy the surrender value thereof at the time of the award, and the award shall be a discharge for all claims by or against the society or company in connection with the policy.

THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893; AND AMENDMENT ACT, 1913.

[56 & 57 VICT. C. 39; 3 & 4 GEO. V. C. 31.]

Jurisdiction under this Act relates to : (1) recovery of money payable to societies by members (sect. 23); (2) defaults of officers (sect. 48); (3) decision of disputes (sect. 49); (4) enforcement of awards on disputes (sect. 49); (5) to setting aside deeds of dissolution of societies (sect. 61).

Practice.—The Act does not specify the court where the proceedings should be commenced, except under sect. 23; in other cases proceed therefore in the court within the district of which the head office of the society was situate, or the defendant dwells. The practice is identical with that under the Building Societies Acts, 1874 and 1894, and is governed by Order XLI., *ante*, p. 1778.

In what Name sued.—Registration renders the society a body corporate by the name mentioned in the acknowledgment of registry, and it should be sued in that name (sect. 21 of Act).

Debentures.—Debentures issued by a society duly registered charging the society's personal chattels by way of security for money are not exempted by sect. 17 of the Bills of Sale Act (1878) Amendment Act, 1882, from the statutory requirements in respect of bills of sale (*Great Northern Rail. Co. v. Coal Co-operative Society*, (1896) 1 Ch. 187; 65 L. J. Ch. 214).

56 & 57 VICT. C. 39.

Section 23.

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Remedy for
debts from
members.

23.—(1) All moneys payable by a member to a registered society shall be a debt due from such member to the society and shall be recoverable as such either in the county court of the district in which the registered office of the society is situate, or in that of the district in which such member resides, at the option of the society.

This jurisdiction is exerciseable, although the defendant has ceased to be a member of the society before the action is brought (*Gwendolen Land Society v. Wicks*, (1904) 2 K. B. 622; 73 L. J. K. B. 815).

* * * * *

Accounts of
officers.

48.—(1) Every officer of a registered society having receipt or charge of money, or his executors or administrators, shall, at such times as by the rules of the society he should render account,

Section 48.

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or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society, or by the committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all moneys and deliver all property for the time being in his hands or custody to such person as the society or the committee appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys or to deliver such property in manner aforesaid, the society may sue upon the bond or security before mentioned, or may apply to the county court (which may proceed in a summary way), or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

(2) This section shall apply to every servant of a registered society in receipt or charge of money in every case where he is not engaged under a special agreement to account.

49.—(1) Every dispute between a member of a registered society, or any person aggrieved who has for not more than six months ceased to be a member of a registered society, or any person claiming through such member or person aggrieved, or claiming under the rules of a registered society, and the society or an officer thereof, shall be decided in manner directed by the rules of the society, if they contain any such direction, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court.

Decision of
disputes.

See *McEllistrim v. Ballymacelligott Co-operative Society, Ltd.*, (1919) 88 L. J. P. C. 59.

(4) Where the rules of a society direct that disputes shall be referred to justices, the disputes shall be determined by a court of summary jurisdiction;

Provided that in every case of dispute cognisable under the rules of a society by a court of summary jurisdiction, it shall be lawful for the parties thereto to enter into a consent referring such dispute to the county court, which may hear and determine the matter in dispute.

(5) Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, which may hear and determine the matter in dispute.

(6) Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the court and the chief or other registrar shall not be compelled to state a special case on any question of law arising in the case, but the court . . . may, at the request of either party, state a case for the opinion in England of the Supreme Court of Judicature, . . . on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, . . . as might be granted by any court of law or equity, such discovery to be made on behalf of the society by such officer of the same as such court . . . may determine.

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Section 61.

Provisions
as to
instrument
of dissolu-
tion.

61. Where a society is terminated by an instrument of dissolution the following provisions shall apply :

- (a) The instrument of dissolution shall set forth the liabilities and assets of the society in detail, the number of members and the nature of their interests in the society respectively, the claims of creditors (if any), and the provisions to be made for their payment, and the intended appropriation or division of the funds and property of the society unless the same be stated in the instrument of dissolution to be left to the award of the chief registrar :
- (b) Alterations in the instrument of dissolution may be made with the like consents as hereinbefore provided, and testified in the same manner :
- (c) A statutory declaration shall be made by three members and the secretary of the society that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution ; and any person knowingly making a false or fraudulent declaration in the matter shall be guilty of a misdemeanor :
- (d) The instrument of dissolution and all alterations therein shall be registered in manner herein provided for the registry of rules, and shall be binding upon all the members of the society :
- (e) The registrar shall cause a notice of the dissolution to be advertised at the expense of the society in the *Gazette* and in some newspaper circulating in or about the locality in which the registered office of the society is situated ; and *unless* within three months from the date of the *Gazette* in which such advertisement appears, *a member or other person interested in or having any claim on the funds of the society commences proceedings to set aside the dissolution of the society in the county court of the district where the registered office of the society is situate*, and such dissolution is set aside accordingly, the society shall be legally dissolved from the date of such advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto :
- (f) Notice shall be sent to the central office of any proceeding to set aside the dissolution of a society, not less than seven days before it is commenced, by the person by whom it is taken, or of any order setting it aside, within seven days after it is made by the society.

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3 & 4 GEO. V. c. 31.

Amendment
of principal
Act as to
nomination.

5.—(1) The principal Act shall as respects nominations made after the commencement of this Act have effect as if the following provisions were substituted for section twenty-five of the principal Act :—

- “(1) A member of a registered society not being under the age of sixteen years may, by writing under his hand delivered at or sent to the registered office of the society during the lifetime of such member or made in any book kept thereat, nominate any person or persons to or

among whom there shall be transferred at his decease such property in the society as may be his at the time of his decease (whether in shares, loans, or deposits, or otherwise), or so much thereof as is specified in such nomination, if the nomination does not comprise the whole. If on the death of the nominator the amount of his property in the society comprised in the nomination exceeds one hundred pounds the nomination shall be valid to the extent of the sum of one hundred pounds, but not further or otherwise :

Section 5.

Provided that a person so nominated shall not be an officer or servant of the society unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator.

“(2) A nomination so made may be revoked or varied by a subsequent nomination signed and delivered or sent or made as aforesaid or by any similar document in the nature of a revocation or variation under the hand of the nominator so delivered sent or made as aforesaid, but shall not be revocable or variable by the will of the nominator or by any codicil thereto.

“(3) The society shall keep a book wherein the names of all persons so nominated and all revocations or variations (if any) of such nominations shall be recorded, and the property comprised in any such nomination to an amount not exceeding one hundred pounds shall be payable or transferable to the nominee although the rules of the society declare the shares not to be transferable.

“(4) The marriage of a member of a society shall operate as a revocation of any nomination made by him before such marriage, provided that, in the event of an officer of a society having transferred any property of a member to a nominee, in ignorance of a marriage contracted subsequent to the date of the nomination, the receipt of the nominee shall be a valid discharge to the society, and the society shall be under no liability to any other person claiming such property.”

(2) The principal Act shall, as respects nominators dying after the commencement of this Act, have effect as if the following provisions were substituted for sub-section (1) of section twenty-six of the principal Act :—

“(1) On receiving satisfactory proof of the death of a nominator, the committee of the society shall, subject to the limitation on amount herein-before provided, either transfer the property comprised in the nomination in manner directed by the nomination, or pay to every person entitled thereunder the full value of the property given to him, unless the shares comprised in the nomination, if transferred as directed by the nominator, would raise the share capital of any nominee to a sum exceeding two hundred pounds, in which case they shall pay him the value of such excess.

“(2) Where a nominee who is nominated under the provisions of this Act is under sixteen years of age, the society may pay the sum nominated to either parent, or to a guardian

Section 5.

of the nominee, or to any other person of full age who will undertake to hold the same on trust for the nominee or to apply the same for his benefit and whom the society may think a fit and proper person for the purpose, and the receipt of such parent, guardian, or other person shall be a sufficient discharge to the society for all moneys so paid."

* * * * *

INEBRIATES ACTS, 1879, 1888, AND 1898.

[42 & 43 VICT. c. 19 ; 51 & 52 VICT. c. 19 ; 61 & 62 VICT. c. 60.]

By the Act of 1879 the local authority were permitted to license "retreats" for the reception, control, and curative treatment of habitual drunkards. Persons were admitted to such retreats on their own application. The application was to be accompanied by a statutory declaration of two persons to the effect that the applicant was an habitual drunkard as defined by the Act, and the signature of the applicant attested (see 1898 Act, s. 16) by one justice.

The 1898 Act allows habitual drunkards convicted on indictment to be detained in a State inebriate reformatory or a certified inebriate reformatory, the managers of which are willing to receive him, and also allows habitual drunkards, four times convicted of drunkenness, to be detained in any certified inebriate reformatory, the managers of which are willing to receive them.

The 1888 Act only amends the 1879 Act in matters having no relation to county courts.

Jurisdiction.—The 1879 Act, s. 18, allows county court judges for the districts in which retreats are situate to authorise persons to visit and report on *patients detained under that Act*, and on their report to order, should they see fit, the detained person's discharge.

Under the 1898 Act, s. 12, a judge of county courts, if satisfied that any person detained in a State or certified inebriate reformatory has property more than sufficient to maintain his family, may make an order for the payment of the expenses incurred in relation to his detention, and the order may be enforced as a judgment of the county court ; sect. 27 of the same Act defines what expenses means.

Practice is provided by Order L. rr. 12, 13, *infra*.

42 & 43 VICT. c. 19.

Judge of High Court of Justice, etc., may make orders to inspect.

18. A judge of the High Court of Justice, on an application *ex parte* at chambers, or a county court judge, within whose district the retreat is situated, may at any time, by order under his hand, authorise and direct any person or persons to visit and examine a person detained in a retreat under this Act, and to inquire into and report on any matters which such judge may think fit in relation to the person so detained. The judge, on receiving such report, may, if he shall think fit, order the discharge of any person so detained from any such retreat.

61 & 62 VICT. c. 60.

Power to recover expenses against inebriate's estate.

12.—(1) If it is made to appear to a judge of county courts that any person detained in a State or certified inebriate reformatory has any real or personal property more than sufficient to maintain his family, if any, the judge may make an order for the payment of the expenses incurred in relation to the detention of

that person, and the order may be enforced against any property of that person in the same way as a judgment of the county court.

Section 12.

(2) The order may be made on application—

- (a) in the case of a person detained in a State inebriate reformatory, of such person as may be authorised by the Secretary of State in that behalf; and
- (b) in the case of a person detained in a certified inebriate reformatory, of the managers of the reformatory, or any two of them, or of any authority contributing to the maintenance of such person.

COUNTY COURT RULES—ORDER L.

12. An application to the judge under sect. 18 of the Inebriates Act, 1879, shall be intituled in the matter of the Act and of the person detained, and shall be made in accordance with the rules for the time being in force as to interlocutory applications, and supported by affidavit.

13. An application under sect. 12 of the Inebriates Act, 1898, shall be made by petition, and the same procedure shall be followed and the same costs allowed as on a petition under Order XXXVIII.

For practice on interlocutory applications, see County Court Rules, Order XII. r. 11, Part I.; for Order XXXVIII., see Part I.

THE INFERIOR COURTS JUDGMENTS EXTENSION ACT, 1882.

[45 & 46 VICT. c. 31.]

Note.—This very useful Act enables a person who has obtained judgment in an inferior court, *e.g.*, a County Court, to have it registered in any other inferior court, either in England, Ireland or Scotland and then to have it enforced by the court in which it has been registered. For procedure, see County Court Rules, Order XLV.

The fee for the grant or registration of the certificate of a judgment pursuant to this Act is 5s., and for sealing and issuing a duplicate of such certificate, 1s. (County Court Fees Order, 1925, Fee No. 82.)

WHEREAS it is expedient to extend the principle of the Judgments 31 & 32 Vict. Extension Act, 1868, to the judgments of certain inferior courts c. 54. of Great Britain and Ireland :

1. This Act may be cited for all purposes as the Inferior Courts Short title. Judgments Extension Act, 1882.

2. In this Act the following words and expressions shall have the interpretations and meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction ; (that is to say),

Interpreta-
tion of
terms.

The expression "judgment" shall include decret, civil bill decree, dismiss, or order :

The expression "inferior courts" shall include county courts, civil bill courts, and all courts in England and Ireland having jurisdiction to hear and determine civil causes, other than

Section 2.

the high courts of justice; and in Ireland, courts of petty sessions and the court of bankruptcy; and in Scotland shall include the sheriffs courts and the courts held under the Small Debts and Debts Recovery Acts:

The expression "registrar of an inferior court" shall include the sheriff clerk of a sheriff's court in Scotland, and any officer fulfilling the duties of a registrar in an inferior court in England; and in Ireland shall include the clerk of the peace or other officer whose duty it is to enter the judgment, decree, or order of the court:

"Prescribed" means prescribed by rules made under the provisions of this Act:

The expression "person" shall include any party or parties to a cause in any inferior court in England, Scotland, or Ireland:

The expression "plaintiff" shall include pursuer, complainer, or any person at whose instance any action or proceeding in an inferior court is instituted; and the expression "defendant" shall include defender, respondent, or other person against whom any such action or proceeding is directed:

The expression "action" shall mean the action or other proceeding in which any judgment was pronounced; and the expression "summons" shall mean the summons or other initial writ in such action.

Registrar of inferior court to grant certificate of judgment.

3. Where judgment shall hereafter be obtained or entered up in any of the inferior courts of England, Scotland, or Ireland respectively for any debt, damages, or costs, the registrar of such inferior court or other proper officer shall, after the time for appealing against such judgment shall have elapsed, and in the event of such judgment not being reversed upon appeal or of execution thereunder not being stayed, upon the application of the party who has recovered such judgment, and upon proof that the same has not been satisfied, and payment of the prescribed fee, grant a certificate in the form in the schedule to this Act annexed (a).

NOTE.—(a) The form of certificate is No. 430 in the County Court Forms, and see notes to sect. 146 of County Courts Act, *ante*, p. 203.

Registration of certificate shall have the effect of a judgment of the court in which it is registered.

4. On the production to the registrar or other proper officer of a county court, or, in the city of London, of the city of London court in England where a judgment has been obtained in Scotland or Ireland, or to the registrar or other proper officer of a sheriff's court in Scotland where a judgment has been obtained in England or Ireland, or to the registrar or other proper officer of a civil bill court in Ireland where a judgment has been obtained in England

Section 4.
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or Scotland of a certificate under this Act purporting to be signed by the registrar or other proper officer of the inferior court where such judgment was obtained, such certificate shall, on payment of the prescribed fee, be registered in the prescribed form by such registrar or other proper officer to whom the same shall be produced for that purpose; and all reasonable costs and charges attendant upon the obtaining and registering such certificate shall be added to and recovered in like manner as if the same were part of the original judgment. No certificate of any such judgment shall be registered as aforesaid in any inferior court in the United Kingdom more than twelve months after the date of such judgment.

5. Where a certificate of a judgment of any of the inferior courts aforesaid has been registered under this Act, process of execution may issue thereon out of the court in which the same shall have been so registered against any goods or chattels of the person against whom such judgment shall have been obtained, which are within the jurisdiction of such last-mentioned court, in the same or the like manner as if the judgment to be executed had been obtained in the court in which such certificate shall be so registered as aforesaid. Execution of judgments

6. The courts of Great Britain and Ireland to which this Act applies shall, in so far as relates to execution under this Act, have over and exercise the same control and jurisdiction over and with respect to the execution of any judgment, a certificate of which shall be registered under this Act, as they now have and exercise over and with respect to the execution of any judgment in their own courts. Jurisdiction over registered judgments limited to execution.

7. On proof of the setting aside, or satisfaction, of any judgment of which a certificate shall have been registered under this Act, the court in which such certificate is so registered may order the registration thereof to be cancelled. Cancellation of registry.

8. In any action brought in any of the inferior courts aforesaid for the purpose of enforcing any judgment which might be registered under this Act in the country in which such action is brought, the party bringing such action shall not recover or be entitled to any costs or expenses, unless the court in which such action shall be brought shall otherwise order. Costs not to be allowed in actions on judgments unless by order of court.

9. Nothing contained in this Act shall authorise the registration in an inferior court of the certificate of any judgment for a greater amount than might have been recovered if the action or proceeding had been originally commenced in such inferior court. Existing limits of local jurisdiction shall not be exceeded.

10. This Act shall not apply to any judgment pronounced by any inferior court in England against any person domiciled in Act not to apply in certain cases.

Section 10.

Scotland or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district, nor to any judgment pronounced by any inferior court in Scotland against any person domiciled in England or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district, nor to any judgment pronounced by any inferior court in Ireland against any person domiciled in England or Scotland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district.

Provided that it shall be competent to any person against whom any judgment to which this Act does not apply, as aforesaid, is sought to be enforced by registration in the register of an inferior court in England or Ireland, to apply for and obtain from one of the superior courts of England or Ireland a prohibition or injunction against the enforcement of such judgment, and of any execution thereupon; and that it shall be competent to any person against whom any judgment to which this Act does not apply, as aforesaid, is sought to be enforced by registration in the register of an inferior court in Scotland, to apply for and obtain from the bill chamber or Court of Session in Scotland suspension or suspension and interdict of or against the enforcement of such judgment and any diligence thereon, and in any such proceeding as aforesaid the unsuccessful party may be found liable in costs.

Provision is made by the rules for the delivery of particulars of the place where the goods of the debtor are, and for the sealing of a copy of the certificate, and for the costs (see Order XLV. rr. 8, 9, 10). A special form of warrant of execution is provided (Form 431).

Money will not be paid out of court without production of the sealed copy of the certificate, or a copy to be obtained in the prescribed manner (Order XLV. r. 11).

It has been held in the High Court that where a certificate of a decret of the Court of Session in Scotland has been registered in the High Court under the Judgments Extension Act, 1868, that court has the same jurisdiction to appoint a receiver by way of equitable execution as if the judgment had been originally obtained in the High Court (*Thompson v. Gill* (C. A.), (1903) 88 L. T. 714).

This Act does not extend to the Irish Free State (*Banfield v. Chester*, (1925) 133 L. T. 623).

INTESTATES' WIDOWS AND CHILDREN ACT, 1873.

INTESTATES' WIDOWS AND CHILDREN EXTENSION ACT, 1875.

[36 & 37 VICT. c. 52; 38 & 39 VICT. c. 27.]

The 1873 Act provided that where the whole estate of an intestate did not exceed 100*l.*, his widow and any one, or more, of his children, if residing more than three miles from the registry having jurisdiction in the matter, might apply to the registrar of the county court of the district within which the intestate lived to fill up the usual papers required, and to swear the applicant and attest the execution of the administration bond, and transmit the same to the registrar of the Court of Probate; for which the registrar was entitled to no fee except as provided by the Act (see *infra*). By the 1875 Act, the above provision was extended to the children of intestate widows.

36 & 37 VICT. c. 52.

1. Where the whole estate and effects of an intestate shall not exceed in value the sum of 100*l.*, his widow or any one or more of his children, provided such widow or children respectively shall reside at a distance exceeding three miles from the registry of the court of probate having jurisdiction in the matter, may apply to the registrar of the county court within the district of which the intestate had his fixed place of abode at the time of his death, and the said registrar shall fill up the usual papers required by the Court of Probate to lead to a grant of letters of administration of the estate and effects of the said intestate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the Court of Probate, and shall then transmit the same papers by post to the registrar of the Court of Probate having jurisdiction in the matter, who shall in due course make out and seal the letters of administration of the estate and effects of the said intestate, and transmit them by post to the said registrar of the county court, to be by him delivered to the party so applying for the same, without the payment of any fee for the same save as is provided by this Act

For purposes of Act application may be made to a registrar of a county court.

2. The registrar of the county court may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

Identity of person may be required.

3. If the registrar of the county court has reason to believe that the whole estate and effects of which the intestate died possessed exceed in value 100*l.*, he shall refuse to proceed with the application until he is satisfied as to the real value thereof.

Registrar may refuse to take affidavit.

4. All registrars of county courts shall for the purposes of this Act have power and are hereby authorized to administer oaths, and to take declarations and affirmations, and to exercise any other powers which can be exercised by commissioners of the Court of Probate. In the necessary absence of the registrar of the county court, applicants may be sworn and execute any necessary documents at the office of the said registrar before any commissioner of the Court of Probate.

Registrars may exercise powers of commissioners of Court of Probate.

5. Any rules and orders and tables of fees requisite for carrying this Act into operation shall be framed and may from time to time be altered by the judge of the Court of Probate, subject as regards the tables of fees to the approval of the commissioners of

Power to frame rules, orders, etc.

Section 5. Her Majesty's Treasury ; and such proportions of the said fees as the said judge, with such approval as aforesaid shall think proper, may be made payable to the registrars of the county courts acting in the said matters, but the total amount to be charged to applicants shall not in any one case exceed the sums mentioned in the schedule of this Act.

SCHEDULE.

Schedule.

Where the whole estate and effects of the intestate shall not exceed in value 20*l.*, the sum of five shillings ; and where the whole estate and effects shall exceed in value 20*l.*, the sum of five shillings, and the further sum of one shilling for every ten pounds or fraction of ten pounds by which the value shall exceed 20*l.*

38 & 39 VICT. c. 27.

WHEREAS it is desirable that the provisions of the Act of thirty-six and thirty-seven Victoria, chapter fifty-two, intituled " An Act for the relief of Widows and Children of Intestates where the personal estate is of small value," should be made applicable to the surviving children of a poor widow who dies intestate :

Be it therefore enacted, &c. :

Extension of Act of 36 & 37 Vict. c. 52, to children of poor intestate widows.

1. Where the whole estate and effects of an intestate widow shall not exceed in value the sum of one hundred pounds, any one or more of her children, if they shall reside at a distance exceeding three miles from the registry of the court of probate having jurisdiction in the matter, may apply to the registrar of the county court within the district in which the intestate had her fixed place of abode at the time of her death, and on compliance with the regulations prescribed in the said Act of thirty-six and thirty-seven Victoria shall be entitled to the benefits in that case made and provided by the said Act, and the schedule thereunto annexed.

Construction of the Act.

2. This Act shall be read and construed along with and as part of the recited Act.

THE SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925.

[15 & 16 GEO. 5, c. 49.]

NOTE.—All the Judicature Acts are repealed by and consolidated in the above statute. The sections affecting county courts are set out below.

Jurisdiction of High Court with respect to appeals from inferior courts.

24. Subject as otherwise provided in this Act and to rules of court, the High Court shall have jurisdiction to hear and determine—

- (a) any appeal from any court which might formerly have been brought to any court or judge whose jurisdiction was by the Act of 1873 transferred to the High Court constituted by that Act ; and
- (b) any application, or any appeal, whether by way of case stated or otherwise, which under or by virtue of any enactment which came into force after the commencement

of the Act of 1873 and is not repealed by this Act, the High Court constituted by that Act had power to hear and determine immediately before the commencement of this Act. Section 24.

31.—(1) No appeal shall lie— Restrictions on appeals.

(f) without the leave of the divisional court or of the Court of Appeal, from the determination by a divisional court of any appeal to the High Court ;

(k) from the decision of the High Court on any appeal from a county court on a point of law arising in any probate cause or matter.

33.—(3) This sub-section relates to the summoning of Trinity Masters on an appeal from a county court in an admiralty action, and is printed *ante* p. 152.

45.—(1) The High Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do. Mandamus, injunctions and receivers.

(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the court thinks fit, whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

63.—(1) Divisional courts may be held for the transaction of any business in the High Court which may be ordered by rules of court to be heard by a divisional court, and in all cases where there is a right of appeal to the High Court from any court or person the appeal shall be heard and determined by a divisional court. Divisional courts of High Court.

150. This section relates to applications for grant or revocation of probate or letters of administration, and is printed *post* p. 2316, *tit.* " Probate Acts, 1857 and 1858." Application for grants.

202. (a) Every inferior court which has jurisdiction in equity or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction, for the time being, grant in any proceeding before it, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counterclaim, equitable or legal Powers of inferior courts having equity and admiralty jurisdiction.

Section 202. (subject to the provision of the next following section), as ought to be granted or given in the like case by the High Court and in as full and ample a manner.

(a) As to the equitable doctrine of "time, when or when not the essence of a contract," see *Stickney v. Keeble*, (1915, A. C. 386; 84 L. J. Ch. 259).

203. The text of this section, relating to counterclaims in inferior courts and transfers therefrom is printed *ante*, p. 36.

Power to
transfer
interpleader
proceedings
to county
court.

204. If it appears to the court or a judge that any proceeding in the High Court by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of 500*l.* may be more conveniently tried and determined in a county court, the court or judge may at any time order the transfer thereof to any county court in which an action or proceeding might have been brought by any party to the interpleader against any other party thereto if there had been a trust to be executed concerning the matter in question, and every such order shall have the same effect as if it had been for the transfer of an action or matter under sect. 69 of the County Courts Act, 1888, as amended by sect. 4 of the County Courts Act, 1919; and the county court shall have jurisdiction and authority to proceed therein, as may be prescribed by county court rules.

For practice rules with regard to remitted interpleader proceedings, see Order XXXIII. rr. 9—19.

205. This section relates to transfer to county courts of money recovered in High Court by infants, etc. It is printed in full, *ante*, p. 74.

Application
of certain
repealed
enactment
in local
courts.
46 & 47 Vict.
c. 49.

209. If and in so far as any enactment repealed by the Statute Law Revision and Civil Procedure Act, 1883, applies, or may have been applied by Order in Council, to the Court of the County Palatine of Lancaster, or to any inferior court of civil jurisdiction, that enactment shall be construed as if it were contained in a local and personal Act specially relating to that court, and shall have effect accordingly.

JUDICIAL TRUSTEES ACT, 1896.

[59 & 60 VICT. c. 35.]

Jurisdiction.]—By this Act and the rules made under it (see Rule 31, *post*, p. 2083), power is given to certain county courts, viz., metropolitan courts and courts having bankruptcy jurisdiction to appoint a judicial trustee where the real property does not exceed 500*l.* in value (see sect. 2, and Rule 31).

A person interested in an estate is not entitled as of right to the appointment of a judicial trustee, the appointment is a matter entirely within the discretion of the court (*In re Ratcliffe*, (1898) 2 Ch. 352; 67 L. J. Ch. 562).

Who may be appointed.]—Any fit and proper person nominated in the application may be appointed; in the absence of any such nomination, or

if the court is not satisfied as to the fitness of the nominated person, an official of the court may, but need not be appointed (*Douglas v. Bolam*, (1900) 2 Ch. 749; 70 L. J. Ch. 1).

Practice.]—The proceedings in the county court must be by petition, which by Rule 31 in the county court is substituted for an originating summons in the High Court, but it is expedient in the petition, or otherwise, to give the particulars required by Rule 4, to be given in the said summons.

1.—(1) Where application is made to the court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court may, in its discretion, appoint a person (in this Act called a judicial trustee) to be a trustee of that trust, either jointly with any other person or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees. **Section 1.**
Power of court on application to appoint judicial trustee.

(2) The administration of the property of a deceased person, whether a testator or intestate, shall be a trust, and the executor or administrator a trustee, within the meaning of this Act.

(3) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee, and, in the absence of such nomination, or if the court is not satisfied of the fitness of a person so nominated, an official of the court may be appointed, and in any case a judicial trustee shall be subject to the control and supervision of the court as an officer thereof.

(4) The court may, either on request or without request, give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5) There may be paid to a judicial trustee out of the trust property such remuneration, not exceeding the prescribed limits, as the court may assign in each case, subject to any rules under this Act respecting the application of such remuneration where the judicial trustee is an official of the court, and the remuneration so assigned to any judicial trustee shall, save as the court may for special reasons otherwise order, cover all his work and personal outlay.

(6) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited, and a report thereon made to the court by the prescribed persons, and, in any case where the court shall so direct, an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee, shall be made in the prescribed manner.

2. The jurisdiction of the court under this Act may be exercised by the High Court, and as respects trusts within its jurisdiction by a palatine court, and (subject to the prescribed definition of jurisdiction) by any county court judge to whom such jurisdiction may be assigned under this Act.

Sect. 3 is repealed by Trustee Act, 1925, and re-enacted by sect. 61 of that Act, *post*, p. 2486.

RULES UNDER THE JUDICIAL TRUSTEES ACT, 1896.

[59 & 60 VICT. c. 35.]

Short title.

1. The following rules may be cited as the Judicial Trustee Rules, 1897, and shall apply as far as practicable to all matters and proceedings under the Judicial Trustees Act, 1896 (in these rules called the Act).

APPOINTMENT OF JUDICIAL TRUSTEE.

Mode of making application

2. An application to the court to appoint a judicial trustee shall be in the Chancery Division, and

- (a) if not made in a pending cause or matter, shall be made by originating summons; and
- (b) if made in a pending cause or matter, shall be made as part of the relief claimed, or by summons in the cause or matter.

Service of summons.

3.—(1) The summons shall be served,—

- (a) where the application is made by or on behalf of a trustee, on the other trustee (if any); and
- (b) where the application is made by or on behalf of a beneficiary, on the trustees (if any),

and in either case on such (if any) of the beneficiaries as the court directs.

(2) Where the application is made by or on behalf of a person creating or intending to create a trust, the summons, subject to any direction of the court, need not be served on any person.

(3) The court may give any directions it thinks fit, either dispensing with the service of the summons on any person on whom it is required to be served under this rule, or requiring the service of the summons on any person on whom it is not required to be served under this rule.

Statement to be supplied on application.

4.—(1) Where an application is made for the appointment of a judicial trustee by originating summons, the applicant must, when he takes out the summons, supply for the use of the court a written statement signed by him containing the following particulars so far as he can gain information with regard to them:—

- (a) A short description of the trust and the instrument by which it is, or is to be, created, and of the relation which the applicant bears to the trust;
- (b) If a person is nominated as judicial trustee the name and address of the person nominated, and short particulars of the reasons which lead to his nomination;
- (c) If a person is nominated as judicial trustee, a statement whether it is proposed that the person nominated should be remunerated or not;
- (d) Short particulars of the trust property, with an approximate estimate of its income, and capital value;
- (e) Short particulars of the incumbrances (if any) affecting the trust property;
- (f) A statement whether it is proposed that the judicial trustee should be a sole trustee or should act jointly with other trustees;
- (g) Particulars as to the persons who are in possession of the documents relating to the trust;

Rule 4.

- (h) The names and addresses of the beneficiaries and short particulars of their respective interests;
- (i) Any exceptional circumstances specially affecting the administration of the trust.
- (2) An affidavit by the applicant verifying the statement shall be sufficient *prima facie* evidence of the particulars contained in the statement.
- (3) Where the applicant cannot gain the information necessary or making the required statement on any point, he must mention the fact in his statement.

5.—(1) The court shall not be precluded by any existing practice as to the appointment of trustees from appointing any person to be a judicial trustee by reason of that person being a beneficiary, or a relation or husband or wife of a beneficiary, or a solicitor to the trust or to the trustee or to any beneficiary, or a married woman, or standing in any special position with regard to the trust. Removal of restriction as to appointment of certain persons to be trustees.

(2) A person may be appointed to be a judicial trustee of a trust although he is already a trustee of the trust.

6. On the appointment of any person to be judicial trustee the court shall make such vesting or other orders and exercise such other powers as may be necessary for vesting the trust property in the judicial trustee either as sole trustee or jointly with other trustees as the case requires. Vesting orders.

APPOINTMENT OF OFFICIAL OF COURT TO BE JUDICIAL TRUSTEE. Official judicial trustee.

7.—(1) Where an official of the court is appointed judicial trustee, the official solicitor of the court shall (subject to the provisions hereinafter contained in rules twenty-nine, thirty, and thirty-one) be so appointed, unless, for special reasons, the court directs that some other official of the court should be so appointed.

(2) Any official of the court appointed to be a judicial trustee shall, on his ceasing to hold office, cease to be such a trustee without any formal resignation.

(3) Where an official of the court is judicial trustee, any trust property vested in or held by him, shall be vested in and held by him under his official title and not in his own name.

(4) Where an official of the court appointed to be a judicial trustee of a trust dies, or ceases to hold office, his successor in office shall, unless the court otherwise directs, become judicial trustee of the trust without any order of the court or formal appointment, and the trust property shall, without any conveyance, assignment, or transfer, in such a case become vested in the successor as it was vested in his predecessor in office.

(5) For the purpose of the definition of "official of the court," in section five of the Act, any paid office in or connected with the court shall be a prescribed office.

ADMINISTRATION OF THE TRUST.

8.—(1) A judicial trustee must unless in any case the court considers that it is unnecessary, as soon as may be after his appointment, furnish the court with a complete statement of the trust property, accompanied with an approximate estimate of the income and capital value of each item. Statement of trust property.

(2) It shall be the duty of the judicial trustee to give such infor-

Rule 8.

mation to the court as may be necessary for the purpose of keeping the statement of the trust property correct for the time being.

Security.

9.—(1) A judicial trustee, if not an official of the court, must give security to the court for the due application of the trust property, unless the court dispenses with security under this rule.

(2) The court may, on the appointment of a judicial trustee, or at any time during his continuance in office as judicial trustee, dispense with security on the application either of the person who is to be appointed or is judicial trustee, or of any person appearing to the court to be interested in the trust, and shall do so where a judicial trustee is appointed on the application of a person creating or intending to create a trust, and that person desires that security should be dispensed with, unless for special reasons the court consider that security is in such a case necessary or desirable.

(3) The security must be given, either by recognizance, bond, or otherwise, as the court directs, and with such sureties as the court approves.

(4) If the court is satisfied that sufficient provision is made for the safety of the capital of the trust property, the amount of the security shall, in ordinary cases, be an amount exceeding by twenty per centum the income of the trust property as estimated by the court.

(5) The court may at any time require that the amount or nature of the security given by a judicial trustee under this rule be varied, or that security be given where it has previously been dispensed with, and a judicial trustee shall comply with any such requirement.

(6) It shall be a condition of every recognizance, bond, or other form of security given under this rule that the judicial trustee shall give immediate notice to the court of the death or insolvency of any of his sureties.

(7) Any recognizance, bond, or other form of security given for the purpose of this rule may be vacated in such manner and subject to such conditions as the court may direct.

(8) Where security is not dispensed with, the appointment of a person to be judicial trustee shall not take effect until he has given the security required by the court under this rule.

(9) Any premium payable by a judicial trustee to any guarantee company on account of his security may, if the court so directs, be paid out of the trust property.

**Trust
account at
bank and
custody of
document.**

10.—(1) When a judicial trustee is appointed, a separate account for receipts and payments on behalf of the trust must be kept in the name of the trustees at some bank approved by the court.

(2) All title deeds and all certificates and other documents which are evidence of the title of the trustee to any of the trust property shall be deposited either with that bank or in such other custody as the court directs.

(3) The deeds or documents must be deposited in the names of the trustees, and the judicial trustee must give notice to the body or person with whom the deeds or documents are so deposited not to deliver any of them over to any person except on a request signed by the judicial trustee and countersigned by the officer of the court, and also to allow any person authorised

by the officer of the court in writing to inspect them during business hours.

Rule 10.

(4) The judicial trustee must deposit with the court a list of all deeds or documents deposited in any custody in pursuance of this rule, and must give information to the court from time to time of any variation to be made in the list.

(5) The judicial trustee must, if at any time directed by the court, give an order to the bank at which the trust account is kept, not to pay at any one time any sum over a specified amount out of the trust account except on an order countersigned by the officer of the court.

(6) Any payments on account of the income of the trust property may be provided for by means of a standing order to the bank at which the trust account is kept.

(7) The court may give such directions to the judicial trustee as may, in the opinion of the court, be necessary or expedient for carrying this rule into effect, and for securing the safety of the trust property.

(8) Where an official of the court is judicial trustee, the court may direct that, instead of a separate account of the receipts and payments on behalf of the trust being kept at some bank approved by the court, all receipts on behalf of the trust may be dealt with, and all payments on behalf of the trust may be made, in such manner, and subject to such regulations as to the accounts to be kept of the receipts and payments and the procedure to be followed in dealing therewith, as the Treasury direct.

11. A judicial trustee must pay all money coming into his hands on account of his trust without delay to the trust account at the bank, and if he keeps any such money in his hands for a longer time than the court considers necessary, shall be liable to pay interest upon it at such rate not exceeding five per centum as the court may fix for the time during which the money remains in his hands. Judicial trustee not to keep money in his hands.

12.—(1) A judicial trustee may at any time request the court to give him directions as to the trust or its administration. Directions to judicial trustees.

(2) The request must be accompanied by a statement of the facts with regard to which directions are required, and by the fee required under these rules in respect of a communication from the court with regard to the administration of the trust.

(3) The court may require the trustee or any other person to attend at chambers if it appears that such an attendance is necessary or convenient for the purpose of obtaining any information or explanation required for properly giving directions, or for the purpose of explaining the nature of the directions.

13. The court, if satisfied that there is no reasonable doubt of any fact which affects the administration of a trust by a judicial trustee, may give directions to the judicial trustee to act without formal proof of the fact. Power to dispense with formal evidence.

ACCOUNTS AND AUDIT.

14.—(1) The court shall give directions to a judicial trustee as to the date to which the accounts of the trust are to be made up in each year, and shall fix in each year the time after that date within which the accounts are to be delivered to it for audit. Accounts and audit.

(2) The accounts shall in ordinary cases be audited by the

Rule 14.

officer of the court, but the court, if it considers that the accounts are likely to involve questions of difficulty, may refer them to a professional accountant for report, and order the payment to him of such amount in respect of his report as the court may fix.

Filing and
inspection
of accounts.

15.—(1) The accounts of any trust of which there is a judicial trustee, with a note of any corrections made upon the audit, shall be filed as the court directs.

(2) The judicial trustee shall send a copy of the accounts or, if the court thinks fit, of a summary of the accounts, of the trust to such beneficiaries or other persons as the court thinks proper.

(3) The court may, if it thinks fit, having regard to the nature of the relation of the applicant to the trust, allow any person applying to inspect the filed accounts so to inspect them on giving reasonable notice to the officer of the court.

Deductions
allowed.

16. A judicial trustee shall, unless the court otherwise directs, be allowed on the audit of his accounts deductions made on account of his remuneration and allowances under these rules and also on account of the fees paid by him under these rules, but shall not be allowed any deduction on account of the expenses of professional assistance, or his own work or personal outlay, unless the deduction has been authorised by the court in pursuance of the Act or the court is satisfied that the deduction is justified by the strict necessity of the case.

REMUNERATION AND ALLOWANCES.

Remunera-
tion of
judicial
trustee.

17.—(1) Where a judicial trustee is to be remunerated the remuneration to be paid to him shall be fixed by the court, and may be altered by the court from time to time.

(2) In fixing the remuneration, regard shall be had to the duties entailed upon the judicial trustee by the trust.

(3) The court may make, if it thinks fit, special allowances to judicial trustees for the following matters, to be paid out of the trust property—

(a) for the statement of trust property prepared by a judicial trustee on his appointment, an allowance not exceeding ten guineas;

(b) for realising and reinvesting trust property, where the property is realised for the purpose of reinvestment, an allowance not exceeding one and half per centum on the amount realised and reinvested;

(c) for realising or investing trust property in any other case, an allowance not exceeding one per centum on the amount realised or invested.

(4) The court may also in any year make a special allowance to a judicial trustee, if satisfied that in that year more trouble has been thrown upon the trustee by reason of exceptional circumstances than would ordinarily be involved in the administration of the trust.

(5) Where a trustee is remunerated, any allowance under this rule may be paid in addition to his remuneration.

(6) Any remuneration or allowance payable to a judicial trustee shall be paid or allowed to him at such times and in such manner as the court directs.

Application
of remunera-

18. Where an official of the court is appointed to be a judicial trustee, any remuneration, allowances, or other payments payable

to him on account of his services as trustee shall be paid, accounted for, and applied in such manner as the Treasury direct.

Rule 18.

19.—(1) If the court is satisfied that a judicial trustee has failed to comply with the Act, or with these rules, or with any direction of the court or officer of the court made in accordance with the Act or these rules, or has otherwise misconducted himself in relation to the trust, the court may order that the whole or any part of the remuneration of the trustee be forfeited.

tion of
official of
the court.
Forfeiture of
remunera-
tion.

(2) This rule shall not affect any liability of the judicial trustee for breach of trust or to be removed or suspended.

(3) A judicial trustee shall have an opportunity of being heard by the court, before any order is made for the forfeiture of his remuneration or any part of it.

REMOVAL AND SUSPENSION OF JUDICIAL TRUSTEE.

20.—(1) The court may at any time, either without any application or on the application of any person appearing to the court to be interested in the trust, suspend a judicial trustee, if the court considers that it is expedient to do so in the interests of the trust, and a judicial trustee while suspended shall not have power to act as trustee.

Suspension
of judicial
trustee.

(2) When a judicial trustee is suspended the court shall cause notice to be given to such of the persons appearing to the court to be interested in the trust as the court directs, and also to the persons having the custody of the trust property, and shall give any other directions which appear necessary for securing the safety of the trust property.

21.—(1) The court may, either without any application or on the application of any person appearing to the court to be interested in the trust, remove a judicial trustee if the court considers that it is expedient to do so in the interests of the trust.

Removal of
judicial
trustee.

(2) Any application to remove a judicial trustee must be made by summons.

(3) A judicial trustee shall not be removed by the court without an application for the purpose, except after notice has been given to him by the court of the grounds on which it is proposed to remove him, and of the time and place at which the matter will be heard.

(4) The court shall cause a copy of the notice to the trustee to be sent to such of the persons appearing to the court to be interested in the trust as the court directs, and the same procedure shall be followed in the matter as far as possible as on a summons to remove a judicial trustee.

22. Where an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee is ordered, the inquiry shall, unless the court otherwise directs, be conducted by the officer of the court, and he shall have the same powers in relation thereto as he has in relation to any other inquiry directed by the court.

Inquiry into
conduct of
judicial
trustee.

RESIGNATION AND DISCONTINUANCE OF JUDICIAL TRUSTEE.

23.—(1) If a judicial trustee desires to be discharged from his trust he must give notice to the court, stating at the same time what arrangements it is proposed to make with regard to the appointment of a successor.

Resignation
of judicial
trustee.

Rule 23.

(2) The court shall give facilities for the appointment on a proper application of an official of the court to be judicial trustee in place of a judicial trustee who desires to be discharged, in cases where no fit and proper person appears available for the office, or where the court considers that such an appointment is convenient or expedient in the interests of the trust.

Discontinu-
ance of
judicial
trustee.

24.—(1) Where there is a judicial trustee of a trust, the court may at any time, on the application made by summons of any person appearing to the court to be interested in the trust, order that there shall cease to be a judicial trustee of the trust, whether the person who is judicial trustee continues as trustee or not.

(2) If the court is satisfied that all the persons appearing to the court to be interested in the trust concur in an application under this rule, the court shall accede to the application, and in any case shall ascertain as far as may be the wishes of those appearing to the court to be interested in the trust with regard to the application.

(3) Where an order is made under this rule, the court shall make all such orders as may be necessary for carrying it into effect, and where in pursuance of any such order a new trustee is appointed in the place of an official of the court, shall make all such vesting or other orders and exercise all such other powers as may be necessary for vesting the trust property in the new trustee either as sole trustee or jointly with other trustees as the case requires.

SPECIAL TRUSTS.

Executors
and adminis-
trators.

25.—(1) Any person who is an executor or administrator may be appointed a judicial trustee for the purpose of the collection and distribution of the estate of a deceased person in the same manner and subject to the same provisions as in the case of an ordinary trust.

(2) Where an administrator has given an administration bond, he need not give security as a judicial trustee under these rules unless the court directs that he is to do so.

Special
trusts.

26.—(1) An official of the court shall not be appointed or act as judicial trustee for any persons in their capacity as members or debenture holders of, or being in any other relation to, any incorporated or unincorporated company, or any club.

(2) Where the circumstances of any trust of which an official of the court is a judicial trustee, or of which it is proposed to appoint an official of the court to be a judicial trustee, involve the carrying on of any trade or business, special intimation of the fact shall be given to the court either by the judicial trustee or by the person making the application for the appointment of the judicial trustee, as the case may be, and the court shall specially consider the facts of the case with a view to determining whether the official of the court should continue or be appointed as judicial trustee, and whether any special conditions should be made or directions given with a view to ensuring the proper supervision of the trade or business.

EXERCISE OF THE POWERS OF THE COURT.

Exercise of
powers of
court.

27. For the purpose of the Act or these rules the officer of the court may exercise any power which may be exercised by the court (including the power of making an order for the

appointment of a judicial trustee or making any vesting order), and may perform any duty to be performed by the court, and may hear and investigate any matter which may be heard or investigated by the court, subject in any case to the right of any party to bring any particular point before the judge.

Rule 27.
—

28.—(1) It shall not be necessary to take out a summons for any purpose under the Act or these rules, except in cases where a summons is required by these rules, or where the court directs a summons to be taken out.

Communication between judicial trustee and court.

(2) Where a judicial trustee desires to make any application or request to the court, or to communicate with the court as to the administration of his trust, he may do so by letter addressed to the officer of the court without any further formality.

(3) The court may give any direction to a judicial trustee with regard to the administration of his trust by letter signed by the officer of the court, and addressed to the trustee without drawing up any order or formal document.

(4) For the purpose of the attendance at chambers of the judicial trustee or any other person connected with the trust for purposes relating to the administration of the trust, the officer of the court may make such appointments as he thinks fit by letter without the service of formal notices.

(5) Any document may be supplied for the use of the court by leaving it with, or sending it by post to, the officer of the court.

[Rule 29 refers to High Court district registries, Rule 30 to palatine courts.]

COUNTY COURTS.

31.—(1) For the purpose of the Act and these rules the jurisdiction of the county court judge shall extend to any trust in which the trust property does not exceed in value five hundred pounds, as if that jurisdiction had been given under section sixty-seven of the County Courts Act, 1888, but that jurisdiction shall be exercised only in a metropolitan county court, or in a county court for the time being having bankruptcy jurisdiction.

County court jurisdiction (51 & 52 Vict. c. 43 ; 46 & 47 Vict. c. 52).

(2) Where the district of any county court (other than a metropolitan county court) or any part of such a district, is attached for the purpose of bankruptcy jurisdiction to some court other than the county court of the district, that district or part shall be attached to the same court for the purpose of jurisdiction under the Act and these rules.

(3) Where proceedings under the Act or these rules are taken in the county court, the official of the court to be appointed judicial trustee, where an official of the court is to be so appointed, shall not be the official solicitor, unless the court for special reasons otherwise directs.

(4) In the application of these rules to the county court a petition shall be substituted for a summons, whether an ordinary or an originating summons.

(5) For the purposes of this rule the expression "metropolitan county court" means any of the county courts mentioned in the third schedule of the Bankruptcy Act, 1883 [now Bankruptcy Act, 1914, Sched. III.].

FEES.

32.—(1) The fees mentioned in the schedule to these rules shall be paid in respect of the matters therein mentioned.

Fees.

Rule 32.

(2) The fees paid by a judicial trustee may be deducted out of the income of the trust property unless the court otherwise directs.

(3) Any fees payable under these rules may be remitted by post, and may be so remitted in any manner except by means of postage stamps or coin.

(4) All fees payable under these rules in the High Court, palatine court, or county court shall, except as provided by these rules, be subject to similar provisions as to payment, account, and application as other fees payable in those courts respectively.

OFFICER OF THE COURT.

Meaning of
"officer of
the court."

33.—In these rules the expression "officer of the court" means—

(a) as regards proceedings in the High Court other than proceedings in a district registry the chancery master, that is to say, the master attached to the chambers of the judge of the Chancery Division to whom the matter is assigned; and

(b) as regards proceedings in a district registry, any registrar of that registry; and

(c) as regards proceedings in a palatine court, any registrar of that court;

(d) as regards proceedings in the county court, the registrar of the county court.

SUPPLEMENTAL.

Rules to be
construed as
part of the
general rules
of court.

34. These rules shall be construed, as far as they relate to the High Court, as one with the Rules of the Supreme Court, 1883, and any rules amending those rules, so far as they relate to a palatine court, as one with the rules of that court, and so far as they relate to the county court, as one with the County Court Rules, 1889, and any rules amending those rules.

Application
of Interpre-
tation Act,
52 & 53 Vict.
c. 63.

35. The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these rules as it applies for the purpose of the interpretation of an Act of Parliament.

August 31, 1897. (Signed) HALSBURY, C.

JUDICIAL TRUSTEES ACT, 1896.

Dated April 27th, 1899.

The following rule under the Judicial Trustees Act, 1896, is hereby published pursuant to the Rules Publication Act, and declared to be urgent.

Where an official of the court is judicial trustee it shall be lawful for the Bank of England and Bank of Ireland, and for any other corporation, company, or public body (all of which other bodies are hereinafter included in the term "company"), to open and keep accounts of stocks, shares, annuities, and securities (all of which are hereinafter included in the term "stock") in the name of such official under his official title without naming him, and the dividends on such stock may from time to time be received, and such stock, or any part thereof, may from time to time be transferred by the person for the time being holding such office without any order or direction of the court as if the same stood in his own name. And without any order or direction of the court such official may, by letter of attorney, authorize

the Bank of England or the Bank of Ireland, or all or any of their proper officers, to sell and transfer all or any part of the stock from time to time standing in the books of the said banks on such account, and to receive the dividends due and to become due thereon. And where, according to the practice of any company (other than the said banks), such stock is accustomed to be sold and transferred, or the dividends to be received by letter of attorney, such official may authorize such company, or the proper officer or officers thereof, or any other person to sell and transfer all or any part of the stock from time to time standing in the books of such company on such account, and to receive the dividends due and to become due thereon. And notwithstanding section 20 of 29 & 30 Vict. c. 39, no request of the Treasury shall be necessary to authorize any such account of Government stocks and annuities to be opened, and no order in writing of the Treasury shall be necessary for the sale or transfer of any such Government stocks or annuities.

This rule shall be read with the Judicial Trustees Rules, 1897.

JUDICIAL TRUSTEE RULE (APRIL), 1900.

Notwithstanding anything in these rules contained, where an official of the court is sole judicial trustee, the trust funds and the title deeds certificates and other documents which are evidence of the title of the trustee to any of the trust property, and all receipts on behalf of the trust, shall be dealt with, and all payments on behalf of the trust shall be made, and accounts shall be kept, in such manner and subject to such regulations as the Treasury may direct.

This rule shall be construed as one with the Judicial Trustee Rules, 1897.

Dated the 21st May, 1900.

SCHEDULE.

FEES.

The following fees shall be payable under these rules—		£	s.	d.
1. In respect of any thing or matter for which a fee is provided under the orders in force for the time being with regard to Supreme Court, palatine court, or county court fees, as the case may be	The fee so provided.			
In respect of any communication from the court with regard to the administration of the trust		0	2	6
For filing the statement of the trust property		0	10	0
For filing any alteration in the statement		0	5	0
For filing the accounts of the trust		0	5	0
For filing any other document relating to the trust		0	2	6
For auditing the accounts of the trust when audited by the officer of the court, for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the gross amount received as income of the trust without deducting any payments.		0	2	6
On the audit of the accounts of the trust where they are referred to a professional accountant for report	A fee equal to the amount paid to the accountant.			
On the inspection of filed accounts for each hour or part of an hour occupied		0	2	0
If not exceeding one day		0	10	6

LAND CHARGES ACT, 1925.

[15 GEO. 5, c. 22.]

Jurisdiction.—This Act consolidates the enactments relating to the registration of pending actions, annuities, writs, orders, deeds of arrangement and land charges. Jurisdiction is given to the court in the following cases :—

(i) *Pending Actions affecting Land.*—The court may upon the determination of the proceedings, or during the pendency thereof if satisfied that the proceedings are not prosecuted in good faith, make an order vacating the registration of the pending action, and direct the party on whose behalf the registration was made to pay all or any of the costs and expenses occasioned by the registration and vacating thereof (sect. 2 (6)).

(ii) *Writs and Orders affecting Land.*—The registration of a writ or order affecting land may be vacated pursuant to an order of the court or a judge thereof (sect. 6 (5)).

(iii) *Deed of Arrangement affecting Land.*—The registration of a deed of arrangement affecting land may be vacated pursuant to an order of the court or a judge thereof (sect. 8 (3)).

(iv) *Land Charges.*—The registration of a land charge (which includes a local land charge (sect. 20 (7)) may be vacated pursuant to an order of the court or a judge thereof (sect. 10 (8)).

“Court” in the Act means the High Court of Justice, also the Court of Chancery of the County Palatine of Lancaster or Durham or the county court where those courts respectively have jurisdiction (sect. 20 (2)).

LAND REGISTRATION ACT 1925.

[15 GEO. 5, c. 21.]

This Act, passed to consolidate the Land Transfer Acts and the statute law relating to registered land, came into force on Jan. 1st, 1926.

Sect 138 (1) provides that “the court” means, for the purposes of the Act, the High Court and also the Palatine Courts of Lancaster and Durham or the county court where those courts respectively have jurisdiction, according as the one or other of such courts may be prescribed by the general rules made for carrying the Act into force. These rules dated Nov. 3rd, 1925, and known as the Land Registration Rules, 1925, have been issued and extend to ninety-eight pages.

When the county court is given jurisdiction under the Act, it has, for all the purposes of such jurisdiction, all the powers of the High Court (sect. 138 (3)).

Any person aggrieved by any order of a judge of a county court may, within the prescribed time and in the prescribed manner appeal to the High Court (sect 143 (1)). The appeal is to a divisional court of the Chancery Division (R.S.C. Order 54D, r. 7). For practice on appeal, see R.S.C. Order 54D, rr. 8-12.

LANDLORD AND TENANT ACT, 1927.

[17 & 18 GEO. 5, c. 36.]

Jurisdiction.]—This Act provides (Part I.) for the payment of compensation for improvements and goodwill to tenants of premises used for business purposes, or the grant of a new lease in lieu thereof. Also, by Part II., some general amendments are made in the law of landlord and tenant.

The tribunal for the purposes of Part I. of the Act is the county court within the district of which the premises or any part thereof are situated, unless all parties agree that the claim shall be heard in the High Court or the matter is transferred to the High Court under sect. 126 of the County Courts Act, 1888 (Sect. 21 (1)).

If the proceedings remain in the county court then, unless the parties otherwise agree or the judge considers that the matter is more fit to be decided by the court, the proceedings stand referred for enquiry and report to one of the panel of referees appointed under the Act as if the matter had been referred to him by consent under sect. 6 of the County Courts Act, 1919 (sect. 21 (2), Ord. LB, r. 11).

Procedure.]—Procedure in the county court is regulated by Ord. LB, *post*, p. 2108. For forms, see *post*, p. 2113.

Court Fees.]—See *post*, p. 2121.

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PART I.

COMPENSATION FOR IMPROVEMENTS AND GOODWILL ON THE
TERMINATION OF TENANCIES OF BUSINESS PREMISES.

Tenant's
right to
compensation
for improve-
ments.

1.—(1) Subject to the provisions of this Part of this Act, a tenant of a holding to which this Part of this Act applies shall, if a claim for the purpose is made in the prescribed manner—
(a) in the case of a tenancy terminated by notice, within one month after the notice was served on or by the tenant ;
and

(b) in any other case, not more than thirty-six nor less than twelve months before the termination of the tenancy ;
be entitled, at the termination of the tenancy, on quitting his holding, to be paid by his landlord compensation in respect of any improvement (including the erection of any building) on his holding made by him or his predecessors in title, not being a trade or other fixture which the tenant is by law entitled to remove, which at the termination of the tenancy adds to the letting value of the holding :

Provided that the sum to be paid as compensation for any improvement shall not exceed—

- (a) the net addition to the value of the holding as a whole which may be determined to be the direct result of the improvement ; or
- (b) the reasonable cost of carrying out the improvement at the termination of the tenancy, subject to a deduction of an amount equal to the cost (if any) of putting the works constituting the improvement into a reasonable state of repair, except so far as such cost is covered by the liability of the tenant under any covenant or agreement as to the repair of the premises.

(2) In determining the amount of such net addition as aforesaid, regard shall be had to the purposes for which it is intended that the premises shall be used after the termination of the tenancy, and if it is shown that it is intended to demolish or to make structural alterations in the premises or any part thereof or to use the premises for a different purpose, regard shall be had to the effect of such demolition, alteration or change of user on the additional value attributable to the improvement, and to the length of time likely to elapse between the termination of the tenancy and the demolition, alteration or change of user.

(3) In the absence of agreement between the parties, all ques-

Section 1.

tions as to the right to compensation under this section, or as to the amount thereof, shall be determined by the tribunal hereinafter mentioned, and if the tribunal determines that, on account of the intention to demolish or alter or to change the user of the premises, no compensation or a reduced amount of compensation shall be paid, the tribunal may authorise a further application for compensation to be made by the tenant if effect is not given to the intention within such time as may be fixed by the tribunal.

2.—(1) A tenant shall not be entitled to compensation under this Part of this Act—

Limitation on tenant's right to compensation in certain cases.

- (a) in respect of any improvement made before the commencement of this Act; or
- (b) in respect of any improvement made in pursuance of a statutory obligation, or of any improvement which the tenant or his predecessors in title were under an obligation to make in pursuance of a contract entered into, whether before or after the passing of this Act, for valuable consideration, including a building lease; or
- (c) in respect of any improvement made less than three years before the termination of the tenancy; or
- (d) if within two months after the making of the claim under section one, subsection (1), of this Act the landlord serves on the tenant notice that he is willing and able to grant to the tenant, or obtain the grant to him of, a renewal of the tenancy at such rent and for such term as, failing agreement, the tribunal may consider reasonable; and, where such a notice is so served and the tenant does not within one month from the service of the notice send to the landlord an acceptance in writing of the offer, the tenant shall be deemed to have declined the offer.

(2) Where an offer of the renewal of a tenancy by the landlord under this section is accepted by the tenant, the rent fixed by the tribunal shall be the rent which in the opinion of the tribunal a willing lessee other than the tenant would agree to give and a willing lessor would agree to accept for the premises, having regard to the terms of the lease, but irrespective of the value attributable to the improvement in respect of which compensation would have been payable.

(3) The tribunal in determining the compensation for an improvement shall in reduction of the tenant's claim take into consideration any benefits which the tenant or his predecessors in title may have received from the landlord or his predecessors in title in consideration expressly or impliedly of the improvement.

3.—(1) Where a tenant of a holding to which this Part of this Act applies proposes to make an improvement on his holding, he shall serve on his landlord notice of his intention to make such improvement, together with a specification and plan showing the proposed improvement and the part of the existing premises affected thereby, and if the landlord, within three months after the service of the notice, serves on the tenant notice of objection, the tenant may, in the prescribed manner, apply to the tribunal, and the tribunal may, after ascertaining that notice of such

Section 3. intention has been served upon any superior landlords interested and after giving such persons an opportunity of being heard, if satisfied that the improvement—

- (a) is of such a nature as to be calculated to add to the letting value of the holding at the termination of the tenancy ;
and
- (b) is reasonable and suitable to the character thereof ; and
- (c) will not diminish the value of any other property belonging to the same landlord, or to any superior landlord from whom the immediate landlord of the tenant directly or indirectly holds ;

and after making such modifications (if any) in the specification or plan as the tribunal thinks fit, or imposing such other conditions as the tribunal may think reasonable, certify in the prescribed manner that the improvement is a proper improvement :

Provided that, if the landlord proves that he has offered to execute the improvement himself in consideration of a reasonable increase of rent, or of such increase of rent as the tribunal may determine, the tribunal shall not give a certificate under this section unless it is subsequently shown to the satisfaction of the tribunal that the landlord has failed to carry out his undertaking.

(2) In considering whether the improvement is reasonable and suitable to the character of the holding, the tribunal shall have regard to any evidence brought before it by the landlord or any superior landlord (but not any other person) that the improvement is calculated to injure the amenity or convenience of the neighbourhood.

(3) The tenant shall, at the request of any superior landlord or at the request of the tribunal, supply such copies of the plans and specifications of the proposed improvement as may be required.

(4) Where no such notice of objection as aforesaid to a proposed improvement has been served within the time allowed by this section, or where the tribunal has certified an improvement to be a proper improvement, it shall be lawful for the tenant as against the immediate and any superior landlord to execute the improvement according to the plan and specification served on the landlord, or according to such plan and specification as modified by the tribunal or by agreement between the tenant and the landlord or landlords affected, anything in any lease of the premises to the contrary notwithstanding :

Provided that nothing in this subsection shall authorise a tenant to execute an improvement in contravention of any restriction created or imposed—

- (a) for naval, military or air force purposes ;
- (b) for civil aviation purposes under the powers of the Air Navigation Act, 1920 ;
- (c) for securing any rights of the public over the foreshore or bed of the sea.

(5) A tenant shall not be entitled to claim compensation under this Part of this Act in respect of any improvement unless he has, or his predecessors in title have, served notice of the proposal to make the improvement under this section, and (in case the landlord

Section 3.

has served notice of objection thereto) the improvement has been certified by the tribunal to be a proper improvement and the tenant has complied with the conditions, if any, imposed by the tribunal, nor unless the improvement is completed within such time after the service on the landlord of the notice of the proposed improvement as may be agreed between the tenant and the landlord or may be fixed by the tribunal, and where proceedings have been taken before the tribunal, the tribunal may defer making any order as to costs until the expiration of the time so fixed for the completion of the improvement.

(6) Where a tenant has executed an improvement of which he has served notice in accordance with this section and with respect to which either no notice of objection has been served by the landlord or a certificate that it is a proper improvement has been obtained from the tribunal, the tenant may require the landlord to furnish to him a certificate that the improvement has been duly executed; and if the landlord refuses or fails within one month after the service of the requisition to do so, the tenant may apply to the tribunal who, if satisfied that the improvement has been duly executed, shall give a certificate to that effect.

Where the landlord furnishes such a certificate, the tenant shall be liable to pay any reasonable expenses incurred for the purpose by the landlord, and if any question arises as to the reasonableness of such expenses, it shall be determined by the tribunal.

4.—(1) The tenant of a holding to which this Part of this Act applies shall, if a claim for the purpose is made in the prescribed manner— Compensation for goodwill.

(i) in the case of a tenancy terminated by notice, within one month after the service of the notice on the tenant; and
 (ii) in any other case, not more than thirty-six nor less than twelve months before the termination of the tenancy;
 be entitled, at the termination of the tenancy on quitting the holding, to be paid by his landlord compensation for goodwill if he proves to the satisfaction of the tribunal that by reason of the carrying on by him or his predecessors in title at the premises of a trade or business for a period of not less than five years goodwill has become attached to the premises by reason whereof the premises could be let at a higher rent than they would have realised had no such goodwill attached thereto:

Provided that—

- (a) the sum to be awarded as compensation for such goodwill shall not exceed such addition to the value of the holding at the termination of the tenancy as may be determined to be the direct result of the carrying on of the trade or business by the tenant or his predecessors in title, and in determining such addition the tribunal shall, if it is proved that the premises will be demolished wholly or partially, or used for a different and more profitable purpose, have regard to the effect of such demolition or change of user on the value of the goodwill to the landlord;
- (b) the tenant shall not be entitled to compensation in respect of such goodwill if within two months after the making

Section 4.

of the claim the landlord serves on the tenant notice that he is willing and able to grant to the tenant, or obtain the grant to him of a renewal of, the tenancy of the premises at which the trade or business is carried on at such rent and for such term not exceeding fourteen years as, failing agreement, the tribunal may consider reasonable; and if the tenant does not within one month from the service of the notice send to the landlord an acceptance in writing of the offer the tenant shall be deemed to have declined the offer;

- (c) in the case of licensed premises the sum payable as compensation for goodwill under this section shall not include any addition to the value of the premises attributable to the fact that the premises are licensed premises;
- (d) the tribunal shall, in determining the amount of compensation for goodwill—

- (i) have regard to the intentions of the tenant as to carrying on the trade or business elsewhere, and may make it a condition of its award that the tenant shall undertake not to carry on the trade or business within such distance of the premises as may be specified in the award; and

- (ii) disregard any value which is attributable exclusively to the situation of the premises;

- (e) where the landlord proves that the value of the goodwill has been created or increased owing to restrictions imposed by the landlord, whether by agreement with the tenant or not, upon the letting for a competitive trade or business of other premises in the neighbourhood owned by or under the control of the landlord, the tribunal shall have regard thereto and may refuse the application for compensation or may award a reduced amount of compensation;
- (f) compensation under this section shall not be payable if the tenant has determined the tenancy or failed to exercise an option for a further term contained in the lease or in a collateral agreement, unless, in the case of an option, the terms of the option are such that the tenant could not reasonably be expected to exercise it;
- (g) where any government department, or a local or public authority, or a charity, or a statutory or public utility company have, in pursuance of the powers contained in the lease, terminated the lease by resuming possession of the premises for the purpose of the department or any other government department, or of the authority, or of the charity, or of the undertaking of the company, or where premises the tenancy whereof has expired by effluxion of time are required for any such purpose no compensation shall be payable under this section.

(2) For the purposes of this section, premises shall be deemed to be used for a more profitable purpose if, but not unless, the rent which the landlord could obtain for the premises if used for that purpose would be greater than the rent which could be obtained if

they were used for the purpose of the trade or business carried on by the tenant.

Section 4.

(3) Where an offer of the renewal of a tenancy by the landlord under this section is accepted by the tenant, the rent fixed by the tribunal shall be the rent which in the opinion of the tribunal a willing lessee other than the tenant would agree to give and a willing lessor would agree to accept for the premises having regard to the terms of the lease, but irrespective of the value of any goodwill which may have become attached to the premises by reason of the tenant or his predecessors in title having carried on thereat a particular trade or business.

(4) In the absence of agreement between the parties, all questions as to the right to compensation under this section, and as to the amount thereof, shall be determined by the tribunal.

5.—(1) Where the tenant alleges that, though he would be entitled to compensation under the last foregoing section, the sum which could be awarded to him under that section would not compensate him for the loss of goodwill he will suffer if he removes to and carries on his trade or business in other premises, he may in lieu of claiming such compensation, at any time within the period allowed for making a claim under the said section, serve on the landlord notice requiring a new lease of the premises at which the trade or business is carried on to be granted to him.

Right to new lease in certain cases.

(2) Where such a notice is so served, the tribunal, on application being made for the purpose either by the landlord or by the tenant not less than nine months before the termination of the tenancy, or, where the tenancy is terminated by notice, within two months after the service of the notice, may, if it considers that the grant of a new tenancy is in all the circumstances reasonable, order the grant of a new tenancy for such period (being a term of years absolute) not exceeding fourteen years and on such terms as the tribunal may determine to be proper, but if the tribunal is precluded on any of the grounds mentioned in paragraph (b) of the following subsection from making such an order the tribunal may award such compensation as is provided under the last foregoing section :

Provided that the rent fixed by the tribunal as the rent payable under the new tenancy shall be such rent as the tribunal may determine to be the rent which a willing lessee other than the tenant would agree to give and a willing lessor would agree to accept for the premises, having regard to the terms of the tenancy but irrespective of any goodwill which may have become attached to the premises by reason of the tenant or his predecessors in title having carried on thereat a particular trade or business.

(3) Where the tenant is the applicant, the grant of a new lease under this section shall not be deemed to be reasonable—

- (a) unless the tenant proves that he is a suitable tenant and that he would be entitled to compensation under the last foregoing section, but that the sum which could be awarded to him under that section would not compensate him for the loss he would suffer if he removed to and carried on his trade or business in other premises ; or

Section 5.

(b) if the landlord proves—

(i) that the premises are required for occupation by himself, or, where the landlord is an individual, for occupation by a son or daughter of his over eighteen years of age; or

(ii) that he intends to pull down or remodel the premises; or

(iii) that vacant possession of the premises is required in order to carry out a scheme of re-development; or

(iv) that for any other reason the grant of such a lease of the premises would not be consistent with good estate management, and for this purpose regard shall be had to the development of any other property of the same landlord :

Provided that, if the grant of a new lease is refused by the tribunal on any such ground as is mentioned in paragraph (b), the tribunal may make it a condition of refusal that if the landlord fails to carry out his intention within such period as may be allowed by the tribunal, the landlord shall pay to the tenant such compensation as the tribunal may fix not exceeding the amount of the loss which the tenant has suffered by reason of having been deprived of his right to the grant of a new lease under this section.

(4) Where the landlord proves to the satisfaction of the tribunal that the premises, though not required immediately on any such ground as aforesaid, will be so required after the lapse of a certain period, the term for which the lease is granted shall not extend beyond the expiration of that period, unless the lease is made subject to a condition that the landlord may at any time after the expiration of that period, on giving not less than six months' notice in writing, resume possession of the premises if he requires them for any such purpose as aforesaid.

(5) Every lease granted under this section shall, if the landlord so requires, be subject to a condition that if at any time after the expiration of seven years from the commencement of the term thereof the premises are required for the purpose of carrying out a scheme of re-development, the landlord, on satisfying the tribunal that the premises are so required, and on giving not less than twelve months' notice in writing to the tenant, may determine the lease and resume possession of the premises upon payment of such compensation as the tribunal may determine to be the value of the unexpired residue of the term of the lease.

(6) Where the landlord is a Government department or a local or public authority or a statutory or public utility company and it is proved to the satisfaction of the tribunal that the premises, though not required immediately for the purposes of the department or of any other Government department or of the authority or of the undertaking of the company, may be so required at some future time, the tribunal shall not order the grant of a lease unless the lease is made subject to a condition that the landlord may at any time on giving not less than six months' notice in writing resume possession of the premises if he requires them for any such purpose.

Section 5.

(7) The tribunal shall not order the grant of a new lease under this section if the landlord offers as an alternative thereto to sell to the tenant the landlord's interest in the premises for such consideration as, failing agreement, the tribunal may determine, and the duration of the landlord's interest is in the opinion of the tribunal adequate; and the consideration may as to the whole or any part thereof, if the tribunal so determines, be in the form of a terminable rent charge for such amount and of such duration not exceeding the duration of the landlord's interest as the tribunal may fix.

(8) No claim for a new lease under this section shall arise in respect of goodwill attaching to the premises and attributable to the trade or business carried on thereat during the term of a new lease granted in pursuance of this section, or of a renewal of a lease granted in lieu of compensation under the last foregoing section; without prejudice however to the right to make a claim for compensation under the last foregoing section in respect of goodwill created during the term of such new lease or renewal.

(9) Where the immediate landlord is a mesne landlord, the expression "landlord" in this section shall include any superior landlord who may be affected by the order of the tribunal:

Provided that the tenant shall not be under the obligation to serve a notice under this section on any landlord except his immediate landlord, but his immediate landlord, if a mesne landlord, shall forthwith serve a copy of the notice on his immediate landlord, who shall in his turn forthwith serve a copy thereof on his immediate landlord if he may be affected by the provisions of this section, and so on; and if any such landlord fails so to serve a copy of the notice on his immediate landlord he shall be liable to pay to the tenant compensation for any loss the tenant may suffer in consequence of such failure, the amount of such compensation to be determined by the tribunal.

(10) Where an order for a new lease is made under this section, the landlord shall be bound to grant, and the tenant shall be bound to accept, a lease in accordance with the order:

Provided that, before making an order, binding any superior landlord, the tribunal shall satisfy itself that notice of the application to the tribunal for a new lease has been served on him and that he has had an opportunity of appearing before the tribunal.

(11) Where the term for which, in the opinion of the tribunal, a new lease should be ordered to be granted would extend beyond the termination of the lease held by the immediate landlord, the power of the tribunal under this section to order the grant of a new lease shall include power to order the grant of such lease and reversionary leases that the combined effect thereof will be equivalent to the grant of a new lease for such term as aforesaid:

Provided that every such lease and reversionary lease shall be so framed as to confer on the landlord granting the lease the same rights of distress as he would have enjoyed had he retained a reversion expectant on the termination thereof.

A reversionary lease granted in pursuance of such an order shall

Section 5.

be deemed to be a lease authorised by section ninety-nine of the Law of Property Act, 1925.

15 Geo. 5,
c. 20.

(12) A new lease under this section shall, if the landlord so requires, contain a covenant prohibiting the carrying on of any trade or business and the doing of any act prohibited by the original lease, unless the landlord has by licence or otherwise consented to a variation of the original terms of the lease in this respect.

(13) Where it appears to the tribunal that proceedings under this section cannot be completed and a new lease in accordance with the order of the tribunal entered into before the termination of the tenancy of the tenant, and that the delay is not due to any default on the part of the tenant, the tribunal may make an interim order authorising the tenant to continue in possession of the premises for such time after the termination of his tenancy and on such terms as the tribunal may allow.

Right of
landlord to
offer alter-
native ac-
commoda-
tion.

6. The tenant shall not be entitled to compensation under section four of this Act or to a new lease under section five thereof if within one month after the tenant has made a claim under section four, subsection (1), or served a notice under section five, subsection (1), the landlord serves on the tenant notice that he is willing to grant to the tenant at such rent and for such term as the tribunal may consider reasonable a tenancy of other premises which, in the opinion of the tribunal, would reasonably preserve to the tenant the goodwill of his business.

Provision
when claim
is both for
improvement
and goodwill.

7. Where in respect of any holding a claim for compensation has been made both for improvements and for goodwill, and the landlord has offered in lieu of compensation for either such claim to grant to the tenant, or obtain the grant to him of, a renewal of the tenancy, the rent under such renewal shall, if both such claims are valid, be fixed irrespective of any increased value of the premises attributable whether to the improvements or to the goodwill.

Rights of
mesne land-
lords.

8.—(1) Where, in the case of any holding, there are several persons standing in the relation to each other of lessor and lessee, the following provisions shall apply :—

Any mesne landlord who has paid or is liable to pay compensation under this Part of this Act shall, at the end of his term, be entitled to compensation from his immediate landlord in like manner and on the same conditions as if he had himself made the improvement or created the goodwill in question, except that it shall be sufficient if the claim for compensation is made at least two months before the expiration of his term :

A mesne landlord shall not be entitled to make a claim under this section unless he has, within the time and in the manner prescribed, served on his immediate superior landlord copies of all documents relating to proposed improvements and claims which have been sent to him in pursuance of this Part of this Act :

Where such copies are so served, the said superior landlord shall

have, in addition to the mesne landlord, the powers conferred by or in pursuance of this Part of this Act in like manner as if he were the immediate landlord of the occupying tenant, and shall, in the manner and to the extent prescribed, be at liberty to appear before the tribunal and shall be bound by the proceedings :

Section 8.
—

Where more than one landlord is concerned and they do not agree as to whether an offer of the renewal of the tenancy in lieu of compensation for an improvement or for goodwill should be made, the matter shall be referred to the tribunal, and the decision of the tribunal as to whether or not any such offer is to be made shall be binding on all the landlords concerned.

(2) In this section, references to a landlord shall include references to his predecessors in title.

9. This Part of this Act shall apply notwithstanding any contract to the contrary, being a contract made at any time after the eighth day of February, nineteen hundred and twenty-seven :

Restriction on contract-
ing out.

Provided that, if on the hearing of a claim or application under this Part of this Act it appears to the tribunal that a contract made after such date as aforesaid, so far as it deprives any person of any right under this Part of this Act, was made for adequate consideration, the tribunal shall in determining the matter give effect thereto.

10. The landlord of a holding to which this Part of this Act applies, or any person authorised by him, may at all reasonable times enter on the holding or any part of it, for the purpose of executing any improvement he has undertaken to execute and of making any inspection of the premises which may reasonably be required for the purposes of this Part of this Act.

Right of
entry.

11.—(1) Out of any money payable to a tenant by way of compensation under this Part of this Act, the landlord shall be entitled to deduct any sum due to him from the tenant under or in respect of the tenancy.

Right to
make
deductions.

(2) Out of any money due to the landlord from the tenant under or in respect of the tenancy, the tenant shall be entitled to deduct any sum payable to him by the landlord by way of compensation under this Part of this Act.

12. Section twenty of the Agricultural Holdings Act, 1923 (which relates to charges in respect of money paid for compensation), as set out and modified in the First Schedule to this Act, shall apply to the case of money paid for compensation under this Part of this Act, including any proper costs, charges, or expenses incurred by a landlord in opposing any proposal by a tenant to execute an improvement, or in contesting a claim for compensation, and to money expended by a landlord in executing an improvement the notice of a proposal to execute which has been served on him by a tenant under this Part of this Act.

Application
of 13 & 14
Geo. 5, c. 9,
s. 20.

13.—(1) Capital money arising under the Settled Land Act, 1925 (either as originally enacted or as applied in relation to trusts for sale by section twenty-eight of the Law of Property Act, 1925),

Power to
apply and
raise capital
money.

Section 13. or under the University and College Estates Act, 1925, may be applied—

15 Geo. 5,
c. 18; 15
Geo. 5, c. 24.

(a) in payment as for an improvement authorised by the Act of any money expended and costs incurred by a landlord under or in pursuance of this Part of this Act in or about the execution of any improvement;

(b) in payment of any sum due to a tenant under this Part of this Act in respect of compensation for an improvement or goodwill, and any costs, charges, and expenses incidental thereto;

(c) in payment of the costs, charges, and expenses of opposing any proposal by a tenant to execute an improvement.

(2) The satisfaction of a claim for such compensation as aforesaid shall be included amongst the purposes for which a tenant for life, statutory owner, trustee for sale, or personal representative may raise money under section seventy-one of the Settled Land Act, 1925.

(3) Where the landlord liable to pay compensation for an improvement or goodwill is a tenant for life or in a fiduciary position, he may require the sum payable as compensation and any costs, charges, and expenses incidental thereto, to be paid out of any capital money held on the same trusts as the settled land.

In this subsection "capital money" includes any personal estate held on the same trusts as the land, and "settled land" includes land held on trust for sale or vested in a personal representative.

Power to sell
or grant
leases not-
withstanding
restrictions.

14. Where the powers of a landlord to sell or grant leases are subject to any statutory or other restrictions, he shall, notwithstanding any such restrictions or any rule of law to the contrary, be entitled to offer to sell or grant any such reversion or lease as would under this Part of this Act relieve him from liability to pay compensation thereunder, and to convey and grant the same, and to execute any lease which he may be ordered to grant under this Part of this Act.

Provisions as
to rever-
sionary
leases.

15.—(1) Where the amount which a landlord is liable to pay as compensation for an improvement under this Part of this Act has been determined by agreement or by an award of the tribunal, and the landlord had before the passing of this Act granted or agreed to grant a reversionary lease commencing on or after the termination of the then existing tenancy, the rent payable under the reversionary lease shall, if the tribunal so directs, be increased by such amount as, failing agreement, may be determined by the tribunal having regard to the addition to the letting value of the holding attributable to the improvement:

Provided that no such increase shall be permissible unless the landlord has served or caused to be served on the reversionary lessee copies of all documents relating to the improvement when proposed which were sent to the landlord in pursuance of this Part of this Act.

(2) The reversionary lessee shall have the same right of objection to the proposed improvement and of appearing and being

Section 15.

heard at any proceedings before the tribunal relative to the proposed improvement as if he were a superior landlord, and if the amount of compensation for the improvement is determined by the tribunal, any question as to the increase of rent under the reversionary lease shall, where practicable, be settled in the course of the same proceedings.

(3) Where a landlord who would have been liable to pay compensation for goodwill under this Part of this Act had, before the thirty-first day of March, nineteen hundred and twenty-seven, granted or agreed to grant a reversionary lease commencing on or after the termination of the then existing tenancy, the landlord shall not be liable to pay compensation to the tenant for goodwill under this Part of this Act.

16. Where the landlord is liable to pay any taxes (otherwise than by deduction from rent) or rates (including water rate) in respect of any premises comprised in a holding, or has undertaken to pay the premiums on any fire insurance policy on any such premises, and in consequence of any improvement executed by the tenant on the premises under this Act the assessment of the premises or the rate of premium on the policy is increased, the tenant shall be liable to pay to the landlord sums equal to the amount by which—

Landlord's right to reimburse-ment of increased taxes, rates or insurance premiums.

(a) the taxes or rates payable by the landlord are increased by reason of the increase of such assessment ;

(b) the fire premium payable by the landlord is increased by reason of the increase in the rate of premium ;

and the sums so payable by the tenant shall be deemed to be in the nature of rent and shall be recoverable as such from the tenant, anything to the contrary in the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, contained notwithstanding.

17.—(1) The holdings to which this Part of this Act applies are any premises held under a lease, other than a mining lease, made whether before or after the commencement of this Act, and used wholly or partly for carrying on thereat any trade or business, and not being agricultural holdings within the meaning of the Agricultural Holdings Act, 1923.

Holdings to which Part I. applies.

(2) This Part of this Act shall not apply to any holding let to tenant as the holder of any office, appointment or employment, from the landlord, and continuing so long as the tenant holds such office, appointment or employment, but in the case of a tenancy created after the commencement of this Act, only if the contract is in writing and expresses the purpose for which the tenancy is created.

(3) For the purposes of this section, premises shall not be deemed to be premises used for carrying on thereat a trade or business—

(a) by reason of their being used for the purpose of carrying on thereat any profession ;

(b) by reason that the tenant thereof carries on the business of subletting the premises as residential flats, whether or not the provision of meals or any other service for the occupants of the flats is undertaken by the tenant :

Section 17. — Provided that, so far as this Part of this Act relates to improvements, premises regularly used for carrying on a profession shall be deemed to be premises used for carrying on a trade or business.

(4) In the case of premises used partly for purposes of a trade or business and partly for other purposes, this Part of this Act shall apply to improvements only if and so far as they are improvements in relation to the trade or business.

PART II.

GENERAL AMENDMENTS OF THE LAW OF LANDLORD AND TENANT.

Provisions
as to cove-
nants to
repair.

18.—(1) Damages for a breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease, whether such covenant or agreement is expressed or implied, and whether general or specific, shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to the breach of such covenant or agreement as aforesaid ; and in particular no damage shall be recovered for a breach of any such covenant or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the tenancy have been or be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement.

(2) A right of re-entry or forfeiture for a breach of any such covenant or agreement as aforesaid shall not be enforceable, by action or otherwise, unless the lessor proves that the fact that such a notice as is required by section one hundred and forty-six of the Law of Property Act, 1925, had been served on the lessee was known either—

(a) to the lessee ; or

(b) to an under-lessee holding under an under-lease which reserved a nominal reversion only to the lessee ; or

(c) to the person who last paid the rent due under the lease either on his own behalf or as agent for the lessee or under-lessee ;

and that a time reasonably sufficient to enable the repairs to be executed had elapsed since the time when the fact of the service of the notice came to the knowledge of any such person.

Where a notice has been sent by registered post addressed to a person at his last known place of abode in the United Kingdom, then, for the purposes of this subsection, that person shall be deemed, unless the contrary is proved, to have had knowledge of the fact that the notice had been served as from the time at which the letter would have been delivered in the ordinary course of post.

This subsection shall be construed as one with section one hundred and forty-six of the Law of Property Act, 1925.

(3) This section applies whether the lease was created before or after the commencement of this Act.

19.—(1) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, underletting, charging or parting with the possession of demised premises or any part thereof without licence or consent, such covenant condition or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject—

Section 19.

Provisions as to covenants not to assign, etc., without licence or consent.

- (a) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses in connection with such licence or consent ; and
- (b) (if the lease is for more than forty years and is made in consideration wholly or partially of the erection, or the substantial improvement, addition or alteration of buildings, and the lessor is not a Government department or local or public authority, or a statutory or public utility company) to a proviso to the effect that in the case of any assignment, under-letting, charging or parting with the possession (whether by the holders of the lease or any under-tenant whether immediate or not) effected more than seven years before the end of the term no consent or licence shall be required, if notice in writing of the transaction is given to the lessor within six months after the transaction is effected.

(2) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against the making of improvements without licence or consent, such covenant condition or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld ; but this proviso does not preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the landlord, and of any legal or other expenses properly incurred in connection with such licence or consent nor, in the case of an improvement which does not add to the letting value of the holding, does it preclude the right to require as a condition of such licence or consent, where such a requirement would be reasonable, an undertaking on the part of the tenant to reinstate the premises in the condition in which they were before the improvement was executed.

(3) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against the alteration of the user of the demised premises, without licence or consent, such covenant condition or agreement shall, if the alteration does not involve any structural alteration of the premises, be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that no fine or sum of money in the nature of a fine, whether by way of increase of rent or otherwise, shall be payable for or in respect of such licence or consent ;

Section 19. but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to him and of any legal or other expenses incurred in connection with such licence or consent.

Where a dispute as to the reasonableness of any such sum has been determined by a court of competent jurisdiction, the landlord shall be bound to grant the licence or consent on payment of the sum so determined to be reasonable.

(4) This section shall not apply to leases of agricultural holdings within the meaning of the Agricultural Holdings Act, 1923, and paragraph (b) of subsection (1), subsection (2) and subsection (3) of this section shall not apply to mining leases.

Apportion-
ment of rents.
17 & 18 Vict.
c. 97.

20.—(1) An order of apportionment of a rent reserved by a lease or any such other rent or payment as is mentioned in section ten of the Inclosure Act, 1854, may be made by the Minister of Agriculture and Fisheries under sections ten to fourteen of that Act, on the application of any person interested in the rent or payment, or any part thereof, or in the land in respect of which such rent or payment is payable, without the concurrence of any other person :

Provided that the Minister may in any such case, on the application of any person entitled to the rent or payment or any part thereof, require as a condition of making the order that any apportioned part of the rent or payment which does not exceed the yearly sum of two pounds shall be redeemed forthwith in accordance with section one hundred and ninety-one of the Law of Property Act, 1925.

(2) Where the reason for the application was due to any action taken by a person other than the applicant, the Minister shall notwithstanding anything in section fourteen of the Inclosure Act, 1854, have power to direct by whom and in what manner the expenses of the application or any part thereof are to be paid

PART III.

GENERAL.

Provisions as
to tribunal.

21.—(1) The tribunal for the purposes of Part I. of this Act shall be the county court within the district of which the premises or any part thereof are situated acting under and in accordance with this section :

Provided that—

(a) if before commencing proceedings in the county court the claimant or applicant and all persons affected agree that the claim or application should be heard by the High Court ; or

(b) if on an application being made to the High Court within the prescribed time the matter is transferred to the High Court in accordance with and subject to the provisions of section one hundred and twenty-six of the County Courts Act, 1888 ;

1 & 52 Vict.
.43.

the High Court shall, in respect of the matter, be the tribunal for the purposes of Part I. of this Act.

Section 21.

(2) Where proceedings are commenced in the county court in respect of any claim or application under Part I. of this Act and are not transferred to the High Court, the matter shall, unless the parties otherwise agree, or it is otherwise prescribed, stand referred for inquiry and report to such one of the panel of referees appointed by the Reference Committee hereinafter mentioned as may be selected by the county court, as if with the consent of the parties the matter had been so referred to him in pursuance of section six of the County Courts Act, 1919.

9 & 10
Geo. 5, c. 73.

(3) The power of selecting a referee from the panel shall, unless any of the parties object, be exerciseable by the registrar of the county court, and if there is such an objection by the judge.

(4) In any proceedings before the referee not more than one expert witness on either side shall be heard unless the referee or the judge of the county court otherwise directs.

(5) County court rules may be made for regulating proceedings under this section and for enabling any party to apply to the county court for directions as to the conduct of a reference under this section, and those rules may fix the remuneration of referees and may provide for applying, subject to the necessary adaptations and exceptions, to costs of proceedings in county courts under this section, the provisions of subsections (1), (2) and (3) of section five of the Acquisition of Land (Assessment of Compensation) Act, 1919, relating to costs of proceedings under that Act.

9 & 10
Geo. 5, c. 57.

(6) The Reference Committee for the purposes of this Act shall consist of the Lord Chief Justice of England, the Master of the Rolls, the President of the Law Society and the President of the Surveyors' Institution, and the Committee shall have power to appoint such persons as they think fit to be members of the panel of referees either generally or for particular localities, and to remove from the panel any person so appointed.

(7) Rules of the Supreme Court may be made regulating proceedings under this Act commenced in or transferred to the High Court, and those rules may provide that on the hearing of a summons for directions, the court or a judge thereof may, without any application for the purpose being made by any party, order the matter to be referred for inquiry and report to such one of the said panel of referees as may be selected by the court or a judge thereof, subject to such directions (if any) as the court or judge may think fit to give; and in any such case the referee so selected shall be deemed to be a special referee within the meaning of section eighty-eight of the Supreme Court of Judicature (Consolidation) Act, 1925.

15 & 16
Geo. 5, c. 49.

(8) Nothing in this Act shall prevent an agreement being made for referring to arbitration under the Arbitration Act, 1889, any matter which under this Act is to be determined by the tribunal.

52 & 53 Vict.
c. 49.

Such an agreement may be contained in the original lease or may be made in writing at any date subsequent to the date of the lease.

22. Where in any proceedings under this Act the tribunal has fixed or allowed any period for the doing of any act or thing, the tribunal may, on an application being made by any party to the extend time.

Section 22. proceeding, either before or after the expiration of the period so fixed or allowed, extend that period.

Service of notices.

23.—(1) Any notice, request, demand or other instrument under this Act shall be in writing and may be served on the person on whom it is to be served either personally, or by leaving it for him at his last known place of abode in England or Wales, or by sending it through the post in a registered letter addressed to him there, or in the case of a local or public authority or a statutory or a public utility company, to the secretary or other proper officer at the principal office of such authority or company, and in the case of a notice to a landlord, the person on whom it is to be served shall include any agent of the landlord duly authorised in that behalf.

(2) Unless or until a tenant of a holding shall have received notice that the person theretofore entitled to the rents and profits of the holding (hereinafter referred to as "the original landlord") has ceased to be so entitled, and also notice of the name and address of the person who has become entitled to such rents and profits, any claim, notice, request, demand, or other instrument which the tenant shall serve upon or deliver to the original landlord shall be deemed to have been served upon or delivered to the landlord of such holding.

Application to Crown, Duchy, ecclesiastical and charity lands.

24.—(1) This Act shall apply to land belonging to His Majesty in right of the Crown or the Duchy of Lancaster and to land belonging to the Duchy of Cornwall, and to land belonging to any Government department, and for that purpose the provisions of the Agricultural Holdings Act, 1923, relating to Crown and Duchy lands, as set out and adapted in Part I. of the Second Schedule to this Act, shall have effect.

(2) The provisions of the Agricultural Holdings Act, 1923, with respect to the application of that Act to ecclesiastical and charity lands, as set out and adapted in Part II. of the Second Schedule to this Act, shall apply for the purposes of this Act.

(3) Where the landlord is the incumbent of a benefice—

- (a) any documents required to be served on the landlord shall also be served on the Ecclesiastical Commissioners ;
- (b) the Ecclesiastical Commissioners shall be entitled to appear and be heard at any proceedings before the tribunal at which the landlord would be entitled to appear and be heard ;
- (c) the incumbent shall not be entitled to offer the grant of a renewal of a tenancy without the consent of the Ecclesiastical Commissioners ;
- (d) any order of the tribunal for the grant of a new tenancy by the incumbent shall be binding on the Ecclesiastical Commissioners ;
- (e) no consent other than that of the Ecclesiastical Commissioners shall be required to the renewal of a tenancy in pursuance of such an offer, or to the grant of a new tenancy in pursuance of such an order.

(4) Where any land is vested in the official trustee of charity lands in trust for any charity, the trustees of the charity and not

the official trustee shall be deemed to be the landlord for the purposes of this Act. Section 24.

25.—(1) For the purposes of this Act, unless the context otherwise requires— Interpretation.

The expression "tenant" means any person entitled in possession to the holding under any contract of tenancy, whether the interest of such tenant was acquired by original contract, assignment, operation of law or otherwise ;

The expression "landlord" means any person who under a lease is, as between himself and the tenant or other lessee, for the time being entitled to the rents and profits of the demised premises payable under the lease ;

The expression "predecessor in title" in relation to a tenant or landlord means any person through whom the tenant or landlord has derived title, whether by assignment, by will, by intestacy, or by operation of law ;

The expression "lease" means a lease, under-lease or other tenancy, assignment operating as a lease or under-lease, or an agreement for such lease, under-lease tenancy, or assignment ;

The expression "mining lease" means a lease for any mining purpose or purposes connected therewith, and "mining purposes" include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes ;

The expression "term of years absolute" has the same meaning as in the Law of Property Act, 1925 ;

The expression "statutory company" means any company constituted by or under an Act of Parliament to construct work or carry on any gas, water, electricity, tramway, hydraulic power, dock, canal or railway undertaking ; and the expression "public utility company" means any company within the meaning of the Companies (Consolidation) Act, 1908, or a society registered under the Industrial and Provident Societies Acts, 1893 to 1913, carrying on any such undertaking ; 8 Edw. 7, c. 69.

The expression "prescribed" means prescribed by County Court Rules, except that in relation to proceedings before the High Court, it means prescribed by rules of the Supreme Court.

(2) The designation of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation.

26.—(1) This Act may be cited as the Landlord and Tenant Act, 1927. Short title, commencement and extent.

(2) This Act shall come into operation on the twenty-fifth day of March, nineteen hundred and twenty-eight.

(3) This Act shall extend to England and Wales only.

SCHEDULES.

Section 12.

FIRST SCHEDULE.

PROVISIONS AS TO CHARGES.

(1) A landlord, on paying to the tenant the amount due to him under Part I. of this Act, in respect of compensation for an improvement or goodwill under that Part, or on expending after notice given in accordance with that part such amount as may be necessary to execute an improvement, shall be entitled to obtain from the Minister of Agriculture and Fisheries (hereinafter referred to as the Minister) an order in favour of himself and the persons deriving title under him charging the holding, or any part thereof, with repayment of the amount paid or expended, including any proper costs, charges or expenses incurred by a landlord in opposing any proposal by a tenant to execute an improvement or in contesting a claim for compensation, and of all costs properly incurred by him in obtaining the charge, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the Minister thinks fit.

(2) Where the landlord obtaining the charge is not an absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement or goodwill in respect whereof compensation is paid will, in the opinion of the Minister, have become exhausted.

(3) Where the estate or interest of a landlord is determinable or liable to forfeiture by reason of his creating or suffering any charge thereon, that estate or interest shall not be determined or forfeited by reason of his obtaining such a charge, anything in any deed, will or other instrument to the contrary thereof notwithstanding.

(4) The sum charged shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein and for interests in the reversion immediately expectant on the termination of the lease; but so that, in any case where the landlord's interest is an interest in a leasehold, the charge shall not extend beyond that leasehold interest.

(5) Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made under this Schedule, upon such terms and conditions as may be agreed upon between the company and the person entitled to the charge, and may assign any charge so acquired by them.

(6) Where a charge may be made under this Schedule for compensation due under an award, the tribunal making the award shall, at the request and cost of the person entitled to obtain the charge, certify the amount to be charged and the term for which the charge may properly be made, having regard to the time at which each improvement or the goodwill in respect of which compensation is awarded is to be deemed to be exhausted.

(7) A charge under this Schedule may be registered under section ten of the Land Charges Act, 1925, as a land charge of Class A.

15 Geo. 5,
c. 22.
Section 24.

SECOND SCHEDULE.

PART I.

APPLICATION TO CROWN AND DUCHY LAND.

1.—(a) With respect to any land belonging to His Majesty in right of the Crown, or to a Government department, for the purposes of this Act, the Commissioners of Crown Lands, or other the proper officer or body having charge of the land for the time being, or, in case there is no such officer or body, then such person as His Majesty may appoint in writing under the Royal Sign Manual, shall represent His Majesty, and shall be deemed to be the landlord.

(b) The power given to the Treasury by section fifteen of the Crown Lands

Act, 1927 (being a power to direct the cost of certain improvements to be 17 & 18 charged to the capital and repaid out of income), shall extend to any compensation under Part I. of this Act payable by the Commissioners of Crown Lands. Geo. 5, c. 23.

2.—(a) With respect to land belonging to His Majesty in right of the Duchy of Lancaster, for the purposes of this Act, the Chancellor of the Duchy shall represent His Majesty, and shall be deemed to be the landlord.

(b) The amount of any compensation under Part I. of this Act payable by the Chancellor of the Duchy shall be raised and paid as an expense incurred in improvement of land belonging to His Majesty in right of the Duchy within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven.

3.—(a) With respect to land belonging to the Duchy of Cornwall, for the purposes of this Act, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall appoints, shall represent the Duke of Cornwall or other the possessor aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder.

(b) Any compensation under Part I. of this Act payable by the Duke of Cornwall, or other the possessor aforesaid, shall be paid, and advances therefor made, in the manner and subject to the provisions of section eight of the Duchy of Cornwall Management Act, 1863, with respect to improvements of land mentioned in that section.

26 & 27 Vict.
c. 49.

PART II.

APPLICATION TO ECCLESIASTICAL AND CHARITY LAND.

1.—(a) Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord in respect of charging land shall not be exercised by the bishop in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners.

(b) Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord in respect of charging land shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the Ecclesiastical Commissioners.

(c) The Ecclesiastical Commissioners may, if they think fit, on behalf of an ecclesiastical corporation, out of any money in their hands, pay to the tenant the amount of compensation due to him under Part I. of this Act, and thereupon they may, instead of the corporation obtain from the minister a charge on the holding in respect thereof in favour of themselves, and every such charge shall where the landlord is the incumbent of a benefice be effectual notwithstanding any change of the incumbent.

2. The powers by this Act conferred on a landlord in respect of charging land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the approval in writing of the Charity Commissioners or the Board of Education, as the case may require.

ORDER LB.

THE LANDLORD AND TENANT ACT, 1927.

PART I.

General.

Interpreta-
tion.

1. In this Order "The Act" means the Landlord and Tenant Act, 1927.

Manner of
making
claim.

2.—(1) A claim under the Act for compensation in respect of any improvement or for goodwill or for a new lease in lieu of compensation for goodwill or by a mesne landlord under section 8 (1) of the Act shall be made in writing signed by the claimant, his solicitor or agent and shall state the name and address of the claimant and of the landlord against whom the claim is made and shall contain—

(a) a description of the holding in respect of which the claim arises and of the trade or business carried on upon the holding ;

(b) a concise statement of the nature of the claim ;

(c) if the claim arises in respect of an improvement, particulars of the improvement including the date whereon the improvement was completed and the cost thereof ; and

(d) if compensation is claimed, a statement of the amount claimed.

Time for
claiming
under s. 8 (1).

(2) Any claim by a mesne landlord under section 8 (1) of the Act shall be made and the document shall be served at least two months before the termination of his tenancy.

Service of
documents.

3. All claims, notices, requests, demands or other instruments under the Act or this Order shall be in writing signed by the person making or giving the same or his solicitor or, except in the case of legal proceedings, by his agent, and save as hereinafter mentioned shall be served in accordance with the provisions of section 23 of the Act :

Provided that service of any summons or process of the Court shall be in accordance with the practice of the County Court.

Mesne land-
lord to serve
copies on his
landlord.

4. Where any process notice or document relating to any proposed improvement or to any claim has been served on or sent to a mesne landlord, he shall forthwith serve on his immediate landlord a copy of the process notice or document, together with a notice in writing stating the date when the process notice or document was served on or sent to the mesne landlord.

PART II.

Rules as to proceedings for compensation or relief in lieu of compensation under Sections 1, 4, 5 and 8 of the Act.

Proceedings
commenced
by action.
Form 467.

5.—(1) Proceedings for the determination of a right to compensation or relief in lieu of compensation under sections 1, 4, 5 and 8 of the Act or any of such sections shall be by action commenced by plant and ordinary summons.

(2) The action shall be intituled " In the matter of the Landlord and Tenant Act, 1927."

(3) The person claiming compensation shall be the plaintiff and the person from whom the compensation is claimed shall be the defendant.

(4) No proceedings under sect. 1 or sect. 4 of the Act shall be commenced until the expiration of two months from the date whereon the plaintiff shall have served on the defendant his claim for compensation.

6. The præcipe filed for the purpose of the entry of the plaint shall be in accordance with the form in the Appendix. Præcipe,
Form 466.

7. The return day shall be fixed not less than six weeks after the filing by the plaintiff of his particulars of claim. Return day.

8. The plaintiff shall at the time of the entry of the plaint file particulars of his claim in accordance as far as possible with the form in the Appendix, and he shall when filing the particulars file as many copies thereof as there are defendants, and the particulars shall be annexed to and served with the summons. The plaintiff shall at the same time also file two copies of the particulars for the use of the Court. Particulars.
Form 468.

9.—(1) Within fourteen days after service on him of the summons every defendant may file a statement of his grounds of defence (if any) and also a statement (with particulars) of any counterclaim or set-off which he may have including any claim under section 11 of the Act. Defence and
Counter-
claim.

(2) Subject to any statement so filed the particulars of the plaintiff shall unless the Court otherwise orders be deemed to be admitted.

(3) The defendant shall at the same time serve on the plaintiff in accordance with the provisions of section 23 of the Act a copy of the statement (if any) and shall also file two copies for the use of the Court.

10. The plaintiff may within seven days from the service of the statement by the defendant serve on the defendant in accordance with the provisions of section 23 of the Act his defence (if any) to the counterclaim and shall also file three copies thereof for the use of the Court. Defence to
Counter-
claim.

11. Unless the parties shall, within seven days after the expiration of the time limited for service on the defendant of the plaintiff's defence to counterclaim (if any), file a memorandum that they agree to the matter being determined otherwise, the matter shall stand referred for inquiry and report to one of the panel of Referees appointed under the Act who shall be selected by the Registrar, or if any party objects in writing to his so doing within the time aforesaid, by the Judge; and the action shall stand adjourned for the consideration of the report and the provisions of section 6 of the County Courts Act, 1919, shall apply : Reference
for inquiry
and Report.

Provided that—

(i) the Court may on the application of either party fix an earlier day than the return day for the trial of the action or an earlier day for the matter standing referred as aforesaid as the case may be, and may give such directions as to the filing of any defence or counterclaim as may be required ;

9 & 10
Geo. 5, c. 73.

(ii) a matter shall not be so referred if the Judge in his discretion with or without application by either party considers that the matter is more fit to be decided by the Court.

Notice to referee. Form 471.
Form 470. 12. The Registrar shall thereupon give notice to the Referee of his appointment and shall forward to him copies of all documents filed by the parties and shall give a similar notice to each of the parties.

Report of referee. Form 485.
Form 486. 13.—(1) The Referee shall complete his inquiries and file his report within a period of four weeks from the receipt of the notice of his appointment unless that period be enlarged by the Court, and at the same time shall file a statement of his remuneration and expenses.

Form 479. (2) On the filing of the report the Registrar shall give notice to the parties that he will fix the remuneration and expenses of the Referee in pursuance of Rule 31 at a date not less than four days from such notice and the Registrar shall fix the remuneration and expenses accordingly.

Form 480. (3) After payment into Court by either of the parties of the amount fixed, the Registrar shall on the request of any party and on payment of the prescribed fee, furnish a copy of the report, and shall give to the parties not less than fifteen days' notice of the day and hour when the report will be considered by the Judge.

Applications. 14.—(1) Any party may at any time apply to the Court for directions.

(2) Four clear days' notice of the application shall be served on every other party to the action.

(3) The Registrar may at any time report to the Judge in relation to any such application, and the Judge may thereupon give or forward by post to the Registrar such directions in writing as may be necessary including an order for the extension of any time limited for the doing of any act or thing provided for by the Act or this Order.

Actions not referred. 15. Subject to the provisions of this Order the action shall proceed according to the Rules and practice prevailing in the County Court.

PART III.

Rules as to other proceedings.

Proceedings commenced by summons. Form 469.
Forms 472–478. 16. Every proceeding for the purpose of obtaining the grant of any certificate by the Court or the determination by the Court of any question under the Act other than questions arising in proceedings to determine the right to compensation or relief in lieu of compensation under sections 1, 4, 5 and 8 or any of those sections shall be commenced by summons.

Filing of summons. 17. The summons shall be prepared by the applicant and filed with the Registrar with as many copies as there are parties to be served and two further copies for the use of the Court.

Particulars. 18. The summons shall contain all such particulars as may be necessary to disclose the nature of, and grounds for the relief claimed.

19. The Registrar shall fix a day for the hearing of the Hearing.
summons.

20. Every summons shall be served on all persons affected Persons
thereby and they shall be respondents to the summons. served.

21. Every summons shall be served ten clear days before the Time of
day fixed for the hearing. service.

22. Subject to the provisions of the Act and this Order, the Procedure.
practice and procedure of the Court in an action shall with the
necessary modifications apply to proceedings on an application
under this Part of this Order.

23. Unless the parties asall before the day fixed for the hearing Reference
of the summons file a memorandum that they agree to the matter for inquiry
being determined otherwise, the matter shall stand referred for and report.
inquiry and report to one of the panel of Referees and the summons
shall stand adjourned for the consideration of the report and the
provisions of section 6 of the County Courts Act, 1919, and of 9 & 10
Rules 12, 13 and 14 shall apply with such modifications as circum- Geo. 5, c. 73.
stances may require :

Provided that the matter shall not be so referred if the in his
discretion with or without application by either party considers
that the matter is more fit to be decided by the Court.

24. If the matter be not referred, the provisions of the three Matters not
next succeeding Rules shall apply. referred.

25. Any summons may be heard and disposed of by the Regis- Hearing.
trar subject to the following provisions :—

(a) The Registrar may in any case and shall on the application
of any party made on the hearing of the summons and
before the Registrar has given his decision refer the matter
to the Judge;

(b) The Judge may vary or rescind any determination or order
of the Registrar and may make such determination or
order as may be just ;

(c) The application for such variation or rescission shall be
made on notice in writing in accordance with the County
Court Rules as to interlocutory applications and the
notice shall be filed within four clear days from the date
of the determination or order of the Registrar, and if not
so filed shall not be filed without leave of the Judge.

26. No affidavit in support of the summons shall be used except Evidence.
by leave of the Court, but the Court may hear oral evidence if
tendered by either party.

27. On the hearing of the summons or at any adjournment Determina-
thereof (but if the respondent does not appear subject to proof of tion, order,
service of the summons), the Court may make such determination direction.
order or direction as the Court shall think fit.

28. When the Court has given its final decision on any sum- Certificate,
mons a certificate of the determination of the Court or an order or order or
direction in accordance with the decision of the Court shall be pre- direction.
pared and sealed and signed by the Registrar and duplicates
thereof shall be delivered to the bailiff who shall within twenty-four

hours send the same by registered post to the parties, but it shall not be necessary for the party in whose favour a certificate or order or direction is made or given to prove previously to take proceedings thereon that it was posted or reached the opposite party.

PART IV.

Rules relating to all proceedings under the Act.

Superior
landlord.

29. A superior landlord upon whom a copy of any process notice or document has been served in pursuance of the Act or Rule 4 of this Order may apply to the Court for directions in any proceedings under the Act or this Order, and the Court may if it appears desirable so to do give leave to the superior landlord to appear in the proceedings and take such part therein as may be just, and the Court may generally direct such proceedings to be taken or amendments to be made and give such directions as the Court may think proper.

Application
of O. 20a.

30. The provisions of Order XXA shall apply to all references so far as not inconsistent with the provisions of this Order.

Remunera-
tion and
expenses of
referee.

31.—(1) The remuneration of the Referee shall be fixed in accordance with the following scale and shall include remuneration for qualifying, viewing and reporting to the Court :—

(a) Where a sum of money is claimed as compensation —		For every day of six hours or part thereof during which the Referee shall sit—
		£ s. d.
not exceeding £50		3 3 0
exceeding £50 and not exceeding £100		4 4 0
„ £100 „ „ £200		6 6 0
„ £200 „ „ £1,000		10 10 0
„ £1,000		15 15 0
(b) In all other cases if the rent per annum reserved by the tenancy in respect of which the claim or application is made—		
does not exceed £25		3 3 0
exceeds £25 and does not exceed £50		4 4 0
„ £50 „ „ £100		6 6 0
„ £100 „ „ £500		10 10 0
„ £500		15 15 0

(2) There shall in addition be allowed to the Referee all proper expenses incurred by him in relation to the reference.

(3) The Court shall determine by whom and (if by more than one person) in what proportions such remuneration and expenses shall be borne, and shall make all orders and give all directions necessary to give effect to the determination of the Court.

Costs.

32.—(1) The costs of all proceedings under the Act and this Order shall be in the discretion of the Court and shall be taxed

according to such one of the Scales of Costs in Part IV. of the Appendix as the Court shall direct and in default of any direction they shall be taxed under column B of the Higher Scale.

(2) If either party has made an unconditional offer in writing to the other party which the other party has refused and the Judge is of opinion, having regard to the result of the proceedings before the Court that the offer should have been accepted, the Judge may order the party so refusing to bear his own costs and to pay the costs of the other party so far as they were incurred after the offer was made and in the opinion of the Judge would not have been incurred had the offer been accepted.

33. All proceedings and documents shall be in forms similar **Forms.** to the forms in the Appendix where the same are applicable, and in cases where such forms are not applicable or where no forms are provided, parties shall frame the proceedings or documents using as guides the forms contained in the Appendix.

466.

THE LANDLORD AND TENANT ACT, 1927.

Præcipe for Summons Claiming Compensation or Relief in Lieu of Compensation in Action brought under Sections 1, 4, 5 and 8.

In the County Court of holden at
In the matter of the Landlord and Tenant Act, 1927.

No. of Plaintiff.

[Other parts as in Form 6, down to and including "Registered Office of the Company."]

What claim is for :—

£ s. d.

Compensation for improvement on holding.

Compensation for loss of goodwill.

Grant of new tenancy.

Fee for issuing plaint.

Solicitor's Costs.

Solicitor's name and address.

467.

THE LANDLORD AND TENANT ACT, 1927.

Summons Claiming Compensation or Relief in Lieu of Compensation under Sections 1, 4, 5 and 8.

In the County Court of holden at
In the matter of the Landlord and Tenant Act, 1927.

No.

Between [name, address and description of tenant]

Plaintiff

and [name address and description of Landlord]

Defendant.

You are hereby summoned to appear at a County Court to be holden at
on the day of 19 , at the hour of in the
noon, to answer the plaintiff to a claim the particulars of which are
hereunto annexed.

	Debt or Claim.	£ s. d.
Strike out so much as may not be applicable.	1. Payment by the defendant of compensation in respect of improvement on a holding situate at _____ and being No. _____ Street in _____ of which holding the plaintiff is tenant and the defendant is landlord.	
	2. Payment by the defendant of compensation for the goodwill of the trade or business of a _____ carried on by the plaintiff on the said holding.	
	3. The grant of a new tenancy of the premises comprised in the said holding.	
	Costs of Plaintiff. Solicitor's Costs.	

Total amount

[See back.]

Registrar.

[To be indorsed on the Summons.]

NOTE.—If you are a mesne landlord you must forthwith serve on your immediate landlord a copy of this summons together with a notice in writing stating the date when you were served with this summons.

You may within fourteen days after service on you of this summons file a statement of your grounds of defence (if any) and also a statement (with particulars of any counterclaim or set-off) which you may have including any claim under section 11 of the above-mentioned act. Subject to any statement so filed by you the particulars of the plaintiff will unless the Court otherwise orders be deemed to be admitted.

If you file any such statement as above mentioned you must at the same time serve on the plaintiff in accordance with section 23 of the act a copy of your statement and you must also file two copies for the use of the Court.

Unless the parties within the time limited by the Rules file a memorandum that they agree to the matter being determined otherwise or unless the Judge otherwise directs the matter will stand referred for inquiry and report to one of the panel referees appointed under the Act who will be selected by the Registrar or (if any party objects in writing to his so doing within the time aforesaid) by the Judge.

468.

THE LANDLORD AND TENANT ACT, 1927.

Particulars of Claim under Sections 1, 4, 5 and 8.

Date of lease or agreement for tenancy of holding.

Names and addresses of parties to lease or agreement.

Term granted by lease or agreement.

Rent reserved by lease or agreement.

Date and mode of termination of tenancy.

Date of notice (if any) terminating tenancy.

Date when plaintiff quitted holding.

Purpose for which holding used.

State particulars with dates of improvements in respect of which a claim is made and the cost thereof.

(If compensation for goodwill is claimed) state grounds upon which compensation is claimed.

Date of service of claim for compensation on defendant.

469.

THE LANDLORD AND TENANT ACT, 1927.

Summons in Proceedings under Rule 16 of Order Lb.

In the County Court of holden at

In the Matter of the Landlord and Tenant Act, 1927.

No. of application.

Between

[name, address and description of Landlord or Tenant, as the case may be],
Applicant,
and

[name, address and description of Tenant or Landlord as the case may be],
Respondent.

Take notice that you are hereby summoned to attend this Court on the
day of _____, 19____, at the hour of _____ in the _____ noon on the
hearing of an application on the part of the said _____ for [state nature of
relief asked for] and for an order providing for the costs of and incidental to
this application including the remuneration and expenses of any Referee to
whom this matter may be referred.

And further take notice that if you do not attend in person or by your Solicitor at the time and place above mentioned such directions will be given and such determination and order made as the Court may think just.

Dated the day of , 19 .

Registrar.

To [name and address of respondent].

NOTE.—If you are a mesne landlord you must forthwith serve on your immediate landlord a copy of this summons together with a notice in writing stating the date when you were served with this summons.

Unless the parties before the day fixed for the hearing of this summons file a memorandum that they agree to the matter being determined otherwise or unless the Judge otherwise directs the matter will stand referred for enquiry and report to one of the panel of Referees appointed under the Act who will be selected by the Registrar or (if any party objects in writing to his so doing) by the Judge.

470.

THE LANDLORD AND TENANT ACT, 1927.

Notice to a Party that an Action or Matter has been Referred to a Referee.

[Title of action or matter.]

Take notice that this action (matter) stands referred to Mr. _____ of _____ for inquiry and report pursuant to section 21 of the Landlord and Tenant Act, 1927, and you are not required to attend this Court on the _____ day of _____. The Referee will hold the inquiry at such time and place as he may appoint.

Dated the day of , 19 .

Registrar.

To the Plaintiff and Defendant
or
Applicant and Respondent.

471.

THE LANDLORD AND TENANT ACT, 1927.

Notice to Referee to whom Action or Matter is Referred.

[Title of action or matter.]

Sir,

Take notice that this action (matter) stands referred to you for inquiry and report pursuant to section 21 of the Landlord and Tenant Act, 1927.

Dated the day of , 19 .

Registrar.

To

of

472.

THE LANDLORD AND TENANT ACT, 1927.

17 & 18 Geo. 5,
c. 36, s. 2 (1) (d).
[Heading and
other parts as in
Form 469.]

Summons for Determination of Rent and Term on Renewal of Lease.

for the determination of certain questions relating to a proposed renewal of a tenancy of a holding situate at and being No. Street of which the applicant is landlord and you are tenant the questions being—

- (a) What is a reasonable term for which the said tenancy should be renewed, and
- (b) What is the reasonable rent to be reserved during such renewed tenancy.

473.

THE LANDLORD AND TENANT ACT, 1927.

17 & 18 Geo. 5,
c. 36, s. 3 (1).
[Heading and
other parts as in
Form 469.]

Summons for a Certificate that an Improvement is a Proper Improvement.

for a certificate that a certain improvement on a certain holding situate at and being No. Street of which holding the said is tenant and you are landlord being the improvement specified in a notice dated the day of 19 and served on you on this day of 19 is a proper improvement.

474.

THE LANDLORD AND TENANT ACT, 1927.

Summons for Certificate that an Improvement has been Executed.

17 & 18 Geo. 5,
c. 36, s. 3 (6).
[Heading and
other parts as in
Form 469.]

or a certificate that a certain improvement on a certain holding referred to in a notice dated the day of 19 and served on the above-named (landlord) has been duly executed.

475.

THE LANDLORD AND TENANT ACT, 1927.

17 & 18 Geo. 5,
c. 36, s. 3 (6).
[Heading and
other parts as in
Form 469.]

Summons for Determination and Payment of Landlord's Expenses of Furnishing a Certificate as to Improvement.

That the expenses incurred by the said for the purpose of furnishing a certificate as to an improvement on a certain holding situate at and being No. Street in of which holding the said is landlord and you are tenant may be determined and certified and that you may be ordered to pay them to the said

476.

THE LANDLORD AND TENANT ACT, 1927.

Summons by Landlord for Directions as to Offering a Renewal of Tenancy. 17 & 18 Geo. 5, c. 36, s. 8 (1).

That with regard to a claim for compensation for an improvement (and for goodwill) made by [name and address of tenant] as tenant of a certain holding situate at and being No. Street it may be determined [Heading and other parts as in Form 469.]

Whether an offer for renewal of the tenancy of the said should be made in lieu of compensation and if so for what term at what rent and subject to what conditions.

477.

THE LANDLORD AND TENANT ACT, 1927.

Summons for Increase of Rent Reserved by Reversionary Lease. 17 & 18 Geo. 5, c. 36, s. 15 (1).

That it may be directed and ordered that the rent reserved by a reversionary lease dated the day of 19 and granted by the said [landlord] to the said [tenant] of a holding situate in and being No. Street may be increased as from the day of 19 by the sum of £ per or by such other sum as the Court may think proper. [Heading and other parts as in Form 469.]

478.

THE LANDLORD AND TENANT ACT, 1927.

Summons for Approval of Lease of other Premises in lieu of Compensation for Goodwill. 17 & 18 Geo. 5, c. 36, s. 6.

That it may be declared that the grant to the above-named of a lease of certain premises situate at and being No. Street in for a term of years from the day of 19 at the yearly rent of £ or for such other term and for such other rent and respect to such other conditions as the Court may think reasonable will reasonably preserve to the said the goodwill of the trade or business carried on by him on a certain holding situate at and being No. [Heading and other parts as in Form 469.]

479.

THE LANDLORD AND TENANT ACT, 1927.

Notice to parties of date for fixing Referee's Remuneration.

[Title of action or matter.]

Take notice that the Registrar has appointed o'clock in the noon on the day of 19 at for the fixing of the amount of the Referee's remuneration and expenses in this matter at which time and place you are at liberty to attend.

In default of your attendance the amount may be fixed in your absence.

Dated .

Signed

Registrar.

To the [Plaintiff and Defendant]

or

[Applicant and Respondent].

480.

THE LANDLORD AND TENANT ACT, 1927.

Notice to parties of date for consideration of the Referee's Report.*[Title of action or matter.]*

Take notice that at a Court to be holden at o'clock in the noon
the Judge will proceed to the consideration of the Referee's Report dated
the day of 19 and will make such order as may be just.

In default of your attendance an order may be made in your absence.

Dated .

Signed

Registrar.

To the [Plaintiff and Defendant]

or

[Applicant and Respondent].

481.

THE LANDLORD AND TENANT ACT, 1927.

Final Order in Action or Matter.*[Title of action or matter.]*

[Upon reading the report dated the day of 19 of Mr.
the Referee to whom the (action matter) was referred for inquiry and report,
and

Upon hearing

It is ordered that

*Substitute
"respondent"
and "appli-
cant" for
"defendant"
and "plaintiff"
if the order is
on further
consideration
of a matter
and not of an
action.

And that the defendant (plaintiff)* do pay to the Registrar for the use
of plaintiff (defendant)* his costs of this action to be taxed in case of differ-
ence under Column of the Scale of County Court Costs [to include the
sum of £ for the remuneration and expenses of the said Referee or as may
be].

add if applicable.

And upon the application of the said (landlord) and upon hearing

It is certified that the amount to be charged under the First Schedule to
the above Act is £ and that such charge may be properly made for the
term of years from the day of 19 .

And it is ordered that the said (landlord) do pay the costs of all
parties of this application for this certificate and the making thereof. Such
costs to be taxed in case of difference under Column of the said Scale.

To the Plaintiff and the Defendant.

482.

THE LANDLORD AND TENANT ACT, 1927.

Final Order on application for Certificate as to Improvement.*[Title as in Form 469.]*

Upon reading the notice dated the day of 19 of the inten-
tion of the above-named applicant to make a certain improvement on the
holding therein mentioned and the specification and plan thereto annexed
[and the Report of Mr. dated the day of 19 and filed
in this Court].

And the Court being satisfied that all proper persons were served with the
said notice and have had an opportunity of being heard Doth hereby certify

that the improvement is a proper improvement subject of the following modifications and conditions that is to say—

That the improvement be completed on or before the day of
19 [add any other modifications or conditions]. S. 3 (5).

[Directions as to taxation and payment of Costs [and if necessary of Referee's remuneration and expenses]]

or

The costs of this application are reserved until the said day of
19 [or as may be] including any necessary provisions as to payment of the Referee's remuneration and expenses.
and the further consideration of this matter is adjourned accordingly.

483.

THE LANDLORD AND TENANT ACT, 1927.

Final Order declaring reasonable terms for renewal of tenancy.

17 & 18 Geo. 5,
c. 36, s. 2 (1) (d).

[Title as in Form 469.]

Upon reading the application of the above-named (applicant) dated the
day of, 19 [and the report of Mr. dated the day of
19 and filed in this Court]

And upon hearing the Court doth determine and declare that the
reasonable term for which and the reasonable rent at which a renewal of the
tenancy of the holding situate at and being No. Street should be
granted by to are as follows, that is to say—

Term years from
Rent £ per

[Directions as to taxation and payment of Costs—Referee's remuneration
(if any) and any other matters.]

484.

THE LANDLORD AND TENANT ACT, 1927.

Final Order granting or refusing new lease in lieu of other compensation for loss of Goodwill.

17 & 18 Geo. 5,
c. 36, s. 5.

[Title of Action or Matter.]

Upon reading the notice dated the day of 19 and served
on the defendant on the day of 19 [and the report of
Mr. dated the day of 19 and filed at this Court.]

It is ordered that a new tenancy of the holding situate at and being
No. Street mentioned in the said notice be granted to the plaintiff for
the term of years from the day of 19 at the yearly rent
of and subject to the conditions and stipulations set forth in the draft
annexed to the said Report [or as may be] or (if new lease is refused on any of
the grounds mentioned in Section 5 (3) (b)).

And it appearing that the holding is required by the defendant for occupa-
tion by himself (or a son or daughter of his over 18 years of age) or that the
defendant intends to pull down (remodel) the premises or that vacant
possession of the said holding is required to carry out a scheme of redevelop-
ment or that the grant of such a lease as is claimed is not consistent with
good estate management.

This Court doth not think fit to make any order for the grant of a new
lease (add if applicable) but doth order that if the defendant shall fail to
carry out his intention within the period of months from the day
of 19, he do at the expiration of that period pay to the plaintiff the

sum of £ as compensation for any loss which the said Plaintiff has suffered by reason of having been deprived of his right to the grant of a new lease under section 5 of the above Act.

And any party is to be at liberty to apply as he may be advised—

[Directions as to taxation and payment of costs and remuneration or expenses of Referees]

or And it appearing that the defendant has offered as an alternative to the granting of a new lease under section 5 of the above Act to sell to the plaintiff his interest in the holding for such consideration as falling agreement this Court may determine and this Court being of opinion that the duration of the interest of the defendant is adequate and that the sum of £ (or a terminable rentcharge of £ per annum payable by equal half-yearly instalments and issuing out of the holding for a term of years from the day of 19) is the proper consideration for the sale of the said interest this Court doth make no order except that each of the parties to this action do and perform all such acts and execute all such deeds and instruments as may be necessary to give effect to the said offer on the terms and conditions and for the consideration aforesaid.

[Directions as to taxation and payment of costs and Referees' remuneration and expenses]

or And it appearing that proceedings under section 5 of the above Act cannot be completed and a new lease in accordance with the order of this Court entered into before the termination of the tenancy of the plaintiff and that the delay is not owing to any default on the part of the plaintiff it is ordered that the plaintiff be at liberty to continue in possession of the said holding for the period of after the termination of his tenancy subject to the following terms and conditions that is to say

[State terms and conditions]

and this hearing is adjourned until

[Directions (if any) as to taxation and payment of Costs and Referees' remuneration and expenses]

And either party is to be at liberty to apply as he may be advised.

485.

LANDLORD AND TENANT ACT, 1927.

Report of Referee.

[Title of action or matter.]

To the Court

Having made due inquiry into the matters in question and having heard and considered the evidence of the parties,

I beg to report as follows :—

Dated .

Referee.

486.

LANDLORD AND TENANT ACT, 1927.

Statement of Referee's Remuneration and Expenses.

[Title of action or matter.]

Having inquired and reported on the above matter, I hereby state that the following are the particulars of the place or places when I held the inquiry and of the hours occupied by each sitting and of the expenses incurred by me in relation to the inquiry :—

- (a) Place or places where inquiry was held.
- (b) Dates of Sittings for purpose of inquiry.
- (c) Hours occupied by Sittings on each day.
- (d) Concise details of Expenses incurred in relation to inquiry with amounts.

	£
	£
	£
	£
	£
(e) Other special items (if any)	£
<i>Remuneration</i>	
<i>Hours</i>	£
<i>Expenses</i>	£
<i>Special items</i>	£
Total	£

Dated

Referee.

COURT FEES.

The following court fees are payable in proceedings under the Landlord and Tenant Act, 1927 :—

45B	(i) On the consideration of the referee's report in an action	Fee No.13
	(ii) On filing a summons under Order 50B, Rule 16.	10s.
	(iii) On the hearing by the judge of a summons under Order 50B, Rule 16	£1.
	<i>Where the summons is referred, this fee is payable on the consideration of the referee's report.</i>	

In addition, if the proceedings are by plaint under Order LB, Rule 5, the appropriate plaint fee (Fee No. 1) is payable on issue of the summons.

LAW OF PROPERTY ACT, 1925.

[15 GEO. V. c. 20.]

By this Act, passed to assimilate and amend the law of real and personal estate, to abolish copyhold and other special tenures, and to amend the law relating to commonable lands, many powers are conferred upon "the court." These are too numerous to be here described.

By sect. 203 (3) the expression "court" means "county court" where such court has jurisdiction, and by sub-s. (2) of the same section every application to the court shall, save as otherwise expressly provided and subject to any rules of court to the contrary, be by summons at Chambers. A county court rule under this sub-s. has been made (Ord. XXXVIII. r. 32), which provides that the application may be made in accordance with the rules as to interlocutory applications.

LEGITIMACY ACT, 1926.

[16 & 17 GEO. 5, c. 60.]

Jurisdiction.—By section 2 of the Act the county court is given concurrent jurisdiction with the High Court to grant a declaration of legitimacy of persons legitimated by the Act. If the county court judge considers that, owing to the value of the property involved or otherwise, the case ought to be dealt with by the High Court, he may, and if so ordered by the High Court, shall transfer the matter to that Court (sect. 2 (2)). A petition under this Act cannot be heard *in camera* (*In the matter of a Petition*, (1928) 138 L. T. 64).

Procedure.—Procedure is by petition. All persons interested must be made parties, and a copy of the petition and the affidavit in support must be delivered to the Attorney-General at least a month before the petition is presented or filed. See Order LA., *post*, p. 2127.

Court Fees.—A fee of 10s. is payable on filing the petition and a further fee of 10s. on the hearing (C. C. Fees Order, 1925, Fees No. 2 and 20).

Section 1.

Legitimation
by subse-
quent mar-
riage of
parents.

1.—(1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in England or Wales, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens.

(2) Nothing in this Act shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born.

(3) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Act expressly provided.

(4) The provisions contained in the Schedule to this Act shall have effect with respect to the re-registration of the births of legitimated persons.

Declarations
of legitimacy
of legitimated
persons.
15 & 16 Geo.
5, c. 49.

2.—(1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in England or elsewhere and whether a natural-born British subject or not, present a petition under sect. 188 of the Supreme Court of Judicature (Consolidation) Act, 1925 (*a*), and that Act, subject to such necessary modifications as may be prescribed by rules of court, shall apply accordingly.

(2) A petition under the said Act may be presented by any such person as aforesaid to the county court instead of to the High Court, and the county court on such a petition being presented shall have all such jurisdiction as by the said Act is conferred upon the High Court:

Provided that, where a petition is presented to the county court, the county court, if it considers that the case is one which owing to the value of the property involved or otherwise ought to be dealt with by the High Court, may, and if so ordered by the High Court shall, transfer the matter to the High Court, and on such

(a) Correction made by Administration of Justice Act, 1928 s. 19 (3).

transfer the proceeding shall be continued in the High Court as if it had been originally commenced therein. **Section 2.**

3.—(1) Subject to the provisions of this Act, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest— **Rights of legitimated persons, &c., to take interests in property.**

(a) in the estate of an intestate dying after the date of legitimation ;

(b) under any disposition coming into operation after the date of legitimation ;

(c) by descent under an entailed interest created after the date of legitimation ;

in like manner as if the legitimated person had been born legitimate.

(2) Where the right to any property, real or personal, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they had been born on the day when he or they became legitimated by virtue of this Act, and if more than one such legitimated person became legitimated at the same time, they shall rank as between themselves in order of seniority. **Ranking of legitimated children inter se and in relation to legitimate children.**

(3) Where property real or personal or any interest therein is limited in such a way that, if this Act had not been passed, it would (subject or not to any preceding limitations or charges) have devolved (as nearly as the law permits) along with a dignity or title of honour, then nothing in this Act shall operate to sever the property or any interest therein from such dignity, but the same shall go and devolve (without prejudice to the preceding limitations or charges aforesaid) in like manner as if this Act had not been passed. This subsection applies, whether or not there is any express reference to the dignity or title of honour and notwithstanding that in some events the property, or some interest therein, may become severed therefrom. **Devolution of property along with dignity or title.**

(4) This section applies only if and so far as a contrary intention is not expressed in the disposition, and shall have effect subject to the terms of the disposition and to the provisions therein contained. **Section to apply subject to any intention to the contrary expressed in disposition.**

4. Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his real or personal property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate. **Succession on intestacy of legitimated persons and their issue.**

5. Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents leaving any spouse, children or remoter issue living at the date of such marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person (including those relating to the rate of death duties) shall apply as if such person as aforesaid had been a legitimated person dying before marriage of parents. **Application to illegitimate person dying before marriage of parents.**

Section 5.

Personal rights and obligations of legitimated persons.

Provisions as to pensions, etc., under Widows', etc., Contributory Pensions Act, 1925.

Death duties.

Provisions as to persons legitimated by extra-neous law.

Meaning of "country."

Right of illegitimate child and mother of

person and the date of the marriage of his parents had been the date of legitimation.

6.—(1) A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to the provisions of this Act, the provisions of any Act relating to claims for damages, compensation, allowance, benefit, or otherwise by or in respect of a legitimate child shall apply in like manner in the case of a legitimated person.

(2) Where the marriage leading to the legitimation of a child took place before the fourth day of January, nineteen hundred and twenty-six, and the father of the child died before that date, the child shall, for the purpose of determining rights to pension or additional allowance under the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, be deemed to have been a child of the marriage living at that date :

Provided that nothing in this subsection shall confer any right to claim any payment in respect of any period prior to the date of legitimation.

7. Where a legitimated person or any relative of a legitimated person takes any interest in real or personal property, any succession, legacy or other duty which becomes leviable after the date of legitimation shall be payable at the same rate as if the legitimated person had been born legitimate.

8.—(1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, and the father of the illegitimate person was or is, at the time of the marriage, domiciled in a country, other than England or Wales, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in England and Wales be recognised as having been so legitimated from the commencement of this Act or from the date of the marriage, whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law.

(2) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person (including those relating to the rate of death duties) shall apply in the case of a person recognised as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognised ; and, accordingly, this Act shall have effect as if references therein to a legitimated person included a person so recognised as having been legitimated.

(3) For the purposes of this section, the expression "country" includes Scotland and any other part of His Majesty's Dominions, as well as a foreign country.

9.—(1) Where, after the commencement of this Act, the mother of an illegitimate child, such child not being a legitimated person,

dies intestate as respects all or any of her real or personal property, and does not leave any legitimate issue her surviving, the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate. **Section 9.** illegitimate child to succeed on intestacy of the other.

(2) Where, after the commencement of this Act, an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his real or personal property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

(3) This section does not apply to or affect the right of any person to take by purchase or descent any entailed interest in real or personal property. Entailed interest.

(4) Subsections (1) and (2) of this section shall apply to Scotland with the substitution of "heritable" for "real" and "moveable" for "personal," and the expression "intestate" therein occurring shall have the same meaning as in the Intestate Moveable Succession (Scotland) Act, 1855, provided always that nothing in this section shall affect the right of any person to succeed under any entail. Application of section to Scotland.

10.—(1) Nothing in this Act shall affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title. Savings.

(2) Nothing in this Act shall affect the operation or construction of any disposition coming into operation before the commencement of this Act, or affect any rights under the intestacy of a person dying before the commencement of this Act.

11. For the purposes of this Act, unless the context otherwise requires:— Interpretation.
 The expression "legitimated person" means a person legitimated by this Act; Legitimated person.
 The expression "date of legitimation" means the date of the marriage leading to the legitimation, or where the marriage occurred before the commencement of this Act, the commencement of this Act; Date of legitimation.
 The expression "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will; Disposition.
 The expression "intestate" has the same meaning as in the Administration of Estates Act, 1925, and "will" includes "codicil"; Intestate. Will.
 The expression "entailed interest" has the same meaning as in the Law of Property Act, 1925. Entailed interest.

12.—(1) This Act may be cited as the Legitimacy Act, 1926. Short title and commencement.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-seven.

(3) The provisions of this Act shall, save as therein otherwise expressly provided, extend only to England and Wales.

Section 1.

SCHEDULE.

REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS.

1. The Registrar-General may, on production of such evidence as appears to him to be satisfactory, authorise at any time the re-registration of the birth of a legitimated person whose birth is already registered under the Births and Deaths Registration Acts, 1836 to 1901, and such re-registration shall be effected in such manner and at such place as the Registrar-General may by regulations prescribe :

Provided that the Registrar-General shall not authorise the re-registration of the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless—

- (a) the name of a person acknowledging himself to be the father of the legitimated person has been entered in the register in pursuance of section seven of the Births and Deaths Registration Act, 1874, or
- (b) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction; or
- (c) a declaration of the legitimacy of the legitimated person has been made under the Legitimacy Declaration Act, 1858, as amended by this Act.

2. It shall be the duty of the parents of a legitimated person, or, in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent, within the time hereinafter specified, to furnish to the Registrar-General information with a view to obtaining the re-registration of the birth of that person; that is to say :—

- (a) If the marriage took place before the commencement of this Act, within six months of such commencement;
- (b) If the marriage takes place after the commencement of this Act, within three months after the date of the marriage.

3. Where the parents, or either of them, fail to furnish the necessary information within the time limited for the purpose, the Registrar-General may at any time after the expiration of that time require the parents of a person whom he believes to have been legitimated by virtue of this Act, or either of them, to give him such information concerning the matter as he may consider necessary, verified in such manner as he may direct, and for that purpose to attend personally either at a registrar's office or at any other place appointed by him, within such time, not being less than seven days after the receipt of the notice, as may be specified in the notice.

4. The failure of the parents or either of them to furnish information as required by this schedule in respect of any legitimated person shall not affect the legitimation of that person.

5. No fee for re-registration under this schedule shall be charged if the necessary information for the purpose is furnished within the time above specified; but in any other case there shall be charged in respect of such re-registration such fees, not exceeding in the aggregate ten shillings, as may be prescribed by regulations under this schedule.

6. This schedule shall be construed as one with the Births and Deaths Registration Acts, 1836 to 1901.

ORDER LA.

(As amended by County Court (No. 2) Rules, 1927.)

THE LEGITIMACY ACT, 1926.

1. In this Order—

“the Act of 1926” means the Legitimacy Act, 1926;

“petitioner” means a person applying for a legitimacy declaration, and “petition” has a corresponding meaning. Rule 1.
Interpretation.

2. A petition may be filed—

(a) in the County Court within the district of which the petitioner resides, or

(b) in the County Court within the district of which the marriage leading to the legitimation occurred; or

(c) if neither the residence of the petitioner nor the place of the marriage is situate in England or Wales, then in any Metropolitan County Court. Venue.

3. The County Court Rules and practice and in particular the practice under Order XXXVIII. shall so far as practicable govern all proceedings under the Act of 1926 subject nevertheless to these Rules.

4.—(1) A petition shall be intituled “In the matter of the Legitimacy Declaration Act, 1858, as amended by sections 188 and 226 of the Supreme Court of Judicature (Consolidation) Act, 1925,” and “In the matter of the Legitimacy Act, 1926,” and “In the matter of—(*the person to be declared legitimated*)”—and shall be according to the form in the Appendix with such variations and additions as the circumstances may require, and shall state, amongst other matters:— Form 460.

(a) the place and date of the marriage;

(b) the status and residence of each of the parents, and the occupation and domicile of the father of the person whose legitimacy the Court is asked to declare (1) at the date of his birth and (2) at the date of the marriage;

(c) whether there is living other issue of the parents of such person as aforesaid and the respective names and dates of the birth of such issue;

(d) the persons (if any) affected by the legitimation of such person as aforesaid and the value so far as is known of the property (if any) thereby involved;

(e) whether any and if so what previous proceedings under the Act of 1926 or otherwise with reference to the paternity of such person as aforesaid or the validity of the marriage leading to his legitimation have been taken in any Court;

(f) that there is no collusion.

(2) A petition shall also include an undertaking by the petitioner (if not an infant or person of unsound mind) to pay the costs of the respondents if the Court shall so direct.

(3) If the petitioner is an infant or person of unsound mind, he shall petition by a next friend, and the full names, occupation or description, and residence or place of business, of the next friend

Rule 4.

Form 15.

shall be stated in the petition and there shall be lodged with the petition an undertaking to be responsible for costs in accordance with the form in the Appendix with the necessary modifications.

5. If the petitioner does not reside in England or Wales the petition shall state an address in England or Wales at which the petitioner may be served with any summons, notice, order of Court, or other process.

6. Where it appears on the presentation of a petition that the petitioner does not reside in England or Wales, the petition shall not be filed until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the Registrar, and the provisions of Rules 10 and 11 of Order V. shall apply *mutatis mutandis*.

7. The respondents to a petition shall be the Attorney-General and all persons whose interests may be affected by the legitimacy declaration asked for, and the Court may at any time direct any persons not made respondents to be made respondents and to be served with the petition and affidavit, and may adjourn the hearing of the petition for that purpose on such terms as to costs or otherwise as may be just.

Form 461.

8. The petition shall be accompanied by an affidavit made by the petitioner or by his next friend (if any) verifying the facts of which he has personal knowledge and deposing as to his belief in the truth of the other facts alleged in the petition, and the affidavit shall be filed with the petition.

9.—(1) There shall be filed with the petition as many copies of the petition and the affidavit as there are respondents to be served and also two copies for the use of the Court.

(2) There shall be lodged with the petition every birth, death or marriage certificate intended to be relied upon at the hearing.

10.—(1) A copy of the petition and a copy of the affidavit shall be delivered or sent by registered post by the petitioner to the Attorney-General at least a month before the petition is presented or filed.

(2) Any document or notice addressed to the Attorney-General shall be addressed to him at the office of the Treasury Solicitor, Storey's Gate, London, S.W. 1.

11.—(1) A sealed copy of the petition and affidavit shall unless the Court otherwise directs be served by the bailiff twenty-eight days at least before the hearing on every respondent (other than the Attorney-General) personally and the petition and every copy to be served on a respondent (other than the Attorney-General) shall be endorsed with a notice according to the form in the Appendix.

Form 460.

Form 462.

(2) At least twenty-eight days' notice of the day whereon the petition will be heard shall be given by the Registrar to the Attorney-General.

12.—(1) A respondent may within fourteen days after service of the petition upon him file an answer to the petition. **Rule 12.**

Form 463.

(2) Every answer which contains matter other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent verifying such other matter as far as he has personal knowledge thereof, and deposing to his belief in the truth of the rest of such other matter.

(3) There shall be filed with the answer as many copies of the answer and the affidavit (if any) as there are other parties to the petition, and also two copies for the use of the Court.

(4) The Registrar shall, within twenty-four hours of receiving them, send by post one sealed copy of the answer and the affidavit (if any) to the petitioner, the Attorney-General, and any other respondents.

13. Evidence on the hearing of the petition shall be given orally :

Provided that the Judge may, on application made to him before or at the hearing, for good cause shown, direct that any particular fact or facts alleged in the petition or answer may be proved by affidavit.

14. The Judge may make such orders as to costs as he shall think fit and may direct the costs to be taxed according to such one of the Scales of Costs as he shall determine, and in default of such direction the costs shall be taxed under column B of the Higher Scale.

15. A copy of the order made on the hearing of a petition sealed with the seal of the Court shall be supplied by the Registrar to any party to the proceedings on payment of the prescribed fee. **Form 464.**

16. If a petition is presented and the Judge considers that the case is one which owing to the value of the property involved or otherwise ought to be dealt with by the High Court, he may, and if ordered by the High Court he shall, transfer the matter to the Probate Divorce and Admiralty Division of the High Court ; and the Registrar shall make and file a copy of such order and shall transmit a sealed copy of such order, together with the petition and affidavits filed in the matter and a certificate showing the state of the matter and the proceedings which may have been had therein, by post or otherwise to the proper officer of the said Division of the High Court, and shall also, send notice of the making of such order by post or otherwise to all parties to the proceedings. **Form 465.**

In Part I of the Appendix to the County Court Rules, 1903, there shall be inserted the following new forms which shall stand as Forms 460, 461, 462, 463, 464, and 465 respectively :—

460.

LEGITIMATION PETITION.

IN THE COUNTY COURT OF HOLDEN AT

In the matter of the Legitimacy Declaration Act, 1858, as amended by sections 188 and 226 of the Supreme Court of Judicature (Consolidation) Act, 1925.

and

In the matter of the Legitimacy Act, 1926,

and

In the matter of A.B. of

in the County of [state name, address, and description of the person whose legitimacy the Court is asked to declare].

To His Honour the Judge of the said Court.

The Petition of the above-named A.B.

Sheweth as follows :—

1. Your Petitioner is of the sex and was born on the day of , 1 , at , in the County of . The birth of your Petitioner is recorded by an entry numbered and made on the day of , 1 , in the Register of Births for the Registration District of and the sub-district of , in the County of .

2. Your Petitioner is the natural child of C.D., of , in the County of , by E.F., of , in the County of .

3. Neither the said C. D. nor E. F. was married at the date of the birth of your Petitioner, the said C. D. being then a spinster [or widow] residing at , and the said E. F. being then a bachelor [or widower], and residing at , and domiciled in .

4. The said C. D. and E. F. were lawfully married to one another on the day of , 19 , at . The said C. D. and E. F. have had issue children and no more, namely [state names and dates of birth of such issue].

5. At the date of the marriage, the said C. D. was a spinster [or widow] and the said E. F. was a bachelor [or widower] and was residing at and was domiciled in .

6. The following persons are affected by the legitimation as aforesaid of your Petitioner :

(State names and addresses and descriptions and relationship.)

7. The value of the property involved by the legitimation of your Petitioner, so far as is known to your Petitioner, is £ .

8. Your Petitioner is not acting in collusion with or with the connivance of any person for the purpose of obtaining a decree and declaration of legitimacy contrary to the justice of the case.

9. No previous proceedings under the Legitimacy Act, 1926, or otherwise, with reference to the paternity of your Petitioner or the validity of the marriage of the said C. D. and E. F. have been taken in any Court (or as may be).

10. Your Petitioner undertakes to pay the costs of the Respondents to this petition if the Court so directs.

(Where the Petitioner is an infant or person of unsound mind this paragraph should be struck out, and the undertaking of the next friend should be lodged with the petition.)

Your Petitioner therefore prays—

That it may be decreed and declared that the said C. D. and E. F. were lawfully married at on the day of , 19 , and that by such marriage your Petitioner became legitimated as from the date of the said marriage [or as from the date of the commencement of the Legitimacy Act, 1926] for the purposes of the Legitimacy Act, 1926.

That the costs of the Respondents to this Petition may be taxed or otherwise ascertained.

Dated the day of , 19 .

NOTE.—It is intended to deliver a copy of this Petition to the Attorney-General and to serve this Petition on .

See BACK.

[To be indorsed on the Petition.]

Notice.

Take notice that the within Petition will be heard at the Court holden at on the day of , 19 , at o'clock in the noon and in default of your then appearing either in person or by your Solicitor the Court will proceed to hear the said petition and pronounce judgment your absence notwithstanding.

If you desire to make answer to the within petition, you must file your answer in the above Court within fourteen days after service of the petition upon you.

If your answer contains matter other than a simple denial of the facts stated in the petition, the answer must be accompanied by an affidavit made by you verifying such other matter as far as you have personal knowledge thereof and deposing to your belief in the truth of the rest of such other matter.

You must file with the answer as many copies of the answer and the affidavit (if any) as there are other parties to the petition, and also two copies for the use of the Court.

(Signed.)

Registrar.

461.

AFFIDAVIT IN SUPPORT OF PETITION.

[Heading as in Form 460.]

I, of , the petitioner (or the next friend of the petitioner) in the above Matter, make oath and say as follows:—

1. That the statements contained in paragraphs of my petition dated the day of , 19 , are true.

2. That the statements contained in paragraphs of my said petition are true to the best of my knowledge, information and belief.

Sworn, etc.

LEGITIMACY ACT, 1926.

462.

NOTICE TO ATTORNEY-GENERAL.

[Heading as in Form 460.]

Take Notice that the petition in the above Matter will be heard at the Court holden at on the day of , 19 , at o'clock in the noon.

Registrar.

463.

ANSWER TO LEGITIMATION PETITION.

(Not to be printed.)

[Heading as in Form 460.]

The respondent L. M., by P. Q., his solicitor (or in person), in answer to the petition filed in the above Matter, says :

(1) That [the petitioner is not the natural child of E. F. as alleged in the petition];

(2) That [at the time of the birth of the petitioner, the petitioner's mother C. D. was married to a third party, namely]

(or as may be)

Wherefore this respondent humbly prays that the prayer of the petition may be rejected.

Dated the day of , 19 :

464.

LEGITIMATION DECREE.

[Heading as in Form 460.]

Upon reading the Petition of A. B. of , presented to this Court in the above Matter and upon reading the affidavit(s) of and the several exhibits thereto.

And upon hearing .

And the Court being satisfied that the allegations contained in the said Petition are true and that a copy of the said Petition was duly delivered to the Attorney-General and that all proper persons have been served with the said Petition.

It is decreed and declared that C. D. of , and E. F. of , in the said Petition mentioned were lawfully married at on the day of , 19 , and that by such marriage the said A. B. was legitimated for the purposes of the Legitimacy Act, 1926, as from the day of , 19 (being the date of the said marriage) [or as from the 1st day of January, 1927 (being the date of the commencement of the said Act)].

And it is ordered that the costs of the Respondents to the said Petition be taxed by the Registrar of this Court under Column of the Higher Scale of Costs in use in County Courts and that the said A. B. do pay to the said Registrar for the use of the said Respondents such Costs within 14 days from the date of the certificate of such taxation (*or as may be*).

465.

ORDER FOR TRANSFER OF PROCEEDINGS TO HIGH COURT.

[*Heading as in Form 460.*]

Whereas it appears that owing to the value of the property involved (*or as may be*) this matter ought to be dealt with by the High Court. It is ordered that this matter be transferred to the Probate Divorce and Admiralty Division of the High Court of Justice together with the petition and affidavits filed in the matter and the annexed certificate of the Registrar of this Court shewing the state of the matter and the proceedings that have been had therein in this Court.

LICENSING (CONSOLIDATION) ACT, 1910.

[10 EDW. VII. & 1 GEO. V. C. 24.]

Jurisdiction.—The county court under this Act and the Licensing Rules, 1910, made by virtue of sect. 47, can be called upon to exercise jurisdiction in two ways: (1) the compensation authority may refer to the county court any question arising on the division of the amount to be paid as compensation, which such authority considers can be more conveniently determined by the county court (sect. 20, sub-s. 3); (2) where the compensation authority makes default for one month in paying 50*l.* or more, due in respect of any loan raised under the Act, the persons entitled or any of them may apply to the county court for the appointment of a receiver. (Rule 71.)

Practice.—A reference by the compensation authority is governed by Order L. rr. 37—57 (*post*, p. 2136). By Rule 38, the court in the district of which the premises are situated shall be the court having jurisdiction; the form of the reference is settled by Rule 39; of the petition and affidavit, by Rule 41; who are to be respondents, by Rule 42; the fixing of the day for hearing, by Rules 44, 45; notice to parties and service, by Rules 46—50; by Rule 53 the procedure shall be the same as on any other petition; by Rule 56 the costs are regulated. By Rule 52 of Order L. the county court, though it can make no order inconsistent with the order of the compensating authority, if it appears to the county court that any person who has not made a claim before the compensating authority is interested, may send the order of reference back to the compensating authority with a report to that effect, in order that the said authority may take such action as it may think fit.

Practice as to the appointment of a Receiver.—Under Licensing Rule 71 the county court having jurisdiction is the court of the district in which the office of the treasurer is situated. By Order L. r. 58 (*post*) an application for the appointment of a receiver shall be by petition, and the procedure shall be the same as on any other petition as to any matter amounting to 50*l.* or over (see O. XXXVIII.).

COMPENSATION IN RESPECT OF NON-RENEWAL OF OLD ON-LICENCES.

Payment of
compensa-
tion.

4 Edw. VII.
c. 23.

20.—(1) Where the compensation authority refuse the renewal of an old on-licence, a sum equal to the difference between the value of the licensed premises (calculated as if the licence were subject to the same conditions of renewal as were applicable immediately before the passing of the Licensing Act, 1904, and including in that value the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the licence), and the value which those premises would bear if they were not licensed premises, shall be paid as compensation to the persons interested in the licensed premises.

57 & 58 Vict.
c. 30.

(2) The amount to be so paid shall, if an amount is agreed upon by the persons appearing to the compensation authority to be interested in the licensed premises and is approved by that authority, be that amount, and, in default of such agreement and approval, shall be determined by the Commissioners of Inland Revenue in the same manner and subject to the like appeal, under section ten of the Finance Act, 1894, to the High Court, as on the valuation of an estate for the purpose of estate duty, and in any event the amount shall be divided amongst the persons interested in the licensed premises (including the holder of the licence) in such shares as may be determined by the compensation authority:

Provided that, in the case of the holder of the licence, regard shall be had not only to his legal interest in the premises or trade fixtures, but also to his conduct and to the length of time during which he has been the holder of the licence; and the holder of a licence, if a tenant, shall (notwithstanding any agreement to the contrary) in no case receive a less amount than he would be entitled to as tenant from year to year of the licensed premises.

(3) If on the division of the amount to be paid as compensation any question arises which the compensation authority consider can be more conveniently determined by the county court, they may refer that question to the county court in accordance with rules of court to be made for the purpose.

If there is delay on the part of the persons interested in the compensation (or it is presumed on the part of the court) the justices may grant a further provisional renewal of the licence though one has already been granted (*Rex v. Newington Licensing Justices*, [1914] 2 K. B. 710, 83 L. J. K. B. 1367).

(4) Any costs incurred by the Commissioners of Inland Revenue on an appeal from their decision to the High Court under this section shall, unless the High Court order those costs to be paid by some party to the appeal other than the Commissioners, be paid out of the amount to be paid as compensation.

Under s. 2 of the 1904 Act it was held that the valuation of the respective interests was a question of fact for the judge and that his finding could not be questioned. *Query* whether there was any appeal from him (*Liverpool Corporation v. Peter Walker & Son*, [C. A.] [1908] 2 K. B. 33; 77 L. J. K. B. 700).

Compensa-
tion fund

21.—(1) The compensation authority shall, in each year, unless they certify to the Secretary of State that it is unnecessary to do so in any year, for the purpose of their powers and duties under

this Act as compensation authority, impose in respect of all old on-licences renewed in respect of premises within their area, charges at rates not exceeding, and graduated in the same proportion as, the rates shown in the scale of maximum charges set out in the first part of the third schedule to this Act.

Section 21.

(2) Charges payable under this section in respect of any licence shall be levied and paid together with, and as part of the duties on, the corresponding excise licence, but a separate account shall be kept by the Commissioners of Customs and Excise of the amount produced by those charges in the area of any compensation authority, and that amount shall in each year be paid over to that authority in accordance with rules made by the Treasury for the purpose.

(3) Such deductions from rent as are set out in the second part of the third schedule to this Act may, notwithstanding any agreement to the contrary, be made by any holder of a licence who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge.

(4) Any sums paid to a compensation authority in respect of the charges under this section, or received by the compensation authority from any other source for the payment of compensation under this Act, shall be paid by them to a separate account under their management, and the moneys standing to the credit of that account shall constitute the compensation fund.

(5) Any expenses incurred by the compensation authority in the payment of compensation under this Act, or otherwise in the exercise of their powers or the performance of their duties as compensation authority, and such expenses of the licensing justices incurred with respect to the matter of the reference to the compensation authority of the question of the renewal of old on-licences, or the grant of new on-licences, as the compensation authority may allow, shall be paid out of the compensation fund, and the compensation authority, in the exercise of their powers, shall have regard to the funds available for the purpose.

(6) The compensation authority may, with the consent of a Secretary of State, borrow in accordance with rules made under this Act, on the security of the compensation fund, for the purpose of paying any compensation payable under this Act.

* * * * *

47. A Secretary of State may make rules for carrying into effect the provisions of this Act as to the renewal of old on-licences, the payment of compensation, and as to the attachment of conditions to new justices' on-licences, and may by those rules amongst other things—

* * * * *

(b) provide for the enforcement of any security given for money borrowed by the compensation authority, and for the time, not exceeding fifteen years, within which money borrowed is to be replaced; and

(c) regulate the management and application of the compensation fund and the audit of the accounts of the compensation authority;

* * * * *

Section 71.

LICENSING RULES, 1910.

71.—(1) Where a compensation authority makes default for a period of one month in paying an amount of not less than fifty pounds (whether in one sum or separate sums) for the time being due in respect of any loan raised under the Act, the persons entitled to the said amount, or any of those persons, may, without prejudice to any other remedy, apply to the county court of the district in which the office of the treasurer of the compensation authority is situated for the appointment of a receiver; and any receiver so appointed (subject to any direction which may be given by the court) shall, as occasion requires, pay out of the compensation fund any sum the payment of which is so in default, together with all sums due while he is receiver on or in respect of any such loan, and all costs, charges, and expenses incurred in or about the appointment of such receiver, and the execution of his duties under this rule, including a proper remuneration for his trouble, and for that purpose may raise such sums as are necessary by means of charges under section 21 of the Act.

(2) The receiver shall have the same power (to be exercised subject to and in accordance with the provisions of these rules).

(3) All sums paid into the sinking fund shall, as soon as may be, be invested by the compensation authority in securities in which trustees are, for the time being, by law authorised to invest, and any investments made in pursuance of this provision may from time to time be varied or transposed; and all dividends and other annual sums received in respect of any investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the compensation authority in like manner.

COUNTY COURT RULES, ORDER L.

THE LICENSING (CONSOLIDATION) ACT, 1910. THE LICENSING RULES, 1910.

Procedure where Questions referred to County Court under the Licensing (Consolidation) Act, 1910 (10 Edw. VII. & 1 Geo. V. c. 24), sect. 20, sub-section (3).

Rule 37.

Settlement
of question
referred
under
10 Edw. VII.
& 1 Geo. V.
c. 24, s. 20 (3).
Court having
jurisdiction.
Form of
reference.
Court may
send back
reference
for further
information,
etc.

37. Where any question is referred to the county court under sub-section (3) of section 20 of the Licensing (Consolidation) Act, 1910, the following provisions shall apply.

38. The court having jurisdiction in the matter shall be the court in the district of which the licensed premises are situate.

39. The reference shall be in the form of an order of the compensation authority, which shall state concisely the question referred and the circumstances in which the question arises, and any facts found by that authority in relation thereto, and shall be authenticated in accordance with the Licensing Rules, 1910.

40. In any case in which it seems necessary or expedient the judge may at any time send the order of reference back to the compensation authority for further information touching the facts or circumstances in which the question arises, or for further explanation of the nature of the question intended to be referred.

Rule 41.

Petition and affidavit.

41. Any person who has been determined by the compensation authority to be interested in the determination of the question referred, or where the compensation authority has not determined who are the persons so interested, any person claiming to be interested in the determination of the question, may on filing a copy of the order of reference authenticated in accordance with the Licensing Rules, 1910, file a petition intituled in the matter of the Licensing (Consolidation) Act, 1910, and of the licensed premises, and stating concisely the circumstances in which his claim arises, and the relief or order which the petitioner claims, and praying for the order and direction of the court with reference to the question, and the rights of all persons interested in the determination thereof. The petition shall be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made. The petitioner may in his petition or affidavit refer to and adopt any facts or circumstances stated in the order of reference without setting them forth anew, but he shall not state or depose to any facts or circumstances inconsistent with those appearing in the order of reference; but he may state or depose to any material facts omitted therefrom and not inconsistent therewith.

Respondents.

42. All persons who have been determined by the compensation authority to be interested in the determination of the question referred, or where the compensation authority has not determined who are the persons so interested, all persons known to the petitioner as persons claiming to be interested in the determination of the question, shall be named as respondents to the petition.

Copies of petition and affidavit.

43. The petitioner shall deliver to the registrar with the petition and affidavit copies thereof for the use of the judge, and copies for each respondent to be served.

Fixing day of hearing by registrar.

44. On the filing of the petition the registrar shall fix the hearing thereof before the judge for any court appointed to be held within twenty-eight days from the date of the filing of the petition, but the date of hearing shall be so fixed as to allow the copies of the petition and affidavit to be served on the respondents at least ten clear days before the date so fixed.

Fixing day and place for hearing by judge.

45. If there is no such court available, the registrar shall send notice of the petition to the judge, who shall, as soon as conveniently may be, appoint a day and place for the hearing. The day shall be so fixed as to allow the copies of the petition and affidavit to be served on the respondents at least ten clear days before the date so fixed. The place of hearing shall be the place at which the court is held, or, if the judge so orders, any other convenient court of which he is judge.

Notice to parties.
Form 341.

46. On the day for the hearing being fixed, the registrar shall give, or send by post, notice in writing to the petitioner, stating the place at which and the day and hour on and at which the petition will be heard, and shall issue the copies of the petition and affidavit, under the seal of the court, for service on the respondents, together with notices signed by the registrar himself and under the seal of the court, stating the place at which and the day and hour on and at which the petition will be heard, and that

Rule 46. — if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Service on respondents. 47. The copies and notices mentioned in the last preceding rule shall be served on each respondent ten clear days at least before the day fixed for the hearing.

By whom service may be effected. 48. Such copies and notices may be served :—
(a) By a bailiff of a court :
or, at the request of the petitioner,

(b) By the petitioner, or some clerk or servant in his permanent and exclusive employ ; or

(c) By the petitioner's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve the copy and notices who might be so employed to serve a writ in an action in the High Court.

Mode of service. 49. Service may be effected either in accordance with the rules as to service of default summonses, or by sending the copy and notice to be served on any respondent by registered post addressed to such respondent at his last-known residence or place of business ; and Order LIV Rule 2, shall apply to service by registered post under this rule

Where service effected otherwise than by bailiff. 50. Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and place and mode of service indorsed thereon, and an affidavit of service, according to the form in the Appendix, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to the registrar by the petitioner.

Adding respondents. 51. Any person not named as a respondent who claims to be interested in the determination of the question referred may, unless the compensation authority has determined that he is not so interested, apply to the court, before or at the hearing, to be added as a respondent, on filing an affidavit showing how he claims to be interested ; and the court may, if it thinks fit, order such person to be added as a respondent accordingly, on such terms as to adjournment, notice to the other parties, costs, and otherwise, as may be just.

Where person who has not made claim before compensation authority appears to court to be interested. 52. The court shall not have power to make any order inconsistent with any determination or order of the compensation authority ; but if in any case in which the compensation authority has determined who are the persons interested it appears to the court that any other person who has not made a claim before the compensation authority is interested in the determination of the question referred, the court may send the order of reference back to the compensation authority with a report to that effect, in order that that authority may take such further action in the matter as it may think fit.

53. Subject to the special provisions of these rules, the procedure on a petition shall be the same as the procedure on any other petition to the court.

Rule 53.

Procedure on petition.

54. A copy of the order of the judge on any petition, signed by the registrar and sealed with the seal of the court, shall be forwarded by the registrar by post to the clerk of the compensation authority.

Order to be sent to compensation authority.

55. Where the hearing is to take place at another court, the registrar of the court in which the petition is pending shall forthwith send notice to the registrar of such other court that the judge has ordered the hearing to take place there; and he shall, in sufficient time before the hearing, transmit the papers to the registrar of the court at which the hearing is to take place, who shall act at the hearing for such first-mentioned registrar, and shall, after the hearing, return the papers to him, with a minute of the order made; and such order shall be drawn up, sealed, filed, and proceeded on in the court in which the petition is pending, in like manner as if the hearing had taken place there.

Where hearing is to take place at another court.

56.—(1) The costs of and incident to a petition and the proceedings connected therewith shall be in the discretion of the judge, who may order any such costs to be paid out of the compensation money, or, where the question referred relates only to a share of the compensation money, out of that share, or to be paid by any party to the proceedings to any other party. Any costs allowed by the judge shall be taxed according to such one of the scales of costs applicable to actions in the county court as the judge shall direct; and in default of such direction shall be taxed according to the scale which would be applicable if the proceeding had been a petition relating to a fund in court.

Costs.

(2) Proceedings on a petition shall be within Order LIII., Rules 7, 8, and 9.

For Order LIII., Rules 7, 8, and 9, see Vol. I.

(3) Where any costs are ordered to be paid out of the compensation money or any share thereof, such costs shall be taxed, and a certificate of taxation shall be signed by the registrar and forwarded by him by post to the clerk of the compensation authority.

57. In these rules the expressions "compensation authority" and "compensation money" have the same meaning as in the Licensing Rules, 1910.

Interpretation.

Appointment of Receiver under the Licensing Rules, 1910, Rule 71.

58. An application to the court for the appointment of a receiver under Rule 71 of the Licensing Rules, 1910, shall be made by petition; and the same procedure shall be followed and the same costs allowed as on any other petition to the court in which the subject-matter of the petition amounts to or (as the case may be) exceeds fifty pounds.

Application for appointment of receiver under Licensing Rules, 1910, Rule 71.

THE LITERARY AND SCIENTIFIC INSTITUTIONS ACT, 1854.

[17 & 18 VICT. c. 112.]

Jurisdiction.—By this Act, jurisdiction is given to the county court (1) to adjust the affairs of a literary or scientific institution, where a dispute has arisen in its winding-up; (2) to distribute, if the members cannot agree, any surplus which may arise on such winding-up. Penalties for breach of byelaws may also be recovered in the county court, s. 24.

Practice.—Proceedings in case of disputes under this Act are commenced by plaint and summons. The practice is the same as explained for disputes in building societies (Order XLI.; see *ante*, p. 1778).

Fees.—Poundage is estimated on the amount in dispute, and if no amount is in dispute, or if the amount is unascertained, then as on a claim for 20%.

Provisions
for the
dissolution
of institu-
tions and
adjustment
of their
affairs.

29. Any number not less than three-fifths of the members of any institution may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the institution, its claims and liabilities, according to the rules of the said institution applicable thereto, if any, and if not, then as the governing body shall find expedient; provided, that in the event of any dispute arising among the said governing body or the members of the institution the adjustment of its affairs shall be referred to the judge of the county court of the district in which the principal building of the institution shall be situated, and he shall make such order or orders in the matter as he shall deem requisite, or, if he find it necessary, shall direct that proceedings shall be taken in the Court of Chancery for the adjustment of the affairs of the institution.

Upon a dis-
solution, no
member to
receive profit.

Proviso for
joint stock
companies.

30. If upon the dissolution of any institution there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said institution or any of them, but shall be given to some other institution, to be determined by the members at the time of the dissolution, or in default thereof by the judge of the county court aforesaid; provided, however, that this clause shall not apply to any institution which shall have been founded or established by the contributions of shareholders in the nature of a joint stock company.

Even if the rules provide for the distribution of any surplus amongst the members, the Act overrides them, and the surplus must be disposed of as above (*Re Bristol Athenæum*, (1889) 43 Ch. D. 236; 59 L. J. Ch. 116).

LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

[51 & 52 VICT. c. 41.]

See *infra*, PARLIAMENTARY ELECTIONS.

LOCAL LOANS ACT, 1875.

[38 & 39 VICT. C. 83.]

Jurisdiction is given under sect. 12, where the local authority has for twenty-one days made default in paying an amount of not less than 500*l.* (whether in one or separate sums), in respect of any security issued under the Act. The persons entitled to the amount or any of such persons may, as an additional remedy, apply to the county court to appoint a receiver, and the court may appoint and may make such orders and give such directions as to the powers and duties of the receiver as may be thought fit.

Further, under sect. 25, if the name of any person is without sufficient cause entered in or omitted from the register of securities issued under the Act (sect. 23), where the value of such securities does not exceed 50*l.*, proceedings for rectification of the register may be taken in the county court.

Practice.—The application under either section shall be by petition presented to the court of the district in which the local authority exercises its authority; the procedure is governed by Order L. rr. 6—8, *infra*.

12. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorised to be raised is charged on the local rate, the receiver may raise the money he is authorised to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorised to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorised to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale as in this Act mentioned, by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as

Section 12. to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

COUNTY COURT RULES, ORDER L.

Application for a receiver to be by petition. 6. An application to the court for the appointment of a receiver under the provisions of sect. 12 of the Local Loans Act, 1875, shall be made by petition, and the same procedure shall be followed and the same fees paid and costs allowed as on any other petition to the court in which the subject-matter of the petition exceeds 100*l*.

Application for rectification of register to be by petition. 7. An application to the judge for the rectification of a register of nominal securities under the provisions of sect. 25 of the Local Loans Act, 1875, shall be made by petition, and the same procedure shall be followed, and the same fees paid and costs allowed, as on any other petition to the court in which the subject-matter of the petition exceeds 20*l*. and does not exceed 100*l*.

To what court. 8. The court to which petitions shall be presented under the two preceding rules of this Order shall be the court of the district in which the local authority exercises its authority.

LOAN SOCIETIES ACT, 1840.

[3 & 4 VICT. C. 110.]

Jurisdiction.—By sect. 17 loans may be recovered in the county court to the extent of its jurisdiction, notwithstanding that sect. 16 provides for recovery by summons before a justice of the peace, also that the treasurer or clerk may be plaintiff.

Practice.—Proceedings will be by plaint and summons, and the ordinary practice of the court applies.

Recovery of loans in courts of request. 17. And be it declared and enacted, that notwithstanding the provisions hereinbefore contained, the treasurer or clerk of such society for the time being may proceed for the recovery of the sum due on such note against the party or parties liable to pay the same, in any county court, or court of conscience or request, having jurisdiction to the amount so due, according to the course and practice of such courts; and in such case the Act or Acts, and all provisions therein relating to such court and the powers thereof, shall be applicable to the recovery of the sum so due on such note.

THE LONDON BUILDING ACTS, 1894 AND 1905.

[57 & 58 VICT. C. CCXIII.; 5 EDW. VII. C. CCIX.—PRIVATE ACTS.]

Jurisdiction is given to the county court by sect. 91 to hear appeals against an award made by surveyor or surveyors as to differences between building owners and adjoining owners within the limits of the administrative county of London; by sect. 94 to settle any difference as to security between a building owner and an adjoining owner; by sect. 168 to settle

the time and manner of executing any work, or of doing any other thing, and to put the parties upon terms as to the execution of the work. By sect. 196, where any consent has to be given to, any notice served on, or any thing done by or to any owner, and there is no owner, or the owner cannot be found, the judge of the county court may give such consent and do or cause such thing to be done on such terms as he may think fit, or may dispense with the service of any notice. By sect. 200, sub-s. 11 (d), (e), the failure to comply with any order of the county court made in pursuance of the Act, or the refusal to admit at a reasonable time any builder to any building or in any way to prevent a builder from complying with any order of the county court, causes a person so offending to be liable upon summary conviction to penalties. By sect. 20 of the Act of 1905 (*supra*) the owner of any building who has paid or incurred the expenses of executing any work in respect of such building which the owner of such building is required to execute under the provisions of this Act or has paid any other expenses which by any such provision as aforesaid are required to be borne or paid by the owner may, if he thinks fit, apply to the county court of the district in which such building is situate and such court may thereupon issue a summons requiring the several persons entitled to any estate or interest in the building to appear before the court and the court may make such order concerning such expenses or their apportionment among all the several persons entitled to any estate or interest in the building as appears to the court to be just and equitable in the circumstances of the case, regard being had to the terms of any lease or contract affecting such building.

Removal to High Court.]—By sect. 91, sub-s. 5, if the appellant satisfies the judge that the matter involves a liability to pay a sum, exclusive of costs, exceeding 50*l.*, and gives security, proceedings in the county court are to be stayed, and the appellant may bring an action against the other party in the High Court, the costs incurred in the county court are to be deemed to be costs incurred in such action.

Practice is settled by Order L. rr. 30—32 (*post*, p. 2146). Rule 30 settles the practice of appeals from an award under sect. 91; Rule 31, the practice where security is demanded under sect. 94; and Rule 32, the practice on an application made under sect. 196. Poundage is estimated on the amount in dispute; if no amount is in dispute, or is unascertained, as on a claim for 20*l.*

Appeal from County Court.]—In any matter in which jurisdiction is given to a county court by the Act, any person has, by sect. 168, the same right of appeal as he would have under the County Courts Act, 1888, s. 120.

See *Monroe v. Lord Burghclere*, (1918) 1 K. B. 291.

91.—(1) In all cases not specially provided for by this Act Settlement where a difference arises between a building owner and adjoining of difference owner in respect of any matter arising with reference to any work between to which any notice given under this part of this Act relates building and unless both parties concur in the appointment of one surveyor adjoining owners. they shall each appoint a surveyor and the two surveyors so appointed shall select a third surveyor and such one surveyor or three surveyors or any two of them shall settle any matter from time to time during the continuance of any work to which the notice relates in dispute between such building and adjoining owner with power by his or their award to determine the right to do and the time and manner of doing any work and generally any other matter arising out of or incidental to such difference but any time so appointed for doing any work shall not unless otherwise agreed commence until after the expiration of the period

Section 91. by this part of this Act prescribed for the notice in the particular case.

(2) Any award given by such one surveyor or by such three surveyors or by any two of them shall be conclusive and shall not be questioned in any court with this exception that either of the parties to the difference may appeal therefrom to the county court within fourteen days from the date of the delivery of the award and the county court may subject as hereinafter in this section mentioned rescind the award or modify it in such a manner as it thinks just.

(3) If either party to the difference make default in appointing a surveyor for ten days after notice has been served on him by the other party to make such appointment the party giving the notice may make the appointment in the place of the party so making default.

(4) The costs incurred in making or obtaining the award shall be paid by such party as the surveyor or surveyors determine.

(5) If the appellant from any such award on appearing before the county court declares his unwillingness to have the matter decided by that court and proves to the satisfaction of the judge of that court that in the event of the matter being decided against him he will be liable to pay a sum exclusive of costs exceeding fifty pounds and gives security to be approved by the judge duly to prosecute his appeal and to abide the event thereof all proceedings in the county court shall thereupon be stayed and the appellant may bring an action in the High Court against the other party to the difference.

(6) The plaintiff in such action shall deliver to the defendants an issue whereby the matters in difference between them may be tried and the form of such issue in case of dispute or in case of the non-appearance of the defendant shall be settled by the High Court and such action shall be prosecuted and issue tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of the High Court or as near thereto as circumstances admit.

(7) If the parties to any such action agree as to the facts a special case may be stated for the opinion of the High Court and any case so stated may be brought before the court in like manner and subject to the same incidents in and subject to which other special cases are brought before such court or as near thereto as circumstances admit and any costs that may have been incurred in the county court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action and be payable accordingly.

(8) Where both parties to the difference have concurred in the appointment of one surveyor for the settlement of such difference then if such surveyor refuse or for seven days neglect to act or die or become incapable to act before he has made his award the matters in dispute shall be determined in the same manner as if such single surveyor had not been appointed.

(9) Where each party to the difference has appointed a surveyor for the settlement of the difference and a third surveyor has been selected then if such third surveyor refuse or for seven days neglect

to act or before such difference is settled die or become incapable to act the two surveyors shall forthwith select another third surveyor in his place and every third surveyor so selected as last aforesaid shall have the same powers and authorities as were vested in his predecessor.

Section 91.

(10) Where each party to the difference has appointed a surveyor for the settlement of the difference then if the two surveyors so appointed refuse or for seven days after request of either party neglect to select a third surveyor or another third surveyor in the event of the refusal or neglect to act death or incapacity of the third surveyor for the time being a Secretary of State may on the application of either party select some fit person to act as third surveyor and every surveyor so selected shall have the same powers and authorities as if he had been selected by the two surveyors appointed by the parties.

(11) Where each party to the difference has appointed a surveyor for the settlement of the difference then if before such difference is settled either surveyor so appointed die or become incapable to act the party by whom such surveyor was appointed may appoint in writing some other surveyor to act in his place and if for the space of seven days after notice served on him by the other party for that purpose he fail to do so the other surveyor may proceed *ex parte* and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred and every surveyor so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former surveyor at the time of his death or disability as aforesaid.

(12) Where each party to the difference has appointed a surveyor for the settlement of the difference then if either of the surveyors refuse or for seven days neglect to act the other surveyor may proceed *ex parte* and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred.

* * * * *

94. An adjoining owner may if he think fit by notice in writing require the building owner (before commencing any work which he may be authorised by this part of this Act to execute) to give such security as may be agreed upon or in case of difference may be settled by the judge of the county court for the payment of all such expenses costs and compensation in respect of the work as may be payable by the building owner.

The building owner may if he think fit at any time after service on him of a party wall or party structure requisition by the adjoining owner and before beginning a work to which the requisition relates but not afterwards serve a counter requisition on the adjoining owner requiring him to give such security for payment of the expenses costs and compensation for which he is or will be liable as may be agreed upon or in case of difference may be settled as aforesaid.

If the adjoining owner do not within one month after service of that counter requisition give security accordingly he shall at the end of that month be deemed to have ceased to be entitled to

Section 94. compliance with his party wall or party structure requisition and the building owner may proceed as if no party wall or party structure requisition had been served on him by the adjoining owner.

* * * * *

Powers of
and appeal
from county
court.

168. Where jurisdiction is by this Act given to a county court that court may settle the time and manner of executing any work or of doing any other thing and may put the parties to the case upon such terms as respects the execution of the work as the court thinks fit :

Provided that any person shall have the same right of appeal from any decision of a county court in any matter in which jurisdiction is given to such court by this Act as he would have under the County Courts Act, 1888, from any decision of such court in any matter.

* * * * *

Consent how
given on
behalf of
owners not
to be found.

Appeals
under 57 & 58
Vict. c. cexiii.
s. 91.

196. Where any consent is required to be given any notice to be served or any other thing to be done by on or to any owner in pursuance of this Act if there is no owner or if any such owner cannot be found the judge of the county court may give such consent or do or cause to be done such thing on such terms and conditions as he may think fit and may dispense with the service of any notice which would otherwise be required to be served.

* * * * *

[Conf.
Form 446.]

COUNTY COURT RULES, ORDER L.

30.—(1.) A party desirous of appealing from an award under sect. 91 of the London Building Act, 1894, shall, within fourteen days from the date of the delivery of the award, file with the registrar two copies of the award, together with a written statement in duplicate of the grounds of appeal.

(2.) The registrar shall forthwith upon the filing of the said copies and statement enter a plaint and issue a summons calling upon the other party to show cause why the award should not be rescinded or modified, and shall annex to the summons for service a copy of the award and one of the statements of the grounds of appeal, which copy and statement shall be deemed to be part of the summons.

(3.) The practice, procedure, and costs in an action shall be applicable to an appeal under the said section.

Applications
under 57 & 58
Vict. c. cexiii.
s. 94.

31. An application to the court under sect. 94 of the London Building Act, 1894, to settle the security to be given in any case mentioned in the said section shall be made by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed with every such application, stating precisely the relief or order which the plaintiff claims.

Applications
under 57 & 58
Vict. c. cexiii.
s. 196.

32. An application to the court under sect. 196 of the London Building Act, 1894, shall be made by petition; and the same practice, procedure, and costs shall be applicable as on any other petition to the court.

THE LONDON (CITY) SMALL DEBTS EXTENSION ACT, 1852.

[15 VICT. C. LXXVII. JUNE 17, 1852.]

Note.—This Act facilitates the service of process between the City of London court and county courts. The City of London court is now substantially a county court (see 10 & 11 Geo. V. c. cxxxiv.).

41. That any summons or other process which under this Act shall be required to be served out of the city of London or the liberties thereof may be served by the bailiff of any court holden in any part of England, under an Act passed in the ninth and tenth years of the reign of her present Majesty, intituled “An Act for the more easy recovery of Small Debts and Demands in England,” or any Act altering or amending the same; any such service shall be as valid as if the same had been made under the provisions of this Act by the bailiff of the sheriffs court within the city of London or the liberties thereof.

Processes out of district of court may be served by bailiff of any other court holden under 9 & 10 Vict. c. 95.

The provisions of this section seem obsolete since 51 & 52 Vict. c. 43, ss. 84, 185, 186.

42. That any summons or other process which, under the before-mentioned Act for the more easy recovery of small debts and demands in England, or under any Act altering or amending the same, shall be required to be served out of the district of the court from which the same shall have issued, may be served within the city of London or the liberties thereof by the bailiff of the sheriffs court; and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court.

As to service of process of county courts in the city of London.

94. That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party or his goods and chattels shall be out of the jurisdiction of the court, it shall be lawful for the chief bailiff of the court to send such warrant of execution or of commitment to the clerk of any county court constituted under the before-mentioned Act for the more easy recovery of small debts and demands in England within the jurisdiction of which such party or his goods and

How execution may be had out of the jurisdiction of the court.

Section 94. chattels shall then be or believed to be, with a warrant thereto annexed, under the hand of the chief bailiff and seal of the court holden under the provisions of this Act, requiring execution of the same; and the clerk of the county court to which the same shall be sent shall seal or stamp the same with the seal of his court, and issue the same to the high bailiff of his court; and thereupon such bailiff shall be authorized and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the court of which he is the high bailiff, and shall within such time as shall be specified in the rules of practice, return to the chief bailiff of the court holden under the provisions of this Act what he shall have done in the execution of such process; and in case a levy shall have been made shall within such time as shall be specified in the rules of practice, pay over all moneys received in pursuance of the warrant to the chief bailiff of the court holden under the provisions of this Act, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended, he shall be forthwith conveyed, in custody of the bailiff or officer apprehending him, to the gaol or house of correction or other prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant: provided always, that if such party, or his goods and chattels, shall not be within the jurisdiction of any county court constituted under the before-mentioned Act, it shall be lawful for the bailiff of the court holden under the provisions of this Act to apply to any justice of the peace acting for the county or place in which such party or his goods and chattels shall happen to be; and upon such officer producing to such justice such warrant, and making oath (which oath such justice is hereby empowered to administer) that the same has been duly issued out of the court, and that the person or goods and chattels (as the case may be) of such person is or are not to be found within the jurisdiction of the court, but is or are believed by such officer to be within the county or place where such justice acts, such justice shall sign his name on the back of such warrant, and thereupon such bailiff shall have power to take the body or goods and chattels of such person (as the case may be) wheresoever the same shall be found within such county or place, and deal forthwith in like manner as if the same had been taken within the jurisdiction of the court; and all constables and other peace officers are hereby required to be

aiding, within their respective jurisdictions, in the execution of the warrant so endorsed as aforesaid. Section 94.

The City of London court being now substantially a county court (51 & 52 Vict. c. 43, ss. 84, 185, 186), and subject to the general provisions applicable to county courts, it is believed that no provision in aid of that court is necessary, though appeal in an original mayor's court action must still be brought where no leave to appeal is given within two days (see *Newman v. Klausner*, (1922) 91 L. J. K. B. 125).

95. That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made, under the before-mentioned Act for the more easy recovery of small debts and demands in England, and such party or his goods and chattels shall be or be believed to be within the city of London or the liberties thereof, it shall be lawful for the high bailiff of the county court from which such warrant of execution shall have issued, or by which such order of commitment shall have been made, to send such warrant or order to the chief bailiff of the sheriffs court, with a warrant thereto annexed under the hand of the high bailiff and the seal of the county court from which the original warrant or order issued, requiring execution of the same, and the clerk of the sheriffs court shall seal or stamp the same with the seal of the court holden under the provisions of this Act, and shall issue the same to the chief bailiff of the court; and thereupon such chief bailiff shall be authorized and required to act in all respects as if the original warrant of execution or order of commitment had been directed to him by the court holden under the authority of this Act, and shall, within such time as shall be specified in the rules of practice, return to the high bailiff of the county court from which the same originally issued what he shall have done in the execution of such process; and in case a levy shall have been made shall, within such time as shall be specified in the rules of practice, pay over all moneys received in pursuance of the warrant to the high bailiff of the court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended mentioned in such order shall be within the city of London or the liberties thereof, he shall be forthwith conveyed in the custody of the bailiff or officer apprehending him to some gaol, house of correction or other prison within the city of London or the liberties thereof, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of the before-mentioned Act for the recovery of small debts and demands in England, or under any Act altering or amending the same.

How execution out of any county court may be had within the jurisdiction of this court.

LUNACY ACT, 1890.

[53 & 54 VICT. c. 5.]

AS AMENDED BY LUNACY ACT, 1891 (54 & 55 VICT. c. 65).

MENTAL DEFICIENCY ACT, 1913.

[3 & 4 GEO. V. c. 28.]

Jurisdiction.—By sect. 132 of the Act of 1890, where a reception order has been made in the case of a lunatic, the value of whose real and personal estate is under 200*l.*, and no relative or friend is willing to undertake the management of such property, any judge of county courts having jurisdiction in the place from which the lunatic is sent, upon application of a clerk to the guardians or relieving officer, may authorise such persons to take possession of and realise the property of the lunatic, and exercise the powers of a legal personal representative as if the lunatic were dead. Also, by sect. 300, upon application by the guardians of a union, a county court judge may make an order to be enforced against any property of the lunatic for payment of expenses incurred in relation to a lunatic.

Since the passing of this statute, patients, not being paupers or lunatics so found by inquisition, can be received only under an order made by a "judicial authority"; by sect. 9, a county court judge may exercise the powers of a "judicial authority," but is not required to exercise such powers so as to interfere with or delay the exercise of his ordinary jurisdiction. In such case he must sign and send the certificate as provided.

The judge of county courts by sect. 19 of the Mental Deficiency Act, 1913, is made a judicial authority under that Act. In s. cts. 5—9 of that Act and the Regulations (*post*, pp. 2159—2163) the requirements as to making orders by the judicial authority are enacted. The judicial authority is entitled to be assisted by the same officers as if he was acting in the exercise of his ordinary jurisdiction.

Practice.—An application under sects. 132 and 300 of the Act of 1890 shall be made by petition and same procedure followed, and costs allowed as on a petition under Order XXXVIII. (see Order L. r. 17, *post*, p. 2156). The practice when the judge is acting as a judicial authority is provided by sects. 4—7 of the Act of 1890, and is initiated by a petition accompanied by particulars and two medical certificates on separate sheets of paper. The petition shall be considered in private, and, except by leave of the judicial authority, no one except the petitioner, the alleged lunatic, one person appointed by the lunatic, and the persons signing the medical certificates shall be present. Petitions under the Act of 1913 follow the enactments of sects. 5—9 and Order XXXVIII. and Order L. r. 17. See also Regulations dated 2nd April, 1914, *post*, p. 2159.

Privilege.—On such an application, the judicial authority is acting judicially, and statements made during the proceedings are not actionable (*Hodson v. Pare*, (1899) 1 Q. B. 455; 68 L. J. Q. B. 309).

53 & 54 VICT. c. 5.

Private

patients not
found lunatic

4.—(1) Subject to the exceptions in this Act mentioned, a person not being a pauper or a lunatic so found by inquisition, shall not be received and detained as a lunatic in an institution for lunatics, or

as a single patient, unless under a reception order made by the judicial authority hereinafter mentioned. A relative of the person applying for an order under this section or of the lunatic, or of the husband or wife of the lunatic, shall not be capable of making such order.

(2) The order shall be obtained upon a private application by petition accompanied by a statement of particulars and by two medical certificates on separate sheets of paper.

8.—(1) When a lunatic has been received as a private patient under an order of a judicial authority, without a statement in the order that the patient has been personally seen by such judicial authority, the patient shall have the right to be taken before or visited by a judicial authority, other than the judicial authority who made the order, unless the medical officer of the institution, or, in the case of a single patient, his medical attendant, within twenty-four hours after reception, in a certificate signed and sent to the Commissioners, states that the exercise of such right would be prejudicial to the patient.

(2) Where no such certificate has been signed and sent, the manager of the institution in which the patient is, or the person having charge of him as a single patient, shall, within twenty-four hours after reception, give to the patient a notice in writing of his right under this section, and shall ascertain whether he desires to exercise the right, and if he, within seven days after his reception, expresses his desire to exercise the right, such manager or person shall procure him to sign a notice of such desire, and shall forthwith transmit it by post in a prepaid registered letter to the judicial authority who is to exercise the jurisdiction under this section, or to the justices' clerk of the petty sessional division or borough where the lunatic is, to be by him transmitted to such judicial authority, and the judicial authority shall thereupon arrange, as soon as conveniently may be, either to visit the patient or to have the patient brought before him by the manager or person as the judicial authority may think fit.

(3) The judicial authority shall be entitled, if he desires so to do, to see the medical certificates and any other documents, upon the consideration of which the reception order was made, and shall after personally seeing the patient send to the Commissioners a report, and the Commissioners shall take such steps as may be necessary to give effect to the report.

(4) For the purposes of this section the jurisdiction shall be exercised by any judicial authority having authority to act in the place where the person received is, and not being the judicial authority who made the reception order; and arrangements shall for that purpose from time to time be made amongst themselves by the persons having such authority as aforesaid.

9.—(1) The powers of the judicial authority under this Act shall be exercised by a justice of the peace specially appointed as hereinafter provided, or a judge of county courts, or magistrate.

Residue of sub-s. rep., 54 & 55 Vict. c. 65, s. 29.

(2) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses,

Section 4.

by inquisition to be received only under order of judicial authority.

Forms 1, 2, 8.

Right of lunatic to be examined by judicial authority.

Form 5.

Form 6.

Form 7.

Judicial authority defined

Section 9. the administration of oaths, and otherwise, as if he were acting in the exercise of his ordinary jurisdiction, and shall be assisted, if he so requires, by the same officers as if he were so acting, and their assistance under this Act shall be considered in fixing their remuneration.

A judicial authority may, if he considers it expedient, transfer the petition to any judicial authority willing to receive it (54 & 55 Vict. c. 65, s. 24).

(3) A judge of county courts and magistrate shall not be required to exercise any powers under this Act so as to interfere with or delay the exercise of his ordinary jurisdiction.

Power to
deal with
property
of small
amount.

132.—(1) Where a reception order is made in the case of a lunatic the value of whose real and personal property is under two hundred pounds, and no relative or friend of the lunatic is willing to undertake the management of such property, any judge of county courts having jurisdiction in the place from which the lunatic is sent, may, upon the application of the clerk of the guardians, or a relieving officer of the union from which the lunatic is sent, authorise the clerk or relieving officer, or such other person as the judge by his order appoints, to take possession of and sell and realise the real and personal property of the lunatic, and to exercise all the powers which could be exercised by the legal personal representative of the lunatic if he were dead; and the receipt of the person so authorised shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

(2) The judge, by whom such order is made, may by the same or any subsequent orders give such directions as he thinks fit as to the application of the property of the lunatic for his benefit or in reimbursement of such sums as may have been or may be expended by the guardians of the union for his care or relief, or of the costs or expenses incurred in relation to the lunatic by such guardians, or by the person acting under any such order as aforesaid, or the judge may, if he thinks fit, order that the whole or any part of the proceeds of the lunatic's property be paid into the county court to the credit of an account intitled in the matter of such lunatic, and any sum so paid into court may either be invested in the manner provided by the county court rules in force for the time being, or be paid out of court from time to time to such person as the judge directs, to be held and applied for the benefit of such lunatic, or in or towards such reimbursement as aforesaid, in such manner as the judge directs.

(3) The person acting under any such order shall render an account of his dealings with the lunatic's property to the judge by whom such order was made in such manner as the judge appoints.

County court judge has no jurisdiction to order transfer of stock standing in the name of a lunatic (*Re Noyce* (C. A.), (1892) 1 Q. B. 642; 61 L. J. Q. B. 628).

Order by
county court
judge.

300. An order may be made by a judge of county courts upon an application by the guardians of any union for payment of the expenses incurred by them under this Act in relation to a lunatic, and such order may be enforced against any property of the lunatic in the same way as a judgment of the county court.

Rules to
prevent inter-

338.—(4) The Lord Chancellor and a secretary of state respectively may by rules provide for preventing interference or delay

in the exercise of the ordinary jurisdiction of the judges of county courts and magistrates respectively by the transfer of petitions and notices or otherwise as such rules may direct. Section 338.

339. Subject to rules made under this Act, the forms in the second schedule may be used, wherever applicable, with such modifications as circumstances may require, and if used, shall be deemed to be sufficient. ference with
ordinary
duties of
judge or
magistrate.
Forms.

THE SECOND SCHEDULE.

Sect. 339.

FORM 1.

Petition for an Order for reception of a Private Patient.

In the matter of A. B., a person alleged to be of unsound mind.

Sects. 4, 5.

To a justice of the peace for

[or

To His Honour the judge of the county court of or To stipendiary magistrate for .]

The petition of C. D. of [full postal address and rank, profession, or occupation] in the county of

1. I am [at least twenty-one] years of age.

2. I desire to obtain an order for the reception of A. B. as a lunatic [or an idiot or person of unsound mind] in the asylum [or hospital or house as the case may be] of situate at [insert a full description of the name and locality of the asylum, hospital, or licensed house, or the full name, address, and description of the person who is to take charge of the patient as a single patient].

3. I last saw the said A. B. at on the [some day within 14 days before the date of the presentation of the petition] day of

4. I am the [here state the connection or relationship with the patient] of the said A. B. [or if the petitioner is not connected with or related to the patient state as follows :]

I am not related to or connected with the said A. B. The reasons why this petition is not presented by a relation or connection are as follows : [State them.]

The circumstances under which this petition is presented by me are as follows : [State them.]

5. I am not related to or connected with either of the persons signing the certificates which accompany this petition as (where the petitioner is a man) husband, father, father-in-law, son, son-in-law, brother, brother-in-law, partner or assistant, (or where the petitioner is a woman) wife, mother, mother-in-law, daughter, daughter-in-law, sister, sister-in-law, partner or assistant.

6. I undertake to visit the said A. B. personally or by some one specially appointed by me at least once in every six months while under care and treatment under the order to be made on this petition.

7. A statement of particulars relating to the said A. B. accompanies this petition.

If it is the fact add :

8. The said A. B. has been received in the asylum [or hospital or house as the case may be] under an urgency order dated the

The petitioner therefore prays that an order may be made in accordance with the foregoing statement.

[Signed]

Date of presentation of the petition (a). Full Christian and surname.

NOTE.--(a) Amended by 54 & 55 Vict. c. 65, s. 23.

FORM 2.

Sects. 4, 5, 11.

Statement of Particulars.

STATEMENT of particulars referred to in the annexed petition [or in the above or annexed order].

The following is a statement of particulars relating to the said A. B. [*is any particulars are not known, the fact is to be so stated. (Where the patient is in the petition or order described as an idiot omit the particulars marked †)*]:—

Name of patient, with Christian name at length.

Sex and age.

†Married, single, or widowed.

†Rank, profession, or previous occupation (if any).

†Religious persuasion.

Residence at or immediately previous to the date hereof.

†Whether first attack.

Age on first attack.

When and where previously under care and treatment as a lunatic, idiot, or person of unsound mind.

†Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others and in what way.

Whether any near relative has been afflicted with insanity.

Names, Christian names, and full postal addresses of one or more relatives of the patient.

Name of the person to whom notice of death to be sent, and full postal address if not already given.

Name and full postal address of the usual medical attendant of the patient.

(Signed)

When the petitioner or person signing an urgency order is not the person who signs the statement, add the following particulars concerning the person who signs the statement.	{	Name with Christian name at length. Rank, profession, or occupation (if any). How related to or otherwise connected with the patient.
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FORM 3.

Sect. 6.

Order for reception of a Private Patient to be made by a Justice appointed under the Lunacy Act, 1890, Judge of County Courts, or Stipendiary Magistrate.

I, the undersigned E. F., being a justice for _____ specially appointed under the Lunacy Act, 1890 [or the judge of the county court of _____ or the stipendiary magistrate for _____] upon the petition of C. D. of [address and description] in the matter of A. B. a lunatic, [or an idiot or person of unsound mind] accompanied by the medical certificates of G. H. and I. J. hereto annexed, and upon the undertaking of the said C. D. to visit the said A. B. personally or by some one specially appointed by the said C. D. once at least in every six months while under care and treatment under this order, hereby authorise you to receive the said A. B. as a patient into your asylum [or hospital or house or as a single patient] And I declare

that I have [or have not] personally seen the said A. B. before making this order.

Dated

(Signed) E. F.

A justice for appointed
under the above-mentioned act,
[or The judge of the county
court of or a stipendiary
magistrate].

To [to be addressed to the medical superintendent of the asylum or hospital
or to the resident licensee of the house in which the patient is to be placed].

RULES UNDER SECT. 338, SUB-S. 4, OF LUNACY ACT, 1890.

1. If on the presentation to a judge of county courts of a petition for a reception order, or the transmission to a judge of a notice that a lunatic desires to exercise the right of being taken before or being visited by him, such judge is unable to proceed upon such petition or notice without interfering with or delaying the exercise of his ordinary jurisdiction, it shall be lawful for him by writing under his hand, to certify such inability, together with the grounds upon which the certificate is founded, and thereupon to send the petition or notice, and the documents accompanying the same, together with the certificate, by registered post, to the justices' clerk of the petty sessional division or borough where the lunatic is, to be transmitted by the clerk to some other of the judicial authorities mentioned in section 9, sub-section 1, of the Lunacy Act, 1890; and such other judicial authority shall thereupon proceed in the matter as if the petition had been presented or the notice had been transmitted to him in the first instance.

2. A judge of county courts signing a certificate under these rules shall also send a copy thereof to the Lord Chancellor.

3. Certificates under these rules shall be according to the form in the schedule.

THE SCHEDULE.

FORM OF CERTIFICATE.

Whereas a petition for a reception order under the Lunacy Act, 1890, in the matter of A. B., a person alleged to be of unsound mind, has been presented to me: [or Whereas a notice of the desire of A. B., a person under care and treatment as a lunatic, to be taken, under the Lunacy Act, 1890, before or visited by a judge of county courts, magistrate, or justice of the peace has been transmitted to me:]

Now I, the undersigned, certify that I am unable to proceed upon the said petition [or the said notice] without interfering with or delaying the exercise of my ordinary jurisdiction as a judge of county courts. The grounds upon which this certificate is founded are as follows: (*here state them*).

(Signed)

Judge of the county court of

Dated

(Signed) HALSBURY, C.

March 29th, 1890.

COUNTY COURT RULES.—ORDER L., RULE 17.

An application to the judge under sect. 132 or sect. 300 of the Lunacy Act, 1890, shall be made by petition; and the same procedure shall be followed and the same costs allowed as on a petition under Order XXXVIII.

MENTAL DEFICIENCY ACT, 1913.

[3 & 4 GEO. V. c. 28.]

REQUIREMENTS AS TO THE MAKING OF ORDERS.

(See Regulations of 2nd April, 1914, *post*, p. 2159.)

NOTE.—The definition of a defective within the meaning of the Mental Deficiency Acts, 1913 to 1927 is now contained in sect. 1 of the 1927 Act (17 & 18 Geo. V. c. 33).

Presentation of petitions.

5.—(1) An order of a judicial authority under this Act shall be obtainable upon a private application by petition made by any relative or friend of the alleged defective, or by any officer of the local authority under this Act authorised in that behalf (a).

(2) Every petition shall be accompanied by two medical certificates, one of which shall be signed by a medical practitioner approved for the purpose by the local authority or the Board, or a certificate that a medical examination was impracticable, and by a statutory declaration made by the petitioner and by at least one other person (who may be one of the persons who gave a medical certificate) stating—

- (a) that the person to whom the petition relates is a defective within the meaning of this Act, and the class of defectives to which he is alleged to belong; and
- (b) that that person is subject to be dealt with under this Act, and the circumstances which render him so subject; and
- (c) whether or not a petition under this Act, or a petition for a reception order under the Lunacy Acts, 1890 to 1911, has previously been presented concerning that person, and, if such a petition has been presented, the date thereof and the result of the proceedings thereon; and
- (d) if the petition is accompanied by a certificate that a medical examination was impracticable, the circumstances which rendered it impracticable.

(3) If a petition is not presented by a relative or by an officer of the local authority, it shall contain a statement of the reasons why the petition is not presented by a relative, and of the connection of the petitioner with the person to whom the petition relates and the circumstances under which he presents the petition.

(4) Where the Board are satisfied that a petition under this section ought to be presented concerning any person, and that the local authority have refused or neglected to cause a petition to be presented, they may direct an inspector or other officer to present a petition, and this section shall apply accordingly.

Procedure on hearing petitions.

6.—(1) Upon the presentation of the petition and such documents as aforesaid, the judicial authority shall either visit the person to whom the petition relates or summon him to appear before him.

(a) See *Rex v. Judge Radcliffe*, (1915) 84 L. J. K. B. 2196.

Section 6.

(2) Proceedings before the judicial authority may, in any case if the judicial authority thinks fit, and shall, if so desired by the person to whom the petition relates, be conducted in private, and in that case no one except the petitioner, the person to whom the petition relates, his parents or guardian and any two persons appointed for the purpose by the person to whom the petition relates, or by his parents or guardian, and the persons signing the medical certificates and the statutory declaration accompanying the petition shall, without leave of the judicial authority, be allowed to be present.

(3) If the judicial authority is satisfied that the person to whom the petition relates is a defective and is also satisfied that he is subject to be dealt with under this Act, the judicial authority may, if he thinks it desirable to do so in the interests of such person, make an order either ordering him to be sent to an institution the managers of which are willing to receive him, or appointing a suitable person to be his guardian, and the order shall state the class of defectives to which he belongs, and the circumstances which render him subject to be dealt with under this Act :

Provided that—

(a) where the petition is not presented by the parent or guardian, the order shall not be made without the consent in writing of the parent or guardian, unless it is proved to the satisfaction of the judicial authority that such consent is unreasonably withheld, or that the parent or guardian cannot be found, *or that, by reason of the parent or guardian being abroad, any attempt to obtain his consent would result in undue delay in dealing with the petition*, but consent shall not be deemed to be unreasonably withheld if withheld with the *bonâ fide* intention of benefiting the defective; and

(b) nothing in this section shall prevent an order being made, notwithstanding that the person to whom the petition relates does not appear to the judicial authority to belong to the class of defectives to which he is in the petition alleged to belong, if the judicial authority is satisfied that he is a defective.

(4) If the judicial authority is not satisfied that the person to whom the petition relates is a defective, and subject to be dealt with under this Act, or that it is desirable in the interests of such person that an order should be made, the judicial authority may, if he thinks fit, adjourn the case for a period not exceeding fourteen days for further evidence or information, and may order that the person to whom the petition relates shall submit himself to medical examination, or may dismiss the petition :

Provided that, unless the petition is dismissed, the judicial authority shall order a medical examination in any case where the petition was accompanied by a certificate that a medical examination was impracticable.

NOTE.—Words in italics added by Mental Deficiency Act, 1927, s. 4.

7.—(1) Where an order has been made that a defective be placed under guardianship the judicial authority which made the order, or any other judicial authority, or, where the original order was not made by a judicial authority, any judicial authority may, on application being made for the purpose by the guardian or by the Board or by the local authority, and on being satisfied

Variation of orders.

Section 7. that the case is or has become one unsuitable for guardianship, order that the defective be sent to an institution.

(2) A person appointed to be guardian of a defective may, on the application of the local authority or of the Board or of any other person who appears to be interested, be removed from his office by any such judicial authority as aforesaid, and, where a person appointed to be guardian of a defective dies, or resigns his office, or is removed from his office, such judicial authority as aforesaid may, on the like application, appoint a suitable person to act in his stead.

(2a) Where an order has been made that a defective be sent to an institution, the judicial authority which made the order, or any other judicial authority, or where the original order was not made by a judicial authority, any judicial authority may, on application being made for the purpose by the Board, or by the local authority, and on being satisfied that the case is or has become one suitable for guardianship, order that the defective be placed under guardianship.

New clause added by Mental Deficiency (Amendment) Act, 1925 (15 & 16 Geo. V. c. 53).

(3) An order under this section shall not be made without giving to the local authority and, where practicable, to the relative or other person who presented the original petition and to the parent or guardian of the defective, an opportunity of being heard.

Procedure in cases of persons guilty of offences, etc. 8 Edw. VII. c. 57.

8.—(1) On the conviction by a court of competent jurisdiction of any person of any criminal offence punishable in the case of an adult with penal servitude or imprisonment, or on a child brought before a court under section fifty-eight of the Children Act, 1908, being found liable to be sent to an industrial school, the court, if satisfied on medical evidence that he is a defective within the meaning of this Act, may either—

- (a) postpone passing sentence or making an order for committal to an industrial school, and direct that a petition be presented to a judicial authority under this Act with a view to obtaining an order that he be sent to an institution or placed under guardianship; or
- (b) in lieu of passing sentence or making an order for committal to an industrial school, itself make any order which if a petition had been duly presented under this Act the judicial authority might have made, which order shall have the like effect as if it had been made by a judicial authority on a petition under this Act:

Provided that, if the court is a court of summary jurisdiction and the case is one which the court has power to deal with summarily, the court, if it finds that the charge is proved, may give such directions or make such order as aforesaid without proceeding to a conviction, and such a person shall for the purposes of this Act be deemed to be a person found guilty of an offence.

(2) The court may act either on the evidence given during the trial or other proceedings, or may call for further medical or other evidence.

(3) Where the court so directs a petition to be presented against a person, it may order him to be detained in an institution for

Section 8.

defectives or in a place of safety for such time as is required for the presentation of the petition and the adjudication thereof.

(4) Where it appears to any court of summary jurisdiction by which a person charged with an offence is remanded or committed for trial that such person is a defective, the court may order that pending the further hearing or trial he shall be detained in an institution for defectives, or be placed under the guardianship of any person on that person entering into a recognisance for his appearance.

(5) Where it appears to the police authority that any person charged with an offence is a defective, they shall communicate with the local authority, and it shall be the duty of the police authority to bring before the court such evidence as to his mental condition as may be available :

Provided that, where it is intended to bring such evidence before the court, the police authority shall give notice of the intention to the person charged, and to his parent or guardian, if known.

NOTE.—As to detention of the defective if it is found impracticable to present a petition or the petition is dismissed, see sect. 5 of Mental Deficiency Act, 1927.

19.—(1) Any judge of county courts, police or stipendiary magistrate, or specially appointed justice who is a judicial authority for the purposes of the Lunacy Acts, 1890 to 1911, shall be a judicial authority for the purposes of this Act, and the number of justices specially appointed to be judicial authorities under those Acts shall be such as may be considered necessary to exercise the powers conferred by this Act as well as by those Acts on a judicial authority (a).

NOTE.—(a) Justices sitting as a judicial authority under this Act have no power to state a case, as their functions are only administrative (*Newman v. Foster*, (1917) 86 L. J. K. B. 360. By analogy with this case a county court judge exercising such jurisdiction is only acting in an administrative capacity).

(2) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, costs, and otherwise, as if he were acting in the exercise of his ordinary jurisdiction, and shall be assisted, if he so requires, by the same officers as if he were so acting, and their assistance under this Act shall be considered in fixing their remuneration.

PROVISIONAL REGULATIONS MADE BY THE SECRETARY OF STATE UNDER THE MENTAL DEFICIENCY ACT, 1913 (3 & 4 Geo. V. c. 28).

(IN SO FAR AS THEY AFFECT THE DUTIES OF A COUNTY COURT JUDGE, AS A "JUDICIAL AUTHORITY" UNDER THE ACT.)

I hereby certify in pursuance of Section 2 of the Rules Publication Act, 1893, that on account of urgency the following Regulations shall come into immediate operation, and in pursuance of the powers conferred on me by the Mental Deficiency Act, 1913, I hereby make the following Regulations to come into operation forthwith as Provisional Regulations :—

Reg. 1.

1. These Regulations may be cited as the Mental Deficiency Act Provisional Regulations, 1914.

2. In these Regulations, unless the context otherwise requires, "The Act" means the Mental Deficiency Act, 1913.

"The Board" means the Board of Control.

"A Commissioner" or "Commissioners" means a Commissioner or Commissioners of the Board of Control.

"Guardian," except when used in the phrase "parent or guardian," means a guardian appointed under the Act.

Other words have the same meaning as in the Act.

3. The penalty for a breach of any of these Regulations shall, where no other penalty is prescribed, be a penalty not exceeding a fine of 20*l*.

25. Where proceedings are taken for the placing of a defective under guardianship, the local authority which may become responsible for his maintenance shall lay before the judicial authority the names of such persons, including relatives of the defective, as are in their opinion suitable persons to undertake the duties of guardianship under this Act.

26. No person who already has charge of a defective or a person certified under the Lunacy Acts shall be recommended to the judicial authority as a suitable person to undertake the duties of guardianship without the consent of the Board.

27. The local authority, on becoming aware that a defective for whose maintenance they are responsible is or has become unsuitable for guardianship or that a guardian is unfit for the office of guardian or has died or resigned or abandoned his office, shall take all necessary steps for the care and protection of the defective.

PROCEDURE ON PETITIONS.

30. No person shall present a petition unless he is at least 21 years of age, and has, within 14 days before the presentation of the petition, personally seen the alleged defective.

31. No petition shall be presented unless signed by the petitioner and accompanied by the certificate or certificates and the statutory declaration required by the Act and a statement of particulars.

32. If the petition is presented by a relative or friend, the petitioner shall in the petition undertake that he will personally, or by someone specially appointed by him, visit the defective once at least in every six months, and the undertaking shall be recited in the order.

33.—(a) The judicial authority shall visit the defective or summon him to appear before him as soon as practicable after receiving the petition.

(b) After seeing the alleged defective, the judicial authority shall either forthwith consider the petition and make an order thereon or dismiss the same, or shall appoint as early a time as practicable, not being more than seven days from the presentation of the petition for considering the same, and notice of the time appointed shall be given to the petitioner, the alleged defective, the parent or guardian, and the local authority (if any) concerned.

(c) If the proceedings are to be conducted in private, the notice

shall so state, and shall also state what persons will be allowed to be present.

34. If a petition is dismissed, the judicial authority shall deliver to the petitioner a statement in writing under his hand of his reasons for dismissing the same, and shall send a copy of such statement to the Board.

35. If, after a petition has been dismissed, another petition is presented as to the same alleged defective, the person presenting such other petition shall obtain from the Board, and present with his petition, a copy of the statement referred to in paragraph 34.

36. Any judicial authority making or refusing to make an order, shall, if so required by the Board, give to them all such information as they may require as to the circumstances in which the order was made or refused.

37.—(a) One of the medical certificates accompanying the petition shall whenever practicable be under the hand of the usual medical attendant, if any, of the alleged defective. If, for any reason, it is not practicable to obtain a certificate from such usual medical attendant, the reason shall be stated in the petition.

(b) Every medical certificate accompanying a petition shall state the facts upon which the certifier has formed his opinion that the alleged defective is a defective, distinguishing facts observed by himself from facts communicated by others, and an order shall not be made upon a certificate which is not founded wholly or in part upon facts observed by the certifier.

(c) An order shall not be made unless each medical practitioner who signs a certificate has, separately from the other medical practitioner, personally examined the alleged defective not more than seven clear days before the date of the presentation of the petition.

(d) A medical certificate accompanying a petition shall not be signed by the petitioner, or by the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner, or assistant of the petitioner.

(e) Neither of the persons signing the medical certificates accompanying the petition shall be the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner, or assistant of the other of them.

(f) A medical certificate shall not be signed by a visitor unless he is ordered by the judicial authority to examine the alleged defective.

(g) An order shall not be made sending any defective to an institution or certified house or placing him under guardianship where any certificate accompanying the petition has been signed by any of the following persons:—

- (i.) A manager or owner of the institution or certified house, or the person appointed guardian of the defective.
- (ii.) Any person interested in the payments on account of the defective.
- (iii.) Any regular medical attendant of the institution or certified house.
- (iv.) The husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-

Reg. 37.

in-law, brother or brother-in-law, sister or sister-in-law, partner, or assistant of any of the foregoing persons.

(h) Where the person who joins with the petitioner in making the statutory declaration is not one of the persons who gave a medical certificate the following provisions shall apply to him :—

- (i.) He or she shall not be the husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of the petitioner, or of either of the persons who gave the medical certificates.
- (ii.) The preceding sub-section (g) shall apply as if he or she had signed one of the medical certificates.

38. The documents upon which an order is founded shall be attached to the order, and the order and documents shall be delivered or sent by post to the petitioner, and shall be delivered by him or his agent to the superintendent of the institution or certified house into which the defective is to be received or to the person appointed to be his guardian.

39. An order made upon a petition, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner, or any person authorised by him, to take the defective and convey him to the place mentioned in such order, and for the defective's reception and detention therein, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

40. At any time before an order has been executed, the judicial authority who made it, or, if he is not available, any other judicial authority, may, on being satisfied that it is necessary or expedient so to do, revoke the order, or may vary the same by substituting another institution or certified house for the institution or certified house, or another guardian for the guardian named in the order; and an order so varied shall take effect as if the substituted institution, certified house, or guardian had been originally named therein.

41.—(1) When a patient has been received under an order into an institution or certified house or under guardianship—

- (a) If the order or any document upon which the same is founded be found to be in any respect incorrect or imperfect it may, with the sanction of a Commissioner, be amended or supplemented within fourteen days from the reception of the patient.
- (b) If the Board or any two Commissioners deem the order or any document upon which the same is founded to be incorrect or defective they may authorise such order or document to be amended or supplemented as they shall, by notice to the superintendent of the institution or certified house or to the guardian, direct. If the order or document is not amended or supplemented in accordance with the direction so given within fourteen days or such longer period as may be allowed for the purpose, the Board or any two Commissioners may, if they think fit, make an order for the patient's discharge.

(2) Every order and document amended or supplemented under this section shall take effect as if the amendment or supplementary matter had been contained therein when it was signed.

Reg. 42.

42. No proceedings on a petition shall be conducted in a police court or other court or room used for the hearing of criminal charges.

43. The Forms P1 to P9 in the Schedule hereto or forms to the like effect may be used wherever applicable with such modifications as circumstances require.

TRANSFER OF PATIENT UNDER GUARDIANSHIP TO AN INSTITUTION OR CERTIFIED HOUSE OR TO ANOTHER GUARDIAN.

235. When a patient ordered to be placed under guardianship is or becomes unsuitable for guardianship, the local authority, in default of application by the person appointed guardian, shall, unless the Board otherwise direct, apply to a judicial authority for an order that the patient be sent to an institution or certified house.

236. The local authority, in default of application by any person who appears to be interested, shall, unless the Board otherwise direct, apply to a judicial authority for an order

(a) for the removal of any person appointed guardian who is or becomes unsuitable, or abandons his charge ;

(b) for the appointment of a suitable person in the place of a person appointed guardian who has been removed, has died, or has resigned, or is about to resign his office.

237. "The local authority" for the purpose of these regulations shall mean the local authority (if any) paying or contributing to the expenses of the patient's guardianship, or, if there be none such, the local authority within whose area the patient is detained under guardianship.

Dated the 2nd day of April, 1914.

(Sd.) R. McKENNA,
One of His Majesty's Principal
Secretaries of State.

SCHEDULE.

[Form P1.]

PETITION FOR AN ORDER SENDING A DEFECTIVE TO AN INSTITUTION OR CERTIFIED HOUSE OR PLACING HIM UNDER GUARDIANSHIP, PRESENTED BY A RELATIVE OR FRIEND.

In the matter of A. B. , of , in the county ¹ of , an alleged defective.

To S. T. a judicial authority ² under the Mental Deficiency Act, 1913.

The petition of C. D. , of , in the county ¹ of , sheweth as follows :—

1. The petitioner is over 21 years of age.

2. The petitioner is ³ to the said A. B.

[or 2. The petitioner is a friend but not a relative of the said A. B.

The reasons why this petition is not presented by a relative are as follows :—

The petitioner's connection with the said A. B. is that :—

and he [or she] presents the petition in the following circumstances :—

3. The petitioner last saw the said A. B. at on the day of ⁵

4. The said A. B. is a defective within the meaning of the said Act, being ⁶ and is subject to be dealt with under the said Act.

5. The petitioner undertakes to visit, personally or by someone specially appointed by him [or her], once at least in every six months, the said A. B. while detained [or kept under guardianship] under the order made on this petition.

6. A statement of particulars concerning the said A. B. accompanies this petition.

7. [The reason why the usual medical attendant of the said A. B. has not signed one of the medical certificates accompanying this petition is :—] ⁷

The petitioner therefore prays that an order may be made for sending the said A. B. to ⁸ [or for placing the said A. B. under the guardianship of ⁸].

Dated

Signed

Date of presentation

¹ Or county borough.

² I.e., judge of county courts, a police or stipendiary magistrate, or a justice specially appointed under the Lunacy Act, 1890.

³ If a relative, state the relationship, see footnote.*

⁴ Erase the bracketed part if the petitioner is a relative.

⁵ The petitioner must have seen the alleged defective within fourteen days before presenting the petition.

⁶ State whether an idiot, an imbecile, a feeble-minded person, or a moral imbecile.

⁷ Erase this paragraph if one of the medical certificates is signed by the usual medical attendant.

⁸ The name of the institution, certified house, or guardian proposed may be inserted at any time before an order is made.

[Form P2.]

PETITION FOR AN ORDER SENDING A DEFECTIVE TO AN INSTITUTION OR CERTIFIED HOUSE OR PLACING HIM UNDER GUARDIANSHIP, PRESENTED BY AN OFFICER OF THE LOCAL AUTHORITY.

In the matter of A. B., of , in the county ¹ of , an alleged defective.

To S. T. a judicial authority ² under the Mental Deficiency Act, 1913.

The petition of E. F., of , in the county ¹ of , sheweth as follows :—

1. The petitioner is over 21 years of age and is an officer of the local authority of the county ¹ of , authorised to present petitions under Section 5 of the said Act.

2. The petitioner last saw the said A. B. at on the day of ³

3. The said A. B. is a defective within the meaning of the said Act, being ⁴ and is subject to be dealt with under the said Act.

* Relative, for the purposes of this Act means—husband or wife, or a lineal ancestor or lineal descendant, or lineal descendant of an ancestor, not more remote than great-grandfather or great-grandmother.

4. A statement of particulars concerning the said A. B. accom-
panies this petition.

5. [The reason why neither of the certificates accompanying this petition
has been signed by the usual medical attendant of the said A. B. is
.]⁵

The petitioner therefore prays that an order may be made for sending
the said A. B. to ⁶ [or for placing the said A. B. under
the guardianship of ⁶].

The petitioner further prays that an order may be made requiring the said
A. B., or M. N. being a person liable to maintain him, to contribute.

Dated

Signed

Date of presentation

¹ Or county borough.

² I.e., a judge of county courts, a police or stipendiary magistrate, or a
justice specially appointed under the Lunacy Act, 1890.

³ The petitioner must have seen the alleged defective within fourteen days
before presenting the petition.

⁴ State whether an idiot, an imbecile, a feeble-minded person, or a moral
imbecile.

⁵ Erase this paragraph if one of the medical certificates is signed by the
usual medical attendant.

⁶ The name of the institution, certified house, or guardian proposed may
be inserted at any time before an order is made.

[Form P3.]

STATEMENT OF PARTICULARS TO ACCOMPANY PETITION.

The following are the particulars concerning A. B. referred to in the
annexed petition:—

- Names in full of defective
- Sex and age and date of birth if known
- Married, single, or widowed
- Age when mental deficiency first observed
- In case of a female married or widowed, maiden name and name under any
previous marriage
- Rank, profession, or previous occupation (if any)
- Religious persuasion
- Residence
- Supposed cause of mental deficiency
- If previously detained under the Lunacy Acts, Idiots Act, or Mental
Deficiency Act, or placed in an Approved Home, or under guardianship,
or under care as a defective, or in a special school or class for mental
defectives, when and where
- Whether subject to epilepsy
- Whether suicidal
- Whether of violent or dangerous propensities, and in what way these are
shown
- Whether any near relative has been insane or mentally defective
- Names in full and postal addresses of one or more relatives of the defective
- Name in full and postal address (if not already given) of the person to whom
notice of death is to be sent
- Name and postal address of the usual medical attendant of the defective

Dated

Signed

[Form P4.]

MEDICAL CERTIFICATE.

In the matter of A. B. , of , in the county¹ of , an alleged defective.

I, the undersigned, K. L. , do hereby certify as follows:—

1. I am a person registered under the Medical Acts and I am in the actual practice of the medical profession [and approved by the Local Authority for the county¹ of or by the Board of Control, for the purpose of giving medical certificates under the above Act] [and the usual medical attendant of the said A. B.].

2. On the day of ,² at , in the county¹ of separately from any other practitioner, I personally examined the said A. B. and satisfied myself that he was .³

3. I formed this conclusion on the following grounds, viz.:—

(a) Facts observed by myself—

(i.) at the time of examination;

(ii.) previously to examination.⁴

(b) Facts communicated by others.

4. The said A. B. appeared to me to be [or not to be] in a fit condition of bodily health to be removed.

Dated .

Signed .
 .

¹ Or county borough.

² The examination must have taken place not more than seven clear days before the date of the presentation of the petition.

³ State whether an idiot, an imbecile, a feeble-minded person, or a moral imbecile.

⁴ Give date when observed.

⁵ Insert postal address.

[Form P5.]

CERTIFICATE AS TO THE IMPRACTICABILITY OF A MEDICAL EXAMINATION.

In the matter of A. B. , of , in the county¹ of , an alleged defective.

I, the undersigned, O. P. , of , in the county¹ of hereby certify that a medical examination of the above-named A. B. is impracticable.

Dated

Signed

¹ Or county borough.

[Form P6.]

STATUTORY DECLARATION TO ACCOMPANY PETITION.

In the matter of A. B. , of , in the county¹ of , an alleged defective.

We, the undersigned, " D. , of in the county¹ of

and I. J. , of , in the county ¹ of , solemnly and sincerely declare as follows :—

1. I, the said C. D. , am the person who presents the accompanying petition.

2. A. B. named in the accompanying petition, is a defective within the meaning of the Mental Deficiency Act, 1913, being .²

3. The said A. B. is subject to be dealt with under the said Act by reason of the following circumstances :—³

4. A petition under the said Act [or a petition for a reception order under the Lunacy Acts, 1890–1911] was presented on the day of with the following result :—⁴

5. A medical examination of the said A. B. is impracticable by reason of the following circumstances :—⁵

And we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared by the said , at , on the day of .
Before me

Signed .

Circumstances which render a Defective liable to be dealt with, upon Petition under the Mental Deficiency Act, 1913.

- | | | | | |
|-------------|---|--|---|---|
| He is found | { | (a) neglected ; | } | |
| | | (b) abandoned ; | | |
| | | (c) without visible means of support ; | | |
| | | (d) cruelly treated ; | | |
| He has been | { | (e) found guilty of a criminal offence, viz. :— | } | to be sent to a certified Industrial School ; |
| | | (f) ordered | | |
| | | (g) found liable to be ordered | | |
| He is | { | (h) undergoing detention in an Institution for Lunatics ; | } | |
| | | (i) an habitual drunkard within the meaning of the Inebriates Acts, 1879–1900 ; | | |
| He is | | (j) over the age of seven, and notice has been given by the Local Education Authority of to the Local Authority of that— | | |
| She | | (k) has recently given birth to an illegitimate child, and was at the time of such birth in receipt of poor relief ; | | |
| She | | (l) is pregnant of an illegitimate child and is in receipt of poor relief. | | |

¹ Or county borough.

² State whether an idiot, an imbecile, a feeble-minded person, or a moral imbecile.

³ Insert here such of the circumstances stated on the back of this form as are applicable to this case.

⁴ If the previous petition was dismissed a copy of the statement of reasons for the dismissal must be obtained from the Board and appended hereto.

⁵ Erase this paragraph if a medical examination has been made.

[Form P7.]

ORDER SENDING A DEFECTIVE TO AN INSTITUTION OR CERTIFIED HOUSE OR PLACING HIM UNDER GUARDIANSHIP.

I, the undersigned, S. T. , being a Justice for , specially appointed under the Lunacy Act, 1890,¹ having considered the documents hereto annexed, namely —

The petition of C. D. in the matter of A. B. :

The medical certificates of K. L. and M. N. :
 [or the certificate of O. P. that a medical examination of the said
 A. B. is impracticable:]
 The statutory declaration made by the said C. D. and by I. J. :
 [The consent in writing of Q. R. the ² of the said A. B. ³ :]
 [The undertaking of the said C. D. to visit the said A. B.
 personally or by someone specially appointed by the said C. D. once at
 least in every six months while the said A. B. is detained [or kept
 under guardianship] under this order ⁴ :]
 Having personally seen the said A. B. [and having caused him
 to be medically examined by U. V. , of ,] ⁵ .
 Hereby find—

That the said A. B. is a defective within the meaning of the Mental
 Deficiency Act, 1913, being ⁶ :

Is subject to be dealt with under the same Act by reason of the following
 circumstances :

[That the consent of Q. R. the ² of the said A. B. has
 been unreasonably withheld :

or that no parent or guardian of, or person who undertakes or performs
 the duty of a parent or guardian towards, the said A. B. can be
 found] : ³

And I hereby order the said A. B. who is a ⁷ to be sent to ⁸
 [or And I appoint M. N. of to be the guardian of the said A. B.]

Dated .

Signed .

NOTE.—Where the council of a county or county borough is to be respon-
 sible for the expenses of a defective ordered to be sent to a certified institution
 or placed under guardianship, the order must recite that the council has been
 given the opportunity of being heard, and must find that the defective
 resides within the area of the council ; and if the institution to which such
 defective is ordered to be sent is not provided by the council, the order must
 either find that there is no room in an institution suitable for him provided
 by the council, or must be expressed to be made with the consent of the
 council.

¹ Or the judge of the county court of , or the stipendiary magistrate
 for , or a metropolitan police magistrate.

² Father, mother, guardian, or person who undertakes or performs the
 duty of a parent or guardian.

³ One of these paragraphs to be filled up if the petition is not presented
 by the parent or guardian.

⁴ Erase this paragraph if the petition is presented by the officer of the local
 authority.

⁵ Erase words in brackets if the petition is accompanied by medical
 certificates.

⁶ State whether an idiot, an imbecile, a feeble-minded person, or a moral
 imbecile.

⁷ State religious persuasion, if any.

⁸ Insert name of the institution or certified house, or guardian.

[Form P8.]

STATEMENT OF PARTICULARS CONCERNING DEFECTIVE PLACED BY PARENT OR GUARDIAN IN A CERTIFIED INSTITUTION OR HOUSE.

The following are the particulars concerning A. B. of .¹ placed
 by me in ² [or under the guardianship of ³] :—
 Names in full of defective

Sex, age and date of birth, if known
 Married, single, or widowed
 Age when mental deficiency first observed
 In case of a female, married or widowed, maiden name and name under any previous marriage
 Rank, profession, or previous occupation (if any)
 Religious persuasion
 Residence
 Supposed cause of mental deficiency
 If previously detained under the Lunacy Acts, Idiots Act, or Mental Deficiency Act, or placed in an Approved Home, or under guardianship, or under care as a defective or in a special school or class for mental defectives, when and where
 Whether subject to epilepsy
 Whether suicidal
 Whether dangerous to others and in what way
 Whether any near relative has been insane, or mentally defective
 Names in full and postal addresses of one or more relatives of the defective
 Name in full and postal address (if not already given) of the person to whom notice of death is to be sent
 Name and postal address of usual medical attendant of the defective
 Dated . . .
 Signed . . . , of . . . ,⁴ . . .⁵ of the said A. B. . . .

¹ State whether an idiot, an imbecile, a feeble-minded person under the age of twenty-one, or a moral imbecile under the age of twenty-one.

² Insert name of certified institution or house.

³ Insert name of guardian.

⁴ Insert postal address.

⁵ If a feeble-minded person, or a moral imbecile, the statement must be signed by the father or mother. If an idiot or imbecile the statement must be signed by father, mother or guardian, or the person who undertakes or performs towards the defective the duty of a parent or guardian.

[Form P9.]

CERTIFICATE BY A JUDICIAL AUTHORITY IN THE CASE OF A FEEBLE-MINDED PERSON OR A MORAL IMBECILE UNDER THE AGE OF TWENTY-ONE PLACED BY HIS PARENT IN AN INSTITUTION OR CERTIFIED HOUSE.

To be appended to each Medical Certificate if the Defective is not an Idiot or Imbecile.

I, the undersigned . . . , being a Justice for . . . specially appointed under the Lunacy Act, 1890,¹ do hereby certify that, having enquired into the case of A. B. . . . of . . . , in the county² of . . . , I am satisfied that the said A. B. . . . is a . . .³ within the meaning of the Mental Deficiency Act, 1913.

Dated . . .

Signed . . .

¹ Or the judge of the county court of . . . , or the stipendiary magistrate for . . . , or a metropolitan police magistrate.

² Or county borough.

³ State whether a feeble-minded person or a moral imbecile.

MARRIED WOMEN'S PROPERTY ACT, 1882.

[45 & 46 VICT. c. 75.]

Jurisdiction.—Besides such jurisdiction as the county court has under its ordinary legal and equitable jurisdiction, the judge of the county court of the district in which either party resides, irrespective of the value of the property in dispute, has, under sect. 17, upon application by summons in a summary way, power to make such order with respect to the title to or possession of property as to which there is any question between husband and wife as he shall think fit, subject in all proceedings in a county court in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed to being removed at the option of the defendant as of right into the High Court by *certiorari* or otherwise as may be prescribed.

The said judge has also under sect. 10, upon an application under sect. 17, power to order a fraudulent investment made by the wife with money of the husband, and the dividends thereof, to be transferred and paid to the husband.

By sect. 11, a policy of assurance effected by a man on his own life, but expressed to be for the benefit of his wife and/or his children, and by wife on her own life for the benefit of her husband and/or her children, shall create a trust in favour of the objects therein named. If at the time of the death of the insured, or at any time afterwards, there is no trustee or it is expedient to appoint a new trustee, such appointment may be made by a county court having jurisdiction under the Trustee Acts, that is in any case where the amount does not exceed 500*l*.

Practice.—This is determined by Order XLVI. (*post*. p. 2172). As to sect. 17, by Rule 2 of the said Order, particulars of the question to be submitted to the court must be filed, and thereupon a summons (Form 433) shall be issued, paying the same fee as upon the entry of a plaint; all subsequent proceedings as in an ordinary case; as to sect. 11, Rule 1 of the said Order determines the procedure.

Costs.—The judge shall direct upon what scale they are to be taxed.

Appeal.—Any order made by the judge under sect. 17 is subject to an appeal as in an equitable suit.

Fraudulent
investments
with money
of husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband, to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use ; and the same and all benefit thereof shall enure accordingly. **Section 11.**

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts : Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy or for the value thereof in whole or in part. **Moneys payable under policy of assurance not to form part of estate of the insured.**

13 & 14 Vict.
c. 60.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think **Questions between husband and wife as to property to be decided in a summary way.**

Section 17. fit (a): Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of *certiorari* or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

NOTE.—(a) A judge of the High Court cannot refer the whole subject matter of an originating summons under this section to an official referee for trial, and *quære* whether the court has jurisdiction to refer a question of account arising in the dispute under sect. 14 of the Arbitration Act, 1889 (*In re Married Women's Property Act, 1882, between W. A. Humphery and H. A. Humphery*, (1917) 2 K. B. 72; 86 L. J. K. B. 775). Note.—By like reasoning a county court judge cannot refer a question under this section to arbitration, but must try it himself.

NOTE.—A married woman cannot sue her husband in tort (*Hulton v. Hulton*, (1917) 1 K. B. 813; 86 L. J. K. B. 633) though she may claim the rectification of a contract entered into by deed with her husband on the ground that she was induced to sign it by misrepresentation (*ib.*).

THE COUNTY COURT RULES, 1903.

ORDER XLVI.

THE MARRIED WOMEN'S PROPERTY ACT, 1882.

Applications under 45 & 46 Vict. c. 75, s. 11.

1. An application to the court for the appointment of a trustee or new trustee under section 11 of the Married Women's Property Act, 1882, shall be made by petition, and the same procedure shall be followed and costs allowed as on any other petition to the court, regard being had to the amount of the subject matter of the petition.

Summons and particulars on application under 45 & 46 Vict. c. 75, s. 17.

2. Where application is made under section 17 of the Married Women's Property Act, 1882, particulars of the question to be submitted to the decision of the court shall be filed, and thereupon a summons shall be issued according to the form in the Appendix, and the same fee shall be taken as upon the entry of a plaint. All subsequent proceedings shall be had as if the proceeding had

been commenced by the entry of a plaint, and the proceeding shall be deemed to be a plaint; and the judge shall direct upon what scale the costs of the proceedings shall be taxed.

Costs.

FORM 433.

Summons.

The Married Women's Property Act, 1882.

45 & 46 Vict.

You are hereby summoned at the instance of _____ of _____, to c. 75.
appear at a county court to be holden at _____, on the _____ day of _____ Order XLVI.
_____, at the hour of _____ in the _____ noon, when the court will r. 2.
proceed to consider the question hereunto annexed, and to make an order
with respect to the property in dispute.

Dated this _____ day of _____.

Registrar.

[FOR MENTAL DEFICIENCY ACT, 1913, see "LUNACY ACT."]

THE MERCHANT SHIPPING ACT, 1894.

[57 & 58 VICT. c. 60.]

AN ACT TO CONSOLIDATE ENACTMENTS RELATING TO MERCHANT SHIPPING. (25TH AUGUST, 1894.)

Be it enacted, etc.

[NOTE.—Only such sections of the Act are here set forth as relate to matters connected with merchant shipping within the jurisdiction of the county court, or are required for purposes of reference.]

PART I.

REGISTRY.

* * * * *

PART II.

MASTERS AND SEAMEN.

* * * * *

Engagement of Seamen.

* * * * *

123. In any legal or other proceeding a seaman may bring forward evidence to prove the contents of any agreement with the crew or otherwise to support his case, without producing, or giving notice to produce the agreement or any copy thereof.

Section 123
Seaman not to be bound to produce agreement.

* * * * *

*Advance and Allotment of Wages.***Section 140.**

Advance
notes re-
stricted.

- 140.**—(1)—(a) Where an agreement with the crew is required to be made in a form approved by the Board of Trade, the agreement may contain a stipulation for payment to or on behalf of the seaman, conditionally on his going to sea in pursuance of the agreement, of a sum not exceeding the amount of one month's wages payable to the seaman under the agreement ; and
- (b) Stipulations for the allotment of a seaman's wages may be made in accordance with this Act.
- (c) Save as aforesaid an agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman conditionally on his going to sea from any port in the United Kingdom shall be void, and any money paid in satisfaction or in respect of any such agreement shall not be deducted from the seaman's wages, and a person shall not have any right of action, suit, or set-off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

This only applies to engagements to sail from United Kingdom (*Ritchie v. Larsen*, (1899) 1 Q. B. 727 ; 68 L. J. Q. B. 335 ; see also *Rowlands v. Miller*, (1899) 1 Q. B. 735 ; 68 L. J. Q. B. 338.

Regulations
as to allot-
ment notes.

141.—(1) Any stipulation made by a seaman at the commencement of a voyage for the allotment of any part of his wages during his absence shall be inserted in the agreement with the crew, and shall state the amounts and times of the payments to be made.

(2) Where the agreement is required to be made in a form approved by the Board of Trade, the seaman may require that a stipulation be inserted in the agreement for the allotment by means of an allotment note, of any part (not exceeding one half) of his wages in favour either of a near relative or of a savings bank.

(3) Allotment notes shall be in a form approved by the Board of Trade.

(4) For the purposes of the provisions of this Act with respect to allotment notes—

- (a) the expression “ near relative ” means one of the following persons, namely, the wife, father, mother, grandfather, grandmother, child, grandchild, brother, or sister of the seaman.
- (b) the expression “ savings bank ” means a seaman's savings bank under this Act, or a trustee savings bank, or a post office savings bank.

This section must be read in conjunction with the Merchant Shipping (Seamen's Allotment) Act, 1911, *post*. See also sect. 62 of the Merchant Shipping Act, 1906, *post*.

Section 141
Notes.

Stipulation for Allotment.—By sect. 61 of the Merchant Shipping Act, 1906 (6 Edw. VII. c. 48), after the seaman has signed the agreement, the superintendent or other officer is under an obligation to inquire of the seaman whether he requires a stipulation for allotment, and if the seaman does require it, then to insert it in the agreement, and any such stipulation is deemed to have been agreed to by the master.

142.—(1) An allotment in favour of a savings bank shall be made in favour of such persons, and carried into effect in such manner as may be prescribed by regulations of the Board of Trade.

Allotments
through
savings
banks.

(2) The sum received by a savings bank in pursuance of an allotment, shall be paid out only on an application made, through a superintendent or the Board of Trade, by the seaman himself, or, in case of his death, by some person to whom his property, if under one hundred pounds in value, may be paid under this Act.

143.—(1) The person in whose favour an allotment note under this Act is made may, unless the seaman is shown, in manner in this Act specified, to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, recover the sums allotted, when and as the same are made payable, with costs from the owner of the ship with respect to which the engagement was made, or from any agent of the owner who has authorised the allotment, in the same court and manner in which wages of seamen not exceeding fifty pounds may be recovered under this Act; provided that the wife of a seaman, if she deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall forfeit all right to further payments under any allotment made in her favour.

Right of
suing on
allotment
notes.

As to mode of recovering wages, see sects. 164 *et seq*.

(2) In any proceeding for such recovery, it shall be sufficient for the claimant to prove that he is the person mentioned in the note, and that the note was given by the owner or by the master or some authorised agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the court, either

- (a) by the official statement of the change in the crew caused by his absence, made and signed by the master, as by this Act is required, or
- (b) by a certified copy of some entry in the official log book to the effect that he has left the ship, or
- (c) by a credible letter from the master of the ship to the same effect, or
- (d) by such other evidence as the court in their absolute dis-

Section 143.

cretion consider sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

[NOTE.—Sect. 144, as to time for payment of allotment notes, is repealed by the Merchant Shipping Act, 1906, and sect. 62 of that Act should now be referred to; see *post*.]

* * * * *

Rights of Seamen in respect of Wages.

Right to wages, etc., when to begin.

155. A seaman's right to wages and provisions shall be taken to begin either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Right to recover wages and salvage not to be forfeited.

156.—(1) A seaman shall not, by any agreement, forfeit his lien on the ship, or be deprived of any remedy for the recovery of his wages, to which, in the absence of the agreement, he would be entitled, and shall not, by any agreement, abandon his right to wages in case of the loss of the ship, or abandon any right that he may have or obtain in the nature of salvage; and every stipulation in any agreement inconsistent with any provision of this Act shall be void.

See *The Leon Blum*, (1915) C. A. 31 T. L. R. 582.

(2) Nothing in this section shall apply to a stipulation made by the seamen belonging to any ship, which, according to the terms of the agreement, is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by that ship to any other ship.

Wages not to depend on freight.

157.—(1) The right to wages shall not depend on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages, if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo, and stores, shall bar his claim to wages.

(2) Where a seaman or apprentice who would, but for death, be entitled by virtue of this section to demand and recover any wages, dies before the wages are paid, they shall be paid and applied in manner provided by this Act with respect to the wages of a seaman who dies during a voyage.

Wages on termination of service

158. Where the service of a seaman terminates before the date contemplated in the agreement, by reason of the wreck or loss

of the ship, or of his being left on shore at any place abroad under a certificate granted as provided by this Act of his unfitness or inability to proceed on the voyage, he shall be entitled to wages up to the time of such termination, but not for any longer period. Section 158.
by wreck
or illness.

NOTE.—This section has been amended by sect. 1 of the Merchant Shipping (International Labour Conventions) Act, 1925, see p. 2257.

“Loss of the Ship.”—See *Austin Friars Co. v. Strack*, (1905) 2 K. B. 315; 74 L. J. K. B. 683; *Sivewright v. Allen*, (1906) 2 K. B. 81; 75 L. J. K. B. 476; *The Olympic (Wages)*, (1913) P. 92; *Beal v. Horlock*, (1916) 1 A. C. 486; 114 L. T. 193.

159. A seaman or apprentice shall not be entitled to wages for any time during which he unlawfully refuses or neglects to work, when required, whether before or after the time fixed by the agreement for his commencement of such work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him. Wages not
to accrue
during
refusal to
work or im-
prisonment

160. Where a seaman is by reason of illness incapable of performing his duty, and it is proved that the illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of the illness, incapable of performing his duty. Forfeiture
of wages,
etc., of sea-
man when
illness
caused by
his own
default.

161. Whenever in any proceeding relating to seamen's wages it is shown that a seaman or apprentice has in the course of the voyage been convicted of an offence by a competent tribunal, and rightfully punished for that offence by imprisonment or otherwise, the court hearing the case may direct any part of the wages due to the seaman, not exceeding three pounds, to be applied in reimbursing any costs properly incurred by the master in procuring the conviction and punishment. Costs of
procuring
punishment
may be
deducted
from wages.

162. If a seaman, having signed an agreement, is discharged otherwise than in accordance with the terms thereof before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying that discharge, and without his consent, he shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage caused to him by the discharge not exceeding one month's wages, and may recover that compensation as if it were wages duly earned. Compensa-
tion to
seaman
improperly
discharged.

163.—(1) As respects wages due or accruing to a seaman or apprentice to the sea service— Restriction
on sale of,
and charge
upon ges.

(a) they shall not be subject to attachment or arrestment from any court;

(b) an assignment or sale thereof made prior to the accruing thereof shall not bind the person making the same;

Section 163.

- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and
- (d) a payment of wages to the seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of those wages, or any attachment, incumbrance, or arrestment thereof.
- (2) Nothing in this section shall affect the provisions of this Act with respect to allotment notes.

But as to sub-s. 1 (b), see *Rowlands v. Miller*, (1899) 1 Q. B. 735; 68 L. J. Q. B. 338.

Mode of recovering Wages.

Summary
proceedings
for wages.

164. A seaman or apprentice to the sea service or a person, duly authorised on his behalf, may as soon as any wages due to him, not exceeding fifty pounds, become payable, sue for the same before a court of summary jurisdiction in or near the place at which his service has terminated, or at which he has been discharged, or at which any person on whom the claim is made is or resides, and the order made by the court in the matter shall be final.

See notes to sect. 3, sub-s. 2, of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), *ante*.

“**Shall be final.**”—Notwithstanding sect. 33, sub-s. 1, of the Summary Jurisdiction Act, 1879, no appeal by special case lies from an order made by a court of summary jurisdiction under this section; *Wills & Sons v. McSherry*, (1914) 1 K. B. 616; 83 L. J. K. B. 596, following and applying *Westminster Corporation v. Gordon Hotels*, (1908) A. C. 142; 77 L. J. K. B. 520.

Restrictions
on suits for
wages.

165. A proceeding for the recovery of wages not exceeding fifty pounds shall not be instituted by or on behalf of any seaman or apprentice to the sea service in any superior court of record in Her Majesty's dominions, nor as an admiralty proceeding in any court having admiralty jurisdiction in those dominions, except:

- (i.) where the owner of the ship is adjudged bankrupt; or
- (ii.) where the ship is under arrest or is sold by the authority of any such court as aforesaid; or
- (iii.) where a court of summary jurisdiction acting under the authority of this Act, refers the claim to any such court; or
- (iv.) where neither the owner nor the master of the ship is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

See notes to sect. 3, sub-s. 2, of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), under heads “Limitation of Jurisdiction in Suits for Wages,” and “Other Claims Recoverable as Wages,” *ante*.

[**Note.**—“**As an admiralty proceeding.**”—This only excludes admiralty proceedings, and does not prevent common law proceedings in any county court.]

Wages not
recoverable
abroad in
certain cases.

166.—(1) Where a seaman is engaged for a voyage or engagement which is to terminate in the United Kingdom, he shall not

be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as is required by this Act, and with the written consent of the master, or proves such ill-usage on the part or by authority of the master, as to warrant reasonable apprehension of danger to his life if he were to remain on board. Section 166.

(2) If a seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this section would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding twenty pounds as the court hearing the case thinks reasonable.

167.—(1) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages as a seaman has under this Act, or by any law or custom. Remedies of master for wages, disbursements, etc.

(2) The master of a ship, and every person lawfully acting as master of a ship, by reason of the decease or incapacity from illness of the master of the ship, shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

(3) If in any admiralty proceeding in any court having admiralty jurisdiction touching the claim of a master in respect of wages, or of such disbursements, or liabilities as aforesaid, any right of set-off or counterclaim is set up, the court may enter into and adjudicate upon all questions, and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and may direct payment of any balance found to be due.

[NOTE.—For the considerable amount of case law bearing upon this important section reference should be made to a leading text-book upon the Act, as it is beyond the scope of this work.]

Power of Courts to rescind Contracts.

168. Where a proceeding is instituted in or before any court in relation to any dispute between an owner or master of a ship and a seaman or apprentice to the sea service arising out of or incidental to their relation as such, or is instituted for the purpose of this section, the court, if, having regard to all the circumstances of the case they think it just to do so, may rescind any contract between the owner or master and the seaman or apprentice, or any contract of apprenticeship, upon such terms as the court may think just, and this power shall be in addition to any other jurisdiction which the court can exercise independently of this section. Power of court to rescind contract between owner or master and seaman or apprentice.

Section 169.

Property of Deceased Seamen.

Property of
seamen who
die during
voyage.

169.—(1) If any seaman or apprentice to the sea service belonging to a British ship, the voyage of which is to terminate in the United Kingdom, whether a foreign-going or a home trade ship, dies during that voyage, the master of the ship shall take charge of any money or effects belonging to the seaman or apprentice which are on board the ship.

(2) The master may, if he think fit, cause any of the effects to be sold by auction at the mast or otherwise by public auction.

(3) The master shall enter into the official log book the following particulars :—

(a) A statement of the amount of the money and a description of the effects :

(b) In case of a sale, a description of each article sold, and the sum received for each :

(c) A statement of the sum due to the deceased for wages and of the amount of deductions (if any) to be made from the wages.

(4) The entry shall be signed by the master and attested by a mate and some other member of the crew.

(5) The said money, effects, proceeds of sale of effects, and balance of wages are in this Act referred to as the property of the seaman or apprentice.

Dealing with
and account
of property of
seamen who
die during
voyage.

170.—(1) Where a seaman or apprentice dies as aforesaid, and the ship before coming to a port in the United Kingdom touches and remains for forty-eight hours at some port elsewhere, the master shall report the case to the British consular officer at such port, or if the port is in a British possession, to the officer of customs there, and shall give to the officer any information he requires as to the destination of the ship and probable length of the voyage.

(2) That officer may, if he thinks it expedient, require the property to be delivered and paid to him, and shall thereupon give to the master a receipt thereof, and endorse under his hand upon the agreement with the crew such particulars with respect thereto as the Board of Trade require.

(3) The receipt shall be produced by the master to a superintendent within forty-eight hours after his arrival at his port of destination in the United Kingdom.

(4) Where a seaman or apprentice dies as aforesaid, and the ship proceeds at once to a port in the United Kingdom without touching and remaining as aforesaid at a port elsewhere, or the consular officer or officer of customs does not require the delivery

and payment of the property as aforesaid, the master shall, within forty-eight hours after his arrival at his port of destination in the United Kingdom, deliver and pay the property to the superintendent at that port. Section 170.

(5) In all cases where a seaman or apprentice dies during the progress of a voyage or engagement, the master shall give to the Board of Trade, or to the superintendent or officer to whom delivery and payment is made as aforesaid, such account in such form as they respectively require of the property of the deceased.

(6) A deduction claimed by the master in such account shall not be allowed unless verified, if an official log book is required to be kept, by an entry in that book made and attested as required by this Act, and also by such other vouchers (if any) as may reasonably be required by the Board of Trade or by the superintendent or officer to whom the account is given.

(7) A superintendent in the United Kingdom shall grant to a master, upon due compliance with such provisions of this section as relate to acts to be done at the port of destination, a certificate to that effect; and an officer of customs shall not clear inwards a foreign-going ship without the production of that certificate.

171.—(1) If the master of the ship fails to comply with the provisions of this Act with respect to taking charge of the property of a deceased seaman or apprentice, or to making in the official log-book the proper entries relating thereto, or to procuring the proper attestation of those entries as required by this Act, or to the payment or delivery of the property, he shall be accountable for the property to the Board of Trade, and shall pay and deliver the same accordingly, and shall in addition for each offence be liable to a fine not exceeding treble the value of the property not accounted for, or if such value is not ascertained not exceeding fifty pounds. Penalty for non-compliance with provisions as to property of deceased seamen.

(2) If any such property is not duly paid, delivered, or accounted for by the master, the owner of the ship shall pay, deliver, and account for the same, and such property shall be recoverable from him accordingly, and if he fails to account for and deliver or pay the same, he shall in addition to his liability for the same be liable to a fine not exceeding treble the value of the property not accounted for, delivered, or paid over, or, if such value be not ascertained, not exceeding fifty pounds.

(3) The property may be recovered in the same court and manner in which the wages of seamen may be recovered under this Act.

As to mode of recovering wages, see sects. 164 *et seq.*

See sect. 29 of the Merchant Shipping Act, 1906, *post*, as to voyages terminating out of the United Kingdom.

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Section 174.

Recovery of wages, etc., of seamen lost with their ship.

174.—(1) Where a seaman or apprentice is lost with the ship to which he belongs the Board of Trade may recover the wages due to him from the owner of the ship, in the same court and in the same manner in which seamen's wages are recoverable, and shall deal with those wages in the same manner as with the wages of other deceased seamen and apprentices under this Act.

(2) In any proceeding for the recovery of the wages, if it is shown by some official return produced out of the custody of the registrar-general of shipping and seamen, or by other evidence, that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, she shall, unless it is shown that she has been heard of within twelve months after that departure, be deemed to have been lost with all hands on board either immediately after the time she was last heard of, or at such later time as the court hearing the case may think probable.

(3) Any duplicate agreement or list of the crew made out, or statement of the change of the crew delivered, under this Act, at the time of the last departure of the ship from the United Kingdom, or a certificate purporting to be a certificate from a consular or other public officer at any port out of the United Kingdom, stating that certain seamen and apprentices were shipped in the ship from the said port, shall, if produced out of the custody of the registrar-general of shipping and seamen, or of the Board of Trade, be, in the absence of proof to the contrary, sufficient proof that the seamen and apprentices therein named as belonging to the ship were on board at the time of the loss.

As to mode of recovering wages, see sects. 164 *et seq.*

[Sects. 186 to 193, dealing with leaving seamen abroad and relief of distressed seamen are repealed by the Act of 1906, and sects. 31 to 43 of that Act should now be referred to; see *post.*]

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Volunteering into the Navy.

* * * * *

Money and effects of seamen volunteer-ing into navy.

196.—(1) If a seaman, without having previously committed an act amounting to and treated by the master as desertion, leaves his ship in order to enter the naval service of Her Majesty, and is received into that service, the master shall deliver to him his effects on board the ship, and shall pay, subject to all just deductions, the proportionate amount of his wages down to the time of his entering Her Majesty's service, to the officer authorised to receive the seaman into that service, either in money or by bill drawn upon the owner, and payable at sight to the order of the accountant-general of the navy; and the receipt of that

officer shall be a discharge for the money or bill so given; and the bill shall be exempt from stamp duty. Section 196.

(2) If the master fails so to deliver the seaman's effects, or to pay his wages, as by this section required, he shall, in addition to his liability to deliver and pay the same, be liable for each offence to a fine not exceeding twenty pounds.

(3) If any such bill be not duly paid when presented, the accountant-general of the navy or the seaman on whose behalf the bill is given, may sue thereon, or may recover the wages due by all or any of the means by which wages due to seamen are recoverable.

As to mode of recovering wages, see sects. 164 *et seq.*

* * * * *

Provisions, Health and Accommodation.

199. In either of the following cases; (that is to say,)

Allowance of
short or bad
provisions.

(i.) if during a voyage the allowance of any of the provisions for which a seaman has by his agreement stipulated is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement with the crew, and also except for any time during which the seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct either on board or on shore); or

(ii.) if it is shown that any of those provisions are or have during the voyage been bad in quality and unfit for use; the seaman shall receive, by way of compensation for that reduction, or bad quality, according to the time of its continuance, the following sums to be paid to him in addition to, and to be recoverable as, wages; (that is to say,)

(a) if his allowance is reduced by not more than one third of the quantity specified in the agreement, a sum not exceeding fourpence a day:

(b) if his allowance is reduced by more than one third of that quantity, eightpence a day:

(c) in respect of bad quality as aforesaid, a sum not exceeding one shilling a day:

But if it is shown to the satisfaction of the court before whom the case is tried that any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the court shall take those circumstances into consideration, and shall modify or refuse compensation as the justice of the case requires.

Section 199
Notes.

As to mode of recovering wages, see sects. 164 *et seq.*
This section is extended by sect. 25 of the Merchant Shipping Act, 1906.

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Sects. 207 and 208 are repealed by the Act of 1906, and sects. 34 and 35 of that Act should now be referred to; see *post*.

* * * * *

Application
of forfeitures.

232.—(1) Where any wages or effects are under this Act forfeited for desertion from a ship, those effects may be converted into money, and those wages and effects, or the money arising from the conversion of the effects, shall be applied towards reimbursing the expenses caused by the desertion to the master or owner of the ship, and subject to that reimbursement shall be paid into the Exchequer, and carried to the Consolidated Fund.

(2) For the purpose of such reimbursement, the master or the owner, or his agent may, if the wages are earned subsequently to the desertion, recover them in the same manner as the deserter could have recovered them if not forfeited; and the court in any legal proceeding relating to such wages may order them to be paid accordingly.

(3) Where wages are forfeited under the foregoing provisions of this Act in any case other than for desertion, the forfeiture shall, in the absence of any specific provision to the contrary, be for the benefit of the master or owner by whom the wages are payable.

As to mode of recovering wages, see sects. 164 *et seq.*

Decision of
questions of
forfeiture
and deduc-
tions in
suits for
wages.

233. Any question concerning the forfeiture of, or deductions from the wages of a seaman or apprentice, may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceedings.

Ascertain-
ment of
amount of
forfeiture
out of
wages.

234. If a seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be an amount bearing the same proportion to the whole wages or share, as a month or any other period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage or run; and if the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Sect. 235 is repealed by the Act of 1906, and sect. 44 of that Act should now be referred to; see *post*.

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PART III.

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2. PASSENGER STEAMERS.

PASSENGER AND EMIGRANT SHIPS.

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Survey of Passenger Steamers.

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275.—(1) If the owner of a steamer feels aggrieved by the declaration of survey of a shipwright or engineer surveyor, or by the refusal of such a surveyor to give such a declaration, he may appeal to the court of survey for the port or district where the steamer for the time being is, in manner directed by the rules of that court.

Section 275.

Appeal to
court of
survey

(2) On any such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal and the Board, when satisfied that the requirements of the report and of the foregoing provisions of this part of this Act have been complied with, may grant a passenger steamer's certificate.

(3) Subject to any order made by the judge of the court of survey the costs of and incidental to the appeal shall follow the event.

(4) A shipwright or engineer surveyor in making a survey of a steamer for the purpose of a declaration of survey shall, if the owner of the steamer so requires, be accompanied on the survey by some person appointed by the owner, and in that case, if the surveyor and the person so appointed agree, there shall be no appeal under this section to the court of survey.

"Shipwright Surveyor."—See sect. 75 of the Act of 1906.

"Court of Survey."—See sects. 487—489.

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Certificate for Clearance.

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318.—(1) If the owner of an emigrant ship is aggrieved by the refusal by an emigration officer of a certificate for clearance, he may appeal to a court of survey for the port or district where the ship for the time being is in manner directed by the rules of that court.

Appeal to
court of
survey.

(2) The judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and the Board, if satisfied that the requirements of the report and of this part of

Section 318. this Act have been complied with, may grant or direct the emigration officer to grant a certificate for clearance.

(3) Subject to any order made by the judge of the court of survey, the costs of, and incidental to the appeal shall follow the event.

(4) Where a survey of a ship is made for the purpose of a certificate for clearance, the person so appointed to make the survey shall, if so required by the owner, be accompanied on the survey by some person appointed by the owner, and in such case if the said two persons agree there shall be no appeal to the court of survey in pursuance of this section.

As to courts of survey, see sects. 487—489.

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PART IV.

FISHING BOATS.

* * * *

Civil right
unaffected by
criminal
provisions.

377.—(1) Nothing in the last preceding section shall take away or limit any remedy by action or before a court of summary jurisdiction which an owner or skipper would otherwise have for any breach of contract in respect of the matters constituting an offence under that section, but no owner or skipper shall be compensated more than once in respect of the same damage.

(2) Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice in the sea-fishing service may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

* * * *

Calculation
of wages.

383.—(1) The wages of a skipper, seaman or apprentice of a fishing boat shall accrue from day to day.

(2) When wages are contracted for by the voyage or trip or the season or by the share, and not by a stated period of time, the amount accruing from day to day shall be an amount equal to the wages for the whole voyage or trip or season or the whole share (as the case may be), divided by the number of days occupied in the voyage or trip or season, but a skipper, seaman or apprentice shall not be entitled to more than what his share of the profits or catch made during the period he has actually served may or would have amounted to.

(3) Where the whole time spent in the voyage or trip does not exceed the period for which the wages are to be forfeited, the forfeiture shall extend to the whole wages or share. Section 383.

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387.—(1) A superintendent shall inquire into, hear, and determine any dispute, either between the owner of a fishing boat and the skipper or a seaman of the boat, or between the skipper of a fishing boat and any seaman of the boat concerning— Decision of disputes by superintendent.

- (i.) the skipper's or seaman's wages or his share in the profits of the voyage or trip or a fishing catch, or any deduction therefrom; or
- (ii.) the skipper's or seaman's engagement, service, or discharge; or
- (iii.) the cost, quantity, or quality, of the provisions supplied to the crew;

if any party to the dispute calls on him to decide it, and his decision thereon shall be final and binding on all persons.

(2) The decision shall, on the request of any party to the dispute, be put into writing, and any such written decision, if purporting to be signed by the superintendent, shall be admissible in evidence in manner provided by this Act.

(3) The decision may be enforced by any justice of the peace, within whose jurisdiction the person or goods of any one against whom the decision is given may be found, in the same manner as if the decision were an order made by a court of summary jurisdiction, and a skipper or seaman may also recover any sum adjudged due to him by any such decision as if it were wages.

(4) A superintendent for the purpose of hearing and determining any such dispute shall have all the powers of a Board of Trade inspector under this Act.

As to the mode of recovering wages, see sects. 164 *et seq.*

“**Superintendent.**”]—A deputy superintendent has power to adjudicate upon disputes under this section: *Mayhew v. Tripp*, (1914) 2 K. B. 455; 83 L. J. K. B. 778.

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396.—(1) Where an indenture of apprenticeship to the sea-fishing service, or any agreement with a sea-fishing boy, has been made before a superintendent at a port, the superintendent for the time being at that port may, by proper legal proceeding taken in his own name, enforce on behalf of the apprentice or boy against the master any stipulations in that indenture or agreement. Enforcement by superintendents of indentures or agreements.

(2) Where an apprentice or boy is taken to sea from any port under an indenture or agreement which is void, the superintendent at that port, or if there is none the superintendent at the

Section 396. nearest port, may, by proper legal proceedings taken in his own name enforce, to such extent as he thinks just, on behalf of the apprentice or boy against the master any stipulation in the void indenture or agreement which is in favour of the apprentice or boy.

(3) Any sums recovered by a superintendent under this section may, so far as necessary, be applied by him in payment of the costs of recovering the same.

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Payment of Wages and Discharge of Seamen.

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Compensation to seamen improperly discharged.

411.—If a seaman, having signed a fishing boat's agreement, is discharged before the commencement of the voyage, or at any time during the voyage or engagement, without fault on his part justifying the discharge and without his consent, he shall be entitled to recover, in addition to an amount of wages proportionate to the time he has served, sufficient compensation for the damage caused to him by the discharge, and may recover that compensation as wages duly earned.

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For application of Part IV. to Scotland, see Merchant Shipping (Scottish Fishing Boats) Act, 1920 (10 & 11 Geo. V. c. 39).

PART V.

SAFETY.

Prevention of Collisions.

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Inspection as to lights and fog signals.

420. (1) A surveyor of ships may inspect any ship, British or foreign, for the purpose of seeing that the ship is properly provided with lights and the means of making fog signals, in conformity with the collision regulations, and if the surveyor finds that the ship is not so provided, he shall give to the master or owner notice in writing, pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

(2) Every notice so given shall be communicated in the manner directed by the Board of Trade to the chief officer of customs at any port at which the ship may seek to obtain a clearance or transire ; and the ship shall be detained, until a certificate under the hand of a surveyor of ships is produced to the effect that the ship is properly provided with lights and with the means of making fog signals, in conformity with the collision regulations.

(3) For the purpose of an inspection under this section a surveyor shall have all the powers of a Board of Trade inspector under this Act.

Section 420.

(4) Where the certificate as to lights and fog signals is refused, an owner may appeal to the court of survey for the port or district where the ship for the time being is in manner directed by the rules of that court.

(5) On any such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and the Board of Trade, when satisfied that the requirements of the report and of this Act as to lights and fog signals have been complied with, may grant, or direct a surveyor of ships or other person appointed by them to grant, the certificate.

(6) Subject to any order made by the judge of court of survey the costs of and incidental to the appeal shall follow the event.

(7) A surveyor in making an inspection under this section shall, if the owner of the ship so require, be accompanied on the inspection by some person appointed by the owner, and, if in that case the surveyor and the person so appointed agree, there shall be no appeal under this section to the court of survey.

(8) Such fees as the Board of Trade may determine shall be paid in respect of an inspection of lights and fog signals under this section not exceeding those specified in the sixteenth schedule to this Act.

As to courts of survey, see sects. 487—489.

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Dangerous Goods.

446.—(1) A person shall not send or attempt to send by any vessel, British or foreign, and a person not being the master or owner of the vessel, shall not carry or attempt to carry in any such vessel, any dangerous goods, without distinctly marking their nature on the outside of the package containing the same, and giving written notice of the nature of those goods and of the name and address of the sender or carrier thereof to the master or owner of the vessel at or before the time of sending the same to be shipped or taking the same on board the vessel.

Restrictions
on carriage of
dangerous
goods.

(2) If any person fails without reasonable cause to comply with this section, he shall for each offence be liable to a fine not exceeding one hundred pounds; or if he shows that he was merely an agent in the shipment of any such goods as aforesaid, and was not aware and did not suspect and had no reason to suspect that the goods shipped by him were of a dangerous nature, then not exceeding ten pounds.

(3) For the purpose of this part of this Act the expression "dangerous goods" means aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, any

Section 446. explosives within the meaning of the Explosives Act, 1875, and any other goods which are of a dangerous nature.

Penalty for misdescription of dangerous goods.

447. A person shall not knowingly send or attempt to send by, or carry or attempt to carry in, any vessel, British or foreign, any dangerous goods under a false description, and shall not falsely describe the sender or carrier thereof, and if he acts in contravention of this section he shall for each offence be liable to a fine not exceeding five hundred pounds.

Power to deal with goods suspected of being dangerous.

448.—(1) The master or owner of any vessel, British or foreign, may refuse to take on board any package or parcel which he suspects to contain any dangerous goods, and may require it to be opened to ascertain the fact.

(2) Where any dangerous goods, or any goods, which, in the judgment of the master or owner of the vessel, are dangerous goods, have been sent or brought aboard any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, the master or owner of the vessel may cause those goods to be thrown overboard, together with any package or receptacle in which they are contained; and neither the master nor the owner of the vessel shall be subject to any liability, civil or criminal, in any court for so throwing the goods overboard.

Forfeiture of dangerous goods improperly sent or carried.

449.—(1) Where any dangerous goods have been sent or carried, or attempted to be sent or carried, on board any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, or under a false description or with a false description of the sender or carrier thereof, any court having Admiralty jurisdiction may declare those goods, and any package or receptacle in which they are contained, to be, and they shall thereupon be, forfeited, and when forfeited shall be disposed of as the court direct.

(2) The court shall have, and may exercise, the aforesaid powers of forfeiture and disposal notwithstanding that the owner of the goods has not committed any offence under the provisions of this Act relating to dangerous goods, and is not before the court, and has not notice of the proceedings, and notwithstanding that there is no evidence to show to whom the goods belong; nevertheless the court may, in their discretion, require such notice as they may direct to be given to the owner or shipper of the goods before they are forfeited.

Saving for other enactments relating to dangerous goods.

450. The provisions of this part of this Act relating to the carriage of dangerous goods shall be deemed to be in addition to and not in substitution for, or in restraint of, any other enact-

ment for the like object, so nevertheless that nothing in the said provisions shall be deemed to authorise any person to be sued or prosecuted twice in the same matter. Section 450.

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Unseaworthy Ships.

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459.—(1) Where a British ship, being in any port in the United Kingdom, is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipments, or machinery, **or by reason of undermanning**, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, such ship may be provisionally detained for the purpose of being surveyed, **or for ascertaining the sufficiency of her crew**, and either finally detained or released as follows :—

Power to detain unsafe ships, and procedure for detention.

- (a) The Board of Trade, if they have reason to believe, on complaint or otherwise, that a British ship is unsafe, may order the ship to be provisionally detained as an unsafe ship for the purpose of being surveyed.
- (b) When a ship has been provisionally detained there shall be forthwith served on the master of the ship a written statement of the grounds of her detention, and the Board of Trade may, if they think fit, appoint some competent person or persons to survey the ship and report thereon to the Board.
- (c) The Board of Trade on receiving the report may either order the ship to be released, or, if in their opinion the ship is unsafe, may order her to be finally detained, either absolutely, or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, **or the manning of the ship**, as the Board think necessary for the protection of human life, and the Board may vary or add to any such order.
- (d) Before the order for final detention is made a copy of the report shall be served upon the master of the ship, and within seven days after that service the owner or master of the ship may appeal to the court of survey for the port or district where the ship is detained in manner directed by the rules of that court.
- (e) Where a ship has been provisionally detained, the owner or master of the ship, at any time before the person appointed

Section 459.

under this section to survey the ship makes that survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of assessors for the court of survey, and in that case if the surveyor and assessor agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the like appeal touching the report of the surveyor as is before provided by this section.

- (f) Where a ship has been provisionally detained, the Board of Trade may at any time, if they think it expedient, refer the matter to the court of survey for the port or district where the ship is detained.
- (g) The Board of Trade may at any time, if satisfied that a ship detained under this section is not unsafe, order her to be released either upon or without any conditions.

Undermanning.]—This section was extended to undermanning by sect. 1, sub-s. 1, of the Merchant Shipping Act, 1897 (60 & 61 Vict. c. 59). See sect. 8 (2) of the Merchant Shipping (Convention) Act, 1914.

(2) Any person appointed by the Board of Trade for the purpose (in this Act referred to as a detaining officer) shall have the same power as the Board have under this section of ordering the provisional detention of a ship for the purpose of being surveyed, and of appointing a person or persons to survey her; and if he thinks that a ship so detained by him is not unsafe may order her to be released.

(3) A detaining officer shall forthwith report to the Board of Trade any order made by him for the detention or release of a ship.

(4) An order for the detention of a ship, provisional or final, and an order varying the same, shall be served as soon as may be on the master of the ship.

(5) A ship detained under this section shall not be released by reason of her British register being subsequently closed.

(6) The Board of Trade may with the consent of the Treasury appoint fit persons to act as detaining officers under this section and may remove any such officer; and a detaining officer shall be paid such salary or remuneration (if any) out of money provided by Parliament as the Treasury direct, and shall for the purpose of his duties have all the powers of a Board of Trade inspector under this Act.

(7) A detaining officer and a person authorised to survey a ship under this section shall for that purpose have the same power as a person appointed by a court of survey to survey a

ship, and the provisions of this Act with respect to the person so appointed shall apply accordingly. Section 459.

As to courts of survey, see sects. 487—489.

Mustering of Crew.]—By virtue of sub-s. 1 of sect. 1 of the Merchant Shipping Act, 1897, the powers exercisable under this sect. 459 are to include power to muster the crew.

460.—(1) If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship under this Part of this Act as an unsafe ship, the Board of Trade shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey. Liability for costs and damages.

(2) If a ship is finally detained under this Act, or if it appears that a ship provisionally detained was, at the time of that detention, an unsafe ship within the meaning of this Part of this Act, the owner of the ship shall be liable to pay to the Board of Trade their costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

(3) For the purpose of this section the costs of and incidental to any proceeding before a court of survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Board of Trade, shall be part of the costs of the detention and survey of the ship, and any dispute as to the amount of those costs may be referred to one of the officers following, namely in England or Ireland to one of the masters or registrars of the High Court, and in Scotland to the auditor of the Court of Session, and the officer shall, on request of the Board of Trade, ascertain and certify the proper amount of those costs.

(4) An action for any costs or compensation payable by the Board of Trade under this section may be brought against the Secretary of that Board by his official title as if he were a corporation sole, and if the cause of action arises in Ireland, and the action is brought in the High Court, that court may order that the summons or writ may be served on the Crown and Treasury Solicitor for Ireland in such manner and on such terms respecting extension of time and otherwise as the court thinks fit, and that service shall be sufficient service of the summons or writ upon the Secretary of the Board of Trade.

As to mode of recovering salvage, see sects. 547 *et seq.*

As to courts of survey, see sects. 487 *et seq.*

See sect. 8 (2) of the Merchant Shipping (Convention) Act, 1914, *post*.

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Section 462.

Application
to foreign
ships of
provisions as
to detention.

462. Where a foreign ship [*has taken on board all or any part of her cargo*] at a port in the United Kingdom, [*and*] is [*whilst at that port*] unsafe **by reason of the defective condition of her hull, equipments, or machinery**, or by reason of overloading or improper loading, **or by reason of undermanning**, the provisions of this Part of this Act with respect to the detention of ships shall apply to that foreign ship as if she were a British ship, with the following modifications :

- (i.) a copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the country to which the ship belongs at or nearest to the said port ;
- (ii.) where a ship has been provisionally detained, the consular officer, on the request of the owner or master of the ship, may require that the person appointed by the Board of Trade to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made and the owner and master shall have the like appeal to a court of survey, touching the report of the surveyor as is hereinbefore provided in the case of a British ship ; and
- (iii.) where the owner or master of the ship appeals to the court of survey, the consular officer, on his request, may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Board of Trade.

Undermanning.]—This section was extended to undermanning by sect. 1, sub-s. 2, of the Merchant Shipping Act, 1897 (60 & 61 Vict. c. 59).

Loading Cargo.]—The words in brackets in this section, *supra*, were repealed by the Merchant Shipping Act, 1906 (6 Edw. VII. c. 48), Schedule II., *post*, to give effect to sect. 2, sub-s. 2, of that Act.

Defective Condition.]—This section was extended to a vessel unsafe by reason of defective condition of her hull, equipments or machinery, by sect. 2, sub-s. 1, of the Merchant Shipping Act, 1906.

As to courts of survey, see sects. 487 *et seq.*

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PART VI.

SPECIAL SHIPPING INQUIRIES AND COURTS.

* * * * *

Courts of Survey.

487.—(1) A court of survey for a port or district shall consist of a judge sitting with two assessors. Section 487

(2) The judge shall be such person as may be summoned for the case in accordance with the rules made under this Act with respect to that court, out of a list approved for the port or district by a Secretary of State, of wreck commissioners appointed under this Act, stipendiary or metropolitan police magistrates, judges of county courts, and other fit persons; but in any special case in which the Board of Trade think it expedient to appoint a wreck commissioner, the judge shall be such wreck commissioner. Constitution of court of survey.

(3) The assessors shall be persons of nautical, engineering, or other special skill and experience; subject to the provisions of the Fifth Part of this Act as regards foreign ships, one of them shall be appointed by the Board of Trade, either generally or in each case, and the other shall be summoned, in accordance with the rules made as aforesaid, by the registrar of the court, out of a list of persons periodically nominated for the purpose by the local marine board of the port, or if there is no such board, by a body of local shipowners or merchants approved for the purpose by a Secretary of State, or, if there is no such list, shall be appointed by the judge: If a Secretary of State thinks fit at any time, on the recommendation of the government of any British possession or any foreign country, to add any persons to any such list, those persons shall, until otherwise directed by the Secretary of State, be added to the list, and if there is no such list shall form the list.

(4) The county court registrar or such other fit person as a Secretary of State may from time to time appoint shall be the registrar of the court, and shall, on receiving notice of an appeal or a reference from the Board of Trade, immediately summon the court to meet forthwith in manner directed by the rules.

(5) The name of the registrar, and his office, together with the rules, made as aforesaid, relating to the court of survey, shall be published in the manner directed in the rules.

* * * * *

For rules of courts of survey, see sect. 535
For list of courts of survey, see *post*, p. 2214

Section 488. **488.**—(1) The court of survey shall hear every case in open court.

Power and
procedure of
court of
survey.

(2) The judge and each assessor of the court may survey the ship, and shall have for the purposes of this Act all the powers of a Board of Trade inspector under this Act.

(3) The judge of the court may appoint any competent person or persons to survey the ship and report thereon to the court.

(4) The judge of the court, any assessor of the court, and any person appointed by the judge of the court to survey a ship, may go on board the ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, or tackle, and any person who wilfully impedes such judge, assessor, or person in the execution of the survey, or fails to comply with any requisition made by him, shall for each offence be liable to a fine not exceeding ten pounds.

(5) The judge of the court shall have the same power as the Board of Trade have to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

(6) The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Board of Trade, may attend at any inspection or survey made in pursuance of this section.

(7) The judge of the court shall send to the Board of Trade such report as may be directed by the rules, and each assessor shall either sign the report or report to the Board of Trade the reasons for his dissent.

For rules of courts of survey, see sect. 489.

Passenger Ships.]—The owner of a passenger steamer aggrieved by the declaration of survey of a ship or engineer surveyor, or by the refusal of such a surveyor to give such a declaration, may appeal to the court of survey of the port or district where the steamer for the time being is, in manner directed by the rules of that court (see sect. 275, *supra*).

Emigrant Ships.]—The owner of an emigrant ship aggrieved by the refusal of an emigration officer of a certificate of clearance, may also appeal to a court of survey (see sect. 318, *supra*).

Lights and Fog Signals.]—So may also the owner of a ship where the certificate as to lights and fog signals is refused (see sect. 420, sub-s. 4, *supra*).

Provisional Detention.]—In the case of the provisional detention of a British or foreign ship by reason of defective condition, undermanning, overloading, or improper loading, the matter may be brought before a court of survey (see sect. 459, sub-s. 1, and sect. 462, *supra*).

Scientific Referees.]—If the Board of Trade are of opinion that an appeal to a court of survey involves a question of construction or design or of scientific difficulty or important principle, they may refer the matter to a scientific referee or referees who shall have the same powers as a judge of the court of survey. The Board of Trade shall also so refer any appeal if the appellant so requires and gives security (see sect. 490).

489. The Lord Chancellor may (with the consent of the Treasury **Section 489.** so far as relates to fees) make general rules to carry into effect the provisions of this Act with respect to a court of survey, and in particular with respect to the summoning of, and procedure before, the court, the requiring on an appeal security for costs and damages, the amount and application of fees, and the publication of the rules, and those rules shall have effect as if enacted in this Act. **Rules for procedure of court of survey, etc.**

Rules for Court of Survey.]—No rules have in fact been made under this Act, but by sect. 745 (a) of this Act, the rules made under the Merchant Shipping Act, 1876 (repealed by this Act), continue in force as if made under this Act. For the general rules for courts of survey in the United Kingdom, see *post*. These rules include in appendices lists of the courts of survey, and the special forms and the fees applicable thereto.

Scientific Referees.

490.—(1) If the Board of Trade are of opinion that an appeal **Reference in** to a court of survey involves a question of construction or design **difficult** or of scientific difficulty or important principle, they may refer **cases to** the matter to such one or more out of a list of scientific referees **scientific** from time to time approved by a Secretary of State, as may appear **persons.** to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Board of Trade and the appellant, or in default of any such agreement by a Secretary of State, and thereupon the appeal shall be determined by the referee or referees, instead of by the court of survey.

(2) The Board of Trade, if the appellant in any appeal so requires and gives security to the satisfaction of the Board to pay the costs of and incidental to the reference, shall refer that appeal to a referee or referees so selected as aforesaid.

(3) The referee or referees shall have the same powers as a judge of the court of survey.

Payments to Officers of Courts.

491. There may be paid out of money provided by Parliament **Payments** to any wreck commissioner, judge of a court of survey, assessor **to officers** in any court of survey or investigation under this Part of this **of court .** Act, registrar of a court of survey, scientific referee, or any other officer or person appointed for the purpose of any court of survey or investigation under this part of this Act, such salary or remuneration (if any) as the Treasury may direct.

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PART IX.

WRECK AND SALVAGE.

Vessels in Distress.

* * * * *

Section 513. **513.**—(1) Whenever a vessel is wrecked, stranded, or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the vessel, or of saving the lives of the shipwrecked persons, or of saving the cargo or apparel of the vessel, unless there is some public road equally convenient, pass and repass, either with or without carriages or horses, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on those lands any cargo or other article recovered from the vessel.

Power to
pass over
adjoining
lands.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the vessel, cargo, or articles in respect of or by which the damage is occasioned and the amount payable in respect of the damage shall, in case of dispute, be determined, and shall, in default of payment, be recoverable in the same manner as the amount of salvage is under this Part of this Act determined or recoverable.

As to mode of recovering salvage, see sects. 547 *et seq.*

See notes to sect. 3, sub-s. 1, of the County Courts Admiralty Jurisdiction Act, 1868, *ante*.

(3) If the owner or occupier of any land—

- (a) impedes or hinders any person in the exercise of the rights given by this section by locking his gates, or refusing, upon request, to open the same, or otherwise; or
- (b) impedes or hinders the deposit of any cargo or other article recovered from the vessel as aforesaid on the land; or
- (c) prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit;

he shall for each offence be liable to a fine not exceeding one hundred pounds.

* * * * *

Disputed
title to
unclaimed
wreck.

526.—(1) Where any dispute arises between any such admiral, vice-admiral, lord of a manor, heritable proprietor, or other person as aforesaid and the receiver respecting title to wreck found at any place, or where more persons than one claim title to that wreck

and a dispute arises between them as to that title, that dispute may be referred and determined in the same manner as if it were a dispute as to salvage to be determined summarily under this Part of this Act.

(2) If any party to the dispute is unwilling to have the same so referred and determined, or is dissatisfied with the decision on that determination, he may within three months after the expiration of a year from the time when the wreck has come into the receiver's hands, or from the date of the decision, as the case may be, take proceedings in any court having jurisdiction in the matter for establishing his title.

* * * * *

Salvage.

544.—(1) Where services are rendered wholly or in part within British waters in saving life from any British or foreign vessel, or elsewhere in saving life from any British vessel, there shall be payable to the salvor by the owner of the vessel, cargo, or apparel saved, a reasonable amount of salvage, to be determined in case of dispute in manner hereinafter mentioned. Salvage payable for saving life.

(2) Salvage in respect of the preservation of life when payable by the owners of the vessel shall be payable in priority to all other claims for salvage.

(3) Where the vessel, cargo, and apparel are destroyed, or the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage payable in respect of the preservation of life the Board of Trade may, in their discretion, award to the salvor, out of the Mercantile Marine Fund, such sum as they think fit in whole or part satisfaction of any amount of salvage so left unpaid.

[NOTE.—Sub-s. 3 indicates the only source from which remuneration for life salvage is obtainable where no property is also salvaged.]

545. When it is made to appear to Her Majesty that the government of any foreign country is willing that salvage should be awarded by British courts for services rendered in saving life from ships belonging to that country, when the ship is beyond the limits of British jurisdiction, Her Majesty may, by Order in Council, direct that the provisions of this Part of this Act with reference to salvage of life shall, subject to any conditions and qualifications contained in the Order, apply, and those provisions shall accordingly apply to those services as if they were rendered in saving life from ships within British jurisdiction. Salvage of life from foreign vessels.

Section 546.

Salvage of
cargo or
wreck.

546. Where any vessel is wrecked, stranded, or in distress at any place on or near the coasts of the United Kingdom or any tidal water within the limits of the United Kingdom, and services are rendered by any person in assisting that vessel or saving the cargo or apparel of that vessel or any part thereof, and where services are rendered by any person other than a receiver in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, apparel, or wreck, a reasonable amount of salvage to be determined in case of dispute in manner herein-after mentioned.

Procedure in Salvage.

Determina-
tion of
salvage dis-
putes.

547.—(1) Disputes as to the amount of salvage whether of life or property, and whether rendered within or without the United Kingdom arising between the salvor and the owners of any vessel, cargo, apparel, or wreck, shall, if not settled by agreement, arbitration, or otherwise, be determined summarily in manner provided by this Act, in the following cases, namely :—

- (a) In any case where the parties to the dispute consent :
- (b) In any case where the value of the property saved does not exceed one thousand pounds :
- (c) In any case where the amount claimed does not exceed in Great Britain three hundred pounds, and in Ireland two hundred pounds :

(2) Subject as aforesaid, disputes as to salvage shall be determined by the High Court in England or Ireland, or in Scotland the Court of Session, but if the claimant does not recover in any such court in Great Britain more than three hundred pounds, and in any such court in Ireland more than two hundred pounds, he shall not be entitled to recover any costs, charges, or expenses incurred by him in the prosecution of his claim, unless the court before which the case is tried certify that the case is a fit one to be tried otherwise than summarily in manner provided by this Act.

(3) Disputes relating to salvage may be determined on the application either of the salvor or of the owner of the property saved, or of their respective agents.

(4) Where a dispute as to salvage is to be determined summarily under this section it shall be referred and determined as follows :—

- (a) In England it shall be referred to and determined by a county court having Admiralty jurisdiction by virtue of the County Courts Admiralty Jurisdiction Act, 1868, or any Act amending the same.

(5) Nothing in this Act relating to the procedure in salvage cases shall affect the jurisdiction or procedure in salvage cases of a county court having Admiralty jurisdiction by virtue of the County Courts Admiralty Jurisdiction Act, 1868, or the Court of Admiralty (Ireland) Act, 1867, or any Act amending either of those Acts. Section 547.

See notes to sect. 3, sub-s. 1, of the Act of 1868, *ante*.

548.—(1) Disputes as to salvage which are to be determined summarily in manner provided by this Act shall— Determination of disputes as to salvage summarily.

(a) where the dispute relates to the salvage of wreck be referred to a court or arbitrators having jurisdiction at or near the place where the wreck is found :

(b) where the dispute relates to salvage in the case of services rendered to any vessel or to the cargo or apparel thereof or in saving life therefrom be referred to a court or arbitrators having jurisdiction at or near the place where the vessel is lying, or at or near the port in the United Kingdom into which the vessel is first brought after the occurrence by reason whereof the claim of salvage arises.

(2) Any court or arbitrators to whom a dispute as to salvage is referred for summary determination may, for the purpose of determining any such dispute, call in to their assistance any person conversant with maritime affairs as assessor, and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his services such sum not exceeding five pounds as the Board of Trade may direct.

549.—(1) Where a dispute relating to salvage has been determined summarily in manner provided by this Act, any party aggrieved by the decision may appeal therefrom— Appeal in case of salvage disputes.

(a) in Great Britain, in like manner as in the case of any other judgment in an Admiralty or maritime cause of the county court or sheriff's court, as the case may be.

* * * * *

556. Whenever the aggregate amount of salvage payable in respect of salvage service rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever that amount may be, then, if any delay or dispute arises as to the apportionment thereof, any court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just, and may for that purpose, if it thinks fit, appoint any person to carry that Apportionment of salvage by admiralty courts.

Section 556. apportionment into effect, and may compel any person in whose hands or under whose control the amount may be to distribute the same, or to bring the same into court to be there dealt with as the court may direct, and may for the purposes aforesaid issue such processes as it thinks fit.

Salvage by Her Majesty's Ships.

Salvage by
Her Majesty's
ships.

557.—(1) Where salvage services are rendered by any ship belonging to Her Majesty or by the commander or crew thereof, no claim shall be allowed for any loss, damage, or risk caused to the ship or her stores, tackle, or furniture, or for the use of any stores or other articles belonging to Her Majesty, supplied in order to effect those services, or for any other expense or loss sustained by Her Majesty by reason of that service and no claim for salvage services by the commander or crew, or part of the crew of any of Her Majesty's ships, shall be finally adjudicated upon unless the consent of the Admiralty to the prosecution of that claim is proved.

(2) Any document purporting to give the consent of the Admiralty for the purpose of this section, and to be signed by the Secretary to the Admiralty or on his behalf, shall be evidence of that consent.

(3) If a claim is prosecuted and the consent is not proved, the claim shall stand dismissed with costs.

(See *The Sarpen*, C. A. 114 L. T. 1011; *The Matti*, 87 L. J. P. 179, (1918) P. 314; *Admiralty Commissioners v. Page*, C. A. 88 L. J. K. B. 325, (1919) 1 K. B. 299; also the Merchant Shipping (Salvage) Act, 1916, *post*.)

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PART X.

PILOTAGE.

[Note.—Sects. 572 to 632 inclusive, and the twenty-first schedule have been repealed by the Pilotage Act, 1913, *post*, p. 2239.]

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Limitation
of liability of
owner or
master
where
pilotage is
compulsory.

633. An owner or master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law.

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PART XIII.

LEGAL PROCEEDINGS.

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Damage occasioned by Foreign Ship.

688.—(1) Whenever any injury has in any part of the world been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, and at any time thereafter that ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, a judge of any court of record in the United Kingdom (and in Scotland the Court of Session and also the sheriff of the county within whose jurisdiction the ship may be) may, upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct or want of skill of the master or mariners of the ship, issue an order directed to any officer of customs or other officer named by the judge, court, or sheriff, requiring him to detain the ship until such time as the owner, master or consignee thereof has made satisfaction in respect of the injury, or has given security, to be approved by the judge, court, or sheriff, to abide the event of any action, suit, or other legal proceedings that may be instituted in respect of the injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

Section 688.

Power to arrest foreign ship that has occasioned damage.

(2) Where it appears that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the limits of the United Kingdom or three miles from the coast thereof, the ship may be detained for such time as will allow the application to be made, and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(3) In any legal proceeding in relation to any such injury aforesaid, the person giving security shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned the damage; and the production of the order of the judge, court, or sheriff made in relation to the security shall be conclusive evidence of the liability of the defendant or defender to the proceeding.

See note to Order XXXIX. r. 13, *ante*. In the case of personal injuries, including fatal injuries, see sect. 1 of the Shipowners' Negligence (Remedies) Act, 1905 (5 Edw. VII c. 10), *post*, p. 2232, and in connection with sub-s. 3 above, cf. sect. 1, sub-s. 2, of that Act.

* * * * *

Section 692.

Enforcing
detention
of ship.

692.—(1) Where under this Act a ship is to be or may be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade, or any officer of Customs, or any British consular officer may detain the ship, and if the ship after detention or after service on the master of any notice of order for detention proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be liable for each offence to a fine not exceeding one hundred pounds.

* * * * *

(3) Where under this Act a ship is to be detained an officer of Customs shall, and where under this Act a ship may be detained, an officer of Customs may, refuse to clear that ship outwards or to grant a transire to that ship.

(4) Where any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of Customs, the proper officer shall mean, unless the context otherwise requires, the officer able to grant a clearance or transire to such ship.

The powers under this section are adopted by sect. 1, sub-s. 3, of the Shipowners' Negligence (Remedies) Act, 1905, *post*, p. 2232, and also by sect. 1, sub-s. 5, of the Merchant Shipping (Stevedores and Trimmers) Act, 1911, *post*, p. 2233.

Sums
ordered to
be paid
leviable by
distress on
ship.

693. Where any court, justice of the peace, or other magistrate, has power to make an order directing payment to be made of any seaman's wages, fines, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the court, justice of the peace, or magistrate who made the order may, in addition to any other powers they may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the ship, her tackle, furniture, and apparel.

Evidence, Service of Documents, and Declarations.

Proof of
attestation
not re-
quired.

694. Where any document is required by this Act to be executed in the presence of or to be attested by any witness or witnesses, that document may be proved by the evidence of any person who is able to bear witness to the requisite facts without calling the attesting witness or the attesting witnesses or any of them.

Admissi-
bility of
documents in
evidence.

695.—(1) Where a document is by this Act declared to be admissible in evidence, such document shall, on its production

from the proper custody, be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or by any officer in pursuance of his duties as such officer. Section 695.

(2) A copy of any such document or extract therefrom shall also be so admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted, and that officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding fourpence for every folio of ninety words, but a person shall be entitled to have—

(a) a certified copy of the particulars entered by the registrar in the register book on the registry of the ship, together with a certified statement showing the ownership of the ship at the time being ; and

(b) a certified copy of any declaration, or document, a copy of which is made evidence by this Act, *for each copy* on payment of one shilling for each copy.

(3) If any such officer wilfully certifies any document as being a true copy or extract knowing the same not to be a true copy or extract, he shall for each offence be guilty of a misdemeanour, and be liable on conviction to imprisonment for any term not exceeding eighteen months.

(4) If any person forges the seal, stamp, or signature of any document to which this section applies, or tenders in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, he shall for each offence be guilty of felony, and be liable to penal servitude for a term not exceeding seven years, or to imprisonment for a term not exceeding two years, with or without hard labour, and whenever any such document has been admitted in evidence, the court or the person who admitted the same may on request direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person for such period or subject to such conditions as the court or person thinks fit.

696.—(1) Where for the purposes of this Act any document is to be served on any person, that document may be served— Service of documents.

(a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode ; and

(b) if the document is to be served on the master of a ship,

Section 696.

where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship with the person being, or appearing to be, in command or charge of the ship; and

- (c) if the document is to be served on the master of a ship, where there is no master, and the ship is in the United Kingdom, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

(2) If any person obstructs the service on the master of a ship of any document under the provisions of this Act relating to the detention of ships as unseaworthy, that person shall for each offence be liable to a fine not exceeding ten pounds, and, if the owner or master of the ship is party or privy to the obstruction, he shall in respect of each offence be guilty of a misdemeanour.

Proof, etc.,
of exemp-
tion.

697. Any exception, exemption, proviso, excuse or qualification, in relation to any offence under this Act, whether it does or does not accompany in the same section the description of the offence, may be proved by the defendant, but need not be specified or negatived in any information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

Declarations. **698.** Any declaration required by this Act to be taken before a justice of the peace, or any particular officer may be taken before a commissioner for oaths.

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PART XIV.

SUPPLEMENTAL.

Surveyors of Ships.

Appointment
of surveyors.

724.—(1) The Board of Trade may, at such ports as they think fit, appoint either generally or for special purposes, and on special occasion, any person they think fit to be a surveyor of ships for the purposes of this Act, and a person so appointed (in this Act referred to as a surveyor of ships) may be appointed either as a shipwright surveyor or as an engineer surveyor or as both.

For "shipwright surveyor" now read "ship surveyor." See s. 75 of the Merchant Shipping Act, 1906, *post*.

* * * * *

Definitions and Provisions as to Application of Act.

Section 742.

742. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say—

“Vessel” includes any ship or boat, or any other description of vessel used in navigation ;

“Ship” includes every description of vessel used in navigation not propelled by oars ;

* * * * *

NOTE.—See definitions “vessel” and “ship” in Merchant Shipping Act, 1921 (11 & 12 Geo. V. c. 28), *post*, p. 2255.

“Master” includes every person (except a pilot) having command or charge of any ship ;

“Seaman” includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship ;

“Wages” includes emoluments ;

“Effects” includes clothes and documents ;

“Salvor” means, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of that ship ;

“Pilot” means any person not belonging to a ship who has the conduct thereof ;

“Court” in relation to any proceeding includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates ;

* * * * *

“Bankruptcy” includes insolvency ;

“Representation” means probate, administration, confirmation, or other instrument constituting a person the executor, administrator, or other representative of a deceased person ;

“Legal personal representative” means the person so constituted executor, administrator, or other representative, of a deceased person.

* * * * *

Any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

* * * * *

Repeal and Savings.

745.—(1) The Acts mentioned in the twenty-second schedule to this Act are hereby repealed to the extent specified in the third column of that schedule. Repeal.

Provided that—

(a) Any order in council, licence, certificate, byelaw, rule, or

Section 745.

regulation made or granted under any enactment hereby repealed shall continue in force as if it had been made or granted under this Act ;

- (b) Any officer appointed, any body elected or constituted, and any savings bank or office established, under any enactment hereby repealed shall continue and be deemed to have been appointed, elected, constituted, or established, as the case may be, under this Act ;
- (c) Any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment of this Act ;

* * * * *

- (e) Ships registered under the Merchant Shipping Act, 1854, and the Acts amending the same, or duly registered before the passing of the Merchant Shipping Act, 1854, shall be deemed to have been registered under this Act.

* * * * *

Short Title.

Short title. **747.** This Act may be cited as the Merchant Shipping Act, 1894.

* * * * *

THE MERCHANT SHIPPING ACT, 1876.
GENERAL RULES FOR COURTS OF SURVEY IN THE
UNITED KINGDOM, 1876.

Whereas by the Merchant Shipping Act, 1876, it is provided that the owner or master of a ship, that has been provisionally detained, may appeal to the court of survey for the port or district, where the ship is detained :

And whereas it is further provided that every court of survey shall consist of a judge sitting with two assessors ; and that the judge of the court shall be summoned from a list of persons from time to time approved for the port or district by one of Her Majesty's principal Secretaries of State :

And whereas it is provided that the Lord Chancellor of Great Britain may from time to time (with the consent of the Treasury so far as relates to fees) make general rules to carry into effect the provisions of the said Act with respect to courts of survey :

Now, therefore, I, the Right Honourable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, with the consent so far as may be necessary of one of Her Majesty's prin-

cial Secretaries of State and of the Treasury so far as relates to fees, do order as follows :

SHORT TITLE.

1. These rules may be cited as "The Rules of the Court of Survey, 1876."

Rule 1.

COMMENCEMENT.

2. These rules shall come into operation on the 1st day of October, 1876.

INTERPRETATION.

3. In the construction of these rules, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number.

COURTS OF SURVEY, THEIR DISTRICTS AND OFFICERS.

4. The courts of survey, with the districts assigned to each, and the persons authorised to act as judges and registrars thereof, and which have been approved by one of Her Majesty's principal Secretaries of State, as set forth in Appendix A, shall be the courts of survey, and the districts, judges, and registrars of such courts, for the purposes of the Merchant Shipping Acts, 1854 to 1876.

PUBLICATION OF RULES.

5. These rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at the office of the registrar of every court of survey and at every custom house and mercantile marine office in the United Kingdom, and may be perused thereat by the master or owner of any ship which may be provisionally detained under the Merchant Shipping Act, 1876, and by any one deputed by him.

PUBLICATION OF THE NAME OF REGISTRAR AND OF HIS OFFICE.

6. A notice shall be put up in some conspicuous place in every custom house and mercantile marine office in the United Kingdom, containing the name of the registrar of the court of survey for that district, and the name of the street or place in which such registrar's office is situated.

NOTICE OF APPEAL.

7. Where the owner or master of a ship, hereinafter called the appellant, desires to appeal to a court of survey, he shall file at the office of the registrar of the court of survey for the London district, or for the district in which the ship is, hereinafter called the court, a notice in the form No. 1 in Appendix B.

SUMMONING OF COURT.

Rule 8.

8. Immediately upon the filing of the notice of appeal, the registrar shall communicate the fact, by telegraph and letter, to the Board of Trade, who shall thereupon inform him whether they intend to have the appeal heard by a wreck commissioner, and, if so, on what day.

9. If the Board of Trade inform him that they do not intend to have the appeal heard by a wreck commissioner, the registrar shall forthwith ascertain which of the other judges of the court will hear the appeal, and on what day.

10. On ascertaining when the hearing will take place, the registrar shall, if there is a list of assessors for the court, select therefrom the person who is, in his opinion, the best qualified to act as assessor on the appeal; or if there is no such list, he will take the instructions of the judge as to the assessor to be appointed.

11. The Board of Trade shall appoint the other assessor, and shall forthwith send the name and address of such assessor to the registrar.

12. If the ship is a foreign ship, the registrar shall give notice to the consular officer for the state to which the ship belongs, residing at or nearest to the place where the ship is detained, that, at the request of the appellant, some competent person will be selected by the consular officer to act as assessor.

13. As soon as the registrar has ascertained by whom the appeal will be heard, he shall summon the court in the form No. 2 in Appendix B. He shall at the same time send notice thereof to the Board of Trade and to the appellant, in the form No. 3 in Appendix B.

14. If the survey has been made on the complaint of any person, hereinafter called the complainant, the Board of Trade shall send to him notice of the time and place appointed for the hearing.

15. Previous to the hearing the Board of Trade shall forward to the registrar to be produced as evidence at the hearing, an official copy of the report of the surveyor.

16. The court shall, if practicable, be summoned to hear the appeal on a day not later than fourteen days from the filing of the notice of appeal.

PARTIES.

17. The Board of Trade and the appellant shall be parties to the proceedings.

18. Any other person, on entering an appearance, may, by permission of the judge, be made a party to the proceedings. Rule 18.

NOTICE TO PRODUCE.

19. Either party may give to the other a notice in writing to produce such documents (saving all just exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

NOTICE TO ADMIT.

20. Either party may give to the other party a notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving such documents, whatever the result may be, unless the court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense.

WITNESSES.

21. The wreck commissioners shall have power to issue subpoenas as nearly as may be in the form used in the High Court of Justice, and such subpoenas shall have effect, and may be served in any part of the United Kingdom.

AFFIDAVITS.

22. Affidavits may, by permission of the judge, be used at the hearing, when sworn to in any of the following ways; viz.,

In the United Kingdom, before any judge or registrar of a court of survey, or before a person authorised to administer oaths in the Supreme Court of Judicature, or before a commissioner empowered to take or receive affidavits, or before a justice of the peace for the county or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any court, judge, or justice of the peace, or any person authorised to administer oaths there in any court.

In any place out of the British dominions, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, his signature being authenticated by the official seal of the court to which such judge or magistrate is attached.

PROCEEDINGS IN COURT.

Rule 23.

23. At the hearing, the Board of Trade shall first call their witnesses and having done so shall state in writing what order they require the court to make.

24. The complainant, if he has appeared, shall then call his witnesses, and having done so shall state in writing what order he requires the court to make.

25. The appellant shall then call his witnesses, and having done so shall state in writing what order he requires the court to make.

26. After the appellant has examined all his witnesses, the Board of Trade and the complainant may, on cause shown to the satisfaction of the judge, call further witnesses in reply.

27. After all the witnesses have been examined, the court shall first hear the appellant, then the complainant (if any), and afterwards the Board of Trade.

28. The judge may adjourn the court from time to time and from place to place, as may be most convenient.

29. The judge may deliver the decision of the court either *vivâ voce* or in writing, and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a court merely for the purpose of giving the decision.

30. As soon as possible after the court has come to its decision, the judge shall issue an order for the release or detention (either finally or on condition) of the vessel in the form No. 4 in Appendix B.

31. The judge shall report to the Board of Trade in the form No. 5 in Appendix B.

COSTS AND DAMAGES.

32. The court may, if the parties consent thereto in writing, decide, whether costs or costs and damages are due, and to and from whom, and may assess the amount thereof; or the parties may, by consent in writing, refer the question to the wreck commissioner.

33. The order for the payment of costs, or of costs and damages, shall be in the form No. 6 in Appendix B.

COMPUTATION OF TIME.

34. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day

appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also.

Rule 34.

35. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days shall not be reckoned or included in the computation.

SERVICE OF NOTICES, ETC.

36. The notice, summons, or other document issuing out of the court may be served by post.

37. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

TABLE OF FEES.

38. The fees, a table whereof is in Appendix C., shall be demanded and taken in any proceedings before a court of survey.

Dated this 29th day of September, 1876.

CAIRNS, C.

APPENDIX A.

LISTS OF THE COURTS OF SURVEY, WITH THE DISTRICTS ASSIGNED TO EACH, AND THE PERSONS AUTHORISED TO ACT AS JUDGES AND REGISTRARS THEREOF, APPROVED BY ONE OF HER MAJESTY'S PRINCIPAL SECRETARIES OF STATE.

In the following lists column No. 1 contains the names of all the courts of survey in the United Kingdom.

Districts.

The district of the court of survey for London shall include the City of London and the districts of all the metropolitan county courts, the districts of the county court of Kent holden at Gravesend, Dartford, Greenwich, and Woolwich, the districts of the county court of Essex holden at Brentwood and Romford, and the district of the county court of Surrey holden at Wandsworth.

The district of any other court of survey in England shall be the district of the county court of the place, at which the court of survey is held.

The district of a court of survey in Scotland and in Ireland shall be the district of the port of customs of the place at which the court is held.

The courts shall be held at the places whose names they bear, or at any place within their respective districts, and may, by the permission of the judge, be adjourned to any place out of such districts.

Judges.

The wreck commissioner shall be a judge of every court of survey in the United Kingdom.

The persons whose official titles are set out in column No. 2 shall be the other judges of the courts of survey at the places opposite to which their names occur.

Registrars.

The registrar of the court of survey for London shall be Mr. William Edward Stanley Thomson, and his office shall be at Somerset House, Strand, in the county of Middlesex.

The registrar of any other court of survey in England shall be the registrar of the county court of the place at which the court of survey is held, and his office shall be the office of the registrar of the said county court.

The registrar of a court of survey in Scotland shall be the sheriff clerk of the county in which the court is held, and his office shall be the office of the said sheriff clerk.

The registrar of a court of survey in Ireland shall be the clerk of the peace, or registrar or other person discharging the duties of registrar of the court of the chairman of the county in which the court is held, and his office shall be the office of the clerk of the peace, registrar or other person aforesaid.

LIST No. 1.

Courts of Survey in England.

Column No. 1. Column No. 2.

Court of Survey for	Judges of the Courts of Survey at the places opposite to which their names occur.
Berwick	} The judges of the county courts in Circuits 1 and 2. The recorder of Berwick.
Belford	
Alnwick	
Morpeth	
North Shields	} The judges of the county courts in Circuits 1 and 2. The stipendiary magistrate at South Shields. The recorders of Durham and Newcastle.
Newcastle	
Gateshead	
South Shields	
Sunderland	
Seaham Harbour	
Hartlepool	} The judges of the county courts in Circuits 2 and 15. The stipendiary magistrate at Middlesbrough. The recorder of Hartlepool.
Stockton	
Stokesley	} The judge of the county court in Circuit 16. The stipendiary magistrate at Hull. The recorders of Hull and Scarborough.
Whitby	
Scarborough	
Bridlington	
Beverley	
Hedon	
Hull	
Goole	} The judges of the county courts in Circuits 16 and 18.
Barton-on-Humber	} The judge of the county courts in Circuit 17.
Great Grimsby	
Louth	
Spilsby	
Boston	

Column No. 1.

Column No. 2.

Court of Survey for	Judges of the Courts of Survey at the places opposite to which their names occur.
Spalding	{ The judge of the county courts in Circuits 17, 32 and 35.
Holbeach	
Wisbech	
King's Lynn	{ The judge of the county courts in Circuit 32. The recorder of King's Lynn.
Little Walsingham	
Holt	
North Walsham	
Yarmouth	{ The judge of the county courts in Circuits 32 and 33. The recorders of Orford, Norwich and Yarmouth.
Lowestoft	
Halesworth	{ The judge of the county courts in Circuit 33. The recorders of Aldborough and Orford.
Framlingham	
Woodbridge	
Ipswich	{ The judge of the county courts in Circuits 33 and 38. The recorder of Ipswich.
Harwich	
Colchester	{ The judge of the county courts in Circuit 38. The recorders of Colchester and Maldon.
Maldon	
Rochford	
London	{ The magistrates of the metropolitan police courts.
Rochester	{ The judge of the county courts in Circuit 48. The stipendiary magistrate at Sheerness. The recorders of Faversham and Rochester.
Sheerness	
Sittingbourne	
Faversham	
Canterbury	{ The judges of the county courts in Circuits 48 and 49. The judge of Admiralty Court of the Cinque Ports. The recorders of Canterbury, Deal, Dover, Folkestone, Hythe, Margate, Sandwich, and Tenterden.
Margate	
Ramsgate	
Sandwich	
Deal	
Dover	
Folkestone	
Hythe	
Romney	
Rye	
Hastings	{ The judge of the county courts in Circuit 50. The judge of Admiralty Court of the Cinque Ports. The recorder of Rye. The judges of the county courts in Circuits 50 and 51. The stipendiary magistrate at Brighton. The recorders of Brighton and Seaford.
Lewes	
Brighton	
Worthing	

Column No. 1.	Column No. 2.
Court of Survey for	Judges of the Courts of Survey at the places opposite to which their names occur.
Arundel	{ The judge of the county courts in Circuits 50 and 51. The recorders of Chichester, Portsmouth and Winchester.
Chichester	
Portsmouth	
Southampton	{ The judges of the county courts in Circuits 51 and 55. The recorders of Poole, Southampton, Wareham, and Winchester.
Newport, Isle of Wight	
Christchurch	
Poole	
Wareham	{ The judge of the county courts in Circuit 55.
Weymouth	
Bridport	{ The judge of the county courts in Circuits 57 and 58. The recorder of Exeter.
Axminster	
Honiton	
Exeter	
Newton Abbot	{ The judge of the county courts in Circuit 58. The recorder of Dartmouth.
Totnes	
Kingsbridge	{ The judges of the county courts in Circuits 58 and 59. The recorders of Devonport, Plymouth and Tiverton.
East Stonehouse	
Liskeard	{ The judge of the county courts in Circuit 59. The recorders of Falmouth, Helston, and Penzance.
Saint Austell	
Truro	
Falmouth	
Helston	
Penzance	
Redruth	
Bodmin	
Camelford	{ The judge of the county courts in Circuit 57. The recorders of Barnstaple and Bideford.
Holsworthy	
Bideford	{ The judges of the county courts in Circuits 54 and 57. The recorders of Bristol and Wells.
Barnstaple	
Williton	{ The judges of the county courts in Circuits 53 and 54.
Bridgewater	
Weston-super-Mare	
Wells	
Bristol	{ The judges of the county courts in Circuits 24 and 54. The recorder of Gloucester.
Thornbury	
Dursley	{ The recorder of Gloucester.
Gloucester	
Newnham	
Chepstow	

Column No. 1.

Column No. 2.

Court of Survey for	Judges of the Courts of Survey at the places opposite to which their names occur.
Newport (Monmouth). Cardiff Bridgend Neath Swansea	{ The judges of the county courts in Circuits 24, 30 and 31. The stipendiary magistrates at Cardiff and Swansea.
Llanelly Carmarthen Narberth Pembroke Haverfordwest Cardigan Aberayron	{ The judge of the county courts in Circuit 31 The recorder of Carmarthen.
Aberystwith Machynlleth Dolgelly Portmadoc Pwllheli	{ The judge of the county courts in Circuit 28.
Carnarvon Llangefni Bangor Conway St. Asaph Holywell Chester	{ The judge of the county courts in Circuit 29. The recorder of Chester.
Runcorn Birkenhead Liverpool	{ The judges of the county courts in Circuits 6 and 7. The stipendiary magistrate at Liverpool. The stipendiary magistrate at Birkenhead. Judge of Court of Passage. The recorder of Liverpool.
Ormskirk	The judges of the county court in Circuit 6.
Preston Kirkham Paulton-le-Fylde Lancaster	{ The judge of the county courts in Circuit 4. The recorder of Preston.
Ulverston Whitehaven Cockermouth Wigton Carlisle	{ The judge of the county courts in Circuit 3. The recorder of Carlisle.

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APPENDIX B.

The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the judge shall be of opinion that the deviation was material.

No. 1. Notice of Appeal.

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the ship "Marian."

To the registrar of the court of survey for

Take notice that I [*name and address*] the master [*or managing owner or owner of* shares] of the ship of the port of do appeal

(1) from the report of L. M., the surveyor appointed by the Board of Trade to survey the said ship.

or (2) from a declaration given by a shipwright surveyor *or* engineer, (*or* from the refusal of a shipwright surveyor or engineer to give a declaration,) under the provisions of section 309 of the Merchant Shipping Act, 1854.

or (3) from the refusal of an emigration officer (*or as the case may be*) to give a certificate of clearance under sections 11 and 50 of the Passengers Act, 1855.

or (4) from the refusal of appointed by the Board of Trade under the provisions of section 30 of the Merchant Shipping Act Amendment Act, 1862, to give a certificate that the said ship is properly provided with lights and with the means of making fog signals.

The address at which all notices and documents may be served by post or otherwise on me is

Dated this day of

(*To be signed by the appellant.*)

No. 2. Summons to Court.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for

In the matter of an appeal by from the report of L. M., the surveyor appointed by the board to survey the "Marian" [*or as the case may be.*]

In pursuance of the Merchant Shipping Act, 1876, I hereby summon you to attend as judge [*or assessor*] on this appeal, at , on the day of at the hour of in the noon.

Dated this day of , 19 .

, Registrar.

I will attend as summoned.

Signature of person summoned.

No. 3. Notice of sitting of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for

In the matter of an appeal by from the report of L. M., the surveyor appointed by the Board of Trade to survey the "Marian" [*or as the case may be.*]

To A. B., the master [*or managing owner, or owner of* shares] of the ship , the appellant [*or the Board of Trade*].

Take notice that the Court of Survey will meet at on the day of , 19 , at o'clock in the noon, to hear the appeal in the above matter.

Dated this day of , 19 .

Registrar.

No. 4. Order of Court for Release or Detention of Ship.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for

In the matter of an appeal by _____ from the report of L. M., the surveyor appointed by the Board of Trade to survey the "Marian" [*or as the case may be*].

I, _____, do, with the concurrence of _____, order the said ship to be released *or* detained [finally *or* conditionally upon _____].

Given under my hand this _____ day of _____, 19____, Judge.

We [*or I*] concur in the above report.

_____, Assessor.

_____, Assessor.

No. 5. Report of Judge of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for

In the matter of an appeal by _____ from the report of L. M., the surveyor appointed by the Board of Trade to survey the "Marian" [*or as the case may be*].

I, _____, do report that, having heard this appeal, I did, with the concurrence of _____, order the said ship to be released *or* detained [finally *or* conditionally upon _____] for the reasons set forth in the annexed statement.

I am also of opinion that the costs of this appeal should be paid by A. B. to the solicitor of the Board of Trade [*or* by the solicitor to the Board of Trade to A. B.; *or* that all parties shall pay their own costs].

Dated this _____ day of _____, 19____.

_____, Judge.

We [*or I*] concur in the above report,

_____, Assessor.

_____, Assessor.

No. 6. Order for Payment of Costs, or of Costs and Damages.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for

In the matter of an appeal by _____ from _____.

[The parties to this appeal having, by agreement in writing, consented to refer the question whether any costs or costs and damages are due, and to and from whom, to me *or* us, with liberty to assess the amount thereof], I order

(1) that the Board of Trade do pay to the appellant the sum of _____ for the costs [*or* the costs and damages] incurred by reason of such detention and survey.

or (2) that the appellant do pay to the solicitor of the Board of Trade the sum of _____ for the costs incurred by reason of the detention and survey of the said ship.

or (3) that each party pays his own costs.

Given under my hand this _____ day of _____, 19____.

_____, Judge.

We [*or I*] concur in the above order.

_____, Assessor.

_____, Assessor.

APPENDIX C.

On filing notice of appeal, for every 50 tons of the gross registered tonnage of the ship	£	s.	d.
On filing every affidavit	0	10	0
On entering appearance	0	2	6
On every subpoena	0	10	0
On every statement of the order required to be made by the court	0	2	6
On the production and swearing of every witness	0	10	0
On every consent by the parties to refer the question of costs, or of costs and damages, to the court or judge, to be paid by each party	0	2	6
On every hearing, for each day, to be paid by each party, } from the amount thereof to be at the discretion of the judge { to	1	0	0
On every order whether for the release or detention of the ship, or for payment of costs, or costs and damages, to be paid by the party taking out the order	5	0	0
On every office copy of the judge's judgment or report, of the shorthand writer's notes of the evidence, or of any of the proceedings in the appeal, per folio of 72 words	1	0	0
	0	0	6

DISEASES OF ANIMALS ACT, 1894.

[57 & 58 VICT. c. 57. AUGUST 25, 1894.]

* . . . * . . . * . . . *

Expenses of
burial of
carcases
washed
ashore.

46.—(1) Where a carcase washed ashore is buried or destroyed under the direction of a receiver of wreck with authority from the Board of Trade, the expenses thereof shall be expenses of the local authority, and shall be paid by the local authority to the receiver on demand, and in default of payment shall be recoverable with costs by the receiver from the local authority.

This includes carcasses shipped as frozen meat as well as carcasses of animals shipped alive (*The Suevic*, (1908) 24 T. L. R. 699).

(2) Where a local authority has incurred any expenses under this section on account of the burial or destruction of the carcase of any animal which, or the carcase of which, was thrown or washed from any vessel, the owner of the vessel shall be liable to repay such expenses to the local authority, and the local authority may recover such expenses with costs in the same manner as salvage is recoverable.

As to mode of recovering salvage, see sects. 547 *et seq.* of the Merchant Shipping Act, 1894.

* . . . * . . . * . . . *

THE MERCHANT SHIPPING ACT, 1897.

[60 & 61 VICT. C. 59.]

AN ACT TO AMEND THE MERCHANT SHIPPING ACT, 1894, WITH
RESPECT TO THE POWER OF DETENTION FOR UNDERMANNING.
(6TH AUGUST, 1897.)

BE it enacted, etc.:

1.—(1) Section four hundred and fifty-nine of the Merchant Shipping Act, 1894 (which gives power to detain unsafe ships), shall apply in the case of undermanning, and accordingly that section shall be construed as if the words “or by reason of undermanning” were inserted therein after the word “machinery,” and as if the words “or for ascertaining the sufficiency of her crew” were inserted after the word “surveyed,” and as if the words “or the manning of the ship” were inserted therein after the words “reloading of cargo,” and the powers exerciseable under or for the purposes of that section shall include power to muster the crew.

(2) Section four hundred and sixty-two of the Merchant Shipping Act, 1894 (which relates to foreign ships), shall also apply in the case of undermanning, and accordingly that section shall be construed as if the words “or by reason of undermanning” were inserted therein after the words “improper loading.”

2. This Act may be cited as the Merchant Shipping Act, 1897. Short title.

THE MERCHANT SHIPPING ACT, 1906.

[6 EDW. VII. C. 48.]

AN ACT TO AMEND THE MERCHANT SHIPPING ACTS, 1894 TO 1900
(21ST DECEMBER, 1906.)

BE it enacted, etc.

[NOTE.—Only such sections of the Act are here set forth as relate to matters connected with merchant shipping within the jurisdiction of the county court, or are required for purposes of reference.]

PART I.

SAFETY.

* * * * *

2. Section four hundred and sixty-two of the principal Act (which relates to the detention of foreign ships)—
(1) shall apply in the case of a ship which is unsafe by reason

Detention of
foreign ships
when unsafe
owing to

Section 2.

defective
equipment,
etc.

of the defective condition of her hull, equipments, or machinery, and accordingly that section shall be construed as if the words "by reason of the defective condition of her hull, equipments, or machinery, or" were inserted before the words "by reason of overloading or improper loading"; and

- (2) shall apply with respect to any foreign ships being at any port in the United Kingdom, whether those ships take on board any cargo at that port or not.

* * * * *

Appointed
day.

5. [Repealed. Statute Law Revision Act, 1927.]

* * * * *

PART II.

PASSENGER AND EMIGRANT SHIPS.

* * * * *

PART III.

SEAMEN'S FOOD.

Statutory
scale of
provisions
for crew.

25.—(1) The master of every ship for which an agreement with the crew is required under the Merchant Shipping Acts shall furnish provisions to every member of the crew (who does not furnish his own provisions) in accordance with the scale set out in the First Schedule to this Act, and for the purposes of section one hundred and ninety-nine of the principal Act (which provides for compensation in the case of short or bad provisions) every such member of the crew of the ship shall be deemed to have stipulated by his agreement for provisions in accordance with that scale.

(2) The power of the court to modify or refuse compensation under section one hundred and ninety-nine of the principal Act shall be extended to cases where a member of the crew claiming compensation, although he has not been supplied with the provisions actually required by the scale, has been supplied with provisions containing on the whole the same or a greater amount of wholesome nutriment in their place.

NOTE.—Words in square brackets repealed, Statute Law Revision Act, 1927.

* * * * *

PART IV.

PROVISIONS AS TO RELIEF AND REPATRIATION OF DISTRESSED SEAMEN, AND SEAMEN LEFT BEHIND ABROAD.

* * * * *

29. The provisions of Part II. of the principal Act, relating to the property of deceased seamen shall be extended so as to apply to seamen belonging to a British ship registered in the United Kingdom, the voyage of which is to terminate out of the United Kingdom, and in that case the British consular officer at the port at which the voyage terminates, or, if the port is in a British possession, the officer of customs there, shall exercise the same powers as he may exercise under those provisions when a ship the voyage of which is to terminate in the United Kingdom touches and remains for forty-eight hours at a port elsewhere than in the United Kingdom, and those provisions shall apply accordingly.

Section 29.

Property of seaman dying on a ship the voyage of which does not terminate in the United Kingdom.

30.—(1) The master of a British ship shall not discharge a seaman at any place out of the United Kingdom (except at a port in the country in which he was shipped), unless he previously obtains, endorsed on the agreement with the crew, the sanction of the proper authority as defined for the purpose in this Part of this Act, but that sanction shall not be refused where the seaman is discharged on the termination of his service.

Sanction required for discharge of seamen out of the United Kingdom.

(2) The authority to whom an application is made for sanction under this section may, and, if not a merchant, shall, examine into the grounds on which a seaman is to be discharged at a place out of the United Kingdom, and for that purpose may, if he thinks fit, administer oaths and may grant or refuse the sanction as he thinks just, but such sanction shall not be unreasonably withheld.

(3) If the master of a ship fails to comply with this section, he shall, in respect of each offence, be guilty of a misdemeanour, and in any legal proceeding for the offence it shall lie on the master to prove that the sanction was obtained or could not be obtained or was unreasonably withheld.

31. Where the master of a British ship discharges a seaman at any place out of the United Kingdom, he shall give to that seaman a certificate of discharge in a form approved by the Board of Trade, and, in the case of any certificated officer whose certificate he has retained, shall return that certificate to him.

Certificate of discharge abroad.

32.—(1) Where the service of a seaman belonging to a British ship terminates at a port out of His Majesty's dominions otherwise than by the consent of the seaman to be discharged during the

Repatriation of seamen on termination of service at foreign port.

Section 32. currency of the agreement, the master of the ship shall, besides giving the certificate of discharge required under this Part of this Act, and besides paying the wages to which the seaman is entitled, make adequate provision in accordance with this Act for his maintenance and for his return to a proper return port, and the proper authority as defined for the purpose in this Part of this Act shall endorse upon the agreement with the crew of the ship which the seaman is leaving the particulars of any provision so made.

(2) If the master fails, without reasonable cause, to comply with this section, the expenses of maintenance and of the journey to the proper return port,—

(a) if defrayed by the seaman, shall be recoverable as wages due to him ; and

(b) if defrayed by the proper authority or by any other person, shall (unless the seaman has been guilty of barratry) be a charge upon the ship to which the seaman belonged, and may also be recovered against the person who is the owner of the ship for the time being, or, where the ship has been lost, against the person who was the owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either against the owner for the time being or against the person who was the owner of the ship at the time of the transfer, at the suit of the proper authority or other person defraying the expenses, or, in case they have been allowed to the authority or person out of public money, as a debt to the Crown, either by ordinary process of law or in the court and in the manner in which wages may be recovered by seamen.

(3) This section shall not apply in the case of a foreign seaman who has been shipped at a port out of the United Kingdom and discharged at a port out of the United Kingdom.

As to mode of recovering wages, see sects. 164 *et seq.* of the Merchant Shipping Act, 1894.

Discharge,
etc., of
seamen on
change of
ownership
of ship at a
foreign port.

33.—(1) Where a British ship is transferred or disposed of at any port out of His Majesty's dominions, any seaman belonging to that ship shall be discharged unless the seaman consents in writing in the presence of the proper authority as defined for the purpose in this Part of this Act to complete the voyage of the ship if continued.

(2) Where a seaman is so discharged the provisions of this Part of this Act as to the certificate of discharge, and the return of the seaman to a proper return port, shall apply as if the service of the seaman had terminated otherwise than by the consent of the

seaman to be discharged during the currency of the agreement, and shall apply to foreign seamen whether they have been shipped at a port in the United Kingdom or not. Section 33.

34.—(1) If the master of, or a seaman belonging to, a ship receives any hurt or injury in the service of the ship, or suffers from any illness (not being venereal disease, or an illness due to his own wilful act or default or to his own misbehaviour), the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of the maintenance of the master or seaman until he is cured, or dies, or is returned to a proper return port, and of his conveyance to the port, and in the case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from his wages. Expenses of medical attendance in case of injury or illness.

“Venereal Disease, &c.” to be omitted. See Merchant Shipping Acts (Amendment) Act, 1923.

(2) If the master or a seaman is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of the removal and of providing the necessary advice and attendance and medicine, and of his maintenance while away from the ship shall be defrayed in like manner.

(3) The expense of all medicines, surgical and medical advice, and attendance, given to a master or seaman whilst on board his ship shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman who dies whilst on service, shall, if duly proved, be deducted from the wages of the seaman.

[See National Health Insurance Act, 1924, sect. 62.]

35.—(1) If any of the expenses attendant on the illness, hurt, or injury of a seaman, which are to be paid under the Merchant Shipping Acts by the master or owner, are paid by any authority on behalf of the Crown, or if any other expenses in respect of the illness, hurt, or injury of any seaman whose wages are not accounted for under the Merchant Shipping Acts to that authority, are so paid, those expenses shall be repaid to the authority by the master or owner of the ship. Recovery of expenses from owner.

(2) If the expenses are not so repaid, the amount thereof shall with costs be a charge upon the ship, and be recoverable from the master or from the owner of the ship for the time being, or where the ship has been lost from the person who was the owner of the ship at the time of the loss, or, where the ship has been transferred

Section 35. — to some person not being a British subject, either from the owner for the time being or from the person who was the owner of the ship at the time of the transfer, as a debt to the Crown, either by ordinary process of law or in the court and in the manner in which wages may be recovered by seamen.

(3) In any proceeding for such recovery, a certificate of the facts, signed by the said authority, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by that authority.

As to mode of recovering wages, see sects. 164 *et seq.* of the Merchant Shipping Act, 1894.

* * * * *

Account of wages in case of seaman left behind on ground of unfitness or inability to proceed to sea.

37.—(1) Where a master of a British ship leaves a seaman behind on shore in any place out of the United Kingdom on the ground of his unfitness or inability to proceed to sea, he shall deliver to the person signing the required certificate of the proper authority a full and true account of the wages due to the seaman, and if that person is a consular officer shall deliver the account in duplicate.

(2) If a master fails without reasonable cause to deliver the account, he shall for each offence be liable on summary conviction to a fine not exceeding ten pounds, and, if he knowingly delivers a false account, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds, in addition in each case to the payment of the wages.

Payment of wages of seamen left behind on ground of unfitness or inability to proceed to sea.

38.—(1) The master shall pay the amount of wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea, if he is left in a British possession to the seaman himself, and if he is left elsewhere to the British consular officer.

(2) Where payment is made to a British consular officer, that officer shall retain one duplicate of the account delivered to him, and, if satisfied with the account, endorse on the other duplicate a receipt for the payment, and return it to the master, and the master shall deliver the duplicate within forty-eight hours of his return to his port of destination, if that port is in the United Kingdom, to the superintendent at that port, and, if that port is not in the United Kingdom, to the proper authority as defined for the purpose of this Part of this Act.

(3) The payment shall be made, whenever it is practicable, in money, and, when not so practicable, by bills drawn on the owner of the ship, but if payment is made by bill—

(a) the person signing the required certificate of the proper authority shall certify by endorsement on the bill that the bill is drawn for seamen's wages, and shall also endorse on

Section 38.

the agreement with the crew the amount for which the bill is drawn, and such further particulars as the Board of Trade require ;

(b) if the bill is drawn by the master, the owner of the ship shall be liable to pay the amount to the holder or endorsee thereof ; and it shall not be necessary in any proceeding against the owner upon the bill to prove that the master had authority to draw it ;

(c) a bill purporting to be drawn and endorsed under this section shall, if produced out of the custody of the Board of Trade or of the Registrar-General of Shipping and Seamen, or of any superintendent, be admissible in evidence ; and any endorsement on any such bill purporting to be made in pursuance of this section shall also be admissible as evidence of the facts stated in the endorsement.

(4) If a master fails, without reasonable cause, to make such payment of wages as provided by this section, he shall for each offence be liable on summary conviction, in addition to the payment of the wages, to a fine not exceeding ten pounds.

39. Where the amount of wages due to a seaman left behind on the ground of his unfitness or inability to proceed to sea is so paid to a British consular officer, that officer shall deal with the sum so paid to him in the following manner, namely :—

Application
by British
consular
officer of
payments
on account
of wages of
seamen left
behind.

(1) If the seaman subsequently obtains employment at or quits the port at which the payment has been made, he shall deduct out of the sum any expenses incurred by him in respect of the maintenance of the seaman under the Merchant Shipping Acts, except such as the owner or master is by the Merchant Shipping Acts required to defray, and shall pay the remainder to the seaman, and deliver to him an account of the sums so received and expended on his behalf ;

(2) If the seaman dies before his ship quits the port, he shall deal with the sum as part of the property of a deceased seaman ; and

(3) If the seaman is sent to a proper return port at the public expense under the Merchant Shipping Acts, he shall account for the sum to the Board of Trade ; and the sum, after deducting any expenses duly incurred in respect of the seaman, except such expenses as the master or owner of the ship is required by the Merchant Shipping Acts to pay, shall be dealt with as wages of the seaman.

Section 40.

Regulations
as to relief
and main-
tenance of
distressed
seamen.

40. The Board of Trade shall make regulations with respect to the relief, maintenance, and return to a proper return port of shipwrecked seamen and of seamen found otherwise in distress in any place out of the United Kingdom, and may, by those regulations (in this Act referred to as the distressed seamen regulations), make such conditions as they think fit with regard to that relief, maintenance, and sending to a proper return port, and a seaman shall not have any right to be relieved, maintained, or sent to a proper return port, except in the cases and to the extent and on the conditions provided by those regulations.

Provisions
for relief
and main-
tenance of
distressed
seamen.

41.—(1) Where either—

- (a) any seamen, whether subjects of His Majesty or not, are found in any place out of the United Kingdom, and have been shipwrecked from any British ship or any of His Majesty's ships, or by reason of having been discharged or left behind from any such ship in any place out of the United Kingdom, are in distress in that place, or
- (b) any seamen, being subjects of His Majesty, who have been engaged by any person acting either as principal or agent to serve in a ship belonging to the government or to a subject or citizen of a foreign country, are in distress in any place out of the United Kingdom,

the proper authority as defined for the purpose in this Part of this Act may, and, if not a merchant, shall, in accordance with and on the conditions prescribed by the distressed seamen regulations, provide in accordance with this Act for the return of those seamen (who are in this Act included in the term distressed seamen) to a proper return port, and also provide for their necessary clothing and their maintenance until their departure for such a port, and, in addition, in the case of shipwrecked seamen for the repayment of any expenses incurred in their conveyance to port after their shipwreck, and their maintenance while being so conveyed.

(2) The authority shall be paid in respect of the expenses incurred under this section on behalf of distressed seamen such sums as the Board of Trade may allow, and those sums shall, on the production of the bills of disbursements, with the proper vouchers, be paid as provided by this Part of this Act.

Recovery of
expenses of
relief of
distressed
seamen.

42.—(1) Where any expenses (other than excepted expenses as defined by this section) are incurred by or on behalf of the Crown, or are incurred by the government of a foreign country, and repaid to that government by or on behalf of the Crown, on account of a distressed seaman, either for his maintenance, necessary clothing, conveyance to a proper return port, or in case

Section 42.

of death for his burial, or otherwise in accordance with this Act those expenses (together with the wages, if any, due to the seaman) shall be a charge upon the ship, whether British or foreign, to which the distressed seaman belonged, and shall be a debt to the Crown from the master of the ship, or from the owner of the ship for the time being, or, where the ship has been lost, from the person who was owner of the ship at the time of the loss, or, where the ship has been transferred to some person not being a British subject, either from the owner for the time being or from the person who was the owner of the ship at the time of the transfer, and also, if the ship be a foreign ship, from the person, whether principal or agent, who engaged the seaman for service in the ship.

(2) The debt, in addition to any fines which may have been incurred, may be recovered by the Board of Trade, on behalf of the Crown, either by ordinary process of law or in the court and manner in which wages may be recovered by seamen.

(3) In any proceeding for such recovery the production of the account (if any) of the expenses furnished in accordance with this Act or the distressed seamen regulations, and proof of payment of the expenses by or on behalf of the Board of Trade, shall be *prima facie* evidence that the expenses were incurred or repaid under this Act by or on behalf of the Crown.

(4) For the purpose of this section, excepted expenses are expenses incurred in cases where the certificate of the proper authority obtained on leaving a seaman behind states, or the Board of Trade are otherwise satisfied, that the cause of the seaman being left behind is desertion, or disappearance, or imprisonment for misconduct, or discharge from his ship by a naval court on the ground of misconduct, and expenses incurred on account of the return to a proper return port of a distressed seaman who has been discharged at the port at which he was shipped, or at some neighbouring port.

As to mode of recovering wages, see sects. 164 *et seq.* of the Merchant Shipping Act, 1894.

* * * * *

45. For the purpose of this Part of this Act, either the port at which the seaman was shipped or a port in the country to which he belongs, or some other port agreed to by the seaman, in the case of a discharged seaman, at the time of his discharge, shall be deemed to be a proper return port :

Provided that in the case of a seaman belonging to a British Possession who has been shipped and discharged out of the

Section 45. United Kingdom the proper officer may treat a port in the United Kingdom as a proper return port.

* * * * *

Definitions
of "proper
authority"
and "sea-
men."

49. For the purposes of this Part of this Act, unless the context otherwise requires,—

(1) The expression "proper authority" means—

(a) as respects a place out of His Majesty's dominions, the British consular officer, or if there is no such officer in the place, any two British merchants resident at or near the place, or if there is only one British merchant so resident, that British merchant; and

(b) as respects a place in a British possession—

(i.) in relation to the discharge or leaving behind of seamen, or the payment of fines, a superintendent, or, in the absence of any such superintendent, the chief officer of customs at or near the place; and

(ii.) in relation to distressed seamen the governor of the possession, or any person acting under his authority; and

(2) The expression "seamen" includes not only seamen as defined by the principal Act, but also apprentices to the sea service.

* * * * *

PART V.

MISCELLANEOUS.

* * * * *

Obligation
to offer
allotment
notes.

61. In order to give effect to the provisions of section one hundred and forty-one of the principal Act enabling a seaman to require a stipulation for the allotment of his wages by means of an allotment note every superintendent or other officer before whom the seaman is engaged shall, after the seaman has signed the agreement, inquire of the seaman whether he requires such a stipulation for the allotment of his wages by means of an allotment note, and if the seaman requires such a stipulation shall insert the stipulation in the agreement with the crew, and any such stipulation shall be deemed to have been agreed to by the master.

Time for
payment of

62. A payment under an allotment note shall begin at the expiration of one month from the date of the agreement with the

crew and shall be paid at the expiration of every subsequent month after the first month, and shall be paid only in respect of wages earned before the date of payment. Section 62.
allotment
note.

This section must be read in conjunction with the Merchant Shipping (Seamen's Allotment) Act, 1911, *post*, p. 2233.

* * * * *

[NOTE.—Sect. 73 has been repealed by the Pilotage Act, 1913.]

75.—(1) Any person appointed to be a surveyor of ships under section seven hundred and twenty-four of the principal Act may be appointed either as a ship surveyor or as an engineer surveyor, or as both, and any reference in that section or in any other section of the principal Act to a shipwright surveyor shall be construed as a reference to a ship surveyor.

See sect. 724 of the Merchant Shipping Act, 1894, *ante*.

* * * * *

PART VI.

SUPPLEMENTAL.

84.—(1) In this Act the expression “principal Act” means the Merchant Shipping Act, 1894, and the expression “Merchant Shipping Acts” means the Merchant Shipping Acts, 1894 to 1900, and this Act. Construction of references to Merchant Shipping Acts.

(2) Any reference in this Act to any provision of the Merchant Shipping Acts, 1894 to 1900, which has been amended by any subsequent Act, or is amended by this Act, shall be construed as a reference to the provision as so amended.

* * * * *

85. [Repealed—Statute Law Revision Act, 1927.]

86.—This Act may be cited as the Merchant Shipping Act, 1906, and shall be construed as one with the principal Act, and the Merchant Shipping Acts, 1894 to 1900, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1906.

(2) [Repealed—Statute Law Revision Act, 1927.]

SCHEDULES.

FIRST SCHEDULE.

SCALE OF PROVISIONS.

* * * * *

SECOND SCHEDULE.

[Repealed—Statute Law Revision Act, 1927.]

SHIPOWNERS' NEGLIGENCE (REMEDIES) ACT, 1905.

[5 EDW. VII. c. 10. AUGUST 4, 1905.]

Be it enacted, etc., as follows:

Enlargement
of remedy by
action for
injuries
caused by
negligence
of a ship-
owner.

1.—(1) If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries including fatal injuries caused by the ship, or sustained on, in, or about the ship in any port or harbour in the United Kingdom in consequence of the wrongful act, neglect, or default of the owners of the ship, or the masters or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with rules of court that the owners are probably liable to pay damages in respect of such injuries, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have made satisfaction in respect of the injuries, or have given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

For powers of detention in the case of damage done by a foreign ship, see sect. 688 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

An application in the County Court is to be made in accordance with Rules 39 & 40 of the Consolidated Workmen's Compensation Rules, July, 1913, until County Court Rules are made under this Act. (See the Rules of the Supreme Court (Shipowners' Negligence Remedies), 1925.)

“**Person Applying.**”]—See sub-s. 4, below.

(2) In any legal proceeding in relation to such injuries as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship which has caused the injuries, or on, in, or about which the injuries were sustained, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

Cf. sect. 688, sub-s. 3, of the Merchant Shipping Act, 1894.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act,

Section 1.

and the expressions "port" and "harbour" have the same meaning as in that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this Act be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

(4) The words "person applying" in this section shall include an employer who has paid compensation or against whom a claim for compensation has been made under the Workmen's Compensation Act, 1897, as amended by any subsequent enactment, if he shows the judge that he probably is or will become entitled to be indemnified under that Act, and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.

Cf. the Merchant Shipping (Stevedores and Trimmers) Act, 1911, *infra*, p. 2233.

2. This Act [shall come into operation on the first day of January, nineteen hundred and six, and] may be cited as the Shipowners' Negligence (Remedies) Act, 1905. Commence-
ment and
short title.

NOTE.—Words in square brackets repealed—Statute Law Revision Act, 1927.

MERCHANT SHIPPING (SEAMEN'S ALLOTMENT) ACT, 1911.

[1 & 2 GEO. V. c. 8. AUGUST 18, 1911.]

Whereas doubts have arisen as to the true interpretation of section one hundred and forty-one of the Merchant Shipping Act, 1894, and section sixty-two of the Merchant Shipping Act, 1906 :

Be it therefore enacted, etc. :

1. By agreement with the master an allotment note may be granted to a seaman providing for— Regulations
as to allot-
ment note.

- (a) payment of a greater sum than one half of the wages.
- (b) payment at a period earlier than one month from the date of the agreement with the crew and at intervals more frequent than one month.

2. This Act may be cited as the Merchant Shipping (Seamen's Short title. Allotment) Act, 1911.

MERCHANT SHIPPING (STEVEDORES AND TRIMMERS) ACT, 1911.

[1 & 2 GEO. V. c. 41. DECEMBER 16, 1911.]

Be it enacted, etc. :

1.—(1) If it is claimed that any sum is due to any person from the owners of a ship for work done at any place in the United Power to
arrest ship on

Section 1.
claim for
work done
in stowing
cargo, etc.

Kingdom by that person in connection with the stowing or discharging of cargoes on board or from that ship, or the trimming of coal on board that ship, and that ship is at any time found in any place in England or Ireland or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with rules of court that *prima facie* the claim against the owners is a good claim and that none of the owners reside in the United Kingdom, issue an order for the arrest of the ship.

(2) An order under this Act shall be directed to some officer of customs and excise, or some other officer named in the order, and shall require him to detain the ship until such time as satisfaction has been made by the owners, agent, master, or consignee thereof in respect of the claim, or until security, to be approved by the judge, has been given by them or him, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the claim, and to pay all costs and damages that may be awarded thereon, and where any such order is made, the officer to whom the order is directed shall detain the ship accordingly.

(3) In any legal proceedings in relation to any such claim as aforesaid the person giving security shall be made defendant, and shall be stated to be the owner of the ship, in respect of which the work giving rise to the claim was done, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceedings.

(4) Where a complaint is made to the Board of Trade that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the limits of England or Ireland or three miles from the coast thereof, the ship shall, if the Board so direct, be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention if made in accordance with the directions of the Board.

(5) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act.

(6) If the owner of a ship is a corporation the owner shall, for the purposes of this Act, be deemed to reside in the United Kingdom if the corporation has an office in the United Kingdom at which service of writs can be effected.

Application
of Act where
a ship is

2. Where a ship has been demised to charterers, the provisions of this Act shall apply to claims against the charterers of the

ship as they apply to claims against the owners of a ship, with the substitution of charterers for owners : Section 2.

Provided that no ship shall be detained on a claim against the charterers of the ship after the expiration of the term for which the ship was demised to them. demised to charterers.

[NOTE.—Under this section it is possible to arrest a foreign ship for claims, within the Act, against time charterers.]

3. Any person having a claim to which this Act applies may, if he so desires, instead of proceeding under the foregoing provisions of this Act institute proceedings in Admiralty for enforcing the claim, and all courts having jurisdiction in Admiralty shall, if proceedings are so instituted, have the same jurisdiction for the purpose of enforcing the claim as if the claim were a claim for necessities supplied to the ship. Proceedings in Admiralty.

[NECESSARIES.—See sect. 3, sub-s. 2, of the County Courts Admiralty Jurisdiction Act, 1868.]

4. Nothing in this Act shall affect the power of any person to enforce any claim to which this Act applies otherwise than in accordance with the provisions of this Act. Saving.

5. This Act may be cited as the Merchant Shipping (Stevedores and Trimmers) Act, 1911. Short title.

MARITIME CONVENTIONS ACT, 1911.

[1 & 2 GEO. V. c. 57.]

PROVISIONS AS TO COLLISIONS, &c.

1.—(1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault : Rule as to division of loss.

Provided that—

(a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally ; and

(b) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed ; and

(c) nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of this Act, the expression “freight”

Section 1. includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

[NOTE.—This section alters the old Admiralty rule in the case of both vessels being to blame for a collision.]

See *The Clara Camus*, C. A. 134 L. T. 50; also (as to costs) *The Modica*, (1926) P. 72.

Damages for personal injuries.

2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several:

Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Right of contribution.

3.—(1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Abolition of statutory presumptions of fault.

57 & 58 Vict. c. 60.

4. [Repealed—Statute Law Revision Act, 1927.]

The failure of the master or person in charge of a vessel to comply with the provisions of section four hundred and twenty-two of the Merchant Shipping Act, 1894, (which imposes a duty upon masters and persons in charge of vessels after a collision to stand by and assist the other vessel) shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default, and accordingly sub-section (2) of that section shall be repealed.

5. Any enactment which confers on any court Admiralty jurisdiction in respect of damage shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought *in rem* or *in personam*. Section 5.
Jurisdiction in cases of loss of life or personal injury.

This section has not altered the law that claims in respect of loss of life which give no right of action for damages but merely a right to compensation under a statute, are not within the Admiralty rules or jurisdiction. Such claims, therefore, cannot be included as an item of damage in an action *in rem* by a shipowner for damages against the owners of another wrong-doing vessel. See *The Molière*, (1925) P. 127; (1924) W. N. 303.

PROVISIONS AS TO SALVAGE.

6.—(1) The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, her crew and passengers (if any), render assistance to every person, even if such person be a subject of a foreign State at war with His Majesty, who is found at sea in danger of being lost, and, if he fails to do so, he shall be guilty of a misdemeanour. General duty to render assistance to persons in danger at sea.

(2) Compliance by the master or person in charge of a vessel with the provisions of this section shall not affect his right or the right of any other person to salvage.

7. Where any dispute arises as to the apportionment of any amount of salvage among the owners, master, pilot, crew, and other persons in the service of any foreign vessel, the amount shall be apportioned by the court or person making the apportionment in accordance with the law of the country to which the vessel belongs. Apportionment of salvage amongst owners, etc., of foreign ship.

GENERAL PROVISIONS.

8. No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment: Limitation of actions.

Provided that any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not

Section 8. during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

"Within two years."—As to loss of life or personal injury see *The Caliph*, (1912) P. 213.

See *H.M.S. Archer*, 88 L. J. P. 3; (1919) P. 1; also *The Danube II.*, (1920) W. N. 97; (1921) P. 183; *The Disperser*, 89 L. J. P. 257; (1920) P. 228; *The P. L. M.* 8, 90 L. J. P. 45; (1920) P. 236; *The Esplancto*, 90 L. J. P. 32; (1920) P. 223; *The Llandovery Castle*, 89 L. J. P. 141; (1920) P. 119; *Admiralty Commissioners v. S.S. Volute*, H. L. (E.) (1922) 1 A. C. 129; *S.S. Haugland v. S.S. Karamea*, H. L. (E.) (1922) 1 A. C. 68; *The Loredano*, (1922) P. 209; *The Cedric*, (1920) P. 193; *The Kashmir*, (1923) P. 85; *The James Westoll*, C. A. (1923) P. 94 n.; *The Arraiz*, 40 T. L. R. 867.

Application
of Act, etc.

9.—(1) This Act shall extend throughout His Majesty's dominions and to any territories under his protection, and to Cyprus:

Provided that it shall not extend to the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) [Repealed—Statute Law Revision Act, 1927.]

(3) The provisions of this Act shall be applied in all cases heard and determined in any court having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused or the salvage services in question were rendered, and sub-section (9) of section twenty-five of the Supreme Court of Judicature Act, 1873, shall cease to have effect.

36 & 37 Vict.
c. 66.

(4) This Act shall apply to any persons other than the owners responsible for the fault of the vessel as though the expression "owners" included such persons, and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the vessel, this Act shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

See *H.M.S. Archer*, 88 L. J. P. 3; (1919) P. 1.

Short title
and con-
struction.

10. This Act may be cited as the Maritime Conventions Act, 1911, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1907.

PILOTAGE ACT, 1913.

[2 & 3 GEO. V. c. 31. MARCH 7, 1913.]

Be it enacted, etc.:

* * * * *

PART II.

Section 26.

* * * * *

SUPPLEMENTARY PROVISIONS AS TO LICENCES AND CERTIFICATES.

26. A pilotage authority may suspend or revoke any pilot's licence or any pilotage certificate granted by them if it appears to them, after giving the holder thereof an opportunity of being heard, that he has been guilty of an offence under this Act or of any breach of any byelaw made by the authority, or of any other misconduct affecting his capability as a pilot, or that he has failed in or neglected his duty as a pilot, or that he has become incompetent to act as pilot; and a licence or certificate, if so revoked shall cease to have effect, and, if so suspended, shall cease to have effect for the period for which it is suspended :

Suspension or revocation of a pilot's licence or a pilotage certificate.

Provided that in any case where pilots are directly represented on a committee of a pilotage authority, that committee may until a Pilotage Order is made regulating the relations between the authority and the committee, exercise the powers conferred on a pilotage authority by this section with respect to pilots' licences as though they were the pilotage authority.

27.—(1) If a complaint is made to the Board of Trade that a pilotage authority have—

- (a) without reasonable cause refused or failed to examine any candidate for a pilot's licence, or a master or mate for a pilotage certificate, or to grant such a licence or certificate after examination; or
- (b) conducted any examination for a pilot's licence or a pilotage certificate improperly or unfairly; or
- (c) imposed conditions on the granting of a pilot's licence or a pilotage certificate which they have no power to impose or which are unreasonable; or
- (d) without reasonable cause refused or failed to renew a pilotage certificate, or, having obtained possession of any such certificate, refused or failed to return it; or
- (e) without reasonable cause suspended or revoked a pilotage certificate, or
- (f) in any other manner failed properly to perform their duties under this Act with respect to the matters above-mentioned in this section, or improperly exercised any of their powers under this Act with respect to those matters :

Appeal by pilot, master, or mate, against action of pilotage authority with respect to pilot's licence or pilotage certificate.

the Board of Trade shall consider the complaint, and, if they are of opinion that the complaint is in any respect well founded, shall make such order as they think fit for the purpose of redressing the matter complained of, and the pilotage authority shall give effect to any order so made by the Board of Trade.

- (2) If a pilotage authority refuse or fail to give effect to any

Section 27. such order of the Board of Trade, the Board of Trade may, for the purpose of giving effect to the order, exercise any powers of the pilotage authority, and anything done by the Board of Trade in the exercise of those powers shall have the same effect as if it had been done by the pilotage authority.

Appeal by
pilot against
action of
pilotage
authority in
suspending,
etc pilot's
licence.

28.—(1) If a pilot is aggrieved by the suspension or revocation by the pilotage authority of his licence, or by the refusal or failure of the pilotage authority to renew his licence, or by the refusal or failure by the pilotage authority who have obtained possession of his licence to return it to him, or by the imposition upon him by the pilotage authority of a fine exceeding two pounds, he may either appeal to a judge of county courts having jurisdiction within the port for which the pilot is licensed or to a metropolitan police magistrate or stipendiary magistrate having jurisdiction within that port.

(2) For the purpose of hearing the appeal, the judge or magistrate shall sit with an assessor of nautical and pilotage experience selected and summoned by the judge or magistrate.

(3) Objection may be taken to any person proposed to be summoned as an assessor, either personally or in respect of his qualification, and by either party to the appeal.

(4) The judge or magistrate may confirm or reverse the suspension or revocation of the licence, or make such order in the case as may seem just, and his decision shall be final, unless special leave to appeal from the same to the High Court on a question of law or a question of mixed law and fact is given by the judge or magistrate, or by the High Court, and in such case the decision of the High Court shall be final.

(5) The costs incurred by a pilotage authority under this section shall be payable out of any fund applicable to the general expenses of the pilotage authority.

(6) Rules with respect to the procedure under this section (including costs and the remuneration of assessors) may be made, as respects county court judges, by the authority having power to make rules of practice under the County Courts Act, 1888, and as respects metropolitan police and stipendiary magistrates by a Secretary of State, but in either case with the concurrence of the Treasury as to fees.

See Order L., rr. 22—29, and Forms 446—448, *post*, pp. 2245—2247.

Fees in
respect of
pilots'
licences and
pilotage
certificates.

29. Such fees shall be payable on the examination for a pilot's licence, or for a pilotage certificate, and on the grant, renewal, or alteration of any such licence or certificate, as may be fixed by byelaw made under this Act.

59. [This Act shall (except as expressly provided) come into operation on the first day of April nineteen hundred and thirteen:] **Section 59.**
 Provided that any enactment, order, charter, custom, byelaw, regulation or provision with reference to pilotage affecting any pilotage district in particular, and in force at the time of the passing of this Act, including any exemptions from compulsory pilotage taking effect thereunder, shall remain in force notwithstanding anything in this Act or any repeal effected by this Act, until provision is made by Pilotage Order, or in the case of a byelaw, by byelaw made under this Act superseding any such enactment, order, charter, custom, byelaw, regulation or provision. **Commence-
ment of Act.**

See *The Port Hunter*, (1915) W. N. 61; 31 T. L. R. 181.

NOTE.—Words in square brackets repealed—Statute Law Revision Act, 1927.

60.—(1) [The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:] **Repeal.**

Provided that—

(a) Any Order in Council, licence, certificate, byelaw, rule, or regulation made or granted under any enactment hereby repealed or in pursuance of any power which ceases in consequence of this Act, shall, subject to the provisions of this Act, continue in force as if it had been made or granted under this Act; and

(b) Any officer appointed, any body elected or constituted and any office established under any enactment hereby repealed shall continue and be deemed to have been appointed, elected, constituted, or established, as the case may be, under this Act;

(c) Any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act or to the corresponding enactment of this Act.

(2) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, as regards the effect of repeals.

NOTE.—Words in square brackets repealed—Statute Law Revision Act, 1927.

61. This Act extends to the United Kingdom and the Isle of Man, and applies to all ships, British and foreign. **Extent of
Act.**

See *The Arum*, 90 L. J. P. 166; (1921) P. 12.

62. This Act may be cited as the Pilotage Act, 1913, and shall be construed as one with the Merchant Shipping Act, 1894, and the Acts amending the same; and the Merchant Shipping Acts, 1894 to 1907, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1913. **Short title.**

SCHEDULES.

FIRST SCHEDULE.

* * * * *

SECOND SCHEDULE.

[Repealed—Statute Law Revision Act, 1927.]

ORDER L., RULES 22 TO 29.

THE PILOTAGE ACT, 1913, SECTION 28 (2 & 3 GEO. 5, C. 31).

Appeals
under 2 & 3
Geo. 5, c. 31,
s. 28, to be
by petition.

22. A pilot who is aggrieved by any such action of a pilotage authority as in section 28 of the Pilotage Act, 1913, mentioned, and who desires to appeal to a judge of county courts under the said section, shall proceed by filing in the court having jurisdiction in Admiralty within the port for where he is licensed a petition setting forth concisely the matter in respect of which he is aggrieved and the grounds of appeal, and stating an address at which documents may be served on him.

Time for
appealing.

23. Subject to the provisions of these rules, a petition of appeal must be filed within one month from the date of the action of the pilotage authority which forms the subject-matter of the appeal.

Title of
petition.

24.—(1) The petition shall be intituled “In the matter of the Pilotage Act, 1913, and in the matter of an appeal by under section 28 of the said Act.”

Copies.

(2) On the filing of the petition the appellant shall deliver to the registrar a copy thereof to be served on the pilotage authority, and a further copy for the use of the judge.

Date of
hearing.

(3) On the filing of the petition the registrar shall fix a day and hour on and at which the petition will be heard, the day to be so fixed as to allow the copy of the petition to be served on the pilotage authority at least fifteen clear days before the date so fixed, unless the pilotage authority or their solicitors on their behalf agree to accept shorter service.

Notice to
parties.

(4) On the day for the hearing being fixed the registrar shall give or send by post notice in writing to the appellant, stating the day and hour on and at which the petition will be heard, and shall issue a copy of the petition under the seal of the court for service on the pilotage authority, together with a notice signed by the registrar himself, and under the seal of the court, stating the place at which and the day and hour on and at which the petition will be heard, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

See Forms 446 and 446A, *post*, p. 2245.

(5) The copy and notice mentioned in the last preceding rule shall be served on the pilotage authority ten clear days at least before the day so fixed for the hearing, unless the authority or their solicitors on their behalf agree to accept shorter service.

Rules.
Service on respondents.

(6) The copy and notice may be served upon either the secretary or clerk of the pilotage authority, if such there be, and if not, then upon some member of the authority.

(7) Service may be effected in accordance with Order VII. Rule 33, and if it is effected otherwise than by a bailiff the provisions of Order VII. Rule 34, shall apply.

Mode of service
Where service effected otherwise than by bailiff.
Statement by pilotage authority.

25.—(1) The pilotage authority shall, five clear days at least before the day fixed for the hearing of the petition, or, where, short service is accepted, within such reasonable time before the day fixed for the hearing as such short service will allow, file with the registrar a statement showing the exact particulars of their action in the matter which forms the subject matter of the appeal and the grounds thereof; and they shall file a copy of the statement for the use of the judge and deliver a copy to the appellant.

(2) If the action of the pilotage authority was in respect of an offence with which the appellant has been charged in any court of criminal jurisdiction, the pilotage authority shall add to the statement full particulars of the hearing of such charge or (if the charge is not already disposed of) of the proceedings taken thereon.

Where pilot has been charged in criminal court.

(3) In the case of non-compliance with the last two preceding paragraphs, and of the appellant not consenting at the hearing to dispense therewith, the judge may, on such terms as he may think fit, adjourn the hearing to enable the pilotage authority to file and deliver such statement.

Where statement not filed.

26.—(1) The assessor shall be selected from the court list of Admiralty assessors, or from any list which may be framed by or on the requirement of the Secretary of State of persons willing to act as assessors on appeals under the said section to a metropolitan police magistrate or stipendiary magistrate having jurisdiction within the port for which the pilot is licensed; or the judge may, if he thinks fit, select as assessor any other person of nautical and pilotage experience.

Selection of assessor.

(2) The registrar shall send to each party to the appeal a notice stating the name and address of the assessor selected, and each party shall as soon as may be after the receipt of the notice inform the registrar in writing whether or not he accepts the assessor so selected.

Notice of selection.

See Form 447, *post*, p. 2246.

Rules.

**Objections,
and hearing
thereof.**

(3) If any party does not accept the assessor so selected, he shall as soon as may be after the receipt of the notice inform the registrar in writing of his non-acceptance and of the reason thereof, and he may give the names and addresses of any persons from whom he is willing that an assessor should be selected. The judge on receipt from the registrar of notice of non-acceptance shall fix a time and place for hearing the objection and selecting an assessor. The objection may be heard before the judge acting under the powers conferred on him by section nine of the County Courts Act, 1888, and notice of the time and place for hearing the objection shall be given to all parties interested. On the hearing such order shall be made as the judge shall think just, and any costs occasioned by the objection or consequent thereon may be ordered to be paid by the party objecting.

See Forms 447A and 447B, *post*, p. 2247.

Costs.

**Summoning
of assessor.**

(4) When the assessor is selected the registrar shall send to him by post a summons according to the form in the Appendix.

See Form 447C, *post*, p. 2247.

**Remunera-
tion of the
assessor.**

(5) The remuneration of the assessor shall be at the rate of two guineas for each day's attendance, together with any allowance for expenses which the judge may order; and such remuneration shall be considered as costs of the appeal.

Evidence.

27.—(1) Unless by consent or otherwise ordered, only oral evidence shall be admitted at the hearing of the appeal.

**Depositions
taken before
court of
summary
jurisdiction.**

(2) Provided that in the case referred to in Rule 25, paragraph 2, depositions taken before a court of summary jurisdiction in respect of an offence with which the appellant has been charged shall be admissible as evidence at the hearing of an appeal against a decision arising from the same offence.

**Production
of proceed-
ings before
pilotage
authority.**

(3) Either party may by *subpoena duces tecum* compel the production of all the proceedings (including the evidence) taken before the pilotage authority.

**Extension of
time for ap-
pealing and
for serving
documents.**

28.—(1) The judge may extend the time for filing a petition of appeal or for serving any notice under these rules upon such terms (if any) as the justice of the case may require, and any such extension may be ordered although the application for the same is not made until after the expiration of the time allowed under these rules.

**Amendment
of petition or
statement.**

(2) The judge may at any stage of the proceedings allow the amendment of the petition or of any statement under these rules, upon such terms as the judge may think right.

**General pro-
visions as to
procedure on
appeal.**

29.—(1) Subject to the special provisions of these rules the procedure on an appeal shall be the same as the procedure in an action commenced in the court by plaint and summons in the

ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall with the necessary modifications apply accordingly; and in the application of such provisions and rules the petition of appeal shall be deemed to be a summons with particulars annexed, the day fixed for the hearing shall be deemed to be the return day, and the appellant and respondents shall be deemed to be plaintiff and defendants respectively.

Rules.

(2) The order of the judge on any appeal shall be prepared and settled and signed by the registrar, and shall be sealed and filed, and copies thereof shall be served on all parties affected thereby in accordance with Order XXIII. Rule 7: and such order shall be enforceable in the same manner as a judgment or order of the court.

See Form 448, *post*, p. 2247.

(3) The costs of and incidental to an appeal shall be borne in such manner and taxed on such scale as the judge shall direct; and in default of such direction they shall be taxed under column B of the higher scale of costs in use in the county courts.

FORMS.

446.

Notice to Appellant under the Pilotage Act, 1913, Section 28, of day on which Appeal will be heard.

[Not to be printed.]

In the county court of _____, holden at _____

No. of Plaintiff.

Order L.,
Rule 24 (4).

In the matter of the Pilotage Act, 1913,
and _____

[Conf. Form 419.]

In the matter of an appeal by _____, under section 28 of the said Act.

Take notice, that the judge of this court will hear the petition of appeal in this matter at [state place of hearing] on the _____ day of _____, 19____, at the hour of _____ in the _____ noon.

Dated this _____ day of _____, 19____.

Registrar.

To _____
of _____

446A.

Notice to the Respondents under the Pilotage Act, 1913, Section 28, of day on which Appeal will be heard.

[Not to be printed.]

[Heading as in Form 446.]

Take notice, that the judge of this court will hear the petition of appeal in this matter, a sealed copy of which is served herewith at [state place of hearing] on the _____ day of _____, 19____, at the hour of _____ in the _____ noon: and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Order L.,
Rule 24 (4).

[Conf. Form 420.]

And further take notice that you are hereby required, five clear days at least before the day fixed for the hearing of the said petition, to file with me at my office situate at _____ a statement in duplicate showing the exact particulars of your action in the matter which forms the subject-matter of the appeal, and the grounds thereof, and to deliver a copy of such statement to the appellant.

[If the action of the pilotage authority was in respect of an offence with which the Appellant has been charged in any Court of criminal jurisdiction, add

And you are hereby required to add to the statement and copies full particulars of the hearing of the charge preferred against the Appellant before [state the court before which the charge was preferred]

in respect of the matter which forms the subject-matter of the appeal, or (if the charge is not already disposed of) of the proceedings taken thereon.]

Dated this _____ day of _____, 19 ____

Registrar.

To [the Respondents].

447.

Notice to Parties of Name of Assessor selected by Judge.

[Not to be printed.]

[Heading as in Form 446.]

Order L.,
Rule 26 (2).

Take notice, that His Honour the judge has selected Mr. _____ of _____ as an assessor to assist him in trying this appeal.

Should you have any objection to the assessor so selected, you must forthwith send me in writing your reasons for your objection and you may mention the name of any other assessor whom you are willing should be summoned.

Should you have no objection to the assessor named being summoned, you must forthwith sign this notice and return it to me.

Dated this _____ day of _____, 19 ____

Registrar.

To [the appellant]
and [the respondents].

The appellant [or respondents] has [or have] no objection to make to the above assessor being summoned.

[Signature.]

447A.

Notice of Sitting to hear Objections to proposed Assessor.

[Not to be printed.]

[Heading as in Form 446.]

Order L.,
Rule 26 (3).

Take notice, that His Honour the judge will on _____ the _____ day of _____, 19 ____, at the hour of _____ in the _____ noon, sit at [state where] to hear the objections made by the appellant [or respondents] to Mr. _____ being summoned to act as assessor on the hearing of the appeal.

Dated this _____ day of _____, 19 ____

Registrar.

To the [appellant
and respondents].

447B.

Order upon hearing Objections to proposed Assessor.

*[Not to be printed.]**[Heading as in Form 446.]*

Upon the hearing of the objections made by the appellant [or respondents] to Mr. being summoned to act as an assessor on the hearing of this appeal.

*Order L.,
Rule 26 (3).*

It is ordered *[here insert order]*

Dated this day of , 19 .

Registrar.

447C.

Summons to Assessor.

*[Not to be printed.]**[Heading as in Form 446.]*

You are hereby summoned to attend and act as an assessor in this court on the day of , 19 , at the hour of in the noon, to assist the judge of this court on the hearing of an appeal by under the Pilotage Act, 1913, section 28.

*Order L.,
Rule 26 (4).*

Dated this day of , 19 .

Registrar.

To
of

448.

Order on Hearing of Appeal.

*[Not to be printed.]**[Heading as in Form 446.]*

Upon the hearing of the appeal of in this matter .

It is this day ordered that the action of the *[here set forth the title of the pilotage authority]* in *[here set forth the action of the authority in the matter which is the subject-matter of the appeal]* shall be confirmed *[or as the case may be]* *[here set forth the order made by the judge]*.

*Order L.,
Rule 29 (2)*

And it is further ordered, that the appellant [or respondent] do pay the costs of the respondents [or appellant] of this appeal, such costs to be taxed by the registrar under column of the scales of costs in force in the county courts, and to be paid by the appellant [or respondents] to the registrar of this court within fourteen days from the date of the certificate of taxation.

Dated this day of , 19 .

Registrar.

To *[the appellant]*
and *[the respondents]*.

[NOTE.—These are new rules and forms of 1914 made under the Pilotage Act, 1913, and replace the previous rules under the repealed sect. 610 of the Merchant Shipping Act, 1894.]

THE MERCHANT SHIPPING (CONVENTION) ACT, 1914.

[4 & 5 GEO. V. c. 50.]

AN ACT TO MAKE SUCH AMENDMENTS OF THE LAW RELATING TO MERCHANT SHIPPING AS ARE NECESSARY OR EXPEDIENT TO GIVE EFFECT TO AN INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, SIGNED IN LONDON ON JANUARY THE TWENTIETH, NINETEEN HUNDRED AND FOURTEEN, AND FOR PURPOSES INCIDENTAL THERETO. (10TH AUGUST, 1914).

BE it enacted, etc.

[NOTE.—Only such sections of the Act are here set forth as relate to matters connected with merchant shipping within the jurisdiction of the county court, or are required for purposes of reference.]

PART I.

ICE AND DERELICTS; NAVIGATION OF NORTH ATLANTIC.

* * * *

PART II.

MANNING, CONSTRUCTION, AND EQUIPMENT OF PASSENGER STEAMERS.

Manning of
passenger
steamers.

8.—(1) Every passenger steamer which is registered in the United Kingdom shall be manned with a crew sufficient and efficient from the point of view of safety of life at sea for the purpose of her intended voyage, and shall during her voyage be kept so manned.

(2) If any of the provisions of this section are not complied with in the case of any steamer, sections four hundred and fifty-nine and four hundred and sixty of the principal Act shall apply to the steamer as it applies to ships which are, by reason of undermanning, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which they were intended, and the owner of the ship (if in fault) shall be liable in respect of each offence to a fine not exceeding one hundred pounds, and the master of the ship (if in fault) shall be liable in respect of each offence to a fine not exceeding fifty pounds.

(3) The Board of Trade shall make rules with respect to the manning of passenger steamers for the purposes of this section

from the point of view of safety of life at sea, and where those rules apply to a ship the ship shall for the purposes of this section be deemed to be manned with a sufficient and efficient crew if she is manned in accordance with those rules, and not to be manned with a sufficient and efficient crew if she is not manned in accordance with those rules.

Section 8.

See sects. 459 and 460 of the Merchant Shipping Act, 1894, *ante*.

* * * * *

13. Any passenger steamer proceeding on a voyage within the home trade limits shall be exempt from the provisions of this part of this Act, and the Board of Trade may by order exempt passenger steamers proceeding on any other voyage specified in the order from all or any of the provisions of this part of this Act according to the voyage on which they are proceeding, if the Board are of opinion that, having regard to the nature of the voyage, it is unnecessary or unreasonable that the provisions from which the steamers are exempted should be applied to the steamers during the voyage; but no such exemption shall be given in relation to any voyage in the course of which the steamer goes more than two hundred sea miles from the nearest coast.

Power of Board of Trade to exempt passenger steamers going on short voyages.

14. For the purposes of this part of this Act—

Definition of passenger steamer for the purposes of Part II.

A passenger steamer means a steamer which carries more than twelve passengers.

Persons who are on board a steamer by reason of *force majeure* or as the result of any obligation on the part of a master to carry shipwrecked persons or persons in like circumstances, shall not be deemed to be passengers and shall not be counted when reckoning the number of persons on board a ship.

PART III.

WIRELESS TELEGRAPHY.

* * * * *

PART IV.

SAFETY CERTIFICATE.

18.—(1) Where any provisions of Parts II. and III. of this Act are applicable to a British ship registered in the United Kingdom, that ship shall not proceed to sea from a port in the United Kingdom unless a certificate (in this Act referred to as a safety certificate) has been granted in respect of the ship, and is for the time being in force, and shall be provided with a safety certificate when coming into such a port.

Certificate of safety.

Section 18.

(2) If the provisions of this section are not complied with in the case of any ship, the master of the ship shall be liable to a fine not exceeding one hundred pounds.

(3) The master of any ship to which this section applies shall produce the safety certificate on being required by any officer authorised by the Board of Trade to require the production of the certificate; and if the certificate is not produced the ship may be detained.

(4) The safety certificate shall certify, in the form set out in the fourth schedule to this Act, that the provisions of the Convention therein referred to have been complied with, and shall be a certificate granted by or under the authority of the Board of Trade under this part of this Act.

Granting of
safety cer-
tificates for
British ships.

19.—(1) The Board of Trade shall not grant a safety certificate or allow a safety certificate to be granted unless they are satisfied, on the report of a wireless telegraphy inspector, as respects provisions relating to wireless telegraphy, and on the report of a surveyor of ships appointed under section seven hundred and twenty-four of the principal Act as respects other matters, that the certificate can be properly granted, and if they are so satisfied, shall grant the certificate.

(2) A copy of any report of a wireless telegraphy inspector or surveyor of ships for the purposes of this section shall be sent to the owner of the ship, and if the owner feels aggrieved by the report he may appeal to the court of survey for the port or the district where the ship for the time being is, in manner provided by the rules of that court.

On any such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and for the purposes of deciding the question whether the certificate of safety is to be granted or not, the report from the judge of the court of survey shall be substituted by the Board of Trade for the report which has been the subject of appeal.

(3) A safety certificate shall not be in force for more than one year from the date of its issue, nor after notice is given by the Board of Trade to the owner, agent, or master of the ship in respect of which it has been granted, that the Board of Trade have cancelled the certificate.

(4) If a ship in respect of which a safety certificate has been granted is absent from the United Kingdom at the time when the certificate expires, the Board of Trade, or any person authorised by them for the purpose, may, if it appears proper and reasonable so to do, grant such an extension of the certificate as will allow the ship to complete the return voyage to the United Kingdom,

but no such extension shall have effect for a period exceeding five months from the date of the expiration of the certificate. Section 19.

(5) Sections two hundred and seventy-six, two hundred and seventy-seven, two hundred and seventy-nine, two hundred and eighty, two hundred and eighty-one, and two hundred and eighty-two of the principal Act (which in connection with passenger steamer certificates relate to the transmission of a certificate, fees for certificate, the cancellation, delivery up, posting up, and penalties for the forgery of, a certificate) shall apply with respect to a safety certificate as they apply with respect to a passenger steamer's certificate, with the substitution of the report of the surveyor or inspector under this section for the declaration of survey.

As to courts of survey, see sects. 487—489 of the Merchant Shipping Act, 1894, *ante*.

* * * * *

21. Where a safety certificate has been granted in respect of a ship and is in force, any of the provisions of this Act or the rules made thereunder relating to the manning, construction or equipment of the ship, or the provision of wireless telegraphy and wireless telegraphy operators and watchers on the ship, which are applicable to the ship, shall be deemed to have been complied with unless it appears that the ship cannot proceed to sea without danger to the passengers or crew, owing to the fact that the actual condition of the ship does not correspond in substantial particulars with the certificate. Effect of safety certificate.

* * * * *

PART V.

APPLICATION OF ACT TO FOREIGN SHIPS AND TO BRITISH SHIPS NOT REGISTERED IN THE UNITED KINGDOM.

23.—(1) Compliance with the provisions of Parts II. and III. relating to the manning, construction, or equipment of passenger steamers or relating to the provision of wireless telegraphy and wireless telegraph operators and watchers on a ship, and representing provisions of the Convention of this Act, shall be required in the case of a foreign ship or a British ship not registered in the United Kingdom which comes into or proceeds to sea from a port in the United Kingdom, in the same manner as compliance with those provisions would be required if the ship were registered in the United Kingdom, and the provisions of this Act shall apply to such a ship accordingly. Application of Act to foreign ships and ships not registered in the United Kingdom.

(2) A safety certificate granted by or under the authority of the Government of the country to which a foreign ship or a British

Section 23. ship not registered in the United Kingdom belongs and recognised by the Board of Trade as granted in accordance with and for the purposes of the Convention, shall have the same effect as regards that ship as a safety certificate granted under this Act has as respects a ship registered in the United Kingdom.

(3) A foreign ship, and a British ship not registered in the United Kingdom, coming into or proceeding to sea from a port in the United Kingdom—

(a) shall, if entitled to a total or partial exemption from the provisions of the Convention under a certificate of exemption recognised by the Board of Trade as granted in accordance with and for the purposes of the Convention, be exempted to the same extent from the corresponding provisions of this Act; and

(b) shall, if on a voyage on which a British ship registered in the United Kingdom would be entitled to a total or partial exemption from the provisions of Parts II., III., or IV. of this Act, be exempted to the same extent as a British ship registered in the United Kingdom would be exempted.

* * * * *

PART VI.

GENERAL.

Exception
for ships
compelled to
take refuge
by stress of
weather, etc.

26. Nothing in this Act shall subject any ship which, not being bound to a port in the United Kingdom, has been compelled to take refuge in such a port by stress of weather or *force majeure* to any provisions of this Act from which the ship would have been exempt in the ordinary course of the ship's voyage.

* * * * *

Construction,
short title,
and com-
mencement.

29.—(1) Any provision of this Act shall, unless the context otherwise requires, be in addition to, and not in derogation of, any provision of the Merchant Shipping Acts or any other enactment relating to the same or similar matters.

(2) Any reference in this Act to any provision of the Merchant Shipping Acts, 1894 to 1913, which has been amended by any subsequent Act, or is amended by this Act, shall be construed as a reference to the provision as so amended.

(3) In this Act the expression "the principal Act" means the Merchant Shipping Act, 1894, and the expression "the Merchant Shipping Acts" means the Merchant Shipping Acts, 1894 to 1913, and this Act.

(4) This Act may be cited as the Merchant Shipping (Con-

vention) Act, 1914, and shall be construed as one with the principal Act, and the Merchant Shipping Acts, 1894 to 1913, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1914.

Section 29.

(5) This Act shall come into operation on the first day of July nineteen hundred and fifteen :

Provided that His Majesty may by Order in Council from time to time postpone the coming into operation of this Act for such period not exceeding on any occasion of postponement one year as may be specified in the Order.

NOTE.—This Act is not yet in operation.

SCHEDULES.

FIRST SCHEDULE.

INTERNATIONAL CONVENTION ON SAFETY OF LIFE AT SEA.

Convention.

* * * * *

SECOND, THIRD, FOURTH AND FIFTH SCHEDULES.

* * * * *

THE MERCHANT SHIPPING (SALVAGE) ACT, 1916.

[6 & 7 GEO. V. c. 41.]

AN ACT TO AUTHORISE THE RECOVERY OF SALVAGE IN RESPECT OF SERVICES RENDERED BY CERTAIN SHIPS BELONGING TO HIS MAJESTY.

BE it enacted, etc.

1. Where salvage services are rendered by any ship belonging to His Majesty, and that ship is a ship specially equipped with salvage plant, or is a tug, the Admiralty shall, notwithstanding anything contained in section five hundred and fifty-seven of the Merchant Shipping Act, 1894, be entitled to claim salvage on behalf of His Majesty for such services, and shall have the same rights and remedies as if the ship rendering such services did not belong to His Majesty.

Right of Admiralty to claim salvage in respect of services of certain ships.

“Ship belonging to His Majesty”: See *Admiralty Commissioners v. Page* C. A. (1919) 1 K. B. 299; 89 L. J. K. B. 977; (1921) 1 A. C. 137 (H. L.) (E.); *The Matti*, (1918) P. 314; 87 L. J. P. 179.

2. This Act may be cited as the Merchant Shipping (Salvage) Act, 1916, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1914, and those Acts and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1916.

Short title and construction

THE MERCHANT SHIPPING (WIRELESS TELEGRAPHY) ACT, 1919.

[9 & 10 Geo. V. c. 38.]

AN ACT TO MAKE FURTHER PROVISION WITH RESPECT TO WIRELESS TELEGRAPHY ON SHIPS.

Be it enacted, etc.

Wireless
telegraphy
requirements.

1.—(1) Every seagoing British ship registered in the United Kingdom being a passenger steamer or a ship of sixteen hundred tons gross tonnage or upwards shall be provided with a wireless telegraph installation, and shall maintain a wireless telegraph service which shall be at least sufficient to comply with the rules made for the purpose under this Act, and shall be provided with one or more certified operators and watchers, at least, in accordance with those rules :

Provided that the Board of Trade may exempt from the obligations imposed by this Act any ships or classes of ships if they are of opinion that, having regard to the nature of the voyages on which the ships are engaged, or other circumstances of the case, the provision of a wireless telegraph apparatus is unnecessary or unreasonable.

(2) The Board of Trade, in consultation with the Postmaster-General, shall make rules prescribing the nature of the wireless telegraph installation to be provided, of the services to be maintained, and the number, grade, and qualifications of operators and watchers to be carried :

4 & 5 Geo. 5,
c. 50.

Provided that no ship shall be required to carry more than one operator unless more than one operator would have been required under the provisions of the Merchant Shipping (Convention) Act, 1914.

(3) If this section is not complied with in the case of any ship, the master or owner of the ship shall be liable in respect of each offence to a fine not exceeding five hundred pounds, and any such offence may be prosecuted summarily, but, if the offence is prosecuted summarily, the fine shall not exceed one hundred pounds.

(4) A surveyor of ships or a wireless telegraphy inspector may inspect any ship for the purpose of seeing that she is properly provided with a wireless telegraph installation and certified operators and watchers in conformity with this Act, and for the purpose of that inspection shall have all the powers of a Board of Trade inspector under the Merchant Shipping Acts, 1894 to 1916.

If the said surveyor or inspector finds that the ship is not so provided, he shall give to the master or owner notice in writing

pointing out the deficiency, and also pointing out what in his opinion is requisite to remedy the same. Section 1.

Every notice so given shall be communicated in the manner directed by the Board of Trade to the chief officer of customs of any port at which the ship may seek to obtain a clearance, or transire, and the ship shall be detained until a certificate under the hand of any such surveyor or inspector is produced to the effect that the ship is properly provided with wireless telegraph installation and certified operators and watchers in conformity with this Act.

(5) The obligations imposed by this Act [shall not come into operation while the obligations with respect to wireless telegraphy on ships imposed by the Defence of the Realm Regulations remain in force, but] shall be in addition to, and not in substitution for, the obligations as to wireless telegraphy imposed by the Wireless Telegraphy Act, 1904, or any Order in Council, or regulations made thereunder, or by the Merchant Shipping (Convention) Act, 1914. 4 Edw. 7, c. 24.

NOTE.—Words in square brackets repealed—Statute Law Revision Act, 1927.

2. The foregoing provisions of this Act shall, [as from a date three months after the coming into operation of the obligations imposed by this Act on British ships registered in the United Kingdom,] apply to ships other than British ships registered in the United Kingdom while they are within any port in the United Kingdom in like manner as they apply to British ships so registered. Application to ships not registered in the United Kingdom.

NOTE.—Words in square brackets repealed—Statute Law Revision Act, 1927.

3.—(1) This Act may be cited as the Merchant Shipping (Wireless Telegraphy) Act, 1919, and the Merchant Shipping Acts, 1894 to 1916, and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1919. Short title and construction.

(2) This Act shall be construed as one with the Merchant Shipping Act, 1894, and “passenger steamer” shall mean a steamer which carries more than twelve passengers, and “wireless telegraphy inspector” means an officer appointed under section twenty of the Merchant Shipping (Convention) Act, 1914, for the purposes therein mentioned. 57 & 58 Vict. c. 60. 4 & 5 Geo. 5, c. 50, s. 20.

MERCHANT SHIPPING ACT, 1921.

[11 & 12 GEO. V. c. 28.]

1.—(1) Notwithstanding anything in section seven hundred and forty-two of the Merchant Shipping Act, 1894 (hereinafter referred to as “the principal Act”), the principal Act shall have effect as Application of Parts I. and VIII. of the Merchant

Section 1.
Shipping
Act, 1894,
to lighters,
etc.
57 & 58 Vict.
c. 60.

though in the provisions of Parts I. and VIII. thereof (which relate respectively to the registry of ships and to the limitation of the liability of the owners of ships), as amended or extended by any subsequent enactment, the expression "ship" included every description of lighter, barge, or like vessel used in navigation in Great Britain, however propelled :

Provided that a lighter, barge, or like vessel used exclusively in non-tidal waters, other than harbours, shall not, for the purposes of this Act, be deemed to be used in navigation.

(2) In the application of Part VIII. of the principal Act to any such lighter, barge, or like vessel as aforesaid, the expression "owner" shall include any hirer who has contracted to take over the sole charge and management thereof and is responsible for the navigation, manning and equipment thereof.

(3) Where the Board of Trade are satisfied that there are in force in any port, under any Act or order, regulations for the measurement or registration of lighters, barges, or like vessels, which provide for the measurement of their tonnage in substantial agreement with the provisions of the Merchant Shipping Acts, 1894 to 1920, and for an adequate system of identification of the vessels and their owners, the Board may by order declare that vessels measured or registered in accordance with such regulations shall, for the purposes of this Act, be deemed to be measured or registered under Part I. of the principal Act.

Use of
unsafe
lighters, etc.

2.—(1) If any person uses or causes or permits to be used in navigation any lighter, barge, or like vessel when, through the defective condition of its hull or equipment or by reason of overloading or improper loading or through undermanning, it is so unsafe that human life is likely to be thereby endangered, he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months.

(2) A prosecution under this section shall not, except in Scotland, be instituted otherwise than by, or with the consent of, the Board of Trade.

Saving for
workmen.

3. This Act shall not affect the liability of the owners of any lighter, barge, or like vessel in respect of loss of life or personal injury caused to any person carried therein.

Short title,
construction,
and com-
mencement

4.—(1) This Act may be cited as the Merchant Shipping Act, 1921, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1920, and those Acts and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1921.

(2) This Act shall come into operation on the first day of January, one thousand nine hundred and twenty-two.

MERCHANT SHIPPING ACTS (AMENDMENT) ACT, 1923.

[13 & 14 GEO. V. c. 40.]

Section 1.

1. Subsection (1) of section thirty-four of the Merchant Shipping Act, 1906 (which relates to the expenses of medical attendance of masters and seamen suffering from injuries and illnesses) shall apply to any case where the illness from which the master or seaman is suffering is venereal disease, and accordingly that subsection shall have effect as if the words "venereal disease or" were omitted therefrom.

2.—(1) This Act may be cited as the Merchant Shipping Acts (Amendment) Act, 1923, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1921, and those Acts and this Act may be cited together as the Merchant Shipping Acts, 1894 to 1923.

(2) This Act shall come into operation on the first day of January nineteen hundred and twenty-four.

MERCHANT SHIPPING (INTERNATIONAL LABOUR CONVENTIONS) ACT, 1925.

[15 & 16 GEO. V. c. 42.]

1.—(1) Where by reason of the wreck or loss of a ship on which a seaman is employed his service terminates before the date contemplated in the agreement, he shall, notwithstanding anything in section one hundred and fifty-eight of the Merchant Shipping Act, 1894, but subject to the provisions of this section, be entitled, in respect of each day on which he is in fact unemployed during a period of two months from the date of the termination of the service, to receive wages at the rate to which he was entitled at that date.

(2) A seaman shall not be entitled to receive wages under this section if the owner shows that the unemployment was not due to the wreck or loss of the ship and shall not be entitled to receive wages under this section in respect of any day if the owner shows that the seaman was able to obtain suitable employment on that date.

(3) In this section the expression "seaman" includes every person employed or engaged in any capacity on board any ship, but, in the case of a ship which is a fishing boat, does not include any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the boat.

* * * * *

MONEY-LENDERS ACT, 1900.

[63 & 64 VICT. c. 51.]

Section 1.

1.—(1) Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction, and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security may order him to indemnify the borrower or other person sued.

The above section is amended by sect. 10 of the Money-lenders Act, 1927, *post*, p. 2262. See notes, Part I., Chapter IV., under heading "Money-lenders Act," for summary of law and practice relating to money-lenders.

The following cases were decided before the Act of 1927 was passed:—

The Act does not apply to a contract for a loan made and intended to be performed abroad (*Shrichand v. Lacon*, (1906) 22 T. L. R. 245).

Any court in which proceedings might be taken for the recovery of money lent by a money-lender may exercise the powers given by the section (63 & 64 Vict. c. 51, s. 1 (2)), but a trustee in bankruptcy has no such power. (*Armstrong In re, B. Lipton ex. p.* (1926) 95 L. J. Ch. 184.) See now sect. 10 (4) of 1927 Act. The test for the county court is the amount of money actually lent by the money-lender (*Crossingham v. Park*, (1928) 1 K. B. 330; 96 L. J. K. B. 1036).

On the above section it was decided in *Wilton v. Osborne*, (1901) 2 K. B. 110; 70 L. J. K. B. 507, that the words "or otherwise is such that a court of equity would give relief" were not exclusive of the words "harsh and unconscionable," and that in order to entitle the person sued to relief the transaction must be such as a court of equity would relieve against on the ground of its being harsh and unconscionable. This decision practically limited the effect of sect. 1, sub-s. 1 of the Act to cases where the debtor could theretofore have obtained relief in a court of equity (see *Nevill v. Snelling*, (1880) 15 Ch. Div. 679; 49 L. J. Ch. 777). But in the case of

Section 1.
Notes.

In re a Debtor (C. A.), (1903) 1 K. B. 705; 72 L. J. K. B. 382; and see *Poncione v. Higgins*, (1904) 21 T. L. R. 11), the Court of Appeal held that a transaction might be re-opened which was harsh and unconscionable, although not one in which a court of equity would have given relief before the Act, and *Wilton v. Osborne*, (1901) 2 K. B. 110; 70 L. J. K. B. 507, was in terms overruled. Excessive interest, having regard to the risk or absence of risk, may of itself render a transaction harsh and unconscionable (*In re a Debtor, supra*; *Saunders v. Newbold*, (1905) 1 Ch. 260; 74 L. J. Ch. 120; (H. L.) *sub nom. Samuel v. Newbold*, (1906) A. C. 461; 75 L. J. Ch. 705; *Wells v. Allott* (C. A.), (1904) 2 K. B. 842; 73 L. J. K. B. 1023; *Part v. Bond*, (1905) 93 L. T. 49; (C. A.) 94 L. T. 390; *Kruse v. Seeley*, (1924) 1 Ch. 136; 93 L. J. Ch. 67). But a high rate of interest is not necessarily excessive (*Carringtons v. Smith*, (1906) 1 K. B. 79; 75 L. J. K. B. 49). Whether the loan is secured or not is a circumstance to be taken into account (*Salaman v. Blair*, (1914) 111 L. T. 426).

It was held at *nisi prius* that a transaction could be re-opened where by reason of a term of the bargain understood by the money-lender, but not understood by the borrower, the rate of interest is considerably increased beyond that contemplated by the borrower (*Levene v. Greenwood*, (1904) 20 T. L. R. 389), and the Court of Appeal has held that in proper cases closed transactions may be re-opened (*Korman v. Wainwright*, (1916) 32 T. L. R. 295). See *Halsey v. Wolfe*, (1915) 84 L. J. Ch. 809.

The powers of the county court under sect. 1, sub-s. 1 of the Act may be exercised at any stage of the proceedings whether notice has or has not been given by the defendant of his intention to ask the court to exercise its powers, subject, where no notice has been given, to such terms as to adjournment, furnishing particulars, costs and otherwise as may be just (Order L. r. 33 (1)).

The questions whether the interest is excessive and whether the transaction is harsh or unconscionable are not questions for the jury, but are for the judge (*Abrahams v. Dimmock*, (1914) 2 K. B. 372; 84 L. J. K. B. 802).

Where a transaction is re-opened under the Act and an account is taken between the parties, the payments made by the borrower must be allocated first to interest, and then towards discharge of principal (*id.*).

But transactions cannot be re-opened under this section when they have been the subject-matter of a previous action in which a judgment has been given though the judgment was by consent and not drawn up (*Cohen v. Jones*, (1926) 1 K. B. 120; but see on appeal (1926) 2 K. B. 1; 95 L. J. K. B. 467, where the decision was reversed, apparently on the ground that the judgment had been re-opened under order of a judge which had not been appealed from. This case will not alter the general rule that a judgment is conclusive of the amount owing).

Art from the Act, if the contract to borrow money improperly and unduly fetters the borrower's liberty to dispose of his services, and the free dealing with his earnings and property, it may be unreasonable as being opposed to public policy (*Horwood v. Millar's Timber and Trading Co., Ltd.*, (1917) 1 K. B. 305; 86 L. J. K. B. 190).

(2) Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived.

Section 1.

An action brought by a borrower under this section against a money-lender is an action of contract, and can be remitted to a county court (*White v. Smith*, (1927) 96 L. J. K. B. 397), but proceedings under this sub-section cannot be commenced in the county court where the amount of the loan exceed 100*l.* (*Crossingham v. Park*, (1928) 1 K. B. 330 ; 96 L. J. K. B. 1036).

A substantive application to the court under sect. 1, sub-s. 2 of the Act must be by action commenced by plaint and summons. Particulars stating concisely the grounds on which the application is made and the relief claimed shall be filed (Order L. r. 33 (2), *post*, p. 2262).

(3) On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

On a bankruptcy petition presented by a money-lender on a judgment the transaction may be re-opened, but if a debt of over 50*l.* is still found to be due a receiving order must be made (*In re a Debtor, Ex parte the Petitioning Creditor*, (1917) 2 K. B. 60 ; 86 L. J. K. B. 746).

Apparently the Official Receiver, acting as trustee in bankruptcy, may re-open a transaction with a money-lender who proves in the bankruptcy in the same manner as the court may do so (*In re Mackenzie, Ex parte Bowen*, (1918) 87 L. J. K. B. 792). See s. 9 of 1927 Act, *post*, p. 2271.

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.

(5) Nothing in the foregoing provisions of this section shall affect the rights of any *bonâ fide* assignee or holder for value without notice.

(6) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

(7) In the application of this Act to Scotland this section shall be read as if the words "or is otherwise such that a court of equity would give relief" were omitted therefrom.

2 and 3. Repealed by Moneylenders Act, 1927, *post*.

Penalties for false statements and representations.

4. If any money-lender, or any manager, agent, or clerk of a money-lender, or if any person being a director, manager, or other officer of any corporation carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of a misdemeanor, and shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both.

Amendment of 55 & 56 Vict. c. 4, s. 2, as to presumption of knowledge of fancy.

5 Where in any proceedings under section two of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the

document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age. Section 5.
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6. The expression “ money-lender ” in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business ; but shall not include— Definition of
money-
lender.

(a) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers ; or

See sect. 14 of 1927 Act for special provisions as to pawnbrokers.

(b) any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections two or four of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894 ; or 59 & 60 Vict.
c. 25.
6 & 7 Will. 4,
c. 32.
3 & 4 Vict.
c. 110.

(c) any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act ; or

(d) any person *bonâ fide* carrying on the business of banking or insurance or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money (a) ; or

(e) any body corporate for the time being exempted from registration under (b) this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.

(a) See *Edgelow v. MacElwee*, (1918) 1 K. B. 205 ; 87 L. J. K. B. 738.

(b) Words in italics repealed by Moneylenders Act, 1927.

7.—This Act may be cited as the Money-lenders Act, 1900. Short title.

ORDER L. RULE 33.

The following rule of practice has been made :—

Order L. Rule 33 (1). Where proceedings are taken by a money-lender, the powers of the court under sub-sect. 1 of sect. 1 of the Money-lenders Act, 1900, may be exercised at any stage of the proceedings, and whether notice has or has not been given by the defendant of his intention to apply to the court to exercise such powers ; subject, nevertheless, where no notice or insufficient notice of such intention has been given, to such terms as to adjournment, furnishing of particulars, costs, and otherwise, as may be just. Proceedings
under
Money-
lenders Act,
1900 (63 & 64
Vict. c. 51),
s. 1.

- O. L. r. 33. (2) An application to the court under sub-sect. 2 of sect. 1 of the said Act, at the instance of a borrower or surety or other person liable, shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed in such action, stating concisely the grounds on which the application is made, and the relief which the plaintiff claims.

NOTE.—The county court has no jurisdiction to entertain an action by a borrower against a moneylender under sect. 1 (2) of the Act of 1900 if the amount of the loan exceeded 100*l*. (*Crossingham v. Park*, (1928) 1 K. B. 330; 96 L. J. K. B. 1036).

Court Fees.—On the entry of a plaint under sect. 1 (2) of the Money-lenders Act, 1900, the fee payable is Fee No. 1 (1) of the County Court Fees Order, 1925. If no amount is stated, the fee is chargeable on 100*l*. The Lord Chancellor's Department does not regard a claim under this subsection as a claim "for the recovery of a sum of money and also for some other remedy or relief" to which Fee No. 1 (iv.) applies.

MONEYLENDERS ACT, 1927.

[17 & 18 GEO. 5, c. 21.]

Licences to
be taken out
by money-
lenders.

1.—(1) Every moneylender, whether carrying on business alone or as a partner in a firm, shall take out annually in respect of every address at which he carries on his business as such, an excise licence (in this Act referred to as "a moneylender's excise licence"), which shall expire on the thirty-first day of July in every year, and, subject as hereinafter provided, there shall be charged on every moneylender's excise licence an excise duty of fifteen pounds, or if the licence be taken out not more than six months before the expiration thereof, of ten pounds.

Provided that—

- (a) the duty charged on any moneylender's excise licence which will expire on the thirty-first day of July, nineteen hundred and twenty-eight, shall, notwithstanding that the licence may be taken out more than six months before the expiration thereof, be a duty of ten pounds; and
- (b) where moneylender's excise licences are taken out by two or more moneylenders in respect of any address or addresses at which they carry on their business as partners in a firm, the Commissioners of Customs and Excise shall remit, or if the duty has been paid repay, to the firm a sum equal to the aggregate of the duties charged on such number of the licences taken out as exceeds the number of the addresses in respect of which they are taken out; and
- (c) where it is proved to the satisfaction of the Commissioners of Customs and Excise that there is in force a licence for

Section 1.

carrying on the business of a pawnbroker at any premises in respect of which a moneylender's excise licence is taken out by the person carrying on the business, the Commissioners shall remit, or if the duty has been paid repay, to that person such part of the duty charged on the moneylender's excise licence as is equal to the amount of the duty paid in respect of the licence for carrying on the business of a pawnbroker, or where in any such case moneylender's excise licences are taken out by partners in a firm in respect of the premises, the remission or repayment shall be made to the firm.

(2) Subject to the provisions of this Act, moneylenders' excise licences shall be in such form as the Commissioners of Customs and Excise may direct, and shall be granted on payment of the appropriate duty by any officer of Customs and Excise authorised by the Commissioners to grant them, and regulations made by the said Commissioners may make provision as to the procedure to be followed in making application for moneylenders' excise licences :

Provided that a moneylender's excise licence shall be taken out by a moneylender in his true name, and shall be void if it be taken out in any other name, but every moneylender's excise licence shall also show the moneylender's authorised name and authorised address.

(3) If any person—

- (a) takes out a moneylender's excise licence in any name other than his true name ; or
- (b) carries on business as a moneylender without having in force a proper moneylender's excise licence authorising him so to do, or, being licensed as a moneylender, carries on business as such in any name other than his authorised name, or at any other place than his authorised address or addresses ; or
- (c) enters into any agreement in the course of his business as a moneylender with respect to the advance or repayment of money, or takes any security for money, in the course of his business as a moneylender, otherwise than in his authorised name ;

he shall be guilty of a contravention of the provisions of this Act and shall for each offence be liable to an excise penalty of one hundred pounds :

Provided that, on a second or subsequent conviction of any person (other than a company) for an offence under this subsection, the court may, in lieu of or in addition to ordering the

Section 1. offender to pay the penalty aforesaid, order him to be imprisoned for a term not exceeding three months, and an offender being a company shall on a second or subsequent conviction be liable to an excise penalty of five hundred pounds.

NOTE.—The following cases were decided under sect. 2 of the 1900 Act, which contained provisions somewhat similar to the above sub-section:—

The Christian name need not be registered in full. The initial letter is sufficient (*Hart v. Hungerford*, (1916) 85 L. J. K. B. 1029).

This sub-section is not violated by the money-lender taking a security—a bill of exchange—in which his name does not appear at all (*Shaffer v. Sheffield and Another*, (1914) 2 K. B. 1; 83 L. J. K. B. 817). See also *Charles Taylor (London) Limited v. Miller and Fingard*, (1917) 86 L. J. K. B. 49, and compare *Merz v. South Wales Money Society*, (1927) 137 L. T. 626.

The section applies to an unregistered money-lender, and renders incapable of enforcement any agreement with respect to the advance and repayment of money, and any security for money taken in the course of his business as an unregistered money-lender (*Victorian Daylesford Syndicate v. Bott*, (1905) 2 Ch. 624; 74 L. J. Ch. 673; approved in *Bonnard v. Dott*, (C. A.) (1906) 1 Ch. 740; 75 L. J. Ch. 446). Post-dated cheques are a “security for money” within the meaning of this sub-section (*Stirling v. John*, (1923) 1 K. B. 557; 92 L. J. K. B. 353). But an unregistered money-lender can maintain an action for damages for fraudulent misrepresentations whereby he was induced to advance money on loan (*Dott v. Brickwell*, (1906) 23 T. L. R. 61), and at all events, where the statutory defence is not pleaded, the judge is not justified in an action brought by a money-lender in insisting on having the fact of registration proved by an examined or certified copy of the same (*Lipton v. Powell and Another*, (1921) 2 K. B. 51; 90 L. J. K. B. 366).

The mere fact that the loan is actually completed at the borrower's office is not an infringement of the clause, which requires the business to be carried on at the money-lender's registered address and at no other address (*King v. Massey*, (1908) 24 T. L. R. 710); it may be carried on through the post (*In re Seed, Ex parte King*, (1910) 1 K. B. 661; 79 L. J. K. B. 421; *Jackson v. Price*, (1910) 1 K. B. 143; 79 L. J. K. B. 130). It is not necessary that every stage and every incident of every piece of the money-lending business should be transacted at the registered office. The question is one of fact, not of law (*Kirkwood v. Gadd*, (1910) A. C. 422; 79 L. J. K. B. 815; reversing *Gadd v. Provincial Union Bank*, (1909) 2 K. B. 353; 78 L. J. K. B. 815). See also *H. Bowen & Co. v. Samuels*, (1918) 34 T. L. R. 487.

A breach of the provisions as to carrying on business at the authorised address by a money-lender renders the transaction void, in addition to subjecting the money-lender to penalties (*Cornelius v. Phillips*, (1918) A. C. 199; 87 L. J. K. B. 246; *Whiteman v. Sadler*, (1910) A. C. 514; 79 L. J. K. B. 1050, explained).

A person registered under the Act as in partnership with another who enters into a money-lending transaction in his own name commits a breach of the Act, and cannot recover the money lent (*Vorst v. Goldstein*, (1924) 2 K. B. 372; 93 L. J. K. B. 965).

A company registered as moneylenders, who take as security from a borrower a promissory note in the name of the secretary of the company or the secretary of the company for the time being, have taken a security for money in the course of their business in a name other than their registered name and the transaction is therefore void (*Mertz v. South Wales Equitable Money Society*, (1927) 2 K. B. 366; 96 L. J. K. B. 1020).

A person who, while *bonâ fide* carrying on business as a solicitor, makes a practice of advancing money to clients and others, must register himself under the Money-Lenders Act, 1900, unless his primary object in so lending

is to increase his professional business, and earn professional fees (*Edgelow v. MacElwee*, (1918) 1 K. B. 205; 87 L. J. K. B. 738. See also *Litchfield v. Dreyfus*, (1906) 1 K. B. 584).

Section 1.

A request by a moneylender to cancel his registration during the period for which he is registered does not cancel it (*Schaverien v. Corbett*, (1923) 1 K. B. 699; 92 L. J. K. B. 646).

2.—(1) A moneylender's excise licence shall not be granted except to a person who holds a certificate granted in accordance with the provisions of this section authorising the grant of the licence to that person, and a separate certificate shall be required in respect of every separate licence. Any moneylender's excise licence granted in contravention of this section shall be void.

Certificate required for grant of money-lender's excise licence.

(2) Certificates under this section (in this Act referred to as "certificates") shall be granted by the petty sessional court having jurisdiction in the petty sessional division in which the moneylender's business is to be carried on, so, however, that within any part of the metropolitan police district for which a police court is established, a certificate shall not be granted except by a police magistrate.

(3) Every certificate granted to a moneylender shall show his true name and the name under which, and the address at which, he is authorised by the certificate to carry on business as such, and a certificate shall not authorise a moneylender to carry on business at more than one address, or under more than one name, or under any name which includes the word "bank," or otherwise implies that he carries on banking business, and no certificate shall authorise a moneylender to carry on business under any name except—

(a) his true name; or

(b) the name of a firm in which he is a partner, not being a firm required by the Registration of Business Names Act, 1916, to be registered; or

6 & 7 Geo. 5, c. 58.

(c) a business name, whether of an individual or of a firm in which he is a partner, under which he or the firm has, at the passing of this Act, been registered for not less than three years both as a moneylender under the Moneylenders Act, 1900, and under the Registration of Business Names Act, 1916.

63 & 64 Vict. c. 51.

(4) A certificate shall come into force on the date specified therein, and shall expire on the next following thirty-first day of July.

(5) A Secretary of State shall make rules with respect to the procedure to be followed in making applications for certificates (including the notices to be given of intention to make such an

Section 2. application), and certificates shall be in such form as may be prescribed by rules so made.

(6) A certificate shall not be refused except on some one or more of the following grounds—

- (a) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of a company of the persons responsible for the management thereof;
- (b) that satisfactory evidence has been produced that the applicant, or any person responsible or proposed to be responsible for the management of his business as a money-lender, is not a fit and proper person to hold a certificate;
- (c) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is by order of a court disqualified for holding a certificate;
- (d) that the applicant has not complied with the provisions of any rules made under this section with respect to applications for certificates.

(7) Any person aggrieved by the refusal of a petty sessional court to grant a certificate may appeal to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts as if the refusal were an order of a court of summary jurisdiction.

Suspension
and for-
feiture of
money-
lenders'
certificates.
55 & 56 Vict.
c. 4.

3.—(1) Where any person, being the holder of a certificate, is convicted of any offence under this Act or under section two or four of the Betting and Loans (Infants) Act, 1892, or the Money-lenders Act, 1900, the court—

- (a) may order that any certificates held by that person, and in the case of a partner in a firm by any other partner in the firm, shall either be suspended for such time as the court thinks fit, or shall be forfeited, and may also, if the court thinks fit, declare any such person, or any person responsible for the management of the moneylending business carried on by the person convicted, to be disqualified for obtaining a certificate for such time as the court thinks fit; and
- (b) shall cause particulars of the conviction and of any order made by the court under this subsection to be endorsed on every certificate held by the person convicted or by any other person affected by the order, and shall cause copies of those particulars to be sent to the authority by whom any certificate so endorsed was granted, and to the Commissioners of Customs and Excise:

Section 3.

Provided that, where by order of a court a certificate held by any person is suspended or forfeited, or any person is disqualified for obtaining a certificate, he may, whether or not he is the person convicted, appeal against the order in the same manner as any person convicted may appeal against his conviction, and the court may, if it thinks fit, pending the appeal, defer the operation of the order.

(2) Any certificate required by a court for endorsement in accordance with the foregoing provisions of this section shall be produced, in such manner and within such time as may be directed by the court, by the person by whom it is held, and any person who, without reasonable cause, makes default in producing any certificate so required shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding five pounds for each day during which the default continues.

(3) Where a certificate held by any person is ordered to be suspended or to be forfeited under the foregoing provisions of this section, any moneylender's excise licences granted to that person whether in pursuance of that or any other certificate, shall be suspended during the period for which the certificate is ordered to be suspended or become void, as the case may be.

4.—(1) Subsection (2) of section two of the Companies (Particulars as to Directors) Act, 1917 (which requires certain particulars to be published in trade catalogues, trade circulars, show cards and business letters) shall apply with the necessary modifications to every company licensed under this Act notwithstanding that the company was registered or had established a place of business within the United Kingdom on or before the twenty-second day of November, nineteen hundred and sixteen.

Names to be stated on documents issued by money-lenders.
7 & 8 Geo. 5, c. 28.

(2) Without prejudice to the provisions of the last foregoing section and of section eighteen of the Registration of Business Names Act, 1916, a moneylender shall not, for the purposes of his business as such, issue or publish, or cause to be issued or published, any advertisement, circular, business letter, or other similar document which does not show—

- (a) in such manner as to be not less conspicuous than any other name, the authorised name of the moneylender; and
- (b) except in the case of an advertisement published in a newspaper, any name, other than his authorised name, under which the moneylender, and in the case of a firm any partner therein, was before the commencement of this Act registered as a moneylender under the Moneylenders Act, 1900;

Section 4. and any moneylender who acts in contravention of this subsection shall be liable on summary conviction to a fine not exceeding twenty pounds in respect of each offence.

(3) If a moneylender, for the purposes of his business as such, issues or publishes, or causes to be issued or published, any advertisement, circular or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking business, he shall on summary conviction be liable to a fine not exceeding one hundred pounds, and on a second or subsequent conviction, in lieu of or in addition to such a fine as aforesaid, to imprisonment for a term not exceeding three months, or, in the case of a second or subsequent conviction of an offender being a company, to a fine not exceeding five hundred pounds.

Restrictions
on money-
lending
advertisements.

5.—(1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name, address or telephone number of a moneylender, or containing an invitation—

- (a) to borrow money from a moneylender
- (b) to enter into any transaction involving the borrowing of money from a moneylender ;
- (c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a moneylender.

(2) Subject as hereinafter provided, no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation, or by means of any poster or placard, an advertisement advertising any such particulars, or containing any such invitation, as aforesaid :

Provided that an advertisement in conformity with the requirements of this Act relating to the use of names on moneylenders' documents may be published by or on behalf of a moneylender in any newspaper or in any such paper as aforesaid or by means of a poster or placard exhibited at any authorised address of the moneylender, if it contains no addition to the particulars necessary to comply with the said requirements, except any of the following particulars, that is to say any authorised address at which he carries on business as a moneylender and the telegraphic address and telephone number thereof, any address at which he formerly carried on business, a statement that he lends money with or without security, and of the highest and lowest sums that he is

prepared to lend, and a statement of the date on which the business carried on by him was first established.

Section 5.

(3) No moneylender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a moneylender, and no person shall act as such agent or canvasser, or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a moneylender any person desiring to borrow money.

(4) Where any document issued or published by or on behalf of a moneylender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall either express the interest proposed to be charged in terms of a rate per cent. per annum or show the rate per cent. per annum represented by the interest proposed to be charged as calculated in accordance with the provisions of the First Schedule to this Act.

(5) Any person acting in contravention of any of the provisions of this section shall be guilty of a misdemeanour and shall in respect of each offence be liable, on conviction on indictment, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and, on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(6) Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall, notwithstanding that the money-lender was duly licensed under this Act, be illegal, unless the money-lender proves that the contravention occurred without his consent or connivance.

6.—(1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a moneylender after the commencement of this Act or for the payment by him of interest on money so lent and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract be made and signed personally by the borrower, and unless a copy thereof be delivered or sent to the borrower within seven days of the making of the contract; and no such contract or security shall be enforceable if it is proved that the note or

Form of
money-
lenders'
contracts

Section 6.

memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given as the case may be.

(2) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and, either the interest charged on the loan expressed in terms of a rate per cent. per annum, or the rate per cent. per annum represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act.

Prohibition
of com-
pound
interest and
provision
as to
defaults.

7. Subject as hereinafter provided, any contract made after the commencement of this Act for the loan of money by a moneylender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract :

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the moneylender under the contract, whether in respect of principal or interest, the moneylender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

Obligation
of money-
lender to
supply in-
formation
as to state
of loan and
copies of
documents
relating
thereto.

8.—(1) In respect of every contract for the repayment of money lent by a moneylender whether made before or after the commencement of this Act, the moneylender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of one shilling for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the moneylender or his agent showing—

- (a) the date on which the loan was made, the amount of the principal of the loan and the rate per cent. per annum of interest charged ; and
- (b) the amount of any payment already received by the moneylender in respect of the loan and the date on which it was made ; and
- (c) the amount of every sum due to the moneylender, but unpaid, and the date upon which it became due, and the

amount of interest accrued due and unpaid in respect of every such sum; and **Section 8.**

(d) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due.

(2) A moneylender shall, on any reasonable demand in writing by the borrower, and on tender of a reasonable sum for expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

(3) If a moneylender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default, and if such default is made or continued after proceedings have ceased to lie in respect of the loan, the moneylender shall be liable on summary conviction to a fine not exceeding five pounds for every day on which the default continues.

9.—(1) Where a debt due to a moneylender in respect of a loan made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act, 1914, relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement, and dividend, be calculated at a rate not exceeding five per cent. per annum, but nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled.

Provisions as to bankruptcy proceedings for money-lenders' loans.
4 & 5 Geo. 5, c. 59.

The provisions of this subsection shall, in relation to such a debt as aforesaid, have effect in substitution for the provisions of subsection (1) of section sixty-six of the Bankruptcy Act, 1914.

(2) No proof of a debt due to a moneylender in respect of a loan made by him shall be admitted for any of the purposes of the Bankruptcy Act, 1914, unless the affidavit verifying the debt is accompanied by a statement showing in detail—

(a) the amount of the sums actually lent to the debtor and the dates on which they were lent, and the amount of every payment already received by the moneylender in respect of the loan and the date on which every such payment was made; and

(b) the amount of the balance which remains unpaid distin-

Section 9.

guishing the amount of the principal from the amount of interest included therein, the appropriation between principal and interest being made in accordance with the provisions of this Act where the interest is not expressed by the contract for the loan in terms of a rate; and

- (c) where the amount of interest included in the unpaid balance represents a rate per cent. per annum exceeding five per cent., the amount of interest which would be so included if it were calculated at the rate of five per cent. per annum.

(3) General rules may be made under section one hundred and thirty-two of the Bankruptcy Act, 1914, for the purpose of carrying into effect the objects of this section.

NOTE.—This section is retrospective and applies to loans whether made before or after the passing of the Act (*Re a Debtor* (99 of 1928) (1928) 139 L. T. 234).

Amend-
ments of
63 & 64
Vict. c. 51,
s. 1.

10.—(1) Where, in any proceedings in respect of any money lent by a moneylender after the commencement of this Act or in respect of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, it is found that the interest charged exceeds the rate of forty-eight per cent. per annum, or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section one of the Moneylenders Act, 1900, that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding forty-eight per cent. per annum, is excessive.

(2) Where a court reopens a transaction of a moneylender under the said section one of the Moneylenders Act, 1900, the court may require the moneylender to produce any certificate granted to him in accordance with the provisions of this Act, and may cause such particulars as the court thinks desirable to be endorsed on any such certificate, and a copy of the particulars to be sent to the authority by whom the certificate was granted.

(3) The powers of a court under the said section one of the Moneylenders Act, 1900, with respect to the re-opening of the transactions of moneylenders, shall extend to any transaction effected under a special contract made in accordance with the provisions of section twenty-four of the Pawnbrokers Act, 1872, and accordingly, for the purposes of the first mentioned section, the

provisions of paragraph (a) of section six of the Moneylenders Act, 1900, shall not apply with respect to any such transaction. **Section 10.**

(4) The powers of a court under subsection (2) of the said section one of the Moneylenders Act, 1900 (which enables a court at the instance of the borrower, surety, or other person liable, to exercise its powers under that section with respect to the re-opening of the transactions of moneylenders, although no proceedings are taken for the recovery of the money lent, and notwithstanding that the time for repayment may not have arrived), may in the event of the bankruptcy of the borrower be exercised at the instance of the trustee in bankruptcy, notwithstanding that he may not be a person liable in respect of the transaction.

(5) The powers of a court under the said subsection (2) of section one of the Moneylenders Act, 1900, may be exercised notwithstanding that the moneylender's right of action for the recovery of the money lent is barred.

11.—(1) Subject as hereinafter provided, no action by a money-lender for the recovery of money lent by him or for enforcing any agreement or security relating to any such money shall be brought in any inferior court other than a county court :

Courts to which proceedings on money-lending transactions are to be taken.

Provided that His Majesty may by Order in Council direct that any inferior court specified in the Order shall have the same jurisdiction as respects such actions as aforesaid as it would have had but for the provisions of this subsection, and any such Order may contain such provisions as appear to His Majesty expedient with respect to the making of rules of court for regulating the procedure to be followed in the case of any such action, and may be revoked or varied by any subsequent Order made in like manner.

(2) Before any Order in Council is made under this section, a draft thereof shall be laid before each House of Parliament for a period of not less than twenty-one days during the session of Parliament, and if either House before the expiration of the said period presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of a new draft order.

NOTE.—By Order in Council, dated December 20th, 1927, made under this section, the following courts are given jurisdiction in actions by moneylenders subject to special Rules regulating the procedure : The Mayor's and City of London Court, The Court of Passage of the City of Liverpool, The Salford Hundred Court of Record, and the Derby Borough Court of Record.

12. Any agreement between a moneylender and a borrower or intending borrower for the payment by the borrower or intending borrower to the moneylender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations by money-lenders.

Prohibition of charge for expenses on loans by money-lenders.

Section 12. for or the granting of the loan or proposed loan shall be illegal, and if any sum is paid to a moneylender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

Limitation
of time for
proceedings
in respect of
money lent
by money-
lenders.

13.—(1) No proceedings shall lie for the recovery by a moneylender of any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of any loan made by him, unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued :

Provided that—

- (a) if during the period of twelve months aforesaid or at any time within any subsequent period during which proceedings may by virtue of this proviso be brought, the debtor acknowledges in writing the amount due and gives a written undertaking to the moneylender to pay that amount, proceedings for the recovery of the amount due may be brought at any time within a period of twelve months from the date of the acknowledgment and undertaking ;
- (b) the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run in respect of any payments from time to time becoming due to a moneylender under a contract for the loan of money until a cause of action accrues in respect of the last payment becoming due under the contract ;
- (c) if at the date on which the cause of action accrues or on which any such acknowledgment and undertaking as aforesaid is given by the debtor, the person entitled to take the proceedings is non compos mentis, the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run until that person ceases to be non compos mentis or dies, whichever first occurs ; and
- (d) if at the date on which the cause of action accrues or on which any such acknowledgment and undertaking as aforesaid is given by the debtor, the debtor is beyond the seas, the time limited by the foregoing provisions of this

section for the commencement of proceedings shall not begin to run until he returns from beyond the seas, so, however, that section eleven of the Mercantile Law Amendment Act, 1856 (which relates to the limitation of actions against joint debtors where some are beyond seas) shall have effect as if this section were included among the enactments therein referred to as fixing a period of limitation.

Section 13 .
 19 & 20 Vict.
 c. 97.

(2) Without prejudice to the powers of a court under section one of the Moneylenders Act, 1900, if at the time when proceedings are taken by a moneylender in respect of a default in the payment of any sum due to him under a contract for the loan of money, any further amount is outstanding under the contract but not yet due, the court may determine the contract and order the principal outstanding to be paid to the moneylender with such interest thereon, if any, as the court may allow up to the date of payment.

14.—(1) The provisions of sections six, twelve and thirteen of this Act shall not apply in relation to any loan by a pawnbroker on a pledge, or in relation to any debt in respect of such a loan, or any interest thereon, notwithstanding that the loan is not made in the course of the business carried on by the pawnbroker in accordance with the Acts for the time being in force in relation to pawnbrokers, so long as the following conditions are complied with in respect of the loan :—

Special
 provisions
 as to pawn-
 broker's
 loans.

(a) The pawnbroker shall deliver or send to the pawner within seven days a note or memorandum containing all the terms of the contract, and in particular showing the date on which the loan is made, the amount of the principal of the loan, the interest charged on the loan expressed in terms of a rate per cent. per annum, and any other charges payable by the pawner under the contract, and the rate of interest charged shall not exceed the rate of twenty per cent. per annum ;

(b) Subject as hereinafter provided, the pawner shall not be charged any sum on account of costs, charges, or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan, except a charge for the preparation of documents relating to the loan not exceeding the sum of one shilling, and a charge equal to the actual amount of any stamp duty paid by the pawnbroker upon any such document :

Provided that a pawnbroker shall not be deemed to have failed

Section 14. to comply with the foregoing conditions by reason of his having made in good faith and in accordance with the terms of the contract for the loan—

- (i) a reasonable charge in respect of the storage or care of any pledge which is not physically delivered to him or which, although so delivered, is of such weight or size that it would not under the Post Office regulations for the time being in force be received for transmission by parcel post; or
 - (ii) a charge for interest at a rate not exceeding twenty per cent. per annum upon any sum reasonably expended by the pawnbroker in respect of the storage or care of the pledge; or
 - (iii) a charge not exceeding one shilling for rendering any account of the sale of any pledge; or
 - (iv) a charge not exceeding one shilling in respect of any inspection of the pawnbroker's books;
- (2) Any charge authorised by this section for the preparation of documents relating to a loan, or in respect of stamp duty upon any such document, may be deducted by the pawnbroker from the amount of the loan, and, if so deducted, shall be deemed for the purposes of this Act to be included in the principal.

Interpreta-
tion, &c.

15.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

- “ Authorised name ” and “ authorised address ” mean respectively the name under which and the address at which a moneylender is authorised by a certificate granted under this Act to carry on business as a moneylender ;
- “ Business name ” means the name or style under which any business is carried on, whether in partnership or otherwise ;
- “ Company ” means any body corporate being a moneylender ;
- “ Firm ” means an unincorporate body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit ;
- “ Interest ” does not include any sum lawfully charged in accordance with the provisions of this Act by a moneylender for or on account of costs, charges, or expenses, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a moneylender in consideration of or otherwise in respect of a loan ;

“Principal” means in relation to a loan the amount actually lent to the borrower. Section 15.

(2) Where by a contract for the loan of money by a money-lender the interest charged on the loan is not expressed in terms of a rate any amount paid or payable to the moneylender under the contract (other than simple interest charged in accordance with the proviso to section seven of this Act) shall be appropriated to principal and interest in the proportion that the principal bears to the total amount of the interest, and the rate per cent. per annum represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act shall be deemed to be the rate of interest charged on the loan.

16.—(1) Where any debt in respect of money lent by a money-lender whether before or after the commencement of this Act or in respect of interest on any such debt or the benefit of any agreement made or security taken in respect of any such debt or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

Notice and information to be given on assignment of money-lenders' debts.

(a) give to the assignee notice in writing that the debt, agreement or security is affected by the operation of this Act; and

(b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligation to supply information as to the state of loans and copies of documents relating thereto.

and any person acting in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall also be guilty of a misdemeanour, and shall in respect of each offence be liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine, and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds.

(2) In this section the expression “assigned” means assigned by any assignment inter vivos other than an assignment by operation of law, and the expressions “assignor” and “assignee” have corresponding meanings.

17.—(1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt to a money-
Application of Act as respects assignees.

Section 17. lender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and, except where the context otherwise requires, references in this Act to a moneylender shall accordingly be construed as including any such assignee as aforesaid :

Provided that—

(a) notwithstanding anything in this Act—

(i) any agreement with, or security taken by, a moneylender in respect of money lent by him after the commencement of this Act shall be valid in favour of any bona fide assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him ; and

(ii) any payment or transfer of money or property made bona fide by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid ; and

(iii) the provisions of this Act limiting the time for proceedings in respect of money lent shall not apply to any proceedings in respect of any such agreement or security commenced by a bona fide assignee or holder for value without notice that the agreement or security was affected by the operation of this Act, or by any person deriving title under him,

but in every such case the moneylender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings commenced by, an assignee or holder for value who is himself a moneylender ; and

(b) for the purposes of this Act and of the Moneylenders Act, 1900, the provisions of section one hundred and ninety-nine of the Law of Property Act, 1925, shall apply as if the expression “ purchaser ” included a person making any such payment or transfer as aforesaid.

(2) Nothing in this section shall render valid for any purpose

any agreement, security, or other transaction which would, apart from the provisions of this Act, have been void or unenforceable. **Section 17.**

18. This Act shall apply to Scotland subject to the following modifications— **Application to Scotland.**

- (a) Certificates under section two of this Act shall be granted by the licensing court under the Licensing (Scotland) Acts, 1903 to 1921, within whose jurisdiction the premises in which the moneylender's business is to be carried on are situated, and may be granted either at the general half-yearly meeting of such court, or at any adjournment thereof, which adjournment they may make from time to time for the purposes of this Act, or at some other meeting specially convened for that purpose, and an appeal against the refusal to grant such a certificate shall lie to the court of appeal under the said Acts :
- (b) The power to make rules under subsection (5) of section two of this Act shall include power to make rules with respect to the procedure to be followed in appeals under the foregoing paragraph of this section :
- (c) The provisions of subsection (3) of section twenty-seven of 3 Edw. 7, the Licensing (Scotland) Act, 1903 (which relates to the prescribing of fees), shall extend to the prescribing of fees payable to clerks of licensing courts and of courts of appeal for anything done under this Act : **c. 25.**
- (d) References to the presentation of a bankruptcy petition shall be construed as references to the presentation of a petition for sequestration ; " scheme of arrangement " shall mean deed of arrangement ; references to the admission of proof of debts shall be construed as references to the ranking of claims or debts ; and " affidavit " shall mean oath :
- (e) The Bankruptcy (Scotland) Act, 1913, shall be substituted 3 & 4 Geo. 5, for the Bankruptcy Act, 1914, except where subsection (1) **c. 20.** section sixty-six thereof is referred to ; and Act of Sederunt under section one hundred and ninety of the said Act of 1913 shall be substituted for general rules under section one hundred and thirty-two of the said Act of 1914 ;
- (f) Where decree is granted by any court in favour of a moneylender for any sum of money in respect of a loan by him, the court may, either at the time of granting such decree or at any time thereafter prior to the payment of such

Section 18.

sum and on the application of either party, make an order that such sum shall be payable by instalments of such amount and subject to such conditions as the court shall think fit :

(g) Section eleven of this Act shall not apply :

(h) Notwithstanding anything to the contrary in any Act contained, summary execution or diligence shall not be competent upon any bill of exchange or promissory note or upon any bond or obligation registered in the books of any court, where such bill, promissory note, bond or obligation has been granted to or in favour of or is held by a moneylender.

Short title,
citation,
construc-
tion, repeal,
extent and
commence-
ment.

19.—(1) This Act may be cited as the Moneylenders Act, 1927, and the Moneylenders Act, 1900, and this Act may be cited together as the Moneylenders Acts, 1900 to 1927.

(2) Except where the context otherwise required, references in this Act to the Moneylenders Act, 1900, shall be construed as references to that Act as amended by this Act, and this Act shall be construed as one with that Act, and the provisions of this Act as to moneylender's excise licences and offences in relation thereto shall also be construed as one with the Acts relating to duties of excise and the management of those duties.

(3) The enactments set out in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule :

1 & 2 Geo. 5,
c. 38.

Provided that section one of the Moneylenders Act, 1911, shall continue in force as respects any agreement with or security taken by a moneylender before the commencement of this Act, or any payment or transfer of money or property made, whether before or after the commencement of this Act, on the faith of the validity of any such agreement or security.

NOTE.—For text of sect. 1 of Money-lenders Act, 1911, see previous editions.

(4) This Act shall not extend to Northern Ireland.

(5) Except as hereinafter provided this Act shall come into force on the first day of January, nineteen hundred and twenty-eight :

Provided that—

(a) subject to the provisions of any regulations or rules made under this Act, licences and certificates may be granted to moneylenders at any time after the first day of October, nineteen hundred and twenty-seven ; and

(b) Orders in Council may be made under the provisions of this Act relating to courts to which proceedings on money-lenders' transactions are to be taken at any time after the passing of this Act, Section 19.

so, however, that no such licence or Order in Council shall come into force until the commencement of this Act.

Nothing in the foregoing proviso shall be construed to limit or otherwise affect the provisions of section thirty-seven of the Interpretation Act, 1889. 52 & 53 Vict.
c. 63.

SCHEDULES.

FIRST SCHEDULE.

Sections 5, 6
and 15.

CALCULATION OF INTEREST WHERE THE INTEREST CHARGED ON A LOAN
IS NOT EXPRESSED IN TERMS OF A RATE.

1. The amount of principal outstanding at any time shall be taken to be the balance remaining after deducting from the principal the total of the portions of any payments appropriated to principal in accordance with the provisions of this Act.

2. The several amounts taken to be outstanding by way of principal during the several periods ending on the dates on which payments are made shall be multiplied in each case by the number of calendar months during which those amounts are taken to be respectively outstanding, and there shall be ascertained the aggregate amount of the sum so produced.

3. The total amount of the interest shall be divided by one-twelfth part of the aggregate amount mentioned in paragraph 2 of this Schedule, and the quotient, multiplied by one hundred, shall be taken to be the rate of interest per cent. per annum.

4. If having regard to the intervals between successive payments it is desired so to do, the calculation of interest may be made by reference to weeks instead of months, and in such a case the foregoing paragraphs shall have effect as though in paragraph 2 the word "weeks" were substituted for the words "calendar months," and in paragraph 3 the words "one-fifty-second," were substituted for the words "one-twelfth."

5. Where any interval between successive payments is not a number of complete weeks or complete months, the foregoing paragraphs shall have effect as though one day were one-seventh part of a week or one-thirtieth part of a month, as the case may be.

SECOND SCHEDULE.

Section 19.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
63 & 64 Vict. c. 51.	The Moneylenders Act, 1900.	Section two; section three; in paragraph (e) of section six the words "registration under"
1 & 2 Geo. 5, c. 38.	The Moneylenders Act, 1911.	The whole Act.

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

[47 & 48 VICT. c. 70.]

Under this Act claims against any person for expenses incurred by or on behalf of a candidate at a municipal election must be sent in within fourteen days after the day of election, and must be paid within twenty-one days after such day (sect. 21, sub-s. 1).

Jurisdiction.—The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in, and any expense to be paid after the times above named (sect. 21, sub-s. 6).

It is rather singular that provision is made by subsequent sub-sections as to the terms on which the application may be granted by the High Court or an election court, but none as to county courts (sect. 21, sub-ss. 7, 8, 9). Doubtless, however, the provision may be taken as a guide in the county court.

Short title.

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

* * * * *

21. (6) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

* * * * *

(8) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10) The return and declaration sent in pursuance of this Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

* * * * *

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough, whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office

Section 33.

Service of notices.

37. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the first schedule to this Act.

Exemption from provisions as to maximum expenses.

FIRST SCHEDULE

ELECTIONS TO WHICH THIS ACT EXTENDS.

Member of local board, as defined by the Public Health Act, 1875 ; member of improvement commissioners, as defined by the Public Health Act, 1875 ; guardian elected under the Poor Law Amendment Act, 1834 ; member of school board.

Practice is governed by—

COUNTY COURT RULES.—ORDER L. RULE 16.

An application to the court under sub-sect. 6 of sect. 21 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall be intituled in the matter of the Act and of the election, and shall be made in accordance with the rules for the time being in force as to interlocutory applications, and supported by affidavit. The court may direct notice of such application to be given to any rival candidate at the election, or to the returning officer.

As to service of notices, see sect. 33 ; as to interlocutory applications, see Part I., Order XII. r. 11.

NATIONAL HEALTH INSURANCE ACT, 1924.

[14 & 15 GEO. V. c. 38.]

The various statutes relating to National Health Insurance have now been consolidated in the National Health Insurance Act, 1924 (14 & 15 Geo. 5, c. 38).

Under the previous statutes of 1911 and 1913 jurisdiction was given to the county court, on appeal from the Insurance Commissioners, to determine any question as to whether employment or any class of employment was employment within the meaning of the Act of 1911, also by the Act of 1913 to determine in the same way who was the employer of an employed contributor.

This jurisdiction is now apparently taken away from the county court and conferred upon a judge of the High Court. See sect. 89 of the Act.

The only jurisdiction seemingly remaining in the county court is that given by sect. 68, sub-s. (1) of the Act of 1911 (now sect. 102 of the Act of 1924) to the registrar of the county court as to cancelling or modifying a medical certificate. Under this section certain protection against distress for rent, execution, and ejectment is given to an insured person where the medical practitioner attending such insured person certifies that the taking of any of the aforesaid proceedings would endanger his life, and such certificate has been recorded in manner provided by sub-s. 4 of the said section; but any person who disputes the accuracy of the certificate may apply to the registrar of the county court, who may make an order cancelling or modifying such certificate.

The decision of the registrar, as to the certificate, is final and not subject to appeal.

Practice.—The applications to the registrar under sect. 68 (now sect. 102) are governed by Order XLIIA., rr. 24—26. Rule 24 deals with stay of proceedings; Rule 25 with an application to cancel or modify a certificate. Rule 26 relates to disputes as to security (see *post*, p. 2254; see also Forms 449 to 452, *post*, pp. 2288—2290).

Section 16 of the present Act contains provisions in the case of contributors entitled to compensation or damages under the Employers' Liability Act, 1880, or the Workmen's Compensation Act, 1925, or at common law. These are dealt with under Part IV. of this work which deals with Injuries to Workmen. This section is printed in full, *ante*, p. 1563.

Protection
against
distress and
execution in
certain cases.

102.—(1) Where the medical practitioner attending on any insured person in receipt of sickness benefit certifies that the levying of any distress or execution upon any goods or chattels belonging to such insured person and being on premises occupied by him, or the taking of any proceedings in ejectment or for the recovery of any rent or to enforce any judgment in ejectment against such person, would endanger his life, and such certificate has been sent to the insurance committee and has been recorded in manner hereinafter provided, it shall not be lawful during any period named in the certificate for any person to levy any such distress or execution or to take any such proceedings or to enforce any such judgment against the insured person :

Provided that, if any person desirous of levying such distress or execution or taking such proceedings or enforcing such judgment

Section 102.
—

disputes the accuracy of the certificate, he may apply to the registrar of the county court, who, if he is of opinion that the certificate should be cancelled or modified, may make an order cancelling or modifying it, and no appeal shall lie against any such order or a refusal to make any such order.

(2) A certificate granted for the purpose of this section shall continue in force for one week or such less period as may be named in the certificate, but may be renewed from time to time for any period not exceeding one week, up to but not beyond the expiration of three months from the date of the grant of the original certificate, but no such renewal shall have effect unless sent to the insurance committee and recorded as aforesaid :

Provided that the protection conferred by this section shall not extend beyond the expiration of one month from such date if, on demand being made by the person desirous of levying such distress or execution, or taking such proceedings, or enforcing such judgment, proper security is not given for payment of rent thereafter to become due from the insured person or the amount of the judgment debt, as the case may be, and any dispute as to the sufficiency of the security shall be determined by the registrar of the county court whose decision shall be final and not subject to appeal.

(3) If any person knowingly levies or attempts to levy any such distress or execution or takes any such proceedings or enforces or attempts to enforce any such judgment in contravention of this section, he shall be liable on summary conviction to a fine not exceeding fifty pounds.

(4) A certificate or renewal thereof granted under this section shall forthwith be sent to the insurance committee, and the committee shall, unless it has reason to suspect its genuineness, record it in a special register without fee, and such register shall, at all reasonable times, be open to inspection ; and, where so recorded, its genuineness shall not be questioned in any proceedings against a sheriff or other officer for failure to levy any distress or execute any warrant.

(5) The genuineness of a certificate so recorded shall not be questioned in any proceedings against a sheriff or other officer for failure to levy any distress or execute any warrant.

(6) Where the time within which a warrant may be executed is limited, any period during which the warrant cannot be executed by reason of the provisions of this section shall be disregarded in computing the time within which the warrant may be executed.

Rules. COUNTY COURT RULES, DATED APRIL 11, 1916, AS TO APPEALS UNDER THE NATIONAL INSURANCE ACT, 1911 (1 & 2 GEO. 5, c. 55), SECTION 68 (NOW SECTION 102 OF NATIONAL HEALTH INSURANCE ACT, 1924).

ORDER XLIIA.

These rules and forms in so far as they relate to applications to the Court, under the jurisdiction now taken away, are useless. They are consequently omitted.

APPLICATIONS TO THE REGISTRAR UNDER SECTION 68 (NOW 102).

Stay of proceedings, etc., where certificate granted under 14 & 15 Geo. V. c. 38, s. 102.

24.—(1) Where the medical practitioner attending on any person who is an insured person within the meaning of the National Insurance Act, 1911, and is in receipt of sickness benefit, certifies pursuant to section 68 of the said Act that the levying of any distress or execution upon any goods or chattels belonging to such insured person, and being on premises occupied by him, or the taking of any proceedings in ejectment or for the recovery of any rent or to enforce any judgment in ejectment against such person, would endanger his life, and such certificate has been sent to the insurance committee and has been recorded in manner provided by the said section, the following provision shall apply.

(2) If notice of such certificate having been given or renewed is given by or on behalf of the insured person to the registrar of the county court in the district of which such insured person resides, no execution upon any goods or chattels belonging to such insured person, and being on premises occupied by him, and no proceeding for the recovery of rent or to enforce any judgment in ejectment against such insured person shall be issued, and any execution or other proceeding as aforesaid issued before notice of the certificate having been given or renewed is received by the registrar shall be stayed, during the currency of the certificate or renewed certificate.

(3) If no notice is given to the registrar, then if notice of such certificate having been given or renewed is given to the bailiff in charge of any such execution or proceeding as aforesaid, such execution or proceeding shall be stayed during the currency of the certificate or renewed certificate.

(4) On notice of a certificate having been given or renewed being given to the registrar or to the bailiff, the registrar or high bailiff shall forthwith send notice to any person at whose instance any such execution or other proceeding as aforesaid issued of such certificate having been given or renewed.

(5) On proof being made to the satisfaction of the registrar that any such certificate or renewed certificate has ceased to be in force, any person desirous of levying any such execution or taking any such proceeding as aforesaid shall be entitled to proceed with the same.

Application to registrar to cancel or modify certificate under 14 & 15 Geo. V. c. 38, s. 102.

25.—(1) Where a person desirous of levying a distress or an execution upon any goods or chattels belonging to an insured person in receipt of sickness benefit, and being on premises occupied by him, or of taking proceedings in ejectment or for the recovery of rent, or to enforce any judgment in ejectment against any such person, disputes the accuracy of a certificate of the medical

practitioner attending on such person granted to such person for the purpose of section 68 of the National Insurance Act, 1911, and sent to the insurance committee and recorded in manner provided by the said section, the following provisions shall apply.

Rule 25.

(2) The person disputing the accuracy of the certificate may apply to the registrar of the county court in the district of which the insured person resides for an order cancelling or modifying the certificate.

(3) The application may be made either in or out of court on notice in writing according to the form in the Appendix, which shall be filed with the registrar; and a copy thereof shall be served on the insured person two clear days at least before the hearing of the application, unless the registrar gives leave for shorter notice.

A copy of the certificate shall be filed with the notice of the application.

(4) On the hearing of the application evidence may be given on oath or affidavit, and the registrar may after hearing such evidence either dismiss the application or make an order cancelling or modifying the certificate, and may make such order and give such directions as may be just.

(5) The allowance of costs of and incidental to the application shall be in the discretion of the registrar.

(6) A sealed copy of the order made on the application shall be sent by post to the applicant and to the person insured, and to the insurance committee.

(7) Where a certificate is cancelled or modified, the applicant may, subject in any case in which the certificate is modified to any directions given by the order of the registrar, proceed as if the certificate had ceased to be in force.

26.—(1) Where a person desirous of levying such distress or execution or of taking such proceedings or enforcing such judgment as in the last preceding rule mentioned has demanded security for payment of rent thereafter to become due from the insured person, or of the amount of the judgment debt, as the case may be, and security is not given or offered, the person demanding security may, after the expiration of one month from the date of the grant of the original certificate, on proof being made to the satisfaction of the registrar of the county court in the district of which the insured person resides that security has been demanded and has not been given or offered, proceed as if the certificate had ceased to be in force.

Application to registrar to determine disputes as to sufficiency of security under 14 & 15 Geo. V. c. 38, s. 102.

(2) If security has been demanded and is given or offered, but any dispute arises as to the sufficiency of the security, either party may apply to the registrar of the county court in the district of which the insured person resides to determine such dispute, and in any such case the following provisions shall apply.

(3) The application may be made either in or out of court on notice in writing according to the form in the Appendix, which shall be filed with the registrar; and a copy thereof shall be served on the opposite party two clear days at least before the hearing of the application, unless the registrar gives leave for shorter notice.

(4) On the hearing of the application evidence may be given on oath or affidavit, and the registrar shall after hearing such

Rule 26. evidence determine the dispute, and may make such order and give such directions as may be just. If he declares the security offered to be insufficient, he may further declare what security would be sufficient.

(5) The allowance of costs of and incidental to the application shall be in the discretion of the registrar.

(6) A sealed copy of the order made on the application shall be sent by post to each party to the application.

(7) If the registrar declares the security offered to be insufficient, and further declares what security would be sufficient, then, if such security is not given, the person demanding security may, after the expiration of one month from the date of the grant of the original certificate, on proof being made to the satisfaction of the registrar that security has not been given, and subject to any directions given by the order of the registrar, proceed as if the certificate had ceased to be in force.

APPENDIX.

449.

Application for Cancellation or Modification of Certificate granted for the purpose of Section 102 of the National Health Insurance Act, 1924.

14 & 15 Geo. V.
c. 38, s. 102.
Order XLIIA.
Rule 25.

In the county court of holden at In the matter of the National Health Insurance Act, 1924, and in the matter of a certificate granted to of for the purpose of section 102 of the said Act.

TAKE NOTICE that of is desirous of levying a distress [or an execution] upon the goods and chattels belonging to of , an insured person in receipt of sickness benefit under the above-mentioned Act, and being on premises occupied by him [or of taking proceedings in ejectment or for the recovery of rent or to enforce a judgment in ejectment against of an insured person in receipt of sickness benefit under the above-mentioned Act]:

And that the said disputes the accuracy of a certificate dated the day of granted by of to the said for the purpose of section 102 of the above-mentioned Act and sent to the insurance committee and recorded in manner provided by the said section:

And that the said intends to apply to the registrar of the above-mentioned court at the court house [or the county court office] situate at on day the day of , at the hour of in the noon, for an order cancelling or modifying the said certificate.

Dated this day of

To

of

and to the registrar of the court.

450.

Order on Application for Cancellation or Modification of Certificate granted for the purpose of Section 102 of the National Health Insurance Act, 1924.

[Heading as in Form 449.]

Upon the application of of for an order cancelling or modifying a certificate dated the day of granted by of to 14 & 15 Geo.V. of , an insured person in receipt of sickness benefit under the c. 38, s. 102. above-mentioned Act for the purpose of section 102 of the said Act: Order XLIIA. And upon hearing the said and the said , and evidence on Rule 25. both sides [or as the case may be]:

I order that the said certificate be cancelled [or be modified as follows (state modification)]:

[Or I order that the said application be dismissed]:

If any order made as to costs, add:

And I order that the said do pay the said the sum of for his costs of and relating to the said application, and that the said do pay to the said the said sum of £ on the day of [or by instalments of for every days, the first instalment to be paid on the day of].

Dated this day of .

Registrar.

451.

Application for Settlement of Dispute as to Sufficiency of Security to be given pursuant to demand under Section 102 of the National Health Insurance Act, 1924.

In the county court of holden at .

In the matter of the National Health Insurance Act, 1924, and in the 14 & 15 Geo.V. matter of a demand for security made by of on of for c. 38, s. 102. security under section 102 of the said Act. Order XLIIA.

TAKE NOTICE, that a demand has been made by of on Rule 8. of under section 102 of the National Health Insurance Act, 1924, for proper security for the payment of rent thereafter to become due from the said to the said [or for the amount of a judgment debt of £ due from the said to the said]:

And that a dispute has arisen as to the sufficiency of the security offered by the said :

And that the said intends to apply to the registrar of the above-mentioned court at the court house [or the county court office] situate at on the day of , at the hour of in the noon, to determine the said dispute.

Dated this day of .

To [the opposite party] ;
and to the registrar of the court.

452.

Order on Application for Settlement of Dispute as to Sufficiency of Security to be given pursuant to Demand under Section 102 of the National Health Insurance Act, 1924.

[Heading as in Form 451.]

Upon the application of of for the determination of a dispute 14 & 15 Geo.V. as to the sufficiency of the security offered by of on demand made by c. 38, s. 102. of under section 102 of the National Health Insurance Act, 1924, Order XLIIA. R3.

on the said for proper security for payment of rent to become due from the said to the said [or for the amount of a judgment debt of £ due from the said to the said]:

And upon hearing the said and the said , and evidence on both sides [*or as the case may be*]:

I declare that the security offered by the said for the rent so to become due [or for the amount of the said judgment debt] is sufficient:

Or I declare that the security offered by the said for the rent so to become due [or for the amount of the said judgment debt] is insufficient [*add, if registrar so declares, but that the following security would be sufficient, viz. :—(state security)*]:

If any order made as to costs, add :

And I order that the said do pay to the said the sum of for his costs of and relating to the said application, and that the said do pay the said sum of to the said on the day of [or by instalments of for every days, the first payment to be made on the day of].

Dated this day of .

Registrar.

OATHS ACT, 1888.

COMMISSIONERS FOR OATHS ACT, 1889.

OATHS ACT, 1909.

[51 & 52 VICT. C. 46; 52 VICT. C. 10; 9 EDW. VII. C. 39.]

When affirmation may be made instead of oath.

1. Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath.

(Remainder of section repealed, see Perjury Act, 1911.)

Form of affirmation.

2. Every such affirmation shall be as follows:

“I, A.B., do solemnly, sincerely, and truly declare and affirm,” and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

Validity of oath not affected by absence of religious belief.

3. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief, shall not for any purpose affect the validity of such oath.

Form of affirmation in writing.

4. Every affirmation in writing shall commence “I, , of , do solemnly and sincerely affirm,” and the form in lieu of jurat shall be “Affirmed at , this day of 18 . Before me.”

5. If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question. Section 5.
Swearing
with uplifted
hand.

6. Repealed by Statute Law Revision Act, 1908.

7. This Act may be cited as the Oaths Act, 1888.

Short title.

[52 VICT. C. 10.]

2. Every person who, being an officer of or performing duties in relation to any court, is for the time being so authorised by a judge of the court, or by or in pursuance of any rules or orders regulating the procedure of the court, and every person directed to take an examination in any cause or matter in the Supreme Court, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties. Powers of
certain
officers of
court, etc., to
administer
oaths.

[9 EDW. VII. C. 39.]

1. This Act may be cited for all purposes as the Oaths Act, 1909; and the Oaths Act, 1888, and this Act may be cited together as the Oaths Acts, 1888 and 1909. Short title.
51 & 52 Vict.
c. 46.

2.—(1) Any oath may be administered and taken in the form and manner following:—
The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words “I swear by Almighty God that”, followed by the words of the oath prescribed by law. Manner of
administra-
tion of oaths.

(2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question:

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful.

3. In this Act the word “officer” shall mean and include any and every person duly authorised to administer oaths. Definition.

4.—This Act shall not apply to Scotland.

Extent.

OPEN SPACES ACT, 1906.

[6 EDW. VII. c. 25.]

Jurisdiction.—Trustees for charitable purposes of open spaces are, in certain cases, empowered to convey or demise them to the local authority in which they are wholly or partially situate to be held as open spaces. The sanction of the court is necessary in some cases, and this may be obtained either in the High Court, or the county court of the district in which the whole or part of any open space may be situated. What is an open space is defined by sect. 20.

Practice.—The application to the court is by petition of the trustees, and the procedure to be followed is set out in Rule 18 of Order L., *post*, p. 2293 (see also sect. 4, sub-s. 3).

LOCAL AUTHORITIES.

Local
authorities.

1. Each of the following bodies shall be a local authority for the purposes of this Act, namely—

The council of any county, of any municipal or metropolitan borough, or of any district :

The common council of the city of London :

Any parish council invested with the powers of this Act by an order of the council of the county within which the parish is situate.

Transfer by
charity
trustees of
open space
to local
authority.

4.—(1) Where an open space is vested in trustees, other than such as are mentioned in the foregoing provisions of this Act, for any charitable purpose and as part of their trust estate, and it appears to the majority of the trustees that the open space is no longer required for the purposes of their trust, or may with advantage to the trust be dealt with under this section, the trustees may, in pursuance of a special resolution, and where the open space is subject to the Charitable Trusts Acts, 1853 to 1894, with such authority or approval as is required by those Acts for a sale of the open space, and in other cases in pursuance of an order of the court to be obtained as hereinafter provided, convey or demise the open space to any local authority on such terms as they may agree, and the local authority shall thenceforth be entitled to hold the same as an open space on the terms and under the conditions specified in the conveyance or demise, or on such terms or under such conditions as may be so authorised or approved, or as the court may from time to time order, as the case may be.

(2) The court for the purposes of this section shall be either the High Court or the county court of the district in which the whole or any part of the open space is situate.

(3) An order of the court for the purposes of this section may be made upon application by the trustees, in manner directed by rules of court, and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice to be given to such persons, as to the court seem expedient, and may make such order thereon as in the discretion of the court appears proper.

* * * * *

20. In this Act, unless the context otherwise requires— Section 20.
 The expression “open space” means any land, whether Definitions.
 inclosed or not, on which there are no buildings or of which
 not more than one-twentieth part is covered with buildings,
 and the whole or the remainder of which is laid out as a
 garden or is used for purposes of recreation, or lies waste
 and unoccupied.

COUNTY COURT RULES. ORDER L. RULE 18.

An application to the court under the Open Spaces Act, 1906, shall be made by petition intituled in the matter of the Act and of the open space, in respect of which the application is made; and the same procedure shall be followed and the same costs allowed as on any other petition to the court, the annual value of the open space being treated as the basis for determining the scale of costs. Application under 6 Edw. VII. c.25.

PARLIAMENTARY ELECTIONS (RETURNING OFFICERS) ACT, 1875, AND AMENDMENT ACT, 1886. LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

[38 & 39 VICT. c. 84; 49 & 50 VICT. c. 57; 51 & 52 VICT. c. 41.]

The sections and schedules attached have been repealed as to Parliamentary elections by the Representation of the People Act, 1918, but are all still applicable to municipal elections. For Rules of Procedure, see C. C. Rules, Order 43, rr. 1—8, *post*, p. 2300.

Jurisdiction.]—The county court has jurisdiction in the taxation of the charges of returning officers at municipal elections, but no longer of the returning officers at Parliamentary elections, unless called upon by the Treasury to tax such costs under sect. 29 of the Representation of the People Act, 1918, see *post*, p. 2337.

38 & 39 VICT. c. 84.

1. The Ballot Act, 1872, as modified by this Act, and this Act shall be construed as one Act. Construction of Act.

This Act shall apply only to parliamentary elections.

2. The returning officer at an election shall be entitled to his reasonable charges, not exceeding the sums mentioned in the first schedule to this Act, in respect of services and expenses of the several kinds mentioned in the said schedule, which have been properly rendered or incurred by him for the purposes of the election. Payments to returning officers.

The amount of such charges shall be paid by the candidates at the election in equal several shares, or where there is only one candidate, by such candidate. If a candidate is nominated without his consent, the persons by whom his nomination is subscribed shall be jointly and severally liable for the share of the charges for which he would be liable if he were nominated with his consent.

A returning officer shall not be entitled to payment for any other services or expenses, or at any greater rates than as in the

Section 2. said schedule mentioned, any law or usage to the contrary notwithstanding.

* * * * *

The accounts of a returning officer may be taxed. 4. Within twenty-one days after the day on which the return is made of the persons elected at the election, the returning officer shall transmit to every candidate or other person from whom he claims payment either out of any deposit or otherwise of any charges in respect of the election, or to the agent for election expenses of any such candidate, a detailed account showing the amounts of all the charges claimed by the returning officer in respect of the election, and the share thereof which he claims from the person to whom the account is transmitted. He shall annex to the account a notice of the place where the vouchers relating to the account may be seen, and he shall at all reasonable times and without charge allow the person from whom payment is claimed, or any agent of such person, to inspect and take copies of the vouchers.

The returning officer shall not be entitled to any charges which are not duly included in his account.

If the person from whom payment is claimed objects to any part of the claim, he may, at any time within fourteen days from the time when the account is transmitted to him, apply to the court as defined in this section for a taxation of the account, and the court shall have jurisdiction to tax the account in such manner and at such time and place as the court thinks fit, and finally to determine the amount payable to the returning officer and to give and enforce judgment for the same as if such judgment were a judgment in an action in such court, and with or without costs at the discretion of the court.

The court for the purposes of this Act shall be in the city of London the Lord Mayor's court, and elsewhere in England the county court, and in Ireland the civil bill court, having jurisdiction at the place of nomination for the election to which the proceedings relate.

The court may depute any of its powers or duties under this Act to the registrar or other principal officer of the court.

Nothing in this section shall apply to the charge of the returning officer for publication of accounts of election expenses.

By the 46 & 47 Vict. c. 51, s. 32 (Corrupt and Illegal Practices Prevention Act, 1883), it is provided that, "The amount of the charges claimed by the returning officer in the case of a candidate and transmitted in pursuance of sect. 4 of the Parliamentary Elections (Returning Officers) Act, 1875, shall be transmitted within the time specified in the said section to the election agent of the candidate, and need not be transmitted to the candidate."

Claims
against a
returning
officer.

5. Every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election, except for publication of accounts of election expenses, shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

Section 5.

Where application is made for taxation of the accounts of a returning officer, he may apply to the court as defined in this Act to examine any claim transmitted to him by any person in pursuance of this section, and the court after notice given to such person, and after hearing him, and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs, and the determination of the court shall be final for all purposes, and as against all persons.

6. In any case to which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the court, upon taxation of his accounts, shall have regard to the provisions of this section. Use of ballot boxes, etc., provided for municipal elections.

7. There shall be added to every notice of election to be published under the provisions of the Ballot Act, 1872, the notification contained in the second schedule to this Act with respect to claims against returning officers. Notices to be given by returning officers.

8. Nothing in this Act shall apply to an election for any university or combination of universities. Savings of the universities.

FIRST SCHEDULE (c).

CHARGES OF RETURNING OFFICERS.

The following are the maximum charges to be made by the returning officer, but the charges are in no case to exceed the sums actually and necessarily paid or payable.

PART I.

COUNTIES AND DISTRICT OR CONTRIBUTORY BOROUGHES.

This part of this Schedule applies to an election for a county, or for either of the boroughs of Aylesbury, Cricklade, Monmouth, East Retford, Stroud, and New Shoreham, or for any borough or burgh consisting of a combination of separate boroughs, burghs or towns.

For preparing and publishing the notice of election	£	s.	d.
	2	2	0
For preparing and supplying the nomination papers	1	1	0
For travelling to and from the place of nomination, or of declaring the poll at a contested election, per mile	0	1	0
For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings	The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.		

NOTE.—(c) Notwithstanding the scales contained in the first schedule, "it shall be lawful in any county constituency in England for the returning officer to charge four guineas for each presiding officer, and thirty shillings for each clerk at a polling station" (48 & 49 Vict. c. 62, s. 4).

FIRST SCHEDULE—*continued.*

	£	s.	d.
For constructing a polling station, with its fittings and compartments, in England	7	7	0
And in Ireland the sum or sums payable under the provisions of the 13th and 14th Victoria, chap. 68, and 35th and 36th Victoria, chap. 33.			
In Ireland the returning officer shall use a court house where one is available as a polling station, and his maximum charge for using and fitting the same shall in no case exceed three pounds three shillings.			
For each ballot box required to be purchased . .	1	1	0
For the use of each ballot box, when hired . .	0	5	0
For stationery at each polling station	0	10	0
For printing and providing ballot papers, per thousand	1	10	0
For each stamping instrument	0	10	0
For copies of the register			
The sums payable by statute for the necessary copies.			
	£	s.	d.
For each presiding officer	3	3	0
For one clerk at each polling station where not more than 500 voters are assigned to such station	1	1	0
For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the first 500 assigned to such polling station	1	1	0
For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors	1	1	0
For making the return to the clerk of the Crown	1	1	0
For the preparation and publication of notices (other than the notice of election).			
Not exceeding for the whole of such notices 20 <i>l.</i> , and 1 <i>l.</i> for every additional 1,000 electors above 3,000.			
	£	s.	d.
For conveyance of ballot boxes from the polling stations to the place where the ballot papers are to be counted, per mile	0	1	0
For professional and other assistance in and about the conduct of the election.			
In a contested election not exceeding 25 <i>l.</i> , and an additional 3 <i>l.</i> for every 1,000 registered electors or fraction thereof above 3,000 and up to 10,000, and 2 <i>l.</i> for every 1,000 or fraction thereof above 10,000. In an uncontested election, one fifth of the above sums.			
	£	s.	d.
For travelling expenses of presiding officers and clerks, per mile.	0	1	0

FIRST SCHEDULE—*continued.*

	£	s.	d.
For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate	2	2	0
For all other expenses	In a contested election not exceeding 10 <i>l.</i> , and an additional 1 <i>l.</i> for every 1,000 electors or fraction thereof above 1,000. In an uncontested election, nil.		

NOTE.—*Travelling expenses are not to be allowed in the case of any person unless for distances exceeding two miles from the place at which he resides.*

PART II.

BOROUGHES.

This part of the Schedule applies to all boroughs not included in Part I. of this Schedule.

	£	s.	d.
For preparing and publishing the notice of election	2	2	0
For preparing and supplying the nomination papers	1	1	0
For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings.	The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.		
In England, for constructing a polling station, with its fittings and compartments, not exceeding two in number	7	7	0
For each compartment required to be constructed, when more than two be used	1	1	0
For the use of each compartment hired, when more than two are used	0	5	0
And in Ireland, in lieu of the charges payable in respect of the foregoing last three services, the sum or sums payable under the provisions of 13th and 14th Victoria chap. 68, and 35th and 36th Victoria, chap. 33.			
For each ballot box required to be purchased	1	1	0
For the use of each ballot box, when hired	0	5	0
For stationery at each polling station	0	10	0
For printing and providing ballot papers, per thousand	1	10	0
For each stamping instrument	0	10	0
For copies of the register	The sums payable by statute for the necessary copies.		

FIRST SCHEDULE—*continued.*

	£	s.	d.
For each presiding officer	3	3	0
For one clerk at each polling station where not more than 500 voters are assigned to such station	1	1	0
For an additional clerk at a polling station for every number of 500 voters or fraction thereof beyond the first 500 assigned to such station	1	1	0
For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors	1	1	0
For making the return to the clerk of the Crown	1	1	0
For the preparation and publication of notices (other than the notice of election).	Not exceeding for the whole of such notices 10 <i>l.</i> , and 1 <i>l.</i> for every additional 1,000 electors above 1,000.		
For professional and other assistance in and about the conduct of the election.	In a contested election, not exceeding 20 <i>l.</i> , an additional 2 <i>l.</i> for every 1,000 registered electors or fraction thereof above 1,000 and up to 10,000, and 1 <i>l.</i> additional for every 1,000 or fraction thereof above 10,000. In an uncontested election one fifth of the above sum.		
For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate	£	s.	d.
For all other expenses	1	1	0
	Not exceeding 10 <i>l.</i> , and an additional 1 <i>l.</i> for every 1,000 electors above the first 1,000.		

NOTE TO PARTS I. AND II. OF SCHEDULE I.

The above sums are the aggregate charges, the amount of which is to be apportioned among the several candidates or other persons liable for the same.

SECOND SCHEDULE.

1. NOTIFICATION TO BE ADDED TO THE NOTICE OF ELECTION.

Take notice, that by the Parliamentary Elections (Returning Officers) Act, 1875, it is provided that every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election (except for publications of account of election expenses), shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the

returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

THIRD SCHEDULE.

MAXIMUM AMOUNT OF SECURITY WHICH MAY BE REQUIRED BY A RETURNING OFFICER.

	County or District of Contributory Borough.	Borough.
	£	£
Where the registered electors do not exceed 1,000 .	150	100
Where the registered electors exceed 1,000 but do not exceed 2,000	200	150
Where the registered electors exceed 2,000 but do not exceed 4,000	275	200
Where the registered electors exceed 4,000 but do not exceed 7,000	400	250
Where the registered electors exceed 7,000 but do not exceed 10,000	550	300
Where the registered electors exceed 10,000 but do not exceed 15,000	700	450
Where the registered electors exceed 15,000 but do not exceed 20,000	800	500
Where the registered electors exceed 20,000 but do not exceed 30,000	900	600
Where the registered electors exceed 30,000	1,000	700

If at the end of the two hours appointed for the election, not more candidates stand nominated than there are vacancies to be filled up, the maximum amount which may be required is *one fifth of the maximum according to the above scale.*

“Twenty-five pounds” is now substituted for the words printed in italics (48 & 49 Vict. c. 62, s. 2).

PARLIAMENTARY ELECTIONS AMENDMENT ACT, 1886.

[49 & 50 VICT. c. 57.]

1. The judge or officer by whom any account or claim is taxed or examined under the Parliamentary Elections (Returning Officers) Act, 1875 (herein called the “principal Act”), shall deliver to the returning officer, and to the other party to the taxation or examination, a certificate showing the items and amounts allowed or disallowed, with a copy of any order or judgment made thereon. Review of taxation. 38 & 39 Vict. c. 84.

Either party may, within seven days of the delivery to him of such certificate, give notice in writing to the said judge or officer of intention to appeal, specifying in the notice the items and amounts in respect of which he intends to appeal.

Section 1.

The said judge or officer shall thereupon forthwith transmit to the prescribed taxing officer of the superior court the said account or claim, with any vouchers relating thereto, the certificate and the notice of appeal, and such taxing officer shall forthwith proceed to review the taxation or examination in the usual manner, or in such manner as may be prescribed, and shall, if required, receive evidence in relation to the matters in dispute, and may confirm or vary the certificate, and direct by whom all or any part of the costs of review are to be paid, and shall return the certificate as confirmed or varied to the said judge or officer with any such direction, and effect shall be given to a certificate as so confirmed or varied, and to any such direction, as if the same had been a judgment of the court as defined in the principal Act.

Any taxation or review of taxation under this Act shall be subject to appeal to the superior court in like manner as any ordinary taxation of costs is now subject.

In this Act "superior court" means in England the Queen's Bench Division of the High Court of Justice in England, and in Ireland the Common Pleas Division of the High Court of Justice in Ireland. "Prescribed" means prescribed by rules of the superior court in England or Ireland, as the case may be.

Short title.

2. This Act may be cited as the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, and shall be read as one with the principal Act.

LOCAL GOVERNMENT ACT, 1888.

[51 & 52 VICT. c. 41.]

* * * * *

75.—(19) Sections 4, 5, 6 and 7 of the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, shall apply as if they were herein re-enacted with the necessary modifications, and in particular with the substitution of the county council for the person from whom payment is claimed and of one month for the period of fourteen days within which application may be made for taxation.

COUNTY COURT RULES. ORDER XLIII.

TAXATION OF CHARGES OF RETURNING OFFICERS. THE PARLIAMENTARY ELECTIONS (RETURNING OFFICERS) ACT, 1875. THE LOCAL GOVERNMENT ACT, 1888, s. 75, SUB-S. 19.

Application
for taxation
of costs of
election.

38 & 39 Vict.
c. 84.

51 & 52 Vict.
c. 41, s. 75,

sub-s. 19.
Form 423.

Notice of

1. An application to the court to tax the charges of any returning officer in respect of any election, under the Parliamentary Elections (Returning Officers) Act, 1875, or any Act applying to the said Act, or under any other Act providing for the taxation by the court of costs of elections, shall be made in writing according to the form in the Appendix, and shall state on whose behalf the application is made, and shall contain a submission on the part of the applicant to pay what shall be found to be due on taxation.

2. On receipt of such application the court shall fix a place and time for proceeding with such taxation, and the registrar shall issue to the bailiff for

service on the applicant and the officer whose account is to be taxed a notice according to the form in the Appendix, signed by the registrar himself, and under the seal of the court, stating the place, day, and hour at and on which the taxation will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend, in person or by their solicitors, such order will be made and such proceedings taken as to the court shall seem just.

Rule 2.

time for
taxation.
Form 424.

3. Where application is made for taxation of the charges of a returning officer, and such officer applies to the court to examine any claim transmitted to him by any person pursuant to section 5 of the Parliamentary Elections (Returning Officers) Act, 1875, or any Act applying the said section, such application shall be in writing according to the form in the Appendix, and shall contain a submission on the part of the applicant to pay what shall be found due on examination.

Application
for examina-
tion of claim
transmitted
to returning
officer.

38 & 39 Vict.
c. 84, s. 5.

4. On receipt of any such application the court shall fix a place and time for such examination, which shall take place before the taxation of the charges of the returning officer is concluded, and such taxation shall, if necessary, be adjourned until such examination has been completed. The registrar shall issue to the bailiff for service on the returning officer and the person by whom the claim was transmitted to the returning officer a notice according to the form in the Appendix, signed by the registrar himself and under the seal of the court, stating the place, day, and hour at and on which such examination will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend, in person or by their solicitors, such order will be made and such proceedings taken as to the court shall seem just.

Form 426.

Notice of
time and
place for
examina-
tion.

Form 427.

5. The bailiff shall serve all copies of such notices as hereinbefore mentioned ten clear days at least before the day fixed for any taxation or examination in accordance with the rules as to service of ordinary summonses.

Service of
notices.

6. Unless by consent, or otherwise ordered, oral evidence only shall be admitted on such taxation or examination.

Evidence to
be oral.

7. The order made on any taxation or examination shall determine the amount payable to or by the returning officer, and shall contain directions as to fees and costs and as to the addition to the sum allowed to any party of any costs adjudged to be paid to him, or the set-off against such sum of any costs adjudged to be paid by him, and as to the payment of the balance ascertained to be due from any party to any other, and the application of any sum deposited by any party to the proceedings with the returning officer as security for his charges, or advanced to the returning officer on account of his charges; and such order shall be according to such of the forms in the Appendix as shall be applicable to the case, with such variations as circumstances may require.

Order on
taxation or
examination
of claim.

Forms 425,
428.

8. The certificate to be delivered under sect. 1 of the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, shall be according to the form in the Appendix.

under
49 & 50 Vict.
c. 57, s. 1.

NOTE.—These rules are not to apply to the taxation of the charges of Returning Officers under the Representation of the People Act, 1918, sect. 29; Rules 9 to 19, which do apply, and forms 423 to 429, are printed, *post*, under that section.

Form 429

PARTITION ACTS, 1868, 1876.

[31 & 32 VICT. C. 40 ; 39 & 40 VICT. C. 17.]

The whole of the Partition Acts have been repealed by the Law of Property Act, 1925 (15 Geo. V. c. 20) without prejudice to proceedings commenced thereunder before 1st of January, 1926. They are consequently omitted in this edition, together with the rules and forms made thereunder.

THE PERJURY ACT, 1911.

[1 & 2 GEO. V. c. 6.]

NOTE.—A county court is a court of record.

Power to
direct a
prosecution
for perjury.

9.—(1) Where any of the following authorities, namely, a judge of, or person presiding in, a court of record or a petty sessional court, or any justice of the peace sitting in special sessions, or any sheriff or his lawful deputy before whom a writ of inquiry or a writ of trial is executed, is of opinion that any person has, in the course of a proceeding before that authority, been guilty of perjury, the authority may order the prosecution of that person for such perjury, in case there shall appear to be reasonable cause for such prosecution, and may commit him, or admit him to bail, to take his trial at the proper court, and may require any person to enter into a recognizance to prosecute or give evidence against the person whose prosecution is so ordered, and may give the person so bound to prosecute a certificate of the making of the order for the prosecution, for which certificate no charge shall be made.

(2) An order made or a certificate given under this section shall not be given in evidence for the purpose or in the course of any trial of a prosecution resulting therefrom.

PETROLEUM (CONSOLIDATION) ACT, 1928.

[18 & 19 GEO. V. c. 32.]

See *ante*, p. 2009.

PHARMACY ACTS, 1852, 1868, 1869.

POISONS AND PHARMACY ACT, 1908.

[15 & 16 VICT. C. 56 ; 31 & 32 VICT. C. 121 ; 32 & 33 VICT. C. 117 ; 8 EDW. VII. C. 55.]

These Acts were passed to cause persons entitled to use the name or title of pharmaceutical chemist to be registered ; to prevent unregistered persons from using such title, and to control the sale of poisons.

Jurisdiction of the county court is exclusive in actions brought to recover penalties of *5l.* each, under sect. 12 of the 1852 Act, against persons not duly registered, for assuming or using the title of pharmaceutical chemist, or any name, title, or sign implying the same; of like sums under sect. 15 of the 1868 Act, for selling or keeping an open shop for the sale of poisons, or for using the title of chemist or druggist, not being a duly registered pharmaceutical chemist; of a like sum under sect. 3 of the 1908 Act, for being a duly registered pharmaceutical chemist, not by himself or by a duly registered chemist conducting the said business; the name of such duly registered chemist, by whom the business is being conducted, must be conspicuously exhibited on the premises.

The schedule to the Act of 1908 specifies the articles to be deemed poisons within the Act, and by the said Act, is substituted for Schedule A to the Act of 1868.

Practice.—Such penalties may be recovered by the registrar appointed by the council of the society, in the name and by the authority of such council in England and Wales by plaint and summons (sect. 12 of the 1852 Act). The action should be brought in the district in which the defendant dwells or carries on business, and may not be brought after the expiration of six months from the date of the offence (sect. 13, *infra*). The proceedings will follow the ordinary practice of the court. No special rules.

Costs.—In every action, the party who shall prevail shall recover his full costs of suit (sect. 13, *infra*).

15 & 16 VICT. c. 56.

7. The registrar to be appointed under or by virtue of this Act shall be bound, on the application of any person paying one shilling, to certify under his hand whether or no any person whose name and address shall be furnished to him appears in the said register or is a member of the Pharmaceutical Society of Great Britain or not; and the certificate of such registrar, signed by the said registrar, and countersigned by the president or two members of the council of the said society, shall, in the absence of evidence to the contrary, be sufficient evidence of the facts therein stated up to the date of the said certificate.

Registrar bound to certify, etc., and his certificate good evidence in absence of the contrary.

* * * * *

12. From and after the passing of this Act, it shall not be lawful for any person, not being duly registered as a pharmaceutical chemist according to the provisions of this Act, to assume or use the title of pharmaceutical chemist or pharmacist in any part of Great Britain, or to assume, use, or exhibit any name, title, or sign implying that he is registered under this Act, or that he is a member of the said society; and if any person, not being duly registered under this Act, shall assume or use the title of pharmaceutical chemist or pharmacist, or shall use, assume, or exhibit any name, title, or sign implying that he is a person registered under this Act, or that he is a member of the said society, every such person shall be liable to a penalty of five pounds; and such penalty may be recovered by the registrar to be appointed under this Act, in the name and by the authority of the council of the said society, in manner following; (that is to say,)

Persons not duly registered shall not assume or use name or title of pharmaceutical chemist, or any name, title, or sign implying the same.

Penalty on persons offending.

In England or Wales, by plaint under the provisions of any Act in force for the more easy recovery of small debts and demands:

Penalties, how recoverable in England and Wales.

* * * * *

Section 13.

Limitation
for recovery
of penalties,
etc.

Application
of penalties.

13. Provided always, that no action or other proceeding for any offence under this Act shall be brought after the expiration of six months from the commission of such offence; and in every such action or proceeding the party who shall prevail shall recover his full costs of suit or of such other proceedings.

14. All and every sums and sum of money which shall arise from any conviction and recovery of penalties for offences incurred under this Act shall be paid as the Commissioners of Her Majesty's Treasury shall direct.

31 & 32 VICT. c. 121.

Persons
selling or
compounding
poisons, or
assuming
the title of
chemist and
druggist, to
be qualified.

1. From and after the thirty-first day of December one thousand eight hundred and sixty-eight it shall be unlawful for any person to sell or keep open shop for retailing, dispensing, or compounding poisons, or to assume or use the title "chemist and druggist," or chemist or druggist, or pharmacist, or dispensing chemist or druggist, in any part of Great Britain, unless such person shall be a pharmaceutical chemist, or a chemist and druggist within the meaning of this Act, and be registered under this Act, and conform to such regulations as to the keeping, dispensing, and selling of such poisons as may from time to time be prescribed by the Pharmaceutical Society with the consent of the Privy Council.

Articles
named in
Schedule (A)
to be deemed
poisons with-
in the mean-
ing of this
Act.

2. The several articles named or described in the Schedule (A) shall be deemed to be poisons within the meaning of this Act, and the council of the Pharmaceutical Society of Great Britain (hereinafter referred to as the Pharmaceutical Society) may from time to time, by resolution, declare that any article in such resolution named ought to be deemed a poison within the meaning of this Act; and thereupon the said society shall submit the same for the approval of the Privy Council, and if such approval shall be given, then such resolution and approval shall be advertised in the *London Gazette*, and on the expiration of one month from such advertisement the article named in such resolution shall be deemed to be a poison within the meaning of this Act.

By sect. 1 of the 1908 Act (*post*) this Schedule (A) has been repealed, and the schedule to the 1908 Act substituted therefor. As to veterinary surgeons, see Pharmacy Act, 1869, s. 1.

Protection
of titles, and
restrictions
on sale of
poisons.

15. From and after the thirty-first day of December one thousand eight hundred and sixty-eight any person who shall sell or keep an open shop for the retailing, dispensing, or compounding poisons, or who shall take, use, or exhibit the name or title of chemist and druggist, or chemist or druggist, not being a duly registered pharmaceutical chemist, or chemist and druggist, or who shall take, use, or exhibit the name or title pharmaceutical chemist, pharmaceutist, or pharmacist, not being a pharmaceutical chemist, or shall fail to conform with any regulation as to the keeping or selling of poisons made in pursuance of this Act, or who shall compound any medicines of the British Pharmacopoeia except according to the formularies of the said pharmacopoeia, shall for every such offence be liable to pay a penalty or sum of five pounds, and the same may be sued for, recovered, and dealt with in the manner provided by the Pharmacy Act for the recovery

of penalties under that Act; but nothing in this Act contained shall prevent any person from being liable to any other penalty, damages, or punishment to which he would have been subject if this Act had not passed. Section 15.

This section, and sect. 16, amended by sect. 3, Poisons and Pharmacy Act 1908. The prohibition against the sale of poisons extends to the sale of a compound containing a scheduled poison (*Pharmaceutical Society v. Piper & Co.*, (1893) 1 Q. B. 686; 62 L. J. Q. B. 305). A defendant may be liable under this section, though he is also liable under sect. 17 (*Pharmaceutical Society v. Jacks*, (1911) 2 K. B. 115; 80 L. J. K. B. 767). Not sufficient to prove an infinitesimally small quantity of poison in the compound sold (*Pharmaceutical Society v. Armson*, (1894) 2 Q. B. 720; 64 L. J. Q. B. 32; *Pharmaceutical Society v. Delve*, (1894) 1 Q. B. 71; 63 L. J. Q. B. 360). An unregistered assistant who sells in the absence of his master is liable though the master be registered (*Pharmaceutical Society v. Wheeldon*, (1890) 24 Q. B. D. 683; 59 L. J. Q. B. 400).

16. Nothing hereinbefore contained shall extend to or interfere with the business of any legally qualified apothecary or of any member of the Royal College of Veterinary Surgeons of Great Britain, nor with the making or dealing in patent medicines, nor with the business of wholesale dealers in supplying poisons in the ordinary course of wholesale dealing; and upon the decease of any pharmaceutical chemist or chemist and druggist actually in business at the time of his death it shall be lawful for any executor, administrator, or trustee of the estate of such pharmaceutical chemist or chemist and druggist to continue such business if and so long only as such business shall be *bonâ fide* conducted by a duly qualified assistant, and a duly qualified assistant within the meaning of this clause shall be a pharmaceutical chemist or a chemist and druggist registered by the registrar under the Pharmacy Act or this Act: Provided always, that registration under this Act shall not entitle any person so registered to practise medicine or surgery, or any branch of medicine or surgery. Reserving rights of certain persons.

This section and sect. 15 amended by sect. 3, Poisons and Pharmacy Act, 1908, 8 Edw. VII., c. 55, *see post*, p. 2306.

* * * * *

SCHEDULE F.

Date.	Name and Address of Purchaser.	Name and Quantity of Poison Sold.	Purpose for which it is required.	Signature of Purchaser.	Signature of Person introducing Purchaser.

32 & 33 VICT. c. 117.

1. Nothing contained in the first fifteen sections of the recited Act shall affect any person who has been registered as a legally qualified medical practitioner before the passing of this Act, Reserving rights of certain persons.

Section 1. and the said clauses shall not apply to any person who may hereafter be registered as a legally qualified practitioner, and who, in order to obtain his diploma for such registration, shall have passed an examination in pharmacy; nor shall the said clauses prevent any person who is a member of the Royal College of Veterinary Surgeons of Great Britain, or holds a certificate in veterinary surgery from the Highland and Agricultural Society of Scotland, from dispensing medicines for animals under his care.

* * * * *

Excepting medicine supplied by a legally qualified medical man. **3.** Nothing contained in section seventeen of the said recited Act shall apply to any medicine supplied by a legally qualified medical practitioner to his patient or dispensed by any person registered under the said Act, provided such medicine be distinctly labelled with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book to be kept by the seller for that purpose.

* * * * *

Schedule (F) amended. **5.** Schedule (F) of the said recited Act is hereby altered by substituting for the second column headed "Name of Purchaser" a column headed "Name and Address of Purchaser."

8 EDW. VII. c. 55 (1908).

Amendment of 31 & 32 Vict. c. 121, schedule A. **1.—(1)** Schedule A to the Pharmacy Act, 1868 (which specifies the articles to be deemed poisons within the meaning of that Act), is hereby repealed, and the schedule to this Act shall be substituted therefor.

(2) The schedule to this Act may be amended by adding thereto or removing therefrom any article, or by transferring any article from one part of the schedule to the other in the manner provided by section two of the Pharmacy Act, 1868, for adding to the list of articles deemed to be poisons within the meaning of that Act.

* * * * *

Amendment of 31 & 32 Vict. c. 121, ss. 15, 16. **3.—(1)** Any person who, being a duly registered pharmaceutical chemist or chemist and druggist, carries on the business of pharmaceutical chemist or chemist and druggist shall, unless in every premises where the business is carried on the business is *bonâ fide* conducted by himself or some other duly registered pharmaceutical chemist or chemist and druggist, as the case may be, and unless the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises, be guilty of an offence under section fifteen of the Pharmacy Act, 1868.

(2) The provisions of section sixteen of the Pharmacy Act, 1868, which enable the executor, administrator, or trustee of the estate of a deceased pharmaceutical chemist or chemist and druggist to continue his business so long as such business is *bonâ fide* conducted by a duly qualified assistant, shall be construed as enabling such executor, administrator, or trustee to carry on the business if and so long only as, in every premises where the business is carried on, the business is *bonâ fide* conducted by a duly registered pharmaceutical chemist or chemist and druggist, as the case may

Section 3.
—

be, and the name and certificate of qualification of the person by whom the business is so conducted in any premises is conspicuously exhibited in the premises.

(3) A registered chemist or druggist may notwithstanding anything in section fifteen of the Pharmacy Act, 1868, take, use, or exhibit the name or title of pharmacist.

(4) A body corporate, and in Scotland a firm or partnership, may carry on the business of a pharmaceutical chemist or chemist and druggist—

(a) if the business of the body corporate, firm, or partnership, so far as it relates to the keeping, retailing, and dispensing of poisons, is under the control and management of a superintendent who is a duly registered pharmaceutical chemist or chemist and druggist, whose name has been forwarded to the registrar appointed under the Pharmacy Act, 1852, to be entered by him in a register to be kept for that purpose, and who does not act at the same time in a similar capacity for any other body corporate, firm, or partnership; and

(b) if in every premises where such business as aforesaid is carried on, and is not personally conducted by the superintendent, such business is *bonâ fide* conducted under the direction of the superintendent by a manager or assistant who is a duly registered pharmaceutical chemist or chemist and druggist, and whose certificate of qualification is conspicuously exhibited in the shop or other place in which he so conducts the business.

A body corporate, and in Scotland a firm or partnership, may use the description of chemist and druggist, or of chemist or of druggist, or of dispensing chemist or druggist, if the foregoing requirements as to the carrying on of the business are observed, and if the superintendent is a member of the board of directors or other governing body of the body corporate, or of the firm or partnership, as the case may be.

Subject as aforesaid, section twelve of the Pharmacy Act, 15 & 16 Vict. 1852, and sections one and fifteen of the Pharmacy Act, 1868, c. 56. shall apply to a body corporate, and in Scotland to a firm or partnership, in like manner as they apply to an individual.

5.—(1) It shall not be lawful to sell any substance to which this section applies by retail, unless the box, bottle, vessel, wrapper, or cover in which the substance is contained is distinctly labelled with the name of the substance and the word “poisonous,” and with the name and address of the seller of the substance, and unless such other regulations as may be prescribed under this section by Order in Council are complied with; and, if any person sells any such substance otherwise than in accordance with the provisions of this section or of any Order in Council made thereunder, he shall, on conviction under the Summary Jurisdiction Acts, be liable for each offence to a fine not exceeding five pounds.

Restrictions
on sale of
certain
poisonous
substances.

(2) The substances to which this section applies are sulphuric acid, nitric acid, hydrochloric acid, soluble salts of oxalic acid, and such other substances as may for the time being be prescribed by Order in Council under this section.

SCHEDULE.

PART I.

- Arsenic, and its medicinal preparations.
- Aconite, aconitine, and their preparations.
- Alkaloids—all poisonous vegetable alkaloids not specifically named in this schedule, and their salts, and all poisonous derivatives of vegetable alkaloids
- Atropine, and its salts, and their preparations.
- Belladonna, and all preparations or admixtures (except belladonna plaisters) containing 0·1 or more per cent. of belladonna alkaloids.
- Cantharides, and its poisonous derivatives.
- Coca, any preparation or admixture of, containing 1 or more per cent. of coca alkaloids.
- Corrosive sublimate.
- Cyanide of potassium, and all poisonous cyanides and their preparations.
- Emetic tartar, and all preparations or admixtures containing 1 or more per cent. of emetic tartar.
- Ergot of rye, and preparations of ergots.
- Nux vomica, and all preparations or admixtures containing 0·2 or more per cent. of strychnine.
- Opium, and all preparations or admixtures containing 1 or more per cent. of morphine.
- Picrotoxin.
- Prussic acid, and all preparations or admixtures containing 0·1 or more per cent. of prussic acid.
- Savin, and its oil, and all preparations or admixtures containing savin or its oil.

PART II.

- Almonds, essential oil of (unless deprived of prussic acid).
- Antimonial wine.
- Cantharides, tincture and all vesicating liquid preparations or admixtures of.
- Carbolic acid, and liquid preparations of carbolic acid, and its homologues containing more than 3 per cent. of those substances, except preparations for use as sheep wash or for any other purpose in connection with agriculture or horticulture, contained in a closed vessel distinctly labelled with the word "Poisonous," the name and address of the seller, and a notice of the special purposes for which the preparations are intended.
- Chloral hydrate.
- Chloroform, and all preparations or admixtures containing more than 20 per cent. of chloroform.
- Coca, any preparation or admixture of, containing more than 0·1 per cent., but less than 1 per cent. of coca alkaloids.
- Digitalis.
- Mercuric iodide.
- Mercuric sulphocyanide.
- Oxalic acid.
- Poppies, all preparations of, excepting red poppy petals and syrup of red poppies (*papaver rhæas*).
- Precipitate red, and all oxides of mercury.
- Precipitate white.
- Strophanthus.
- Sulphonal.
- All preparations or admixtures which are not included in Part I. of this schedule, and contain a poison within the meaning of the Pharmacy Acts, except preparations or admixtures the exclusion of which from this schedule is indicated by the words therein relating to carbolic acid, chloroform, and coca, and except such substances as come within the provisions of section five of this Act.

PLACES OF WORSHIP (ENFRANCHISEMENT) ACT, 1920.

[10 & 11 GEO. V. c. 56.]

By this statute the judge of the county court of the district in which a place of worship is situated, where the premises are leasehold and the trustees wish to enlarge the leasehold into a fee simple, is to appoint and fix the remuneration of the arbitrator who is to decide the compensation to be paid (sects. 2 (a), 5).

POOR LAW ACT, 1927.

[17 & 18 Geo. V. c. 14.]

Jurisdiction.—By sect. 45 of the Act, any relief or the cost thereof given to any person above the age of twenty-one, or to his wife, or to any member of his family under the age of sixteen, which the Minister by any rule or order declares to be given by way of loan, and whether any receipt for such relief or engagement to repay the same, shall have been given or not, by the person to or on account of whom the same shall have been given, shall be considered a loan to such person.

By sect. 46 (1) of the Act, any relief granted to any person by way of loan may be recovered in the county court of the district comprising the union or the major part thereof, on the plaint of the board of guardians.

By sect. 106, the cost of burying any person by or under the direction of the guardians is recoverable in the like manner and from the same parties as the cost of any relief (if given to such person when living) would have been recoverable.

By sect. 124, when an order of removal of a person from one union to another is suspended, the guardians of the poor in whose favour such order is made, may, whilst the suspension is in force, recover the expenses incurred in the relief of any person named in the order, from the union on whom the order is made in the county court within whose jurisdiction their union, or the greater part thereof shall be situated.

Practice.—Proceedings are by plaint and summons under the general practice of the court (Order L. rr. 35, 36). It is not considered necessary to set out the sections of the statute.

PRIVATE STREET WORKS ACT, 1892.

[55 & 56 VICT. c. 57.]

This Act applies only to those urban sanitary districts in which it is adopted in the manner required by the Act (sect. 2). If adopted, the provisions of sects. 150 to 152 of the Public Health Act, 1875, do not apply.

Jurisdiction.—Expenses of private street works in whole or any portion thereof (see sects. 10 and 12) incurred pursuant to the Act, together with interest at 4 per centum per annum from the date of the final apportionment (sect. 12) till payment may be recovered as a simple contract debt by action in any court of competent jurisdiction, i.e., in the county court up to 100*l*.

Practice.]—The procedure will be by plaint and summons as in an action for debt, and Order L. rr. 35, 36 shall apply. Notice particularly the provisions of sects. 6, 7 and 8 ; by sect. 6 the resolution approving the specification, etc. and provisional apportionments shall be published in manner prescribed (and copies served on the owners of premises liable to be charged), and kept open to inspection for one month. During this month, by sect. 7, objections to the proposals on any of the grounds set out in the said section may be lodged. By sect. 8, at any time after the expiration of the month, the objections made may be determined by a court of summary jurisdiction, and by sect. 8, sub-s. 2, *no objection which could be made under the Act, shall be otherwise made or allowed in any court or proceeding.*

Short title,
construction,
and extent.

1. This Act may be cited as the Private Street Works Act, 1892, and shall be construed as one with the Public Health Acts, and shall extend only to England ; and this Act and the Public Health Acts may be cited together as the Public Health Acts.

Adoption of
Act,

2. This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act.

* * * * *

Apportion-
ment of
expenses.

10. In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises ; but the urban authority may if they think just, resolve that in settling the apportionment regard shall be had to the following considerations (that is to say),

(a) The greater or less degree of benefit to be derived by any premises from such works ;

(b) The amount and value of any work already done by the owners or occupiers of any such premises.

They may also, if they think just, include any premises which do not front, adjoin or abut on the street or part of a street but access to which is obtained from the street through a court, passage or otherwise and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.

See *Rex v. Minister of Health : Aldridge, Ex parte*, (1925) 94 L. J. K. B. 707.

Amendment
of plan, etc.

11. The urban authority may from time to time amend the specifications, plans and sections (if any), estimates and provisional apportionments for any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment shall be published in the manner prescribed in Part II. of the schedule to this Act, and shall be open to inspection at the urban authority offices at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby ; and objections may be made to the increase and on apportionment and if made shall be dealt with and determined in like manner as objections to the original estimate and apportionment.

12.—(1) When any private street works have been completed and the expenses thereof ascertained the surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be) and such final apportionment *shall be conclusive for all purposes*; and notice of such final apportionment shall be served upon the owners of the premises affected thereby; and the sums apportioned thereby shall be recoverable in manner provided by this Act, or in the same manner as private improvement expenses are recoverable under the Public Health Act, 1875, 38 & 39 Vict. including the power to declare any such expenses to be payable c. 55. by instalments.

Section 12.

Final apportionment and recovery of expenses.

(2) Within one month after such notice the owner of any premises charged with any expenses under such apportionment may, by a written notice to the urban authority, object to such final apportionment on the following grounds, or any of them:—

- (a) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent.
- (b) That the final apportionment has not been made in accordance with this section.
- (c) That there has been an unreasonable departure from the specification, plans, and sections.

(3) Objections under this section shall be determined in the same manner as objections to the provisional apportionment.

* * * * *

14. The urban authority, if they think fit, may from time to time (in addition and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or as a simple contract debt by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due for expenses of private street works the whole or any portion of such sum, together with interest at a rate not exceeding four pounds per centum per annum, from the date of the final apportionment till payment thereof.

Recovery of expenses summarily or by action.

The High Court held in *Mayor of Blackburn v. Sanderson*, (1902) 1 K. B. 794; 71 L. J. K. B. 590, that the six months' limitation only applies to summary proceedings, and not to an action brought in a court of competent jurisdiction; and hence does not apply to an action brought under the provisions of this section. Followed in *Metropolitan Water Board v. Bunn*, C. A., [1913] 3 K. B. 181; 82 L. J. K. B. 1024.

25. Neither sections one hundred and fifty, one hundred and fifty-one, and one hundred and fifty-two of the Public Health Act, 1875, nor section forty-one of the Public Health Acts Amendment Act, 1890, shall apply to any district or part of a district in which this Act is in force.

Certain sections of Public Health Acts not to apply.

THE PROBATE ACTS, 1857 AND 1858.

[20 & 21 VICT. c. 77 ; 21 & 22 VICT. c. 95.]

Jurisdiction.—Sect. 10 of the 1858 Act is repealed and re-enacted with modifications in sect. 150 (b) of the Supreme Court of Judicature (Consolidation) Act, 1925 (*post*, p. 2316). The judge of the county court (having jurisdiction in the place of abode of the deceased) has the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate or administration, provided that the deceased's personal estate (without deducting debts) was at the time of death under the value of 200*l.*, and that the deceased was not entitled beneficially to real estate of the value of 300*l.* or upwards. To give rise to this jurisdiction, the above conditions as to the amount of the property, must be proved to the satisfaction of a registrar of the principal registry, the application to him being on affidavit ; the affidavit is *prima facie* conclusive but if in the course of the proceedings it be shown to the judge that the conditions are not correctly stated in the affidavit, and if correctly stated, would not have given him jurisdiction, he must stay the proceedings, make such order as to costs as he may think just, and leave any party to apply to the Court of Probate (see sect. 57 of the 1857 Act).

Transfer from Probate Division to County Court.—Where the application for the grant or revocation of a grant of probate or letters of administration is made through the principal registry, the judge of the Probate Division, if any contentious matters arise, and the amount of the property and the place of abode of the deceased be such as to give contentious jurisdiction to a judge of a county court, may send the cause to the county court, and the judge of the said court may then proceed as if the application had been made to his court in the first instance (sect. 59 of the 1857 Act, now sect. 150 (a) of the Supreme Court of Judicature (Consolidation) Act, 1925, *post*, p. 2316) ; but that both the place of the abode and the value of the property should be as above are essential conditions necessary to enable the Probate Division to make the order. Where either the personalty is not under 200*l.*, or the realty not under 300*l.*, there is no power to transfer (see *Davies v. Brecknell*, (1870) L. R. 2 P. & D. 177 ; 40 L. J. P. 15, where the estate of the deceased consisted of personalty under 20*l.* in value, and of realty valued at 370*l.* subject to a mortgage ; and *Thomas v. Nurse*, (1870) 39 L. J. P. 80, where all conditions to give the county court jurisdiction existed, except that the realty exceeded 300*l.*, though not affected by the action).

Practice is governed by Order XLIX. (see p. 2316) framed under the authority of sect. 60 of the Act of 1857. The proceedings are commenced by plaint and summons in the ordinary way, but *before* the entry of any plaint the proposed plaintiff must lodge with the registrar an office copy of the minute of the High Court, authorising the commencement of the proceedings (Rule 4). The plaint and all subsequent proceedings are to be intitled "The Court of Probate Acts, 1857 and 1858" (Rule 1).

Parties.—Where a caveat has been lodged against the grant of probate or administration, the person who applies for probate or administration will be plaintiff in the proceedings, and the person lodging the caveat defendant (Rule 2). In proceedings for revocation of a grant, the party applying will be plaintiff, and the person against whom the application is made defendant (Rule 3).

Particulars.—Particulars of demand must be filed in all cases, stating concisely the nature of the proceedings and the relief or order which the plaintiff claims (Rule 5).

Service.—Service of a summons or notice of a summons out of England and Wales may be allowed by leave of the court (Order VII. r. 43).

Interveners.]—Any person not named in the summons may intervene and appear in the action, on filing an affidavit showing how he is interested in the estate of the deceased (Rule 6).

Notice for Production of Will, etc.]—The registrar, on issuing a plaint for revocation of probate or administration, must send notice (Form 443) by post to the district probate registrar by whom the probate or letters of administration has or have been granted, to produce the original will and other necessary documents at the hearing (Rule 7).

Transmission of Action from High Court.]—Where application for the grant or revocation of probate or letters of administration has been made at the principal registry of the Probate Division, and a judge of the said division shall send any action or contentious matter arising out of such application to the county court, the provisions of Order XLIX., *post*, p. 2316, and Order XXXIII., relating to actions or matters remitted from the Chancery Division to the county court shall apply to the proceedings in the county court (Rule 10). Where no provision has otherwise been made, the rules and practice of the Probate Division shall be followed so far as applicable (Rule 12).

After the transfer of an action, it becomes for all purposes a county court case, and the Probate Division cannot direct a new trial (*Zealley v. Veryard*, (1866) L. R. 1 P. & D. 195; 35 L. J. P. 127), or make an order as to costs either before or after removal (*Macleur v. Macleure*, (1868) L. R. 1 P. & D. 604; 37 L. J. P. & M. 68).

Production of Documents.]—The judge, upon application, may order any instrument, purporting to be testamentary, to be produced before him by the person in whose possession or control it may be; or where there is reasonable ground for believing that any person has knowledge of such paper or writing, the judge may require his attendance for the purpose of his being examined in open court, or upon interrogatories; and such person is to be liable to process of contempt in case he does not answer such interrogatories, or, if ordered, produce the document. The costs of the application are to be in the discretion of the judge (sect. 26 of the 1857 Act).

Administration pendente Lite.]—Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of letters of administration, the judge of the county court before whom such suit may be pending, may appoint an administrator of the personal estate of the deceased. The administrator has all the rights and powers of a general administrator, other than the right of distributing the residue of the personal estate, and is subject to the immediate control of the judge and must act under his directions (sect. 70 of the 1857 Act).

If in any such suit the will, the validity of which is disputed, affects real estate, the judge may appoint such administrator or any other person to be the receiver of the real estate, with such powers to receive all rents and profits, and of letting and managing it, as the judge may direct (sect. 71 of the 1857 Act).

The administrators and receivers so appointed are to receive out of the personal and real estate of the deceased such reasonable remuneration as the judge thinks fit (sect. 72 of the 1857 Act).

Jury.]—The judge of the county court may cause any question of fact arising in any suit or proceeding to be tried by a jury, or may direct an issue to be sent for trial to the High Court, in the same manner as an issue could formerly be directed by the Court of Chancery (sect. 35 of the 1857 Act).

Where an heir-at-law, cited or otherwise made party to a suit or proceeding, makes application to the judge for the question to be tried by a jury, the question must be so tried (*Ib.*).

In any other case where all the parties concur in an application for the question to be tried by a jury, or where any party or parties, other than the

heir-at-law, make such application, and the court refuses to cause such trial, the applicant may appeal (*Ib.*).

The order of the judge shall be in Form 445, and a copy shall be sent by post to the plaintiff and defendant, and to any party intervening (Rule 9); the judge can enforce his judgments and orders as in an ordinary action (sect. 56 of the 1857 Act). The judge may order the costs to be taxed under column B or C, in default of an order they will be taxed under B (Rule 11).

Appeal.]—If either party is dissatisfied with the determination of the judge of the county court in point of law, or upon the admission or rejection of any evidence, he may appeal to the Probate Division of the High Court (sect. 58 of the 1857 Act; *Leigh v. Green*, (1892) P. 17; 61 L. J. P. 66). The right of appeal extends to proceedings under the Act of 1857 as well as 1858 (*Copeland v. Simister*, (1893) P. 16; 62 L. J. P. 38). The appeal will, it is believed, lie by motion, and generally the ordinary practice seems to apply (sect. 120, County Courts Act, 1888, Part I.). No further appeal lies to the Court of Appeal (Supreme Court of Judicature (Consolidation) Act, 1925, sect. 31 (1) (*k*)).

20 & 21 VICT. C. 77.

Registrar of county court to transmit certificate of decree for grant or revocation of probate.

55. On a decree being made by a judge of a county court for the grant or revocation of a probate or administration in any such cause, the registrar of the county court shall transmit to the district registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode, a certificate under the seal of the county court of such decree having been made; and thereupon on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree.

NOTE.—Where the next of kin were "alien enemies, the Public Trustee, as custodian under the Trading with the Enemy (Amendment) Act, 1914 (5 Geo. 5, c. 12), was appointed administrator in preference to a person named as executor in an informal testamentary document (*Schiff, In re* (1915) P. 86; 84 L. J. P. 79).

The judge of the county court to decide causes and enforce judgments as in other cases.

56. The judge of any county court before whom any disputed question shall be raised relating to matters and causes testamentary under this Act shall, subject to the rules and orders under this Act, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the county court.

Affidavit of the facts giving the county court jurisdiction to be conclusive, unless disproved while the matter is ending.

57. The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of a county court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorising the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any

Section 57.

of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the judge of a county court before whom any matter is pending under this Act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated would not have authorised him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

58. Any party who shall be dissatisfied with the determination Appeals of the judge of the county court in point of law, or upon the from county admission or rejection of any evidence in any matter or cause court. under this Act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the rules and orders made under this Act, *and the decision of the Court of Probate on such appeal shall be final.*

Note.—Words in italics repealed by the Supreme Court of Judicature (Consolidation) Act, 1925, which provides, by sect. 31 (1) (k), that no appeal shall lie from the decision of the High Court on any appeal from a county court on a point of law arising in any probate cause or matter.

* * * * *

60. For regulating the procedure and practice of the county Rules and courts, and the judges, registrars and officers thereof, in relation orders for to their jurisdiction and proceedings under this Act, rules and regulating the procedure orders may be from time to time framed, amended and certified the procedure by the county court judges appointed for the time being to frame of county rules and orders for regulating the practice of the county courts under the Act of the session holden in the nineteenth and twentieth years of Her Majesty, chapter one hundred and eight, and shall the Act to be made by the judges now having authority for the like purpose. be subject to be allowed or disallowed or altered and shall be in force from the day named for that purpose by the Lord Chancellor, as in the said Act is provided in relation to other rules and orders regulating the practice of the same courts.

* * * * *

21 & 22 VICT. C. 95.

13. The power and authority to make rules and orders for Rules and regulating the proceedings of the county courts shall extend and orders, etc., be applicable to all proceedings in the county courts under this for the Act, and also to framing a scale of costs and charges to be paid county to counsel, proctors, solicitors and attorneys, in respect of proceedings in county courts, under the said Court of Probate Act courts. or this Act.

* * * * *

15 & 16 GEO. 5, c. 49 (Judicature Act, 1925).

Section 150.Application
for grants.

150. An application for the grant or revocation of probate or administration may be made through the principal probate registry :

Provided that—

- (a) Where, in any contentious matter arising out of the application, the court is satisfied that the state of the property and the place of abode of the deceased were such as to give jurisdiction in the matter to a county court, the court may remit the matter to that county court and the judge thereof shall proceed in the matter as if the application had been made to the county court in the first instance :
- (b) Where a registrar of the principal probate registry is satisfied by affidavit that the personal estate of the person in respect of whose estate the application for the grant or revocation is made exclusive of what he was possessed of or entitled to as a trustee and not beneficially, but without any deduction on account of his debts, was at the time of his death under the value of two hundred pounds, and that at that time he was not seised or entitled beneficially of or to any real estate of the value of three hundred pounds or upwards, the judge of the county court having jurisdiction in the place of abode of the deceased shall have the jurisdiction of the High Court in respect of any contentious matter arising in connection with the said grant or revocation.

COUNTY COURT RULES.—ORDER XLIX.

PROBATE AND LETTERS OF ADMINISTRATION.

Proceedings
under Court
of Probate
Acts, 1857
and 1858.
20 & 21 Vict.
c. 77; 21 &
22 Vict.
c. 95.

Parties where
caveat lodged.

Parties on
application
to revoke
grant.

Production
of authority
of High
Court.

Particulars.

1. Proceedings under the Court of Probate Act, 1857, as amended by the Court of Probate Act, 1858, or by any other Act, shall be commenced by plaint and summons in the ordinary way. The plaint and all subsequent proceedings shall be intituled "The Court of Probate Acts, 1857 and 1858."

2. Where any person has lodged a caveat against the grant of probate or letters of administration, and proceedings are taken to obtain such grant, the person applying for the probate or letters of administration shall be plaintiff, and the person who has lodged the caveat shall be defendant.

3. In proceedings for the revocation of probate or letters of administration the person applying for such revocation shall be plaintiff and the person against whom the application is made shall be defendant.

4. Before the entry of the plaint the plaintiff shall lodge with the registrar an office copy of the minute of the High Court authorizing the commencement of proceedings.

5. Particulars of demand shall be filed in all cases, stating concisely the nature of the proceeding, and the relief or order which the plaintiff claims.

Rule 6.

Intervention
by person
not named in
summons.

Notice to
district
registrar.
Form 443

Certificate.
20 & 21 Vict.
c. 77, s. 55.
Form 444.

Order.
Form 445.

Transmission
of action from
High Court.

Practice in
proceedings
for which no
provision
made.

443.

The Court of Probate Acts, 1857 and 1858.

Whereas an application has been made to this court to revoke the grant of *Order 49*,
probate of the will [or letters of administration granted by you in the goods] *Rule 7.*
of [here insert the name and address of the testator or intestate];

on the _____ day of _____ at the _____ hour of _____
I therefore request that you will cause to be produced before the court
on that day [the will *and] all documents which are in your possession
relating to the matter.

Dated this _____ day of _____ 19 _____

Registrar.

*To be left out where administration without will annexed has been granted.

444.

Certificate of Registrar.

The Court of Probate Acts, 1857 and 1858.

[Heading as in Form 443.]

Order 49,
Rule 8.

I, A. B., registrar of the above court, do hereby certify that the following order was made in the above action on the day of 19 .

[Here set out the order.]

Certified under the seal of the court this day of 19 .
Registrar.

445.

Order in Probate Action.

The Court of Probate Acts, 1857 and 1858.

[Heading as in Form 443.]

Order 49,
Rule 8.

Upon the hearing of this action at a court holden this day, it is adjudged as follows :

[Here set out the order.]

and it is ordered, that the do pay the sum of for the 's costs; and that the same be paid to the registrar of this court on the day of 19 .

Given under the seal of the court this day of 19 .
By order of the court,

Registrar.

Hours of attendance at the office of the registrar [place of office] from ten till four, except on , when the office will be closed at one.

[As the forms relating to probate matters will seldom be required they are not to be printed, but are to be written on foolscap paper.]

THE PUBLIC HEALTH ACT, 1875.

[38 & 39 VICT. c. 55.]

Jurisdiction.]—For the purposes of the Act, sect. 91 declares certain things to be nuisances liable to be dealt with summarily as provided by the Act, and by sect. 35 of the Public Health Acts Amendment Act, 1907 (7 Edw. VII. c. 53), this definition of nuisance has been extended, and again by sect. 54 of the Public Health Act, 1925. By sects. 104 and 106, costs and expenses of the local authority, or of the officer of police authorised by the Local Government Board, incurred in making a complaint, or giving notice, or obtaining an order of the court of summary jurisdiction, or in carrying the same into effect, are declared to be money paid for the use and at the request of the person on whom the order is made, or of the person by whose act or default the nuisance was caused, and such costs and expenses to be recoverable in a summary manner, or in any county or superior court. It is clear that this gives under these two sections, county courts jurisdiction where the costs and expenses do not exceed 100*l.* and probably where they exceed this sum.

Further, by sect. 261, proceedings for the recovery of demands below 50*l.* which local authorities are empowered to recover in a summary manner may at the option of the authority be taken in the county court. There are many sections which empower local authorities to recover money summarily, but sect. 150 is the one on which proceedings are taken most frequently in the county court by virtue of the jurisdiction given by sect. 261.

Practice.—The proceedings should be by action commenced in usual way, by plaint and summons, and are regulated by Order L. rr. 35 and 36, see Part I. No special rules.

Time within which proceedings should be taken is discussed in notes to the respective sections.

PART I

PRELIMINARY.

1. This Act may be cited as The Public Health Act, 1875.

* * * * *

4. In this Act, if not inconsistent with the context, the following words and expressions have the meaning herein-after assigned to them; that is to say—

* * * * *

“Person” includes any body of persons, whether corporate or unincorporate:

“Local authority” means urban sanitary authority and rural sanitary authority:

“Surveyor” includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act:

“Lands” and “premises” include messuages, buildings, lands, easements, and hereditaments of any tenure:

See *Macey v. James*, (1917) 86 L. J. K. B. 1257.

“Owner” means the person for the time being receiving the rackrent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent:

“Rackrent” means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant’s rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent:

“Street” includes any highway, and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not:

See *Regent’s Canal and Docks Co. v. Gibbons*, (1925) 1 K. B. 81.

* * * * *

NUISANCES.

91. For the purposes of this Act,—

- (1) Any premises in such a state as to be a nuisance or injurious to health: Definition of nuisances.
- (2) Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul or in such a state as to be a nuisance or injurious to health:
- (3) Any animal so kept as to be a nuisance or injurious to health:

Section 91.

- (4) Any accumulation or deposit which is a nuisance or injurious to health :
- (5) Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family :
- (6) Any factory, workshop, or workplace (not already under the operation of any general Act for the regulation of factories or bakehouses), not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein :
- (7) Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever ; and
- (8) Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance,

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act : Provided—

First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health :

Secondly. That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

The above definition of nuisance has been extended by the Public Health Acts Amendment Act, 1907, s. 35, which section is as follows :—

35. For the purpose of the Public Health Act, 1875,

- (1) Any cistern used for the supply of water for domestic purposes so placed, constructed, or kept as to render the water therein liable to contamination, causing or likely to cause risk to health.
- (2) Any gutter, drain, shoot, stack-pipe, or down-spout of a building which, by reason of its insufficiency or its defective condition, shall cause damp in such building, or in an adjoining building ; and

(3) Any deposit of material in or on any building or land which shall cause damp in such building, or in an adjoining building, so as to be dangerous or injurious to health,

Section 91.

shall be deemed to be a nuisance within the meaning of the said Act.

The definition of nuisance has been further extended by sect. 54 of the Public Health Act, 1925 (15 & 16 Geo. V. c. 71), to include a watercourse so choked or silted up as to obstruct or impede the proper flow of the water.

See *Clayton v. Sale U.D.C.*, (1926) 1 K. B. 415.

* * * * *

94. On the receipt of any information respecting the existence of a nuisance the local authority shall, if satisfied of the existence of a nuisance, serve a notice (a) on the person by whose act default or sufferance the nuisance arises or continues, or, if such person cannot be found (b), on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purposes.

Local authority to serve notice requiring abatement of nuisance.

NOTE (a).—The notice must not be ambiguous (*Whalling v. Rees*, (1915) 84 L. J. K. B. 1122).

NOTE (b).—"Cannot be found." See, *Rhymney Iron Co. v. Gelligaer District Council*, (1917) 1 K. B. 589; 86 L. J. K. B. 564.

Provided—

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:

Secondly. That where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act default or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further order.

95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.

On non-compliance with notice complaint to be made to justice.

96. If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence; or an order both requiring abatement and prohibiting the recurrence of the nuisance.

Power of court of summary jurisdiction to make order dealing with nuisance.

The Court may by their order impose a penalty not exceeding five pounds on the person on whom the order is made, and shall also give directions as to the payment of all costs incurred up to the time of hearing or making the order for abatement or prohibition of the nuisance.

Section 97.

Order of prohibition in case of house unfit for human habitation.

97. Where the nuisance proved to exist is such as to render a house or building in the judgment of the court unfit for human habitation the court may prohibit the using thereof for that purpose until in its judgment the house or building is rendered fit for that purpose; and on the court being satisfied that it has been rendered fit for that purpose the court may determine its previous order by another declaring the house or building habitable and from the date thereof such house or building may be let or inhabited.

Penalty for contravention of order of court.

98. Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance shall if he fails to satisfy the court that he has used all due diligence to carry out such order be liable to a penalty not exceeding ten shillings per day during his default: and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding twenty shillings per day during such contrary action; moreover the local authority may enter the premises to which any order relates and abate the nuisance, and do whatever may be necessary in execution of such order and recover in a summary manner the expenses incurred by them from the person on whom the order is made.

Mandamus to compel a local authority to abate a nuisance will not be granted (*In re Ham Local Board*, (1857) 26 L. J. M. C. 64).

* * * * *

Costs and expenses of execution of provisions relating to nuisances.

104. All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order is made on the local authority, or if no order is made, but the nuisance is proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises: Provided that such costs and expenses shall not exceed in the whole one year's rack-rent of the premises.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner or in any county or superior court; and the court shall have power to divide costs expenses and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just.

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises; and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent:

Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without

first deducting the amount of such costs or expenses, become payable by such occupier, unless he refuses, on application to him by the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier: Section 104.

Provided also, that nothing herein contained shall affect any contract between any owner or occupier of any house building or other property whereby it is or may be agreed that the occupier shall pay or discharge all rates dues and sums of money payable in respect of such house building or other property, or to affect any contract whatsoever between landlord and tenant.

The time within which an action may be brought for the recovery of costs and expenses and penalties has been discussed under divers sections of this Act and of local Acts, and the decisions have turned upon slight verbal differences in the different sections. The result of the decisions seems to be that if the statute allows proceedings to be taken either by complaint before justices, or by action in a court of competent jurisdiction, the six months' limit only applies to the summary proceedings, and not to the alternative proceedings (*Mayor of Blackburn v. Sanderson*, (1902) 1 K. B. 794; 71 L. J. K. B. 590), followed in *Metropolitan Water Board v. Bunn* (C. A.), (1913) 3 K. B. 181; 82 L. J. K. B. 1024: doubts being thrown upon *Vestry of Hammersmith v. Lowenfeld*, (1896) 2 Q. B. 278; 65 L. J. Q. B. 662; but if, as in sect. 261, demands made recoverable by summary proceedings are by another section made recoverable in the county court, the six months' limit of time wherein proceedings must be brought in the court of summary jurisdiction applies also to any action brought in the county court (*Tottenham Local Board v. Rowell* (C. A.), (1876) 1 Ex. D. 514; 46 L. J. Ex. 432); the time therefore under this section and sect. 106 is the usual period of limitation and not six months.

* * * * *

106. Where it is proved to the satisfaction of the Local Government Board that a local authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorise any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner or in any county or superior court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority: Power of officer of police to proceed in certain cases against nuisances.

But such officer of police shall not be at liberty to enter any house used as the dwelling of any person without such person's consent, or without the warrant of a justice, for the purpose of carrying into effect this enactment.

As to the time within which an action must be brought in county court, see note to sect. 104.

* * * * *

150. Where any street within any urban district (not being a highway repairable by the inhabitants at large) or the carriage-way footway or any other part of such street is not sewered, levelled, paved, metalled, flagged, channelled and made good or is not lighted to the satisfaction of the urban authority, such authority may, if it is of opinion that it is expedient so to do, cause the street to be Power to compel paving, etc., of private streets.

Section 150. rity may, by notice addressed to the respective owners or occupiers of the premises fronting adjoining or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good or to provide proper means for lighting the same within a time to be specified in such notice.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground : such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice ; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein ; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act ; or the urban authority may by order declare the expenses so incurred to be private improvement expenses.

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.

Though the practice in the county court to recover claims under this section is, by sect. 261, very simple, viz., by plaint and summons, to satisfy the burden of proof thrown on the plaintiff is far from a simple matter. Each step indicated by the section must be proved step by step ; thus it must be proved (a) that the condition of the street is unsatisfactory in the opinion of the urban authority ; this may be proved by a resolution to that effect ; (b) that plans and sections as provided by the section have been made under the direction of their surveyor ; (c) that an estimate of the probable cost has been drawn up under the same direction ; (d) that the said plans, etc., and estimates had been deposited in the office of the urban authority ; (e) that notice had been addressed to the owners or occupiers of the premises fronting, adjoining, or abutting on such part of the street as may require to be made good, requiring them to make good or provide the work specified in such notice within a named time ; (f) such notice must contain a statement of the place where the said plans, etc., and estimate have been deposited, and that the same are open daily during business hours during the time specified in the notice for inspection by all persons interested ; (g) that such notice was not complied with, and that the works mentioned were executed by the urban authority ; (h) the expenses incurred in doing the works ; (i) the proportion payable by the respective owners in default as settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by the Act ; (k) a demand for payment.

Time.—See *Macclesfield Corporation v. Governors of Free Grammar School of King Edward VI.*, (1921) 2 Ch. 189; 90 L. J. Ch. 477.

The action must be brought within six months (*Tottenham Local Board v. Rowell* (C. A.), (1876) 1 Ex. D. 514; 46 L. J. Ex. 432).

“**Street**,” for the meaning of, see sect. 4, *ante*, as explained in *Fenwick v. Rural Sanitary Authority of Croydon*, (1891) 2 Q. B. 212; 60 L. J. M. C. 161, following the dictum of Lord Selborne in *Robinson v. Barton and Eccles Local Board*, (1883) 8 App. Cas. 798; 53 L. J. Ch. 226, that “street” in this Act means the roadway as distinguished from the road with houses.

Notice must be specific; a notice which refers in general terms to the provisions of the section is bad (*Stourbridge Urban District Council v. Butler and Grove*, (1909) 1 Ch. 87; 78 L. J. Ch. 59), and must be served on the owner or occupier or expenses cannot be recovered (*Jarrow Local Board v. Kennedy*, (1870) L. R. 6 Q. B. 128; *Bristol Corporation v. Sinott*, (1918) 87 L. J. Ch. 30).

Dispute as to the apportionment must be referred to arbitration (*Sandgate Local Board v. Keene*, (1892) 1 Q. B. 831; 61 L. J. Q. B. 775); as to what is a dispute, see *Mayor of Folkestone v. Brooks*, (1893) 3 Ch. 22; 62 L. J. Ch. 863; *Stoker v. Mayor, &c., of Morpeth*, (1915) 2 K. B. 511.

Abutting.—A house may abut upon a street though it has no access thereto (*Newport Urban Sanitary Authority v. Graham*, (1882) 9 Q. B. D. 183).

Street or Road of which Part is a Public Footpath.—Frontagers liable to expense of improving the whole street, and not merely such part as had been added to ancient highway (*Evans v. Newport Urban Sanitary Authority*, (1890) 24 Q. B. D. 264; 59 L. J. M. C. 8).

Private Improvement Expenses.—The urban authority may declare the expenses under this section to be private improvement expenses; such expenses may be recovered under sects. 213 and 257.

There is a vast field of learning, and many decisions on this section which cannot satisfactorily be dealt with in a book merely dealing with the practice of a particular court, but can be found on reference to Lumley’s *Public Health* (7th edit.), pp. 287—318.

* * * * *

This limitation of six months, in the case of summary proceedings, does not apply to proceedings in the county court under sects. 104 or 106, nor to proceedings to enforce a charge under sect. 257 (see note to those sections).

* * * * *

257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner,

Section 257. such apportionment shall be binding and conclusive on such owner unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same.

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act.

Time within which proceedings may be taken to enforce a charge on the land is the usual period of limitation (*Tottenham Local Board v Rowell* (No. 2), (1880) 15 Ch. D. 378; 50 L. J. Ch. 99 (C. A.)), and the time begins to run from the demand for payment.

The proceedings to enforce such a charge in the county court should be taken under sect. 67 of the County Courts Act, 1888, as to which, see Act in Part I.

How the charge ought to be apportioned.]—Where a local authority have made up a road fronting several premises, held that the charge must be for an apportioned sum in respect of each one of the premises fronting on the road (*Croydon Rural District Council v. Betts*, (1914) 1 Ch. 870; 82 L. J. Ch. 709).

* * * * *

Demands below 50l. may be recovered in county courts.

261. Proceedings for the recovery of demands below fifty pounds, which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognizance of such courts.

Time for taking proceedings in the county court under this section, as well as before a court of summary jurisdiction, is six months, as provided by sect. 252 (*Tottenham Local Board v. Rowell* (C. A.), (1876) 1 Ex. D. 514; 46 L. J. Ex. 432; see note to sect. 104).

PUBLIC HEALTH (LONDON) ACT, 1891.

[54 & 55 VICT. c. 76.]

By this Act certain things are declared to be nuisances by sect. 2, and under sects. 4 and 5 certain steps may be taken to abate such nuisances.

Jurisdiction.—By sect. 11, sub-s. 1, all reasonable costs and expenses incurred in abating such nuisances shall be deemed to be money paid for the use and at the request of the person on whom the order is made; by sect. 11, sub-s. 2, such costs and expenses and fines may be recovered in a summary manner, or in the county court or High Court. The court has further power to divide costs, expenses and fines between the persons responsible for the nuisance.

By sect. 117, sub-s. 2, a demand not exceeding 50l., which a sanitary authority can recover in a summary manner, may be recovered in the county court as if such demand were a debt.

Practice.—Proceedings are to be by action commenced by plaint and summons in the ordinary way (Order L. rr. 35, 36 apply; see Part I.).

No special rules.

Time within which the action should be commenced is a matter of some doubt, but the better opinion seems to be that the action must be commenced within six calendar months' time (see note to sect. 11).

NUISANCES (GENERAL).

2.—(1) For the purposes of this Act,—

- (a) Any premises in such a state as to be a nuisance or injurious to health; What nuisances
- (b) Any pool, ditch, gutter, watercourse, cistern, watercloset, earth closet, privy, urinal, cesspool, drain, dung-pit, or ashpit so foul or in such a state as to be a nuisance or injurious to health; may be abated summarily.
- (c) Any animal kept in such place or manner as to be a nuisance or injurious or dangerous to health;
- (d) Any accumulation or deposit which is a nuisance or injurious or dangerous to health;
- (e) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family;
- (f) Any such absence from premises of water fittings as is a nuisance by virtue of section thirty-three of the Metropolitan Water Act, 1871, set out in the first schedule to this Act; and 34 & 35 Vict. c. 113.
- (g) Any factory, workshop, or workplace which is not a factory subject to the provisions of the Factory and Workshop Act, 1878, relating to cleanliness, ventilation, and overcrowding, and 41 & 42 Vict. c. 16.
 - (i.) is not kept in a cleanly state and free from effluvia arising from any drain, privy, earth closet, watercloset, urinal, or other nuisance, or
 - (ii.) is not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or,
 - (iii.) is so overcrowded while work is carried on as to be injurious or dangerous to the health of those employed therein,

shall be nuisances liable to be dealt with summarily under this Act.

(2) Provided that—

- (i.) Any accumulation or deposit necessary for the effectual carrying on of any business or manufacture shall not be punishable as a nuisance under this section, if it is proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health; and
- (ii.) In considering whether any dwelling-house or part of a dwelling-house which is used also as a factory, workshop, or workplace, or whether any factory, workshop, or workplace used also as a dwelling-house, is a nuisance by reason of overcrowding, the court shall have regard to the circumstance of such other user.

Section 11.

Costs of
execution of
provisions
relating to
nuisances.

11.—(1) All reasonable costs and expenses incurred in serving notice, making a complaint, or obtaining a nuisance order, or in carrying the order into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order is made on the sanitary authority, or, if no order is made, but the nuisance is proved to have existed when the notice was served or the complaint made, then of the person by whose act, default, or sufferance, the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises.

(2) Such costs and expenses, and any fines incurred in relation to any such nuisance, may be recovered in a summary manner or in the county court or High Court, and the court shall have power to divide costs, expenses and fines between persons by whose acts, defaults, or sufferance a nuisance is caused, as to it may seem just.

In the case of *Vestry of Hammersmith v. Lowenfeld*, (1896) 2 Q. B. 278; 65 L. J. Q. B. 662, it was held that any such action in a county court must be brought within six months from the time when the costs and expenses were incurred; some doubts were thrown upon this decision in the *Mayor of Blackburn v. Sanderson*, (1902) 1 K. B. 794; 71 L. J. K. B. 590. See also *Metropolitan Water Board v. Bunn*, C. A., (1913) 3 K. B. 181; 82 L. J. K. B. 1024, but the better opinion seems to be that the first-named case is correct, especially as fines are expressly named in the section, and would have to be recovered within six months if recovered in a summary manner.

PUBLIC TRUSTEE ACT, 1906.

[6 EDW. VII. c. 55.]

This Act provided for the appointment of a public trustee in England (a), a corporation sole which may sue or be sued under that name. The public trustee may, if he think fit (a) act in the administration of estates of small value, (b) as custodian trustee, (c) as an ordinary trustee, (d) as a judicial trustee, (e) as the administrator of the property of a convict under the Forfeiture Act, 1870.

NOTE (a).—Not Scotland. See *Hewitt's Settlements, In re*, (1915) 1 Ch. 223; 84 L. J. Ch. 358.

Jurisdiction of the county court is limited to estates which do not exceed 500*l.* in value. By sect. 10 of this Act any person aggrieved by any act or omission or decision of the public trustee in relation to any trust, may apply to the "court," and the "court" may make such order in the matter as it thinks fit. Under sect. 13, sub-s. 6. the "court" may make such order as it thinks just if the auditor, mentioned in that section, is refused access to any document, or is obstructed in his investigations. The word "court" by sect. 15 means the High Court, and as respects trusts within its jurisdiction, the county court; the County Courts Act, 1888, s. 67, limits the powers of the county court as to trust estates to 500*l.* A corporate body may be appointed custodian trustees (*In re Cherry's Trusts, Robinson v. Trustees for Wesleyan Methodists*, (1914) 1 Ch. 83; 83 L. J. Ch. 142).

Practice.—The proceedings are commenced by petition, and carried on as provided by Order XXXVIII. (see County Court Rules, Part I.).

Appeal from the county court will be as in cases under sect. 67 of the County Courts Act, 1888.

The Public Trustee Rules, 1912, have been made by the Lord Chancellor for carrying into effect the objects of this Act; none of these rules touch the practice of the county court, and they are, therefore, not set out, but will be found in the Annual Practice.

SUPPLEMENTAL PROVISIONS AS TO PUBLIC TRUSTEE.

10.—(1) A person aggrieved by any act or omission or decision Appeal to of the Public Trustee in relation to any trust may apply to the the court. court, and the court may make such order in the matter as the court thinks just.

(2) Subject to rules of court, an application under this section to the High Court shall be made to a judge of the Chancery Division of the High Court in chambers.

* * * * *

INVESTIGATION AND AUDIT OF TRUST ACCOUNTS.

13.—(1) Subject to rules under this Act and unless the court Investigation otherwise orders, the condition and accounts of any trust shall, and audit of on an application being made and notice thereof given in the trust prescribed manner by any trustee or beneficiary, be investigated accounts. and audited by such solicitor or public accountant as may be agreed on by the applicant and the trustees or, in default of agreement, by the Public Trustee or some person appointed by him :

Provided that (except with the leave of the court) such an investigation or audit shall not be required within twelve months after any such previous investigation or audit, and that a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

(2) The person making the investigation or audit (herein-after called the auditor) shall have a right of access to the books, accounts, and vouchers of the trustees, and to any securities and documents of title held by them on account of the trust, and may require from them such information and explanation as may be necessary for the performance of his duties, and upon the completion of the investigation and audit shall forward to the applicant and to every trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that he has had the securities of the trust fund investments produced to and verified by him or (as the case may be) that such accounts are deficient in such respects as may be specified in such certificate.

(3) Every beneficiary under the trust shall, subject to rules under this Act, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate, and, at his own expense, to be furnished with copies thereof or extracts therefrom.

(4) The auditor may be removed by order of the court, and, if any auditor is removed, or resigns, or dies, or becomes bankrupt or incapable of acting before the investigation and audit is completed, a new auditor may be appointed in his place in like manner as the original auditor.

Section 13.

(5) The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be prescribed by rules under this Act, and shall, unless the Public Trustee otherwise directs, be borne by the estate; and, in the event of the Public Trustee so directing, he may order that such expenses be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.

(6) If any person having the custody of any documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto or in anywise obstructs the investigation or audit, the auditor may apply to the court, and thereupon the court shall make such order as it thinks just.

* * * * *

Definitions.

15. In this Act, unless the context otherwise requires—
the expression "court" means the High Court and, as respects trusts within its jurisdiction, the county court:

RAILWAY REGULATION AMENDMENT ACT, 1871.

[34 & 35 VICT. c. 78.]

Jurisdiction.]—The county court as a court has no jurisdiction under this Act but by sect. 7 the Board of Trade is empowered, when it considers that a formal investigation as to the causes and circumstances of any railway accident ought to be made to direct that such investigation shall be held (amongst other persons) by a county court judge, with the assistance of an inspector or an assessor or assessors. The said persons constitute a court, and by sect. 7, sub-s. 3, are given divers powers therein set forth. The court has to report to the Board of Trade as to the causes and circumstances attending the accident.

Inquiry into
accidents and
formal inves-
tigation in
serious cases.

7. The Board of Trade may direct an inquiry to be made by an inspector into the cause of any accident, of which notice is for the time being required by or in pursuance of this Act to be sent to the Board of Trade; and where it appears to the Board of Trade, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, the Board of Trade may, by order, direct such investigation to be held, and with respect to such investigation the following provisions shall have effect:

- (1) The Board of Trade may, by the same or any subsequent order, appoint any person or persons possessing legal or special knowledge to assist an inspector in holding the same, or may direct the county court judge, stipendiary magistrate, metropolitan police magistrate, or other person or persons named in the same or any subsequent order, to hold the same with the assistance of an inspector or any other assessor or assessors named in the order:
- (2) The persons holding any such formal investigation (hereinafter referred to as the court) shall hold the same in open court in such manner and under such conditions as they may think most effectual for ascertaining the causes and

circumstances of the accident, and enabling them to make the report in this section mentioned :

Section 7

- (3) The court shall have for the purpose of such investigation all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and all the powers of an inspector under this Act, and in addition the following powers ; namely,

(a) They may enter and inspect any place or building the entry or inspection whereof appears to them requisite for the said purpose :

(b) They may by summons under their hands require the attendance of all such persons as they think fit to call before them and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as they think fit to make :

(c) They may require and enforce the production of all books, papers, and documents which they consider important for the said purpose :

(d) They may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination :

(e) Every person so summoned not being a person engaged in the management, service, or employment of a company, or otherwise connected with a company, shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record ; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses :

- (4) The inspector making an inquiry into any accident and the court holding an investigation of any accident shall make a report to the Board of Trade stating the causes of the accident and all the circumstances attending the same, and any observations thereon or on the evidence or on any matters arising out of the investigation which they think right to make to the Board of Trade, and the Board of Trade shall cause every such report to be made public in such manner as they think expedient.

REGISTRATION OF BUSINESS NAMES ACT, 1916.

[6 & 7 GEO. 5, c. 58.]

By this Act all firms, and persons carrying on business in names other than their own must be registered. One of the penalties of non-registration is that such firm or person cannot sue on its business contracts.

The High Court or the county court where the action is brought in the county court, may give relief against this penalty on being satisfied that the failure to register was accidental or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable that relief should be granted.

1. Subject to the provisions of this Act --

- (a) Every firm having a place of business in the United Kingdom

Firms and persons to be registered.

and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such Christian names (a) ;

NOTE.--(a) Similar provisions as to Directors of Companies are contained in the Companies (Particulars as to Directors) Act, 1917. See *ante*, p. 1874.

- (b) Every individual having a place of business in the United Kingdom and carrying on business under a business name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof ;
 - (c) Every individual or firm having a place of business in the United Kingdom, who, or a member of which, has either before or after the passing of this Act changed his name, except in the case of a woman in consequence of marriage ;
- shall be registered in the manner directed by this Act :

Provided that—

- (i.) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary ; and
- (ii.) where two or more individual partners have the same surname, the addition of an s at the end of that surname shall not of itself render registration necessary ; and
- (iii.) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court, registration shall not be necessary ; and
- (iv.) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business whether or not the owners share any profits arising from the sale thereof.

Penalty for
default in
registration.

7. If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall without reasonable excuse make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable on summary conviction to a fine not exceeding five pounds for every day during which the default continues, and the court shall order a statement of the required particulars or change in the particulars to be furnished to the registrar within such time as may be specified in the order.

See, as to penalty, *Solicitor to the Board of Trade v. Ernest*, (1920) 1 K. B. 816 ; 89 L. J. K. B. 766.

8.—(1) Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding (a) either in the business name or otherwise.

Disability of person in default.

(a) A judgment debtor had sold the goodwill and stock-in-trade of his business to a person who carried on the business for a time in the name of the judgment debtor and afterwards in no declared name, and who did not register particulars as required by this Act. The goods were seized by the execution creditor of the vendor. Held that the claimant was not prevented by this section from succeeding in her claim to recover the goods, because, though she produced the assignment, she was not claiming "under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business" within the meaning of this subsection (*Daniel v. Rogers*; *Fantini, Claimant*, (1918) 1 K. B. 149; 87 L. J. K. B. 259; on appeal, (1918) 87 L. J. K. B. 1149).

Provided always as follows:—

(a) The defaulter may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contracts on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions (if any) as the court may impose, but such relief shall not be granted except on such service and such publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if this Act had been complied with, he would not have entered into the contract;

The High Court may grant relief after a writ has been issued. The disability is imposed on the defaulter only and not on his assignees (*Hawkins v. Duche & Sons*, (1921) 3 K. B. 226; 90 L. J. K. B. 913). Relief may even be granted at any stage of the action or after judgment (*Shaen, In re, Silverman, Ex parte*, (1927) 96 L. J. K. B. 282).

(b) Nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid;

(c) If any action or proceeding shall be commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing herein con-

tained shall preclude the defaulter from enforcing in that action or proceeding, by way of counterclaim set off or otherwise, such rights as he may have against that party in respect of such contract.

(2) In this section the expression "court" means the "High Court" or a judge thereof:

Provided that, without prejudice to the power of the High Court or a judge thereof to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a county court, the county court may, as respects that contract, grant such relief as aforesaid.

A county court judge can grant this relief on any grounds just and equitable (*Weller v. Denton*, (1921) 3 K. B. 103; 90 L. J. K. B. 889).

REPRESENTATION OF THE PEOPLE ACT, 1918.

[8 GEO. 5, c. 64.]

By this statute the county courts are given jurisdiction on appeal from the registration officer (sect. 14).

An appeal lies from any decision of the registration officer on any claim or objection which has been considered by him under the Act, or the placing of, or refusal to place any mark against any name on the register (see Schedule I. (23)).

The county court may also be called upon to tax the expenses and accounts of the returning officer if called upon to do so by the Treasury (who now pay the expenses). See sect. 29. See Rules, Order 43, rr. 9—19, *post*, p. 2339.

Objection.—Any person whose name appears on the lists may object to the registration of any person whose name is included in the lists, by sending notice of objection in the prescribed form to the registration officer not later than the 15th day of February in the case of the spring register, and the 15th day of August in the case of the autumn register, and may object to the registration of any person whose name is included in the list of claimants by notice in prescribed form to the registration officer not later than the 7th day of March in the case of the spring register, and the 4th day of September in the case of the autumn register.

Subject to the Act, the procedure on appeals is to be regulated by rules of court. (These rules have been made, dated June 18th, 1918, and are set out in full, *post*, p. 2344. Amended by Rules dated February 3, 1919.)

No appeal is allowed where a claimant or objector has not availed himself of his opportunity, as provided in the First Schedule (see *post*), of being heard by the registration officer on the claim or objection, or as to the placing or refusing to place any such mark as aforesaid (sect. 14 (1)).

On any point of law there is an appeal from the county court to the Court of Appeal, the decision of which court is final (sect. 14 (2)).

A pending appeal does not prejudice the right of a person whose name is on the register to vote, and the vote once given is good whatever may be the result of the appeal (sect. 14 (3)).

The result of the appeal to the county court is sent to the registration officer in accordance with the rules, who must make the necessary alterations in the register (sect. 14 (4)).

On any appeal the registration officer is a party to the proceedings (sect. 14 (5)).

Provision is made for the appointment of assistant county court judges if the judge is unable owing to the number of the appeals under the Act to transact the business of his courts with proper despatch (sect. 14 (6)). The assistant judge may help the judge either in the hearing of the appeals or in the general business of the court (sect. 14 (6)).

A person desiring to appeal must give notice in the prescribed form (see *post*) to the registration officer, and to the opposite party, if any, when the decision is given, or within five days thereafter, specifying the grounds of appeal. The registration officer forwards any such notices to the county court, as provided by the rules (see *post*) together, in each case, with a statement of the material facts, which in his opinion have been proved, and of his decision upon the whole case, and on any point specified as a ground of appeal. He must also furnish the court with any other information required which he is able to furnish (Schedule I. (29)).

If the registration officer thinks that any notices of appeal are based on similar grounds, he must inform the county court of the fact, for the purpose of enabling the court (if it thinks fit) to consolidate the appeals, or to select a case as a test case (Schedule I. (30)).

Any claim or notice of objection to be sent under the rules in Schedule I. to the registration officer may be sent by post, addressed to him at his office; and any notice required to be sent by him under such rules to any person shall be sufficiently sent if sent by post to the address of that person as given by him for the purpose, or as appearing on the lists, or if there is no such address to his last known place of abode (Schedule I. (34)).

The court to which the appeal lies is the court in the district of which the "qualifying premises" are situate (County Court (Registration Appeals) Rules, 1918, r. 2 (1), *post*, p. 2344 (a)).

The "qualifying premises" are the premises in respect of which the person is entered on the electors list, or claims to be entitled to be registered; or, where such person is entered, or claims to be entitled in respect of residence in or occupation of premises in succession, the premises last resided in or occupied during the qualifying period (County Court Rules (Registration Appeals), 1918, r. 1 (2)).

The registration officer sends the appeal, within seven days of its receipt, to the registrar of the county court with the particulars required by r. 4 (1) (*post*).

The party appealing gives notice to the county court as well as to the registration officer and the other party (r. 6, *post*).

The registrar enters the appeal and the judge fixes time and place of hearing—which must be within twenty-eight days of its receipt, and five clear days' notice given to the parties—

Provided that an appeal relating to the autumn register may be fixed between 22nd September and 11th October inclusive, although it may be more than 28 days from the date on which the appeal was received by the registrar (r. 9 (1), (2), (3), *post*).

Rule 10 provides for the notices to be sent by the registrar to the parties interested. Copies of documents forwarded by the registration officer may be obtained at the expense of the party requiring them, and are made *prima facie* evidence. Other evidence may be given, but it must be oral, unless by consent, or where otherwise ordered by the judge. The judge is not to be confined to the strict rules of evidence in deciding whether a *prima facie* case has been established. He may send back the statement forwarded by the registration officer for further information (r. 11 (5), *post*).

Any party to the appeal may appear in person, or by solicitor or counsel, or by any other party authorised in writing (the judge may dispense with the written authorisation).

A general power to amend, to draw inferences of fact, and to exercise the general powers of the court is given to the judge by rr. 13, 14, and 15, *post*. The judge must make a note of any point of law raised as under sect. 120

of the County Courts Act, 1888, r. 16. Costs are in his discretion, but a respondent to an appeal, other than the registration officer, is not liable to pay, or entitled to receive costs, unless he appears before the court in support of the decision of the registration officer (r. 17, *post*).

Rule 19 provides the procedure where the hearing is to take place at another court.

Rule 20 provides the procedure where a number of appeals are consolidated, or one appeal is heard as a test case.

Rule 21 relates to service of notices and documents and proof of service of the same.

Rules 23 and 24 relate to appeals to the Court of Appeal, and the consolidation of such appeals.

Rule 25 places the approved deputy registration officer in the same position as the registration officer, for the purposes of appeals.

Non-compliance with the rules or forms is not to render the proceedings void, unless the judge so directs, but necessary amendments may be made.

The court fee on entering the appeal from the registration officer is 10s. (County Court Fees Order, 1925, Fee No. 47).

(a) If sent to the wrong court the judge may either transfer it or hear it at that court (r. 7 (2), *post*).

AN ACT TO AMEND THE LAW WITH RESPECT TO PARLIAMENTARY
AND LOCAL GOVERNMENT FRANCHISES, AND THE REGIS-
TRATION OF PARLIAMENTARY AND LOCAL GOVERNMENT
ELECTORS, AND THE CONDUCT OF ELECTIONS, AND TO PROVIDE
FOR THE REDISTRIBUTION OF SEATS AT PARLIAMENTARY
ELECTIONS, AND FOR OTHER PURPOSES CONNECTED THEREWITH
(6TH FEBRUARY, 1918).

* * * * *

Appeals.

14.—(1) An appeal shall lie to the county court, as defined by rules of court, from any decision of the registration officer on any claim or objection which has been considered by him under this Act, or the placing of or refusal to place any mark against any name on the register, and rules of court shall be made for the purpose of determining the procedure on any such appeals and for applying and adapting thereto any enactments relating to county courts and the procedure therein :

Provided that an appeal shall not lie where a claimant or objector has not availed himself of his opportunity, as provided in the First Schedule to this Act, of being heard by the registration officer on the claim or objection, or as to the placing or refusing to place any such mark as aforesaid.

(2) An appeal shall lie on any point of law from any decision of the county court on any such appeal from the registration officer in accordance with rules of the Supreme Court to the Court of Appeal, but no appeal shall lie from the decision of the Court of Appeal.

(3) The right of voting of any person whose name is for the time being on the register shall not be prejudiced by any appeal pending under this section, and any vote given in pursuance of that right shall be as good as if no such appeal were pending, and shall not be affected by the subsequent decision of the appeal.

(4) Notice shall be sent to the registration officer in manner provided by rules of Court of the decision of the county court or of the Court of Appeal on any appeal under this section, and the registration officer shall make such alterations in the electors lists or register as may be required to give effect to the decision.

(5) On any appeal under this section the registration officer shall be deemed to be a party to the proceedings.

(6) If the Lord Chancellor is satisfied on the representation of the judge of any county court that the judge is unable, owing to the necessity of dealing with appeals under this Act, to transact the business of the court with proper despatch, the Lord Chancellor may appoint a barrister of at least seven years' standing to act as assistant judge for such time as the Lord Chancellor may direct, and subject to any conditions which he may impose.

Any assistant judge so appointed shall have all the powers and privileges and may perform any of the duties of the judge, whether under this Act or otherwise, to whom he has been appointed assistant.

An assistant judge shall be paid out of moneys provided by Parliament such remuneration and travelling allowances as may be allowed by the Treasury.

In the application of this provision to a county court district the whole of which is within the Duchy of Lancaster, the Chancellor of the Duchy shall be substituted for the Lord Chancellor.

* * * * *

29.—(1) The returning officer at a parliamentary election (other than a university election) shall be entitled to his reasonable charges, not exceeding the sums specified in the scale of maximum charges framed under this section, in respect of services and expenses of the several kinds mentioned in the said scale which have been properly rendered or incurred by him for the purposes of or in connexion with the election.

Payment of
returning
officers' ex-
penses by
Treasury.

(2) The amount of any such charges shall be *charged on and paid out of the consolidated fund or the growing produce thereof* (a) on an account being submitted to the Treasury in accordance with regu-

Section 29. lations made under this section; but the Treasury may, if they think fit, before payment apply to the court as defined by this section for the taxation of the account, and the court shall have jurisdiction to tax the account in such manner and at such time and place as the court thinks fit, and finally to determine the amount payable to the returning officer.

On the request of the returning officer for an advance on account of his charges, the Treasury may, if they think fit, and on such terms as they think fit, make such an advance.

(a) Words in italics substituted for former words.

(3) Where an application is made for the taxation of a returning officer's account, the returning officer may apply to the court to examine any claim made by any person against him in respect of matters charged in the account; and the court, after notice given to the claimant and after giving him an opportunity to be heard and to tender any evidence, may allow or disallow or reduce the claim objected to, with or without costs; and the determination of the court shall be final for all purposes and as against all persons.

(4) The Treasury shall prescribe a scale of maximum charges for the purposes of this section and may revise the scale as and when they think fit, and may also make regulations as to the time when and manner and form in which accounts are to be rendered to them for the purpose of the payment of the charges.

(5) The court for the purposes of this section shall be, as respects an election in the City of London, the Mayor's Court; and elsewhere in England and in Ireland the county court having jurisdiction at the place of nomination for the election to which the proceedings relate; and as regards Scotland "the court" shall mean the auditor of the Court of Session.

FIRST SCHEDULE.

REGISTRATION RULES.

* * * * *

Appeals from Registration Officer.

Sections 13,
14 (1).

Notice of
appeal from
registration
officer.

29. A person desiring to appeal against the decision of a registration officer must give notice of appeal in the prescribed form to the registration officer and to the opposite party, if any, when the decision is given or within five days thereafter, specifying the grounds of appeal.

The registration officer shall forward any such notices to the county court in manner directed by rules of court together, in each case, with a statement of the material facts which, in his opinion, have been established

in the case, and of his decision upon the whole case and on any point which may be specified as a ground of appeal, and shall also furnish to the court any further information which the court may require and which he is able to furnish.

30. Where it appears to the registration officer that any notices of appeal given to him are based on similar grounds, he shall inform the county court of the fact for the purpose of enabling the county court (if the court thinks fit) to consolidate the appeals, or select a case as a test case.

COUNTY COURT RULES. ORDER XLIII.

NOTE.—Rules 1 to 8, which do not apply to the taxation of charges of returning officers under the Representation of the People Act, 1918, sect. 29, are printed *ante*, p. 2300.

Taxation of Accounts and Examination of Claims under the Representation of the People Act, 1918, Section 29.

9. The foregoing Rules of this Order shall not apply to the taxation of accounts of returning officers or the examination of claims against returning officers under section 29 of the Representation of the People Act, 1918, but such taxation or examination shall be regulated by the following Rules.

10. An application by the Treasury to the court for the taxation of the accounts of a returning officer under the said section shall be made in writing addressed to the registrar at his office.

11. On receipt of the application the court shall fix a place and time for proceeding with such taxation, and the registrar shall issue to the bailiff for service on the Treasury and the returning officer notices, signed by the registrar and under the seal of the court, stating the place, day and hour at and on which the taxation will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend in person or by their solicitors such proceedings will be taken and certificate given as to the court shall seem just.

12. Where application is made for the taxation of a returning officer's account, and such officer applies to the court to examine any claim made by any person against him in respect of matters charged in the account, such application shall be made in writing addressed to the registrar at his office, and shall contain a submission on the part of the applicant to pay what shall be found due on examination.

13. On receipt of any such application the court shall fix a place and time for such examination, which shall take place before the taxation of the returning officer's account is concluded, and such taxation shall if necessary be adjourned until such examination has been completed. The registrar shall issue to the bailiff for service on the returning officer and the person making the claim notices, signed by the registrar and under the seal of the court, stating the place, day and hour at and on which such examination will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend in person or by their solicitors such proceedings will be taken and order made as to the court shall seem just.

14.—(1) The bailiff shall serve all such notices as hereinbefore mentioned ten clear days at least before the day fixed for any taxation or examination unless the court gives leave for shorter service.

(2) Service may be effected in accordance with Order LIV., Rules 2 and 3.

(3) Where any notice is to be served on the Treasury, it may be served on the Permanent Secretary or the Solicitor to the Treasury.

Rule 15.

15. Unless consent, or otherwise ordered, oral evidence only shall be admitted on any taxation or examination.

Evidence to
be oral.
Certificate on
taxation.

16.—(1) On the hearing of an application for taxation, or at any adjournment thereof, the court shall determine the amount payable to the returning officer, and shall specify the amount in a certificate, which shall be signed in duplicate and sent by post to the parties: but no order directing payment shall be inserted in the certificate except in the case mentioned in paragraph 3 of this Rule.

Fees and
costs.

(2) The court may determine by whom the court fees are to be paid, and may order either party to pay such sum as the court may consider proper by way of costs to the other party, and the amount allowed in respect thereof shall be added to or deducted from the amount payable to the returning officer, and the amount to be included in the certificate shall be adjusted accordingly.

Order for
payment
where
balance due
from return-
ing officer.

(3) If the court orders any sum to be paid by way of fees and costs to the Treasury, and such sum exceeds the amount certified to be payable by the Treasury to the returning officer, or if the amount already advanced by the Treasury to the returning officer on account of his charges exceeds the amount certified to be payable to him, the court shall certify the amount of the excess, and shall order the amount so certified to be paid to the Treasury, and the order shall be enforceable in like manner as a judgment of the court.

Order on
examination
of claim.

17. On the hearing of an application for the examination of a claim, or at any adjournment thereof, the court may allow or disallow or reduce the claim, and may determine by whom the court fees are to be paid, and may order either party to pay such sum as the court may consider proper by way of costs to the other party, and may give directions as to the addition to the sum allowed to the claimant of any costs ordered to be paid to him, or the set off against such sum of any fees and costs ordered to be paid by him, and as to the payment of the balance ascertained to be due from either party to the other.

Forms 423,
424, 425A,
426-428.

18. Forms 423, 424, 426, 427 and 428 in the Appendix, entitled in the Matter of the Representation of the People Act, 1918, and of the election in question, and with the necessary modifications, may be used for applications for taxation of accounts or examination of claims, notices of time and place fixed for taxation or examination, and orders on examination of claims under these Rules; and Form 425A in the Appendix, with the necessary modifications, may be used for certificates on taxation.

Rule 19 annulled by County Court (No. 1) Rules, 1925, r. 15.

FORMS.

423.

Application for Taxation of Charges of Returning Officer.

[Not to be printed.]

Order XI.III.
Rule 1.

In the County Court of _____, holden at _____, in the matter of the Parliamentary Elections (Returning Officers) Act, 1875, [as applied by sub-section 19 of section 75 of the Local Government Act, 1888 (or as the case may be)]; and

In the matter of an election of a member to serve in Parliament for the division of the county of _____ [or as the case may be].

Application is hereby made to the Court on behalf of [a person or the authority from whom payment is claimed] to tax the account of the Returning Officer at the above-mentioned election, of the charges

claimed by him in respect of such election, and to fix a place and time for such taxation, the Applicant [or Applicants] hereby submitting to pay to the said [Returning Officer] what shall be found to be due to him in the taxation of his said account.

Dated this day of 19 .

Applicant.
or Clerk to the Applicants.
or Solicitor to the Applicants.

To the Registrar of the Court.

424.

Notice of Place and Time fixed for Taxation.

[Not to be printed.]

[Heading as in Form 423.]

Application having been made to the Court on behalf of to tax Order XLIII.
the account of , the Returning Officer at the above-mentioned Rule 2.
election, of the charges claimed by him in respect of such election, and to
fix a place and time for such taxation :

Take notice, that the Court will proceed with such taxation at [place]
on the day of at the hour of in the
noon :

And you the said [Applicant], and you the said [Returning Officer] are
thereby respectively required to attend before the Court at the place and
time above-mentioned, and to produce before the Court on oath all books,
papers, and writings in your respective custody or power relating to the
above-mentioned matter, and to be examined touching the said matter as
the Court shall direct.

And further take notice, that if you or either of you do not attend, either
in person or by your solicitor, at the place and time above-mentioned, such
order will be made and such proceedings taken as to the Court shall seem
just.

Dated this day of .

Registrar.

To [the Applicant]
and to
[Returning Officer].

425A.

**Certificate on Taxation under the Representation of the People Act, Order XLIII.
1918, Section 29. Rule 18.**

[Not to be printed, but to be used as a precedent.]

In the County Court of holden at

In the Matter of the Representation of the People Act, 1918, Section 29,
and

In the Matter of an Election of a Member to serve in Parliament for the
Division of the County of

[or as the case may be.]

On the application of the Treasury for the taxation of the account
of the charges of the returning officer at the above-mentioned election
in respect of such election.

The Court doth determine that the amount payable to the said in
respect of such charges is the sum of £ , and doth certify the same
accordingly :

And the Court doth further determine that the Court fees payable on this application, amounting to £ , are to be paid by .

And doth further order that do pay to the sum of £ by way of costs in respect of this application :

And the Court doth certify that the amount payable to the said , including the costs payable to him as aforesaid [or after deducting the fees and costs payable by him as aforesaid] is the sum of £ .

[Or, if the balance, after adjusting the fees and costs, and giving credit for any amount already advanced on account of his charges, is against the returning officer,

And the Court doth certify that the balance due from the said after crediting him with the amount payable to him in respect of his charges and debiting him with the amount payable by him for Court fees and costs and the amount already advanced to him on account of his charges, is the sum of £ ;

And doth order that the said do on or before the day of , 19 , pay the said sum of £ to the registrar of this Court for the use of the Treasury.]

Given under the seal of the Court this day of , 19 .

By the Court,
Registrar.

To the Treasury
and to
The Returning Officer].

426.

Application for Examination of Claim transmitted to Returning Officer.

[Not to be printed.]

[Heading as in Form 423.]

Order XLIII. Application is hereby made to the Court on behalf of , the Re-
Rule 3. turning Officer at the above-mentioned election, to examine a claim for
transmitted to him by A.B., of , pursuant to section 5 of the
Parliamentary Elections (Returning Officers) Act, 1875 [as applied by sub-
section 19 of section 75 of the Local Government Act, 1888 (or as the case
may be)], and to fix a place and time for such examination, the applicant
hereby submitting to pay to the said A.B. what shall be found to be
due to him on such examination.

Dated this day of .

Returning Officer.

To the Registrar of the Court.

427.

Notice of Place and Time fixed for Examination of Claim.

[Not to be printed.]

[Heading as in Form 423.]

Order XLIII. Application having been made to the Court on behalf of , the
Rule 4. Returning Officer at the above-mentioned election, to examine a claim for
transmitted to him by A.B., of , pursuant to section 5
of the Parliamentary Elections (Returning Officers) Act, 1875 [as applied

by sub-section 19 of section 75 of the Local Government Act, 1888 (or as the case may be)], and to fix a place and time for such examination :

Take notice, that the Court will proceed with such examination at [the place] on the day of at the hour of in the noon :

And you the said [Returning Officer], and you the said A.B., are hereby respectively required to attend before the Court at the place and time above mentioned, and to produce before the Court on oath all books, papers, and writings in your respective custody or power relating to the above-mentioned matter, and to be examined touching the said matter as the Court shall direct.

And further take notice, that if you or either of you do not attend, either in person or by your solicitor, at the place and time above-mentioned, such order will be made and such proceedings taken as to the Court shall seem just.

Dated this day of , 19 .

Registrar.

To [the Returning Officer]
and to

[the person transmitting the claim].

428.

Order on Examination of Claim.

[Not to be printed, but to be used as a precedent.]

[Heading as in Form 423.]

It is this day adjudged and determined on the examination of a claim for transmitted by A.B., of , to , the Returning Officer at the above-mentioned election, pursuant to section 5 of the Parliamentary Elections (Returning Officers) Act, 1875, as applied by sub-section 19 of section 75 of the Local Government Act, 1888 [or as the case may be], that the said A.B. is entitled to recover the sum of against the said [Returning Officer] in respect of the said claim : [or that the said A.B. is not entitled to recover anything against the said [Returning Officer] in respect of the said claim].

[Order as to fees, costs, set-off, and payment of balance due from either party to the Registrar for the use of the other party.]

Given under the seal of the Court this day of , 19 .

The Registrar.

To [Returning Officer]

and to

[the person transmitting the claim].

429.

Certificate under 49 & 50 Vict. c. 57, s. 1.

[Not to be printed.]

[Title as in Form 423.]

I, Judge of the above-mentioned Court [or I, Registrar of Order XLIII. Rule 8.], the above-mentioned Court, having been deputed by the Judge of the said Court to exercise the powers of the Court under the above-mentioned Act], do hereby, pursuant to sect. 1 of the Parliamentary Elections (Returning Officers) Act, 1875, Amendment Act, 1886, certify that I have, on the application of , taxed the account of , the Returning Officer

at the above-mentioned election, of the charges claimed by him in respect of such election, and have allowed the same at the sum of £ [or that I have, on the application of , the Returning Officer at the above-mentioned election, examined the claim transmitted to him by for work [or labour, material, services, or expenses] in respect of the contract made with the said by the said [Returning Officer] for the purpose of the said election, and have allowed such claim at the sum of £], and that the particulars of the items and amounts claimed, and of the items and amounts allowed or disallowed, are set forth in the schedule herunto annexed.

Dated this day of 19 .

Judge [or Registrar].

SCHEDULE.

No. of Item.	Particulars.	Details of Items.	Amounts Claimed.	Amounts Allowed.	Amounts Disallowed.

STATUTORY RULES AND ORDERS, 1918, No. $\frac{802}{L. 27}$.

THE COUNTY COURT (REGISTRATION APPEALS) RULES, 1918, DATED JUNE 18, 1918, AS TO APPEALS FROM REGISTRATION OFFICERS UNDER SECTION 14 OF THE REPRESENTATION OF THE PEOPLE ACT, 1918 (7 & 8 GEO. 5, c. 64).

Rule 1.

Procedure on appeals under 7 & 8 Geo. 5, c. 64, s. 14.

Court to which appeal shall lie. [Act, s. 14 (1).]

1. The procedure on appeals to the county court from the decisions of registration officers under section fourteen of the Representation of the People Act, 1918 (in these Rules referred to as "the Act"), shall be governed by the following rules.

2. (1) The court to which an appeal shall lie shall be the court in the district of which the qualifying premises (as defined by this Rule) are situate, subject to paragraph 2 of Rule 7, and to the power of the judge to fix the place for the hearing of the appeal pursuant to Rule 9.

(2) For the purposes of this Rule the expression "the qualifying premises" means the premises in respect of which the person whose right to be registered is in any way in question on the appeal is entered on the electors list or claims to be entitled to be registered; or where such person is so entered or claims to be entitled to be registered in respect of residence in or occupation of premises in succession, the premises last resided in or occupied during the qualifying period as defined by section six of the Act.

- 3.** Where notice of appeal is given pursuant to Rule 29 in the first Schedule to the Act, the party (if any) in whose favour the decision of the registration officer is given shall be the respondent; and the registration officer shall also be named as a respondent. Rule 3.
Respondents to appeal.
[Act, s. 14 (5): Sched. I. Rule 29.]
- 4.** (1) On a notice of appeal being given to the registration officer pursuant to Rule 29 in the first Schedule to the Act, he shall within seven days after the receipt of the notice forward the same by post to the registrar of the court to which the appeal lies, together in each case with—
Notice of appeal and other documents to be sent by registration officer to registrar.
[Act, Sched. I. Rule 29.]
 - (a) a copy of any claim or notice of objection sent to him in the matter;
 - (b) a statement of the material facts which in his opinion have been established in the case; and
 - (c) a statement of his decision upon the whole case and upon any special point which may be specified in the notice of appeal as a ground of appeal.
- (2) The registration officer shall also on request furnish to the court any further information which the court may require, and which he is able to furnish.
- 5.** Where it appears to the registration officer that any notices of appeal given to him are based on similar grounds, he shall forward to the registrar a declaration to that effect, for the purpose of enabling the court, if it thinks fit, to consolidate the appeals, or to select one of such cases for hearing in the first instance as a test case. Where a number of appeals are based on similar grounds.
Form 1.
[Act, Sched. I. Rule 30.]
- 6.** A person desiring to appeal against the decision of a registration officer shall in addition to giving notice of appeal pursuant to Rule 29 in the first Schedule to the Act forward to the registrar of the court to which the appeal lies, within the time fixed by that rule, a copy of the notice of appeal, accompanied by a request to the court, according to the form in the Appendix, to enter the appeal for hearing and to fix a time and place for the hearing thereof, and shall state in such request an address to which notices and other documents are to be sent, and shall with such copy and request forward to the registrar the fee prescribed by these Rules. Request by appellant for entry of appeal for hearing.
Form 2.
- 7.** (1) If any notice of appeal or request for the entry of an appeal is forwarded to a court other than the court to which it should have been forwarded, the registrar shall within two days after the receipt thereof forward the same and any documents and the fee relating to the matter to the registrar of the proper court, who shall proceed thereon as if such notice or request had been forwarded to him in the first instance; and the time within which the hearing is to be fixed shall be calculated from the date on which such request is received by him. Where notice of appeal or request forwarded to wrong court.

Rule 7.

(2) If after an appeal has been entered for hearing and notice of the hearing has been given it appears that the notice of appeal and request for entry should have been forwarded to some other court, the judge may either—

- (a) transfer the appeal to such other court, in which case it shall be dealt with as if the notice and request had been sent in the first instance to that court; or
- (b) retain the appeal and deal with the same in the court in which it is entered, in which case the proceedings on the appeal shall be as valid as if it had been properly sent to that court.

Notices of
appeal to be
numbered
and
registered.
Form 13.

8. Notices of appeal with requests for the entry of the appeals for hearing received and retained by the registrar shall be numbered by him consecutively, and shall be entered in a register to be kept by the registrar according to the form in the Appendix; and all subsequent notices and documents relating to any such appeal shall bear the same number.

Fixing time
and place for
hearing
appeal.

9. (1) On receipt of a request for the entry of an appeal for hearing the registrar shall enter the same accordingly, and shall communicate with the judge, who shall, as soon as conveniently may be, fix a time and place for the hearing of the appeal.

(2) The time to be fixed shall be within twenty-eight days from the day on which the request is received by the registrar, and shall be so fixed as to allow notice of the hearing to be given to the parties and the registration officer five clear days at least before the day so fixed.

(3) Provided that the time for the hearing of any appeal relating to the autumn register may be fixed for any day between the twenty-second day of September and the eleventh day of October, both inclusive, although the day so fixed may be more than twenty-eight days from the day on which the request for the entry of the appeal is received by the registrar.

(4) The place of hearing shall be the place at which the court is held: Provided that if the judge is satisfied that any appeal can be more conveniently heard at some other court of which he is the judge, he may order the hearing to take place at such other court.

(5) The hearing of any appeal may be fixed either for any day appointed for the holding of a court for the transaction of the ordinary business of the court at the place at which the appeal is to be heard, or for any day specially appointed for the hearing of appeals.

(6) Two special courts for the hearing of appeals may be held on one day before the same judge.

Amended rule, dated February 3, 1919.

10. On the time and place for the hearing being fixed, the registrar shall give notice thereof to the appellant and to the respondent (if any), and to the registration officer, according to the form in the Appendix. Provided that where the same person is appellant or respondent in a number of appeals fixed to be heard on the same day it shall be sufficient to send one notice only to such person, with a schedule appended thereto of the appeals to which the notice relates: Provided also, that it shall be sufficient to send one notice only to the registration officer of a number of appeals fixed to be heard on the same day, with a schedule appended thereto of the appeals to which the notice relates.

Rule 10.

Notice of hearing to parties and registration officer.

Forms 3, 4,

11. (1) The registrar shall, on the application and at the cost of any party to an appeal, furnish him with a copy of any document, statement, or information forwarded by the registration officer to the registrar.

Furnishing copies of documents sent by registration officer.

(2) The documents, statement, and information so forwarded shall be received and used on the hearing of the appeal, and shall be *prima facie* evidence of the facts stated therein; but any party to the appeal may, by leave of the judge, give such further evidence as he may be advised.

Documents to be received and used at hearing.

(3) Where further evidence is tendered, oral evidence only shall be admitted, unless by consent or otherwise ordered.

Further evidence.

(4) The judge may order that any material, whether strictly admissible in evidence or not, which in his opinion ought to be admitted as *prima facie* evidence of any fact, shall be *prima facie* evidence of that fact, so as to throw the burden of proof on to the other party.

Oral evidence.

Admission of certain material as *prima facie* evidence.

(5) If in the opinion of the judge the statement forwarded by the registration officer, and the other material before the court, are not sufficient to enable him to give judgment in law, he may remit the statement to the registration officer for restatement or further statement.

Sending back statement for restatement.

12. (1) Any party to an appeal may appear or act on the appeal—

Appearance of parties.

(a) in person;

(b) by any solicitor who would be entitled to appear for such party in an action in the county court;

(c) by counsel; or

(d) by any other person nominated by such party in writing signed by him to appear or act on his behalf and approved by the judge;

but not otherwise.

Rule 12.

Provided that the judge may allow any party to appear or act by a person not nominated in writing as required by paragraph (d), if he is satisfied that such person is in fact authorised to appear or act for such party, and that the failure to obtain a nomination in writing is due to mistake or other reasonable cause.

(2) No person (other than a solicitor) who appears or acts on behalf of any party to an appeal shall be entitled to have or recover any fee, reward or sum for so appearing or acting, other than such travelling expenses (if any) as may be allowed by the court: Provided that nothing in these Rules contained shall affect the right of a solicitor to recover costs (subject to the limitation imposed by these Rules) in respect of his employment of counsel.

Amendment
of notice of
appeal, &c.

13. The judge may at any stage of the proceedings allow the amendment of the notice of appeal, or make any other order on such terms as he may think just, to ensure the determination on the merits of the real question in controversy between the parties.

Power
to draw
inferences
of fact.

14. The judge shall have power to draw all inferences of fact which might have been drawn by the registration officer, and to give any decision and make any order which ought to have been given or made by the registration officer, regard being had in particular to Rule 22 in the first Schedule to the Act.

General
powers.

15. Subject to the special provisions of these Rules, the court shall in relation to any appeal have all the powers attaching to the exercise of its ordinary jurisdiction, and the rules governing the practice of the court shall with the necessary modifications apply accordingly.

Note to be
taken of
question of
law raised,
&c., and
copy
furnished.

16. At the hearing of an appeal the judge shall make a note of any question of law raised, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision on the hearing of the appeal: and where notice of appeal to the Court of Appeal has been given he shall, at the expense of any party to such appeal, furnish a copy of the note so taken to such party, and shall sign such copy.

Costs.

17. (1) The costs of and incidental to an appeal shall be in the discretion of the judge.

(2) The judge may either fix the amount of such costs, or allow them on such scale as he may direct, and in default of any such direction they shall be taxed under Column A. of the higher scale of costs in use in the county courts: and an order directing payment of any such costs shall be enforceable in the same manner as an order to the like effect made in an action.

(3) A respondent to an appeal, other than the registration officer, shall not be liable or entitled to costs, unless he appears before the court in support of the decision of the registration officer.

Rule 17.

18. When the judge has given judgment on an appeal the registrar shall as soon as conveniently may be draw up, seal and file an order in accordance with the decision, specifying exactly every alteration or correction to be made in the electors lists or register pursuant to the order ; and sealed copies of the order shall be sent to the registration officer and to each party to the appeal.

Order on appeal.
Form 6.

19. Where the hearing of an appeal is fixed to take place at another court, the registrar of the court to which notice of appeal is sent shall forthwith send notice to the registrar of such other court that the hearing has been ordered to take place there ; and he shall in sufficient time before the hearing transmit the papers to the registrar of the court at which the hearing is to take place, who shall act at the hearing for the first-mentioned registrar, and shall after the hearing return the papers to him with a minute of the order made : and the order shall be drawn up, filed, sealed and proceeded on in the court to which the notice of appeal was originally sent in like manner as if the hearing had taken place there.

Where hearing to take place at another court.

20. (1) Where it appears to the judge, from any declaration to that effect forwarded by the registration officer to the registrar, or otherwise, that any number of cases decided by the registration officer in which notices of appeal have been given to him and forwarded by him to the registrar, and requests for the entry of the appeals for hearing have been forwarded to the registrar, depend and have been decided by the registration officer on the same point or points of law, the judge may declare that such appeals ought to be consolidated, or that one appeal should be selected for hearing in the first instance as a test case ; and thereupon the following provisions shall apply.

Consolidation of appeals to county court or selection of one appeal for hearing as test case.

[Act, Sched. I. Rule 30.]
Form 7.

(2) A time and place shall be fixed for the hearing of such appeals in accordance with Rule 9, but one only of such appeals shall be selected by the judge for hearing in the first instance as a test case ; and the registrar shall as soon as may be send to the parties to the selected appeal and all the other appeals, and to the registration officer, a notice according to the form in the Appendix, informing such parties and the registration officer that it appears to the judge that the cases specified in the schedule appended to the notice depend and have been decided by the registration officer on the same point or points of law, and that the judge has directed that the selected appeal shall be heard

Form 8.

Rule 20.

in the first instance as a test case. The provisoes to Rule 10 shall apply to notices sent under this Rule.

Form 9.

(3) The notice shall further request the parties to the other appeals to give notice to the registrar and to the opposite parties and the registration officer, within three days from the date of the notice sent by the registrar, either that they consent to be bound by the decision on the selected appeal (without prejudice to their right to appeal to the Court of Appeal), or that they require the appeals to which they are parties to be heard.

Form 10.

(4) Where the same person is appellant or respondent in a number of such appeals, it shall be sufficient for him to send separate notices to the respondents or appellants (other than the registration officer) in such appeals, and one notice only to the registrar and to the registration officer, with a schedule appended thereto of the appeals to which the notice relates.

(5) In the case of any appeal in which no notice requiring such appeal to be heard is sent, the parties shall be deemed to consent to be bound by the decision on the selected appeal (without prejudice to their right to appeal to the Court of Appeal); and in any such case, after the selected appeal has been disposed of, an order similar to that made on the selected appeal shall be made without further hearing, but no costs shall be allowed to either side, other than the court fees and the costs of and incidental to the notice of appeal and the request for the entry of the appeal for hearing, and the notice sent by the registrar and any notice sent in reply thereto, and the costs of and incidental to the order.

(6) The parties who consent or under this rule are to be deemed to consent to be bound by the decision on the selected appeal, and who are in the same interest as the unsuccessful party to such appeal, shall be liable for the costs of the selected appeal in the same manner and to the same extent as the unsuccessful party to such appeal, and an order directing them to pay such costs may be made and enforced accordingly.

(7) In the case of any appeal in which notice requiring the appeal to be heard is sent, such appeal shall be heard after the selected appeal is disposed of; but a party requiring any such appeal to be heard shall be liable to pay costs to the opposite party, and shall not be entitled to receive any costs of or in such appeal, other than the court fees and the costs of and incidental to the notice of appeal and the request for the entry of the appeal for hearing, and the notice sent by the registrar and any notice sent in reply thereto, and the costs of and incidental to the order, unless the judge shall otherwise order.

Service of
notices and
documents.

21. (1) Any notice or other document required or authorised by these Rules to be sent to the registration officer may be sent to

him by post addressed to him at his office. Any notice or other document required or authorised by these Rules to be sent to any other person shall be sufficiently sent if sent by post to the address of such person as given by him for the purpose or appearing on the documents forwarded to the court, or, if there is no such address, to his last known place of abode. Provided that where any such person acts by a solicitor or by a person nominated in writing pursuant to Rule 12, paragraph 1, sub-paragraph (d), any such notice or document may be sent by post to such solicitor or person at the address for service given by him. Rule 21.
[Act,
Sched. I.
Rule 34.]

(2) Any such notice or document shall, unless the contrary be proved, be deemed to have been served at the time when the same would have been delivered in the ordinary course of post, and in proving the service thereof it shall be sufficient to prove that the same was properly addressed and posted. Proof of
service.

Rule 22 annulled by County Court (No. 1) Rules, 1925, r. 24.

23. A person desiring to appeal to the Court of Appeal against the decision of the county court on any appeal shall give notice of his intention to appeal to the registrar and to the registration officer and to the opposite party, if any, according to the form in the Appendix, when the decision is given, or within five days thereafter, specifying the grounds of appeal. Notice of
appeal from
county court
to Court of
Appeal.
Form 11.

24. (1) Where it appears to the judge that the validity of any number of decisions given by the county court on appeals from the decisions of the registration officer depends upon the same point or points of law, and the parties to such appeals or any of them have given notice to the registrar of their intention to appeal to the Court of Appeal, the judge may, whether the appeals to the county court have or have not been consolidated, declare that the appeals to the Court of Appeal ought to be consolidated; and thereupon the following provisions shall apply. Consolida-
tion of
appeals
from county
court to
Court of
Appeal.

(2) In any such case the judge, after making and furnishing a copy of a note in one of such appeals as provided by Rule 16, shall make and sign a statement according to the form in the Appendix that the several persons whose names and qualifications are set out in a schedule to be appended to the statement were parties as appellants or respondents to appeals from decisions of the registration officer given in circumstances similar to those in the case in which the note is made, and that similar decisions were given on all the said appeals (the numbers of the several appeals to which the said persons respectively were parties being set opposite to their respective names in the schedule), and that due notice to appeals from such decisions was given, and that he declared that the appeals in all the said cases ought to be consolidated. Form 12.

Rule 24.

(3) And he may name any person interested and consenting to be appellant or respondent in the consolidated appeal on behalf of himself and all other persons interested in like manner in the appeals who consent to be parties to and to be bound by the consolidated appeal, and such person shall sign a declaration that he appeals on behalf of himself and all the other persons interested as appellants whose names are written under the declaration, and agrees to prosecute the appeal, or that he agrees on behalf of himself and all the other persons interested as respondents whose names are written under the declaration to appear and answer the appeal; and the names and qualifications of every party intended to be joined shall be written under the declaration; and the declaration so signed shall be delivered to the registrar, and a copy thereof shall be appended to the statement made by the judge; and every party whose name is so written shall be deemed to consent to be a party to and to be bound by the consolidated appeal.

Where
deputy or
temporary
registration
officer
appointed.
[Act, s. 12
(3, 4).]

25. Where any deputy registration officer approved under subsection three, or any person temporarily appointed under subsection four of section twelve of the Act performs the duties and exercises the powers of the registration officer in relation to the formation of the register, and notice of appeal against any decision of such deputy or other person is given, the provisions of these Rules as to the registration officer shall as regards such appeal apply to such deputy or other person as they apply to the registration officer as regards cases dealt with by him, and references in these Rules to the registration officer shall as regards such appeal be construed as referring to such deputy or other person accordingly.

Where
assistant
judge
appointed.
[Act, s. 14
(6).]

26. Where an assistant judge appointed pursuant to subsection six of section fourteen of the Act is performing any of the duties of the judge under the Act, reference in these Rules to the court or judge shall be construed as referring to such assistant judge.

Forms

27. (1) The forms in the Appendix to these Rules, with such modifications as may be necessary, shall be used for notices and orders under these Rules.

(2) The registrar of any court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply such of the same as are to be used by parties to appeals, without charge, for the use of parties requiring the same.

Non-
compliance
with rules
or forms.

28. (1) Non-compliance with any of these Rules or any departure from the forms in the Appendix shall not render any pro-

proceedings void unless the judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the judge may think fit.

Rule 28.

29. In reckoning time for the purposes of these Rules Sunday, Christmas Day, Good Friday, and any bank holiday or day set off in part as a public holiday or day of public fast, humiliation or thanksgiving, or any day on which the offices of the court are closed, shall be excluded, and where the time for doing any act or taking any proceeding under these Rules expires on any such day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the next day not being one of any such days.

30. These Rules may be cited as the County Court (Registration Appeals) Rules, 1918.

APPENDIX OF FORMS.

No. 1.

Declaration by Registration Officer that it appears to him that a number of Notices of Appeal are based on similar grounds.

The Representation of the People Act, 1918.

I hereby declare that it appears to me that the notices of appeal given to me in the cases mentioned in the Schedule hereto are based on similar grounds, and I forward to the Court this declaration accordingly, for the purpose of enabling the Court (if the Court thinks fit) to consolidate the appeals, or to select one of such cases for hearing in the first instance as a test case.

The day of 19

Registration Officer.

To the Registrar of the County Court
of held at

Schedule.

No.	Appellant.	Respondents.
1	A. B., of (address).	C. D., of (address), and the Registration Officer for
	And	so on.

Registration Officer.

No. 2.

Request by Appellant for Entry of Appeal.

In the County Court of held at
In the Matter of the Representation of the People Act, 1918,
and
In the Matter of an Appeal against the decision of the Registration Officer
for

Between

A. B. _____ Appellant
of (address) _____

and

C. D.
of (address)

and

The Registration Officer for _____ Respondents.
SIR,

I HEREWITH forward to you copy of the notice of appeal in the above-mentioned matter given to the above-named C. D. and to the Registration Officer.

I request the Court to enter the appeal for hearing, and to fix a time and place for the hearing thereof.

I enclose the sum of 10s. for the fee payable on the entry of the appeal for hearing.

Dated this day of , 19 .

A. B. , Appellant
(add address)

to which address all notices or other documents are to be sent.

To the Registrar of the County Court
of held at .

No. 3.

Notice of Time and Place for Hearing of Appeal.

In the County Court of _____ held at _____
In the Matter of the Representation of the People Act, 1918,
No. of Appeal.

No. of Appeal.

and

In the Matter of an Appeal against the decision of the Registration Officer
for _____

Between

A. B.
of (address) Appellant

and

C. D.
of (address)

and

The Registration Officer for _____, Respondents.

TAKE NOTICE, that the above-mentioned appeal will be heard at a Court to be held at _____ on _____ the _____ day of _____, 19____, at the hour of _____ in the _____ noon:

And that if you do not attend either in person or by your solicitor at the time and place above mentioned such proceedings will be taken and order made as the Judge may think just.

Dated this day of , 19

Registrar.

To (the Appellant and the Respondent
if any) named in the notice of appeal
and to
(the Registration Officer for

No. 4.

Notice of Time and Place for Hearing to Appellant or Respondent in a number of Appeals fixed to be heard on the same day.

In the County Court of held at .

In the Matter of the Representation of the People Act, 1918,
and

In the Matter of the several Appeals against the decisions of the Registration Officer for enumerated in the Schedule hereto.

TAKE NOTICE, that the several appeals enumerated in the Schedule hereto in which you are the Appellant [or the Respondent] will be heard at a Court to be held at on the day of , 19 , at the hour of in the noon;

And that if you do not attend either in person or by your solicitor at the time and place above-mentioned such proceedings will be taken and orders made on the said appeals as the Judge may think just.

Dated this day of , 19 .

Registrar.

To (the Appellant or the Respondent,
naming him).

Schedule of Appeals.

No.	Appellants.	Respondents.
	<i>Where same Appellant.</i>	
1	A. B., (address).	C. D., (address), and the Registration Officer.
2	The same.	E. F., (address), and the Registration Officer.
3	<i>And so on.</i>	
	<i>Or, where same Respondent.</i>	
4	G. H., (address).	I. J., (address), and the Registration Officer.
5	K. L., (address).	The same.
6	M. N., (address).	The same.
	<i>And so on.</i>	

Registrar.

No. 5.

Notice to Registration Officer of Time and Place for Hearing of a Number of Appeals fixed to be heard on the same day.

In the County Court of held at .

In the Matter of the Representation of the People Act, 1918,
and

In the Matter of the several Appeals against the decisions of the Registration Officer for enumerated in the Schedule hereto.

TAKE NOTICE, that the several appeals enumerated in the Schedule hereto will be heard at a Court to be held at on the day of , 19 , at the hour of in the noon;

And that if you do not attend either in person or by your solicitor at the

COUNTY COURT (REGISTRATION APPEALS) FORMS, 1918.

time and place above-mentioned, such proceedings will be taken and orders made on the said appeals as the Judge may think just.

Dated this day of , 19 Registrar.

To the Registration Officer for

Schedule of Appeals.

No.	Appellant.	Respondent.
1	(Name and address).	(Name and address), and the Registration Officer.
2	(Name and address).	(Name and address), and the Registration Officer.
	And so on.	

Registrar.

No. 6.

Order on Appeal.

In the County Court of held at
In the Matter of the Representation of the People Act, 1918,
No. of Appeal.

and
In the Matter of an Appeal against the decision of the Registration Officer
for

Between

A. B. Appellant
of (address) and

C. D. Respondents.
of (address) and

The Registration Officer for Respondents.
Upon hearing for the Appellant and for the
Respondent C. D. and for the Registration Officer

It is ordered that the decision of the Registration Officer refusing to enter the name of the above-named A. B. on the Register of Parliamentary Electors for the Registration Area of in the Polling District of in the Constituency of

[or (state the decision appealed against)]
be reversed [or varied] and that (state the order made, and the exact alteration or correction to be made in the electors list or register pursuant to the order)

And it is ordered that the Appellant be allowed against the Respondent C. D. , and against the Registration Officer [or against the Registration Officer] his costs of and incidental to this appeal, which are hereby allowed at the sum of £ [or to be so taxed by the Registrar under Column A. of the higher scale of costs in use in the county courts];

And it is ordered that the Respondents or one of them [or the Registration Officer] do pay the said sum of £ to the Registrar for the use of the Appellant on or before the day of , 19 [or do pay the amount of the said costs when taxed to the Registrar for the use of the Appellant within fourteen days from the date of the Registrar's certificate of the result of the taxation].

[or It is ordered that the decision of the Registration Officer (state the decision) be affirmed;

And it is ordered that the Respondents C. D. and the Registration Officer [or the Registration Officer] be allowed against the Appellant their [or his] costs of and incidental to this appeal, which are hereby allowed in

the case of the Respondent C. D. at the sum of £ and in the case of the Registration Officer at the sum of £ [or which are hereby allowed at the sum of £] [or to be taxed by the Registrar under column A. of the higher scale of costs in use in the county courts];

And it is ordered that the Appellant do pay the said sums of £ and £ to the Registrar for the use of the Respondents respectively or do pay the said sum of to the Registrar for the use of the Registration Officer] on or before the day of , 19 [or do pay the amount [or amounts] of the said costs when taxed to the Registrar for the use of the Respondents respectively [or for the use of the Registration Officer] within fourteen days from the date of the Registrar's certificate of the result of the taxation.]

Dated this day of , 19 .

By the Court,
Registrar.

To (the Appellant and the Respondent, naming them) and to the Registration Officer for

No. 7.

Declaration by Judge that Appeals depending on the same Point or Points of Law ought to be Consolidated.

In the County Court of held at
in the Matter of the Representation of the People Act, 1918,
and
in the Matter of the several Appeals against the decisions of the Registration Officer for enumerated in the Schedule hereto.

It appearing to me that the several cases enumerated in the Schedule hereto depend and have been decided by the Registration Officer on the same point or points of law,

I declare that such appeals ought to be consolidated.

And I select the Appeal No.

Between

A. B. of (address) Appellant

and

C. D. of (address)

and

The Registration Officer for Respondents,
for hearing in the first instance as a test case.

Dated this day of , 19 .

Judge
[or Assistant Judge].

Schedule of Appeals.

No.	Appellant.	Respondents.
1	(Name and address).	(Name and address), and the Registration Officer.
	And so on.	

Judge
[or Assistant Judge].

No. 8.

Notice of Consolidation of Appeals and Selection of One Appeal for Hearing in the First Instance as a Test Case.

In the County Court of _____ held at _____
 In the Matter of the Representation of the People Act, 1918,
 and _____

In the Matter of the several Appeals against the decisions of the Registration Officer for _____ enumerated in the Schedule hereto.

TAKE NOTICE, that it appears to the Judge that the several cases enumerated in the Schedule hereto depend and have been decided by the Registration Officer on the same point or points of law, and the Judge has declared that the appeals ought to be consolidated, and has selected the Appeal No. _____ therein

Between

A. B.

(address)

Appellant

and

C. D.

and

The Registration Officer for _____
 for hearing in the first instance as a test case.

Respondents,

The said appeal will be heard at a Court to be holden at _____ on _____ day of _____, 19____, at the hour of _____ in the _____ noon, and all the other appeals enumerated in the Schedule hereto have been set down for hearing at the same time and place.

I have therefore to request you to give notice in writing to me, and to the opposite party [or parties], if any, to the appeal [or appeals] to which you are a party, and to the Registration Officer, within three clear days from the date of this notice, either that you consent to be bound by the decision on the selected appeal (without prejudice to your right to appeal to the Court of Appeal), or that you require the appeal [or appeals] [or. any and, if so, which of the appeals] to which you are a party to be heard

If you are Appellant or Respondent in a number of the said appeals, it will be sufficient for you to send separate notices to the Respondents or Appellants other than the Registration Officer in such appeals, and to send one notice only to me and to the Registration Officer, with a list appended thereto of the appeals to which the notice relates.

In the case of any appeal in which no notice requiring such appeal to be heard is so sent you will be deemed to consent to be bound by the decision on the selected appeal (without prejudice to your right to appeal to the Court of Appeal); and in any such case, after the selected appeal has been disposed of, an order similar to that made on the selected appeal will be made without further hearing on the appeal [or appeals] in which no notice is so sent: but no costs will be allowed to either side. other than the Court fees and the costs of and incidental to the notice [or notices] of appeal and the request for the entry of such appeal [or appeals] for hearing, and this notice and any notice sent in reply thereto, and the costs of and incidental to the order [or orders] made.

The parties who consent or are to be deemed to consent to be bound by the decision on the selected appeal, and who are in the same interest as the unsuccessful party to such appeal, will be liable for the costs of such appeal in the same manner and to the same extent as the unsuccessful parties to such appeal, and an order directing them to pay such costs may be made and enforced accordingly.

If you send notice requiring any appeal to which you are a party to be heard, such appeal will be heard after the selected appeal is disposed of;

but you will be liable to pay costs to the opposite party, and will not be entitled to receive any costs of or in such appeal, other than the Court fees and the costs of and incidental to the notice of appeal and the request for the entry of the appeal for hearing, and this notice and any notice sent in reply thereto, and the costs of and incidental to the order, unless the Judge shall otherwise order.

Dated this day of , 19

Registrar.

to the parties to the several appeals mentioned in the Schedule hereto, and to the Registration Officer for

Schedule of Appeals.

No.	Appellant.	Respondents.
1	(Name and address).	(Name and address), and the Registrar.
2	(Name and address).	(Name and address), and the Registrar.
	And so on.	

Registrar.

No. 9.

Notice consenting to be bound by Decision on Selected Appeal, or requiring Appeal to be heard.

In the County Court of held at .

In the Matter of the Representation of the People Act, 1918, and

In the Matter of an Appeal against the decision of the Registration Officer for

No. of appeal,

Between

E. F.
(address)

Appellant

and

E. H.
(address)

and

The Registration Officer for Respondents.

Pursuant to the Notice sent to me by the Registrar, dated the day of , 19 , I hereby give you notice that I consent to be bound in the above mentioned appeal by the decision of the Court on the selected appeal

Between

A. B.

Appellant

and

C. D.

and

The Registration Officer for Respondents,
without prejudice to my right to appeal to the Court of Appeal.

COUNTY COURT (REGISTRATION APPEALS) FORMS, 1918.

[or I hereby give you notice that I require the above mentioned appeal to which I am a party to be heard after the selected appeal

Between

A. B. Appellant

and

C. D.

and

The Registration Officer for Respondents,
has been disposed of.]

Dated this day of , 19 .

E. F. Appellant
[or G. H., Respondent].
(add address)

To the Registrar of the Court
and to (the Respondent or the Appellant)
and to the Registration Officer for

No. 10.

Notice to Registrar and Registration Officer consenting to be bound by Decision on Selected Appeal, or requiring Appeals to be heard, where the same Person is Appellant or Respondent in a number of Appeals.

In the County Court of held at .

In the Matter of the Representation of the People Act, 1918,
and

In the Matter of the several Appeals against the decisions of the Registration Officer for enumerated in the Schedule hereto.

Pursuant to the Notice sent to me by the Registrar, dated the day of , 19 , I hereby give you notice that I consent to be bound in the several appeals enumerated in the Schedule hereto to which I am a party by the decision of the Court on the selected appeal

Between

A. B. Appellant

and

C. D.

and

The Registration Officer for Respondents,
without prejudice to my right to appeal to the Court of Appeal.

[or I hereby give you notice that I require the several appeals enumerated in the Schedule hereto to which I am a party to be heard after the selected appeal

Between

A. B. Appellant

and

C. D.

and

The Registration Officer for Respondents,
has been disposed of.]

[or I hereby give you notice that I consent to be bound in the several appeals enumerated in the first part of the Schedule hereto to which I am a party by the decision of the Court on the selected appeal

Between

A. B. Appellant

and

C. D.

and

The Registration Officer for Respondents,
without prejudice to my right to appeal to the Court of Appeal;

But that I require the several appeals enumerated in the second part of the

Schedule hereto to which I am a party to be heard after the selected appeal has been disposed of.]

Dated this day of , 19 .

E. F. Appellant
[or G. H. Respondent].
(add address)

To the Registrar of the Court
and to the Registration Officer for

SCHEDULE.

PART I.

Appeals in which the Appellant or Respondent consents to be bound.

No.	Appellant.	Respondents.

PART II.

Appeals which the Appellant or Respondent requires to be heard.

No.	Appellant.	Respondents.

E. F.
[or G. H.
or R. S.]

No. 11.

Notice of Intention to Appeal to Court of Appeal.

In the County Court of held at .

In the Matter of the Representation of the People Act, 1918,
and No. of Appeal.

In the Matter of an Appeal against the decision of the Registration Officer
for

Between

A. B. Appellant
of (address) and

C. D. Respondents.
of (address) and

The Registration Officer for ,

TAKE NOTICE, that I intend to appeal to the Court of Appeal from the decision of the Judge on the hearing of the above-mentioned appeal on the day of , 19 , whereby (state the decision appealed against)

The grounds of my appeal are (state grounds)

Dated this day of , 19 .

A. B. Appellant.
or C. D. Respondent,
(add address)

To (the opposite party, if any) and to
The Registration Officer for
and to the Registrar of the Court.

Statement by Judge that Appeals to the Court of Appeal against Decisions depending upon the same Point or Points of Law ought to be Consolidated.

A. B. of (address) Between and Appellant
C. D. of (address) and

In the Matter of the several other Appeals against the decision of the said
Registration Officer referred to by number in the Schedule hereto.

At a Court held before me at _____ on _____ the _____ day of _____ 19____, A. B. _____ of _____ appealed against the decision of the Registration Officer for (state the decision appealed against).

On the hearing of the said appeal I decided (*state the decision*).

The questions of law raised on the appeal, and the facts in evidence in relation thereto, and my decision thereon and my decision on the hearing of the appeal, are stated in a note made and signed by me.

The several persons whose names and qualifications are set out in the Schedule hereto were parties as Appellants [*or* Respondents] to appeals (numbered in the Schedule hereto) from decisions of the Registration Officer given in circumstances similar to those in the case in which the said note was made, and similar decisions were given by me on all the said appeals.

Due notice of appeal against my decisions was given, and I declared that the appeals in all the said cases ought to be consolidated.

And I name A. B. of to be Appellant [or C. D. of to be Respondent] in the consolidated appeal on behalf of himself and all other persons interested in like manner who consent to be parties to and to be bound by the consolidated appeal.

Dated this day of , 19 .

Judge
[or Assistant Judge.]

Declaration to be Signed by Person named as Appellant.

I, A. B., of _____, hereby declare that I appeal against the decisions of the County Court in the above mentioned cases on behalf of myself and all the other persons interested as Appellants whose names and qualifications are hereunder written in the Schedule hereto, and I agree to prosecute the consolidated appeal.

Dated this day of 19

A. B. Appellant
(add address)

Declaration to be Signed by Person named as Respondent.

I, C. D., of , on behalf of myself and all the other persons interested as Respondents in the appeals in the above mentioned cases

whose names and qualifications are hereunder written in the Schedule hereto, do agree to appear and answer the consolidated appeal.

Dated this day of , 19 .

C. D. Respondent
(add address)

See post for Form of Certificate on Taxation under the Representation of the People Act, 1918, sect. 29.

SCHEDULE.

List of Appeals.

PART I.

Names and Qualifications of Persons interested as Appellants, who consent to be parties to and to be bound by the Consolidated Appeal.

No. of Appeal.	Name and Qualification.

A. B.

PART II.

Names and Qualifications of Persons interested as Respondents, who consent to be parties to and to be bound by the Consolidated Appeal.

No. of Appeal.	Name and Qualification.

C. D.

No. 13.

Register of Appeals.

Register of Appeals from Registration Officers under the Representation of the People Act, 1918, Section 14.

No. of Appeal.	Name and Address of Appellant.	Names and Addresses of Respondents.	Date when requests for entry received.	Fee on request.	Date and place of hearing.	Appearance.		Minute of Order.	Costs allowed.	Result of Appeal (if any) to Court of Appeal.
						Appellant.	Respondents.			

THE RIOT (DAMAGES) ACT, 1886.

[49 & 50 VICT. c. 38.]

By this Act, sect. 2, compensation out of the police rate is given for damage by riot to any house or building in a police district, or for property therein injured or stolen by persons riotously and tumultuously assembled together, but in fixing the amount regard shall be had to the conduct of the person applying for compensation; sub-s. 2 of sect. 2 allows an insurer to stand in the shoes of his assured. By sect. 3 claim for compensation is to be made to the police authority of the district in accordance with regulations published in the *London Gazette* (see *post*). By sect. 4, where a claim has been made in accordance with the said regulations, and the claimant is aggrieved by the refusal or failure of the police authority to fix compensation or by the amount of the compensation fixed he may bring an action against the police authority in respect of the matters mentioned in such claim.

The cause of action arises, not at the date of the damage done by the riot, but at the date when the claimant is aggrieved by the refusal or failure of the police to fix compensation or by the amount fixed; further, such an action is not an action for "penalties, damages, or sums of money given to the party grieved by any statute" within the meaning of the Civil Procedure Act, 1833, sect. 3, and consequently the time in the Act limited for bringing such an action is not applicable to a claim under this Act (*Jarvis v. Surrey County Council*, (1925) 1 K. B. 554; 94 L. J. K. B. 609).

Jurisdiction of the county court is by sect. 4, sub-s. 2, exclusive as to all claims not exceeding 100*l.* and the action shall be brought in the county court for the district in which any part of the police district is situate.

Practice.—No special practice has been indicated, so the claimant must proceed by plaint and summons (Order L. rr. 35, 36; see Part I. See Home Secretary's Regulations, *post*, p. 2. 67).

Costs.—Should the claimant fail to recover any compensation from the police authority or only recover an amount not exceeding that fixed by the police authority, he shall pay the costs of the police authority as between solicitor and client (sect. 4, sub-s. 1).

Appeal from the county court will be under sect. 120 of the County Courts Act, 1888.

As to liability of the police authority for damage done to vessels by persons riotously assembled, see sect. 515, Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). The Public Authorities Protection Act does not apply to a claim under the Act (*Kaufmann Bros. v. Liverpool Corporation*, (1916) 85 L. J. K. B. 1127).

For the elements necessary to constitute a riot, see *Field v. Receiver, Metropolitan Police*, (1907) 2 K. B. 853; 76 L. J. K. B. 1015; *Ford v. Receiver for the Metropolitan Police District*, (1921) 2 K. B. 344; 90 L. J. K. B. 929; *Cooper v. General Accident, Fire and Life Insurance Co.*, (1923) 92 L. J. K. B. P. C. 168. See also, as to what circumstances may constitute a "riot," the judgments delivered in the House of Lords in *London and Lancashire Insurance Co. v. Bolands, Ltd.*, (1924) A. C. 836.

1. This Act may be cited as the Riot (Damages) Act, 1886.

2.—(1) Where a house, shop or building in any police district has been injured or destroyed, or the property therein has been injured, stolen or destroyed, by any persons riotously and tumultuously assembled together, such compensation as hereinafter mentioned shall be paid out of the police rate of such district to any person who has sustained loss by such injury, stealing, or destruction; but in fixing the amount of such compensation regard shall be had to the conduct of the said person, whether as respects the precautions taken by him or as respects his being a party or

Compensation to persons for damage by riot.

accessory to such riotous or tumultuous assembly, or as regards any provocation offered to the persons assembled or otherwise.

Section 2.

(2) Where any person having sustained such loss as aforesaid has received, by way of insurance or otherwise, any sum to recoup him, in whole or in part, for such loss, the compensation otherwise payable to him under this Act shall, if exceeding such sum, be reduced by the amount thereof, and in any other case shall not be paid to him, and the payer of such sum shall be entitled to compensation under this Act in respect of the sum so paid in like manner as if he had sustained the said loss, and any policy of insurance given by such payer shall continue in force as if he had made no such payment, and where such person was recouped as aforesaid otherwise than by payment of a sum, this enactment shall apply as if the value of such recoupment were a sum paid.

It is not necessary that the riotous persons should be civilians. The section applies though the damage was occasioned by riotous soldiers in a military camp and under military control (*Pitchers v. Surrey County Council*, (1923) 2 K. B. 57; 92 L. J. K. B. 415).

3.—(1) Claims for compensation under this Act shall be made to the police authority of the district in which the injury, stealing, or destruction took place, and such police authority shall inquire into the truth thereof, and shall, if satisfied, fix such compensation as appears to them just. (a) Mode of awarding compensation.

(2) A secretary of state may from time to time make, and when made, revoke and vary regulations respecting the time, manner, and conditions within, in, and under which claims for compensation under this Act are to be made, and all claims not made in accordance with such regulations may be excluded. . . .

(3) The said regulations shall be published in the *London Gazette*, and every police authority shall cause the same to be published in their police district, and copies thereof to be at all times sold to any applicant at a price not exceeding 6d. for each copy.

See *Curtis & Son v. Mathews*, (1919) 1 K. B. 425.

NOTE.—(a) By virtue of the Local Government Act, 1888, ss. 3 (1), (14) and 9, ss. (1), if damage by riot occurs within a police district being part of a county maintaining a separate police force the authority liable to pay the damages is the county council (*Glamorgan Coal Company, Ltd v. Standing Joint Committee of the Quarter Sessions and County Council of Glamorgan*, (1915) 1 K. B. 384; 84 L. J. K. B. 362).

4.—(1) Where a claim to compensation has been made in accordance with the regulations, and the claimant is aggrieved by the refusal or failure of the police authority to fix compensation upon such claim, or by the amount of compensation fixed, he may bring an action against the police authority to recover compensation in respect of all or any of the matters mentioned in such claim and to an amount not exceeding that mentioned therein, but if in such action he fails to recover any compensation or an amount exceeding that fixed by the police authority, he shall pay the costs of the police authority as between solicitor and client. Right of action to person aggrieved.

(2) If the amount of compensation for which such action is brought does not exceed 100*l.*, the action shall be brought in the county court for any district in which any part of the police district is situate.

6. This Act shall apply—

(a) (Repealed).

Application of Act to wreck of machinery.

Section 8.

- (b) in the case of the injury or destruction, by persons riotously and tumultuously assembled together, of any machinery, whether fixed or movable, prepared for or employed in any manufacture, or agriculture, or any branch thereof, or of any erection or fixture about or belonging to such machinery, or of any steam-engine or other engine for sinking, draining, or working any mine or quarry, or of any staith or erection used in conducting the business of any mine or quarry or of any bridge, waggon-way, or trunk for conveying minerals or other product from any mine or quarry; or in like manner as if such injury or destruction were an injury, stealing or destruction in respect of which compensation is payable under the foregoing provisions of this Act.

Some part of this section repealed by sect. 745 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

As to
claimants
in the case
of churches,
public insti-
tutions, etc.

7. For the purposes of this Act—

- (a) where a church or chapel has been injured or destroyed, or any property therein has been injured, stolen or destroyed, the churchwardens or chapelwardens, if any, or if there are none, the persons having the management of such church or chapel, or the persons in whom the legal estate in the same is vested; and
- (b) where a school, hospital, public institution, or public building, has been injured or destroyed, or any property therein has been injured, stolen, or destroyed, the persons having the control of such school, hospital, institution, or building, or the persons in whom the legal estate in the same is vested;

shall be deemed to be the persons who have sustained loss from such injury, stealing, or destruction, and claims may be made by any one or more of such persons in relation both to the building and to the property therein, and payment to any such claimant shall discharge the liability of the police authority to pay compensation, but shall be without prejudice to the right of any person to recover the compensation from such payee.

Definitions

9. In this Act, unless the context otherwise requires—

The expression “person” includes a body of persons, corporate or unincorporate:

The expression “police district” means one of the districts set forth in the first column of the first schedule to the Act: and the expressions “police authority” and “police rate” mean, as respects each police district, the authority and rate respectively mentioned opposite to that district in the second and third columns of that schedule, and the expressions defined in that schedule shall have the meanings thereby assigned to them:

The expression “house, shop, or building” includes any premises appurtenant to the same:

The expression “borough” means a borough subject to the Municipal Corporations Act, 1882, and the Acts amending the same:

The expression “secretary of state” means one of Her Majesty’s principal secretaries of state.

FIRST SCHEDULE.

See Sect. 9.

POLICE DISTRICTS AND AUTHORITIES.

Police District.	Police Authority.	Police Rate.
The city of London and the liberties thereof.	The mayor and commonalty and citizens of London, acting by the common council.	The police rate.
The Metropolitan Police District.	The receiver for the Metropolitan Police District.	The rate authorised to be levied for raising that proportion of the sum required for defraying the expenses of the metropolitan police force which can be raised by a rate.
Any county, riding, parts, division, or liberty of a county maintaining a separate police force.	The justices in general or quarter sessions assembled.	The police rate.
A borough maintaining a separate police force	The mayor, aldermen, and burgesses of the borough, acting by the council.	The borough fund or borough rate.
Any town not being a borough and maintaining a separate police force under any Local Act of Parliament.	The commissioners or other authority under the Local Act.	The fund or rate applicable under the Local Act for the expenses of the police force.
The river Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners.	The Tyne Improvement Commissioners.	The tonnage rates and dues and other sums applicable under the Acts relating to the improvement of the river Tyne for the expenses of maintaining the police force.

In this Act the expression "county" does not include a county of a city or county of a town.

All liberties of a county not maintaining a separate police force under the Acts relating to police forces shall be deemed to form part of the county of which they form part for the purposes of those Acts.

Where the police force of a borough has been consolidated with the police force of a county, such borough shall be deemed for the purposes of this Act to form part of the police district constituted by the said county.

Such parts as are within the Metropolitan Police District, or as form part of any other police district, shall not be deemed for the purposes of this Act to form part of the County Police District.

REGULATIONS AS TO CLAIMS FOR
COMPENSATION.

In pursuance of the above-mentioned Act, I the Right Honourable Herbert Henry Asquith, one of Her Majesty's Principal Secretaries of State, make the following Regulations:—

Reg. 1.

1. All claims for compensation under the Act shall be made in writing, and shall be delivered as under:—

When the matter in respect of which the claim is made arises in—

The City of London and the liberties thereof	} To the Town Clerk of London.
--	--------------------------------

The Metropolitan Police District	} To the Receiver for the Metropolitan Police District.
--	---

Any county, riding, parts, division, or liberty of a county maintaining a separate police force, or any borough the police force of which has been consolidated with the police force of a county	} To the Clerk to the County Council.
---	---------------------------------------

A borough maintaining a separate police force	} To the Town Clerk.
---	----------------------

Any town not being a borough, and maintaining a separate police force under any local Act of Parliament	} To the Clerk to the Commissioners or other authority under the local Act.
---	---

The River Tyne within the limits of the Acts relating to the Tyne Improvement Commissioners	} To the Secretary to the Commissioners.
---	--

2. All claims shall be so delivered within fourteen clear days after the day when such injury, stealing, or destruction took place.

Provided that the police authority, on application to be made before the expiration of the fourteen days, may, for special cause shown, enlarge the period of fourteen days to forty-two days, and in the event of such application being refused, the applicant may, within seven days after such refusal, appeal to the Secretary of State, and his decision shall be conclusive as to whether the claim shall be received.

3. All claims shall be made in the form appended to these regulations.

4. The claim shall specify the name and address of the claimant, the day and hour on which the injury, stealing, or destruction took place; and as to the premises whether they are a house, shop, or building, and where they are situated, and the nature of the claimant's interest therein.

5. The claim shall state separately the sums claimed for—

(a) Destruction of premises,

(b) Injury to premises (including injury to windows, fittings, or fixtures thereof),

(c) Injury to other property in or on the premises,

(d) Theft or destruction of other property in or on the premises,

distinguishing, as regards (c) and (d), property belonging to the claimant from property belonging to others in his care.

6. Where the claim is in respect of *injury* done either to premises or to property therein, it shall state shortly the nature of the injury; if the injury has been repaired, it shall state the cost of the repairs and be accompanied by the bill for such repairs; if the injury has not been repaired, but is repairable, then the

claim shall contain a specification of the repairs required and an estimate by a competent person of their cost.

Reg. 6.

7. Where the claim is in respect of *property* in or upon premises, whether such property has been injured, stolen, or destroyed, it shall, when practicable (except in the case of articles of the same nature and of small value, and except where the cost of repairs only is claimed), specify each article separately, and the sum claimed for it or for the injury thereto; and, when practicable, the claimant shall send with his claim vouchers or copies of vouchers for the sums paid by him for the property.

8. In all cases the claim shall state generally the evidence which the claimant is prepared to offer in support of it, and the place where such documents as he proposes to put in evidence may be inspected; and whether the claimant has received or may receive, or is entitled to, any compensation from any (and if so what) source for any loss included in his claim, and the amount of such compensation.

9. The claimant, if so required by the police authority, shall verify the claim by himself making such a statutory declaration, and by procuring and furnishing to the police authority such statutory declarations of other persons as the police authority may require; and he shall produce to the police authority and to any person nominated by that authority all such documents under his control as are needed to support his claim, and shall deliver to the police authority copies thereof or extracts therefrom as may be required, and shall give to the police authority or any person nominated by that authority access to the premises and produce the property for injury to which the claim is made.

10. The police authority may make separate awards as regards property of the claimant and property not belonging to him.

When an award includes compensation for property in the care of, but not belonging to the claimant, it may provide that prior to payment either the claimant shall produce receipts from the owners for the sums payable to them, or their authority to him to receive the same, or that the claimant or some other person to be approved by the police authority shall enter into a bond or personal undertaking with the police authority in such sum as the award shall name for securing payment to the owners of such property of the sums due to them. When an award includes compensation for stolen property, it may provide for a similar bond or undertaking for securing either repayment to the police authority of the whole or such part as the police authority may determine of the compensation paid for such stolen property as may be subsequently recovered, or the delivery of the property so recovered to the police authority to be realised by them for the benefit of the police rate.

No costs will be allowed to any claimant.

12. The above regulations shall, with the necessary variations, apply:

(a) In the case of the plundering, damage, or destruction of any ship or boat stranded or in distress, on or near the shore of any sea or tidal water, or of any part of

Reg. 12.

the cargo or apparel of such ship or boat, by persons riotously and tumultuously assembled together; and

- (b) In the case of the injury or destruction, by persons riotously and tumultuously assembled together, of any machinery (whether fixed or movable) prepared for or employed in any manufacture or agriculture, or any branch thereof, or of any erection or fixture about or belonging to such machinery, or of any steam engine or other engine for sinking, draining, or working any mine or quarry, or of any staith or erection used in conducting the business of any mine or quarry, or of any bridge, waggon-way or trunk for conveying minerals or other product from any mine or quarry.

13. The regulations made under the above-mentioned Act on the 28th July 1886 are hereby revoked.

H. H. ASQUITH.

Whitehall,
30th June, 1894.

(1) "I" or
"We."

(2) Insert total
sum claimed.

(3) If the claim
is not made
under all the
heads, the super-
fluous words
should be struck
out.

(4) "me" or hereto.
"us."

(5) Insert the
hour or hours at
which the riot
occurred.

(6) Insert name
of premises.

(7) Insert par-
ticulars of docu-
ments sent.

Note.—Bills for
repairs should
accompany the
claim, and
where the re-
pairs have not
been executed,
an estimate of
the cost, by
a competent
person, should
be sent.

When prac-
ticable, or
vouchers for
copies of
vouchers for
the sums paid
for property
injured, stolen,
or destroyed,
should be sent
with the claim.

(8) Insert par-
ticulars, adding,
in the case of
documents,
where they can
be inspected.

FORM OF CLAIM.

RIOT (DAMAGES) ACT, 1886.

(1) the undersigned, claim the sum of (2) £ as compensation
for (3) (a) destruction of, and (3) (b) injury done to, premises occupied by
(4) and (3) (c) for injury to property therein, and (3) (d) for property
therein stolen or destroyed, in the riot which occurred at (5) on the
day of . Particulars of such claim are given in the Schedules

The premises (3) destroyed and injured, and wherein the property was
injured, stolen or destroyed, are (6)

The following documents are sent herewith in support of the claim :—(7)

The following further evidence in support of the claim will be adduced :—
(8)

SCHEDULE A.

CLAIMS AS TO DESTRUCTION OF PREMISES.

Description and Situation of Premises, and Nature of Claimant's Interest.	In what way destroyed.	Estimated Cost of Restoration.		
	Total £			
Deduct sum received or which claimant is entitled to or may receive as compensation from		£		
(1)		Amount claimed £		

(1) Here insert the name of the person or company from whom compensation has been received, &c.

SCHEDULE B.

CLAIM AS TO INJURY TO PREMISES.

Description and Situation of Premises, and Nature of Claimant's Interest.	Short Particulars of Injury done.	Cost of Repairs where executed.	Estimated Cost of Repairs when not executed.		
			£		
			£		
	Total £				
Deduct sum received or which claimant is entitled to or may receive as compensation from		£			
(1)		Amount claimed £			

(2) See note above.

THE RIOT (DAMAGES) ACT—REGULATIONS.

SCHEDULE C.

CLAIM AS TO INJURY TO PROPERTY.

PART I.—PROPERTY BELONGING TO CLAIMANT.

[illegible]

(1) Here insert (1)
the name of the
person or com-
pany from whom
compensation —
has been re-
ceived, etc.

PART II.—PROPERTY BELONGING TO OTHERS IN CARE OF CLAIMANT.

[illegible]

SCHEDULE D.

CLAIM AS TO PROPERTY STOLEN OR DESTROYED.

PART I.—PROPERTY BELONGING TO CLAIMANT.

Premises wherein stolen or destroyed.	Particulars of Property stolen or destroyed.	Estimated Amount of Loss.		
Deduct sum received or which claimant is entitled to or may receive as compensation from (1)		£		
		£		
Amount claimed		£		

(1) Here insert the name of the person or company from whom compensation has been received, &c.

PART II.—PROPERTY BELONGING TO OTHERS IN CARE OF CLAIMANT.

Premises wherein stolen or destroyed.	Particulars of Property stolen or destroyed.	Name and Address of Owner.	Estimated Amount of Loss		
Deduct sum received or which claimant or owner is entitled to or may receive as compensation from (2)			£		
			£		
Amount claimed			£		

(2) See note above.

SUMMARY.

SCHEDULE	A.	.	.	.	.	.	.	.	£
"	B.	.	.	.	.	.	.	.	£
"	C. PART I.	.	.	.	.	.	.	£	
"	C. PART II.	.	.	.	.	.	.	£	
									£
"	D. PART I.	.	.	.	.	.	.	£	
"	D. PART II.	.	.	.	.	.	.	£	
									£
Total . . .									£

(1) " I " or (1) certify that the particulars above given are correct; that the
" We. " claim includes only injury to, or destruction of, houses, shops, or buildings
(2) Insertname in (2) occupied or owned by (3) and property in such houses,
of police district. shops, or buildings occupied by (3) injured, stolen, or destroyed by
(3) " me " or persons taking part in the riot on the day of and that (1)
" us. " have not received, and (4) not entitled to receive, any compensation
" are. " from any other source than is stated above.

(Signed)_____

(Address)_____

(Date)_____ day of_____

RIVERS POLLUTION PREVENTION ACTS, 1876,
1893, AND 1898.

[39 & 40 VICT. C. 75; 56 & 57 VICT. C. 31; 61 & 62 VICT. C. 34.]

Jurisdiction to Restrain Offences.—The county court having jurisdiction in the place where any offence (see sects. 2 to 5 of the Act of 1876, and sect. 1 of 1893 Act) against these Acts is committed may, by summary order, require any person to abstain from the commission of such offence; and where such offence consists in default to perform a duty under the Act, may require him to perform such duty in manner in the order specified. The court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just; and generally may give such directions for carrying into effect any order as to the court seems fit. Previously to granting the order the court may, if it thinks fit, remit to skilled persons to report "on the best practicable and available means," and the nature and costs of the works and apparatus required, who must in all cases take into consideration the reasonableness of the expenses involved (sect. 10). The jurisdiction under these Acts is exclusive.

Notice of intention to proceed. Practice is by plaint and summons, and follows the ordinary practice of the court, but must not be commenced until two months after written notice of the intention to take proceedings (sect. 13 of Act of 1876), which

notice cannot be given until the requisite consent of the Local Government Board to the taking of proceedings has been obtained (*West Riding Rivers Board v. Robinson*, (1907) 1 K. B. 431; 76 L. J. K. B. 426).

Discovery.]—The proceedings are not of a criminal or penal nature, so complainants are entitled to discovery (*In re Derbyshire County Council v. Mayor, etc., of Derby*, (1897) A. C. 550; 66 L. J. Q. B. 701).

In county court no special procedure is ordered, hence Order L. rr. 35, 36, apply; see Part I.

Effect of Order.]—The order is equivalent to a judgment, and estops the defendant from disputing the commission of the alleged offence or the jurisdiction of the court (*River Ribble Committee v. Croston Urban District Council*, (1897) 1 Q. B. 251; 66 L. J. Q. B. 384).

Appeal.]—Either party aggrieved by the decision of the court in point of law or on the merits, or in respect of the admission or rejection of any evidence, may appeal to the High Court. The appeal must be by motion in accordance with the ordinary practice (*Kirkheaton Loc. Bd. v. Ainley* (C. A.), (1892) 2 Q. B. 274; 61 L. J. Q. B. 812), but the appeal court may draw inferences from the facts (sect. 11, *post*, p. 2380; see sect. 9 for provisions as to Lee Conservancy Board).

Costs.]—The judge may certify that the proceedings involve novel or difficult points of law, or that the question was to some class or body of persons of general or public interest (sect. 119, County Courts Act. 1888). See as to costs generally Order LIII., and Part II., "Costs and Court Fees."

Removal of Plaintiff into High Court.]—Any plaintiff entered in a county court under the Act may be removed into the High Court by leave of the judge of the High Court, if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the High Court, and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any), as such judge may think fit (sect. 11, *post*, p. 2380).

39 & 40 VICT. C. 75. AUG. 15, 1876.

WHEREAS it is expedient to make further provision for the prevention of the pollution of rivers, and in particular to prevent the establishment of new sources of pollution :

1. This Act may be cited for all purposes as the Rivers Pollution Prevention Act, 1876. Short title of Act.

PART I.

LAW AS TO SOLID MATTERS.

2. Every person who puts or causes to be put or to fall or Prohibition knowingly permits to be put or to fall or to be carried into any as to putting stream, so as either singly or in combination with other similar solid matters acts of the same or any other person to interfere with its due flow, into streams, or to pollute its waters, the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, shall be deemed to have committed an offence against this Act.

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution,

Section 2. although each act taken by itself may not be sufficient for that purpose.

“Solid matter” has received judicial interpretation (*River Ribble v. Halliwell*, (1899) 2 Q. B. 385; 68 L. J. Q. B. 984).

PART II.

LAW AS TO SEWAGE POLLUTIONS.

Prohibition as to drainage into streams of sewage. 3. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid or liquid sewage matter, shall (subject in this Act mentioned) be deemed to have committed an offence against this Act.

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

Where the Local Government Board are satisfied after local inquiry that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.

See Rivers Pollution Act, 1893, *post*, p. 2382, where this section is explained.

Knowingly permits.]—For interpretation of, see *Yorkshire West Riding v. Holmfirth Urban Sanitary Authority*. (1894) 2 Q. B. 842; 63 L. J. Q. B. 485. A defendant cannot rely upon an easement or prescriptive right to pollute a stream contrary to the provisions of the Act (*Hulley v. Silversprings Bleaching Co.*, (1922) 2 Ch. 268; 91 L. J. Ch. 207).

PART III.

LAW AS TO MANUFACTURING AND MINING POLLUTIONS.

Prohibition as to drainage into streams from many factories. 4. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel caused, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

Section 4.

As to "causing," see *Southall Norwood District Council v. Middlesex C. C.*, (1901) 49 W. R. 376; *Butterworth v. West Riding Rivers Board*, (1909) A. C. 45; 78 L. J. K. B. 203; also *Moses v. Midland Railway*, (1915) 84 L. J. K. B. 2181. As to responsibility, see *Yorkshire (W. R.) Rivers Board v. Linthwaite Urban Council* (No. 2), (1915) 84 L. J. K. B. 1610

Local Sanitary Authority.—Proceedings can be taken against . . . under s. 4: *West Riding of Yorkshire Rivers Board v. Linthwaite Urban District Council*, (1915) 2 K. B. 436; 84 L. J. K. B. 793 (C. A. reversing Divisional Court).

5 Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter as to drainage from any mine in such quantities as to prejudicially interfere into streams with its due flow, or any poisonous, noxious, or polluting solid from mines. or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream

6. Unless and until Parliament otherwise provides the following enactments shall take effect, proceedings shall not be taken against any person under this part of this Act save by a sanitary authority, (a) nor shall any such proceedings be taken without the consent of the Local Government Board: Provided always, that if the sanitary authority, on the application of any person interested alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board, and if that board on inquiry is of opinion that the sanitary authority should take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

Restrictions on proceedings under this part of the Act.

NOTE.—(a) See, where river is situated partly in England and partly in Scotland, 61 & 62 Vict. c. 34.

The said board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.

The said board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due

Section 6.

inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.

Any person within such district as aforesaid, against whom proceedings are proposed to be taken under this part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

PART IV.

ADMINISTRATION OF LAW.

Sanitary
authority
to afford
facilities for
factories
draining
into sewers.

7. Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers:

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view:

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority.

Where these Acts provide an appropriate remedy, the High Court will not interfere by a mandamus (*Peebles v. Oswaldtwistle Urban District Council*, (1897) 1 Q. B. 384; 66 L. J. Q. B. 106). As to acquired rights, see *Eastwood v. Honley District Council*, (1900) 1 Ch. 781; 69 L. J. Ch. 470.

See also *Liverpool Corporation v. H. Coghill & Son, Ltd.*, (1918) 1 Ch. 307.

Power of
sanitary
authority
to enforce
Act.

8. Every sanitary authority shall, subject to the restrictions in this Act contained, have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district, of any such stream, against any other sanitary authority or person, whether

such offence is committed within or without the district of the first-named sanitary authority.

Section 8

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1875.

Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence.

9. The conservancy board constituted under the Lee Conservancy Act, 1868, shall, within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act. Power of Lee Conservancy Board to enforce Act.

The said conservancy board may also enforce the provisions of the Lee Conservancy Act, 1868, under the head or division "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

LEGAL PROCEEDINGS. SAVING CLAUSES. DEFINITIONS.

(1) *Legal Proceedings.*

10. The county court having jurisdiction in the place where any offence against this Act is committed may by summary order require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order the court may, if it think fit, remit to skilled parties to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report. Offences to be restrained by summary order of county court.

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order, and all expenses incurred by any such person or persons to such amount as may be allowed

Section 10.

by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court.

See *Staffordshire County Council v. Seisdon Rural District Council*, (1907) 96 L. T. 328, as to test to be applied by county court judge when exercising his discretion.

Appeal from county court, and removal of case into High Court of Justice.

11. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on the merits, or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice.

[The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys, and, if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys.]

Now obsolete. The appeal must be by motion (*Kirkheaton Local Board v. Ainley* (C. A.), (1892) 2 Q. B. 274; 61 L. J. Q. B. 812).

The Court of Appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge to the said High Court, if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

Certificate of inspector of Local Government Board as to best practicable means.

12. A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or withholding of a certificate under this section may appeal to the Local Government Board against the decision of the inspector; and the board may either confirm, reverse, or modify his decision, and may make such order

as to the party or parties by whom the costs of the appeal are to be borne as to the said board may appear just. **Section 12.**

13. . . . Nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending. **Restriction on proceedings for offences.**

The first part of this section was repealed by the S.L.R. Act, 1883.

This section does not apply to an order to enforce penalties for non-compliance with an existing order which had been made against defendants (*Yorkshire (West Riding) Rivers Board v. Heckmondwike Urban District Council* (1914) W. N. 147).

Sects. 14 and 15 have no relation to county courts.

(2) *Saving Clauses.*

16. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law: Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act. **Powers of Act cumulative.**

17. This Act shall not apply to affect the lawful exercise of any rights of impounding or diverting water. **Saving of rights of impounding and diverting water.**

See *River Ribble Joint Committee v. Halliwell*, (1899) 1 Q. B. 27; 68 L. J. Q. B. 20.

18. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by The Thames Conservancy Acts, 1857 and 1864, or by The Thames Navigation Act, 1866, or by the Lee Conservancy Act, 1868, or by any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis) executed under the Metropolitan Management Act, 1855, and the Acts amending or extending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege of the Metropolitan Board of Works. **Saving of certain conservancy Acts.**

19. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment shall be deemed to be an offence against this Act. **Saving of works of certain local authorities.**

(3) *Definitions.*

20. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say, **Definitions.**

"Person" includes any body of persons, whether corporate or unincorporate:

Section 20.

“Stream ” includes the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary grounds, be determined by the Local Government Board, by order published in the *London Gazette*. Save as aforesaid, it includes rivers, streams, canals, lakes, and water-courses, other than watercourses at the passing of this Act mainly used as sewers, and emptying directly into the sea, or tidal waters which have not been determined to be streams within the meaning of this Act by such order as aforesaid :

“Solid matter ” shall not include particles of matter in suspension in water :

“Polluting ” shall not include innocuous discoloration :

“Sanitary authority ” means—

In the metropolis as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same ;

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875.

“Solid matter ” and “particles of matter in suspension in water ” interpreted (*River Ribble Joint Committee v. Halliwell*, (1899) 1 Q. B. 27; 68 L. J. Q. B. 20).

56 & 57 VICT. C. 31.

Explanation
of 39 & 40
Vict. c. 75,
s. 3, as to
drainage into
streams.

1. Where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of section three of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

Construction
and short
title.

2. This Act shall be construed as one with the Rivers Pollution Prevention Act, 1876 ; and the Rivers Pollution Prevention Act, 1876, and this Act may be cited for all purposes as the Rivers Pollution Prevention Acts, 1876 and 1893.

61 & 62 VICT. C. 34.

Provision for
enforcement
of 39 & 40
Vict. c. 75 in
border
counties.

1. Where a river or any tributary thereof is situate partly in England and partly in Scotland, the Local Government Board for England and the Secretary for Scotland, by Provisional Order made on the application of the council of any of the counties concerned, may together constitute a joint committee or other body representing all or any of the counties through or by which such river or any specified portion or tributary thereof passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order ; and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of

39 & 40 Vict.
c. 75.

such committee or body by the counties represented by it, and for the audit of the accounts of such committee or body and their officers. Section 1.
—

2. Section two hundred and ninety-seven of the Public Health Act, 1875 (which relates to the making of Provisional Orders by the Local Government Board) shall apply for the purposes of this Act as if the same was herein re-enacted, and in terms made applicable thereto, but with the substitution for the words "Local Government Board" of the words "Local Government Board for England and Secretary for Scotland." Application of
38 & 39 Vict.
c. 55, s. 297.

3. In this Act the term "county" means, as regards England, an administrative county, and includes a county borough, and means, as regards Scotland, a county or burgh as defined by the Local Government (Scotland) Act, 1889. Interpretation of
"county."
52 & 53 Vict.
c. 50.

4. This Act may be cited as the Rivers Pollution Prevention (Border Councils) Act, 1898. Short title.

ROADS IMPROVEMENT ACT, 1925.

[15 & 16 GEO. 5, c. 68.]

Jurisdiction.—This Act passed for the purpose of facilitating the laying out and planting the margins of public roads, preventing obstruction to view at the corners of roads, making experiments for testing the efficacy of roads, placing notices, sign posts, etc., declares (sect. 9) that

9.—(1) If any question arises—

- (a) whether compensation is payable under any of the provisions of this Act except section five thereof (a) or as to the amount of any compensation so payable; or
- (b) whether a notice served under section four of this Act shall be withdrawn as respects any requirement or restriction objected to in manner provided by this Act; or
- (c) whether any expenses were reasonably incurred by any person in carrying out directions contained in a notice served under section four of this Act:

Determination of
questions.

the question shall be decided, if the parties so agree, by a single arbitrator appointed by them, or in default of such agreement as aforesaid, by the county court.

(2) A county court shall have jurisdiction to deal with any such question as aforesaid, notwithstanding that, by reason of the amount of claim or otherwise, the case would not, but for this provision, be within the jurisdiction of a county court.

(3) In determining any question whether a notice served under section four of this Act shall be withdrawn as respects a requirement or restriction objected to, the arbitrator or court shall have power to order that the requirement or restriction shall have effect subject to such modifications, if any, as the arbitrator or court may direct.

Section 9. (4) Except in so far as they may be applied by county court rules, the provisions of the Arbitration Act, 1889, shall not apply to any proceedings in a county court under this Act.

52 & 53 Vict.
c. 49.

NOTE.—(a) Sect. 5 relates entirely to prescription of building lines.

THE SALE OF EXHAUSTED PARISH LANDS ACT, 1876.

[39 & 40 VICT. C. 62.]

Provision is by this Act made for the sale and disposal by order of the Local Government Board of parish lands such as exhausted gravel pits. Before issuing their order for sale the Local Government Board shall hear and decide upon every objection and claim made in writing by any one claiming an interest in the land.

Jurisdiction is given under sect. 3, where there is any disputed claim, or where the person entitled to any interest therein is under legal disability, if the amount of the value in question does not exceed 50*l.*, for the county court to settle such dispute or make an order as to the proper disposal of such amount where there is no dispute; for matters in excess of 50*l.* parties must go to the High Court.

Practice is governed by Order L. r. 10 (*post*, p. 2385). The proceedings are to be, in case of a dispute, by action commenced by plaint and summons in the ordinary way against the person or authority in whom the land is vested, or in whose hands the purchase-money may be. No provision is made as to what county court has jurisdiction, hence sect. 74 of the County Courts Act of 1888, which regulates the court by the residence of the defendant, or the place where the land is situate, should be followed. In the case of a person under legal disability, by petition, asking for directions of the court as to disposal of purchase-money. The petition should be served on the person or authority holding the money.

Appeal from the county court will be as provided by sect. 120 of the County Courts Act, 1888. See Part I.

* * * * *

Disputed
claims and
interests of
disabled
persons.

3. If there be disputed claims to any interest in the said land, or if the person entitled to such interest be under legal disability, the board shall direct that proceedings may be taken in the High Court of Justice, or, where the amount of the value in question shall not exceed fifty pounds, in the county court, for the settlement of such dispute, or for the proper disposal of such amount where there is no such dispute.

* * * * *

COUNTY COURT RULE. ORDER L. RULE 10.

Rule 10.

10. Where the Local Government Board directs that proceedings may be taken under sect. 3 of the Sale of Exhausted Parish Lands Act, 1876, such proceedings may be taken as follows :—

Proceedings
under 39 &
40 Vict. c. 62,
s. 3.

- (a) If there are disputed claims to any interest in any land or the purchase money of any land, any person claiming any such interest may take proceedings by action commenced by plaint and summons in the ordinary way against the other persons claiming any interest, and the person or authority in whom such land is vested, or in whose hands such purchase money may be. Particulars of demand shall be filed in such action, stating concisely the relief or order which the plaintiff claims. The person or authority in whose hands such purchase money may be may at any time after service of the summons pay such purchase money into court, and thereupon further proceedings against such person or authority shall be stayed. The judge at the trial of the action shall decide upon the rights of the several persons claiming any interest in the land or purchase money, and shall make such order for the purpose of giving effect to such rights, and as to costs, as may be just.
- (b) If any person entitled to any interest in the purchase money of any land, where there is no dispute, is under legal disability, then
- (i.) the person or authority in whose hands such purchase money may be may pay the same into court under c. 43, s. 70. sect. 70 of the Act, in accordance with Rule 9 of Order XXXVIII., and that rule and the subsequent rules of that Order shall apply to the payment into court and subsequent disposal of such purchase money (a) ; or
- (ii.) a petition may be filed on behalf of the person under disability, asking for the directions of the court as to disposal of such purchase money. If such petition is filed, it shall be served on the person or authority in whose hands such purchase money may be, and the same procedure shall be followed and costs allowed as on any other petition to the court. The person or authority served with such petition may, at any time after service, pay the purchase money into court, and thereupon further proceedings against such person or authority will be stayed.

(a) For Rule 9 of Order XXXVIII., see Part I.

SALE OF GOODS ACT, 1893.

[56 & 57 VICT. c. 71. 20TH FEBRUARY, 1894.]

NOTE.—Inserted for general convenience of county court practitioners, though the statute is a general one, and the county court has no special jurisdiction in relation to it.

PART I.

FORMATION OF THE CONTRACT.

Contract of Sale.

Sale and
agreement to
sell.

1.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Hiring Agreements.—As to goods obtained under agreement to purchase—"hire purchase agreements"—and when the person in possession of such goods under such an agreement, can or cannot give a title to the same, see *Lee v. Butler*, (1893) 2 Q. B. 318; *McEntire v. Crossley Bros.*, (1895) A. C. 457; *Helby v. Matthews*, (1895) A. C. 471; *Belsize Motor Supply Co. v. Cox*, (1914) 1 K. B. 244; *Whiteley, Ltd. v. Hilt*, (1918) 2 K. B. 808; 87 L. J. K. B. 1058. See also *Lewis v. Thomas*, (1919) 1 K. B. 319.

Capacity to
buy and sell.

2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Provided that where necessities are sold and delivered to an infant, or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

"Necessaries."—*Ryder v. Wombwell*, (1868) 4 Ex. 32; Ex. Ch. 38; *Nash v. Inman*, (1908) 2 K. B. 1; *Re Rhodes*, (1890) 44 C. D. 94.

Formalities of the Contract.

Contract of
sale, how
made.

3. Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with

Section 3.

without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

Provided that nothing in this section shall affect the law relating to corporations.

“Implied.”]—*Brogden v. Metropolitan Rail. Co.*, (1877) 2 A. C. 666.

4.—(1) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment (a), or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

Contract of sale for ten pounds and upwards.

NOTE.—(a) “Part payment.” See *Parker v. Crisp & Co.*, (1919) 1 K. B. 31; 88 L. J. K. B. 775. *Thirkell v. Cambi*, (1919) 2 K. B. 590; (1920) 89 L. J. K. B. 1; *Norton v. Davison*, (1899) 1 Q. B. 401; 68 L. J. Q. B. 265. *Cohen v. Roche*, (1926) 1 K. B. 169; 95 L. J. K. B. 945; *Farr Smith & Co. v. Messers*, (1928) 1 K. B. 397; 97 L. J. K. B. 126.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.

(4) The provisions of this section do not apply to Scotland.

As to this section, which was formerly in substance sect. 17 (really sect. 16) of the Statute of Frauds (29 Chas. II., c. 3), see Chalmers, “Sale of Goods Act, 1893,” 7th edit., pp. 18—25.

An agreement under this section is merely not enforceable by law if not in writing. It is not invalid for all purposes, and the law as declared with reference to the corresponding section (sect. 17 of the Statute of Frauds) is altered to this extent. Though such a contract when in writing cannot be varied by parol, yet parol evidence is admissible to prove the abandonment or rescission of the same (see *Morris v. Barron & Co.*, (1918) A. C. 1; 87 L. J. K. B. 145). The defence of absence of writing must be pleaded (see *Roe v. R. A. Naylor, Ltd.*, (1918) 87 L. J. K. B. 958).

If where the contract is in writing the time of delivery of the goods is extended by verbal arrangement between the parties, this amounts to “forbearance” only. Such an arrangement is not a verbal variation of the written contract, and the defendant when sued for non-acceptance of the goods cannot rely upon the fact that the agreement for forbearance was not in writing (*Levey & Co. v. Goldberg*, (1922) 1 K. B. 688; 91 L. J. K. B. 551). A ship may be goods within this section (*Behnke v. Bede Shipping Co.*, (1927) 1 K. B. 649; 96 L. J. K. B. 325).

Section 5.

Subject matter of Contract.

Existing or
future goods.

5.—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods."

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

"Contingency."—*Hale v. Rawson*, (1858) 27 L. J. C. P. 189; *Barnett v. Javeri & Co.*, (1916) 85 L. J. K. B. 1703.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

"Future Goods."—See *Watts v. Friend*, (1830) 10 B. & C. 446; *Ajello v. Worsley*, (1898) 1 Ch. 274; *Holroyd v. Marshall*, (1862) 10 H. L. C. 191; *Collyer v. Isaacs*, (1881) 50 L. J. Ch. 707.

Goods which
have
perished.

6. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

See *Couturier v. Hastie*, (1856) 5 H. L. C. 673; 25 L. J. Ex. 253; *Smith v. Myers*, (1870) L. R. 5 Q. B. 429; L. R. 7 Q. B. 139.

Goods perish-
ing before
sale but after
agreement
to sell.

7. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

See *Howell v. Coupland*, (1874) L. R. 9 Q. B. 462; (1876) 1 Q. B. D. 258; *Elphick v. Barnes*, (1880) 5 C. P. D. 821.

The Price.

Ascertain-
ment of price.

8.—(1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

"Reasonable Price."—*Acebal v. Levy*, (1834) 10 Bing. 376; *Valpy v. Gibson*, (1847) 4 C. B. 837.

Deposit.—Money paid as a deposit in the absence of an agreement is forfeited if the sale goes off through the buyer's fault (*Soper v. Arnold*, (1889) 14 A. C. 435).

Agreement
to sell at
valuation.

9.—(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided; provided that if the goods or any part

thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor. Section 9.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

See *Vickers v. Vickers*, (1867) L. R. 4 Eq. 529; *Clarke v. Westrope*, (1856) L. J. C. P. 287.

Conditions and Warranties.

10.—(1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract. Stipulations as to time.

(2) In a contract of sale "month" means *primâ facie* calendar month.

"Essence of Contract."—See *Martindale v. Smith*, (1841) 1 Q. B. 389; *Mersey Steel and Iron Co. v. Naylor*, (1884) 9 A. C. 434; *Hartley v. Hymans*, (1920) 3 K. B. 475; (1921) 90 L. J. K. B. 14.

11.—(1) In England or Ireland—

(a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated (a). When condition to be treated as warranty.

(b) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract (b):

(c) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated (c), unless there be a term of the contract, express or implied, to that effect.

(2) In Scotland, failure by the seller to perform any material part of a contract of sale is a breach of contract, which entitles the buyer either within a reasonable time after delivery to reject the goods and treat the contract as repudiated, or to retain the goods

Section 11. and treat the failure to perform such material part as a breach which may give rise to a claim for compensation or damages.

(3) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

NOTE.—(a) See notes to *Pasley v. Freeman*, Smith's L. C., 12th edit., 87. For careful examination by the House of Lords as to what constitutes a warranty, see *Heilbut, Symons & Co. v. Buckleton*, (1913) 82 L. J. K. B. 245.

NOTE.—(b) "Depends in each case on the construction of the contract."—See *Walter v. Pratt and Hughes*, (1910) 2 K. B. 1003.

NOTE.—(c) See *Heilbutt v. Hickson*, (1872) L. R. 7 C. P. 450; *Wallis, Son & Wells v. Pratt & Haynes*, (1911) 80 L. J. K. B. 1058; (1911) A. C. 390; *Benabu v. The Produce Brokers Co.*, (1921) 37 T. L. R. 609; *Sanderson v. Armour*, (1922) 91 L. J. P. C. 167.

Implied
undertaking
as to title, &c.

12. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

- (1) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass :
- (2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods :
- (3) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

See *Eichholz v. Bannister*, (1864) 34 L. J. C. P. 105.

There is a breach of this section where, without the knowledge either of the buyer or seller the goods sold were labelled in such a way that they could not be resold by the buyer without infringing a trade mark belonging to a third party (*Niblett, Ltd. v. Confectioners' Materials Co.*, (1921) 3 K. B. 387; 90 L. J. K. B. 984; *Rowland v. Divall*, (1923) 2 K. B. 500; 92 L. J. K. B. 1041).

Sale by
description.

13. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description ; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description (a).

NOTE.—(a) "Description."—See *Randall v. Newson*, (1877) 2 Q. B. D. 109; *Bowes v. Shand*, (1877) 2 A. C. 455; *Varley v. Whipp*, (1900) 1 Q. B. 513; *Re North Western Rubber Co.*, (1908) 2 K. B. 907.

In buying from a firm of good reputation a customer is justified in trusting to the label as to quantity in a package, and is not guilty of contributory negligence in not discovering that a mistake has been made in this respect (*British South African Co. v. Lennon, Ltd.*, (1916) 85 L. J. P. C. 111; *Moore v. Landauer*, (1921) 2 K. B. 519; 90 L. J. K. B. 731).

Implied con-
ditions as to
quality or
fitness.

14. Subject to the provisions of this Act and of any statute in that behalf (a), there is no implied warranty or condition as to the

quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows (b) :— Section 14.

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose (c), provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose (d) :

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality (e) ; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed :

NOTE.—As to what is a sufficient "examination" to satisfy this sub-section, see *Thornett & Fehr v. Beers & Son*, (1919) 1 K. B. 486 ; 88 L. J. K. B. 684.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

See *Niblett, Ltd. v. Confectioners' Materials Co.*, ante, p. 2390 ; and compare *Umner, Permain & Co. v. Webb & Co.*, (1922) 1 K. B. 55 ; 91 L. J. K. B. 28.

NOTE.—(a) *E.g.*, Sale of Food and Drugs Act, 1875, and Amendment Acts.

NOTE.—(b) See *Chanter v. Hopkins*, (1838) 4 M. & W. 399 ; *Ward v. Hobbs*, (1878) 4 A. C. 13 ; *Paldrey v. Marshall, Ltd.*, (1925) 1 K. B. 260 ; 94 L. J. K. B. 208.

NOTE.—(c) "Fit for Such Purpose."—*Jones v. Just*, (1868) L. R. 3 Q. B. 53 ; *Randall v. Newson (supra)* ; *Drummond v. Van Ingen*, (1887) 12 A. C. 284.

NOTE.—(d) See *Chanter v. Hopkins (supra)* ; *Ollivant v. Bayley*, (1843) Q. B. 288 ; *Gillespie v. Cheney & Co.*, (1896) 2 Q. B. 59 ; *Gedding v. Marsh*, (1920) 1 K. B. 668 ; 89 L. J. K. B. 526 ; *Manchester Liners, Ltd. v. Lea, Ltd.*, (1922) 2 A. C. 74 ; 91 L. J. (H. L.) 504.

NOTE.—(e) See *Jones v. Just (supra)* ; *Jones v. Padgett*, (1890) 24 B. D. 650.

A defence, to an action for the price of goods, of breach of warranty, is not a statutory defence, and need not be specially pleaded (*Bright v. Rogers*, 917) 1 K. B. 917 ; 86 L. J. K. B. 804).

Sale by Sample.

15.—(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. sample.

(2) In the case of a contract for sale by sample—

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- (a) There is an implied condition that the bulk shall correspond with the sample in quality (a) :
- (b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample (b) :
- (c) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

NOTE.—(a) “Correspond with the Sample in Quality.”—See *Walkers v. Shaw*, (1904) 2 K. B. 152.

NOTE.—(b) See *Lorymer v. Smith*, (1822) 1 B. & C. 1; *Heyworth v. Hutchinson*, (1867) 2 Q. B. D. 447.

PART II.

EFFECTS OF THE CONTRACT.

Transfer of Property as between Seller and Buyer.

Goods must be ascertained.

16. Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

See *Dixon v. Yates*, (1833) 5 B. & Ad. 340; *Campbell v. Mersey Docks*, (1863) 14 C. B. N. S. 412; *Jenner v. Smith*, (1869) L. R. 4 C. P. 276; *Badische Anilin Fabrik v. Hickson*, (1906) A. C. 419.

Property passes when intended to pass.

- 17.—(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

See *Reid v. Macbeth*, (1904) A. C. 223; *Sir J. Laing v. Barclay & Co.*, (1908) A. C. 35; *Hamer v. London City and Midland Bank*, (1918) 87 L. J. K. B. 973; *Sterns, Ltd. v. Vickers, Ltd.*, (1923) 1 K. B. 78; 92 L. J. K. B. 332; *Kursell v. Timber Operators and Contractors, Ltd.*, (1927) 1 K. B. 298.

Rules for ascertaining intention.

18. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1.—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed (a).

See *Kursell v. Timber Operatives &c.*, (1926) 95 L. J. K. B. 569.

Rule 2.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done (b), and the buyer has notice thereof.

Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof (c). Section 18

Rule 4.—When goods are delivered to the buyer on approval or “on sale or return” or other similar terms the property therein passes to the buyer:—

- (a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction:
- (b) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time; and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

See *Kempler v. Bravingtons*, (1925) 133 L. T. 680.

Rule 5.—(1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract (d), either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made (e):

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

(a) “Postponed.”—See *Tarling v. Barter*, (1827) 6 B. & C. 360; *Barr v. Gibson*, (1838) 3 M. & W. 390; *Seath v. Moore*, (1886) 11 A. C. 350. Followed in *Blyth Shipbuilding Co., Foster v. The Co.*, (1926) 95 L. J. Ch. 350.

(b) See *Anderson v. Morice*, (1875) A. C. 713; *Seath v. Moore* (supra).

(c) *Furley v. Bates*, (1863) 33 L. J. Ex. 43.

(d) See *Healy v. Howlett & Sons*, (1917) 1 K. B. 337; 86 L. J. K. B. 252; *Denny v. Skelton*, (1917) 86 L. J. K. B. 280.

(e) See *Groom, Ltd. v. Barber*, (1915) 84 L. J. K. B. 318; *Pritchett & Co. v. Currie*, (1916) 85 L. J. Ch. 753.

As to when the property passes on a sale of fixtures to be severed from freehold by vendor, see *Underwood, Ltd. v. Burgh Castle Brick and Cement Co.*, (1922) 1 K. B. 343; 91 L. J. K. B. 355.

19.—(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve Reservation of right of disposal.

Section 19. the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodier for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *primâ facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

See *Mirabita v. Imperial Ottoman Bank*, (1878) 3 Ex. Div. 164; *Shepherd v. Harrison*, (1871) L. R. 5 H. L. 116.

Risk *primâ facie* passes with property.

20. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodier of the goods of the other party.

See *Castle v. Playford*, (1872) L. R. 7 Ex. 100; *Anderson v. Morice*, (1875) L. R. 10 C. P. 609; affirmed, 1 A. C. 713; *Head v. Tattersall*, (1871) L. R. 7 Ex. 7; *Elphick v. Barnes*, (1880) 5 C. P. D. 321; *Martineau v. Kitching*, (1872) L. R. 7 Q. B. 436; *Pignataro v. Gilroy*, (1919) 1 K. B. 459; 88 L. J. K. B. 726; *Sterns, Ltd. v. Vickers, Ltd.*, (1923) 1 K. B. 78; 92 L. J. K. B. 332.

Transfer of Title.

Sale by person not the owner.

21.—(1) Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell (a).

(2) Provided also that nothing in this Act shall affect—

(a) The provisions of the Factors Acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(b) The validity of any contract of sale under any special

common law or statutory power of sale or under the order of a court of competent jurisdiction. **Section 21.**

NOTE.—(a) See *Colonial Bank v. Whinney*, (1886) 11 A. C. 426; *Hollins v. Fowler*, (1875) L. R. 7 H. L. 757; *Cundy v. Lindsay*, (1878) 3 A. C. 459; *Helby v. Matthews*, (1895) A. C. 471; *Pickard v. Sears*, (1837) 6 A. & E. 469; *Weiner v. Gill*, (1906) 2 K. B. 582; *Farquharson v. King*, (1902) A. C. 325; *Heap v. Motorists' Advisory Agency*, (1923) 1 K. B. 577; 92 L. J. K. B. 553.

22.—(1) Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller. Market overt.

(2) Nothing in this section shall affect the law relating to the sale of horses.

(3) The provisions of this section do not apply to Scotland.

See *Crane v. London Dock Co.*, (1864) 33 L. J. Q. B. 224; *Hargreave v. Spink*, (1892) 1 Q. B. 25; *Clayton v. Le Roy*, (1911) 81 L. J. K. B. 49.

23. When the seller of goods has a voidable title thereto, but this title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title. Sale under voidable title.

See *Cundy v. Lindsay*, (1878) 3 A. C. 459; *Croft v. Lumley*, (1856) 6 H. L. 705; 27 L. J. Q. B. 321.

24.—(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen reverts in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise (a). Revesting of property in stolen goods on conviction of offender.

(2) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revert in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender (b).

(3) The provisions of this section do not apply to Scotland.

NOTE.—(a) “Market overt or otherwise.”—See *Scattergood v. Sylvester*, (1850) 19 L. J. K. B. 447; *Clayton v. Le Roy* (*supra*).

(b) “Conviction.”—See Larceny Act, 1916 (6 & 7 Geo. V. c. 50, s. 45), also Criminal Appeal Act, 1907 (7 Edw. VII. c. 23, s. 6); *Oppenheimer v. Frazer*, (1907) 2 K. B. 50.

25.—(1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same. Seller or buyer in possession after sale.

Section 25.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section the term "mercantile agent" has the same meaning as in the Factors Acts.

See *Lee v. Butler*, (1893) 2 Q. B. 318; *Helby v. Matthews*, (1895) A. C. 471. "Agreed to buy," see *Martin v. Whale*, (1917), 2 K. B. 480; 86 L. J. K. B. 1305.

See also under this section, *Farquharson v. King*, (1902) A. C. 325, and, somewhat to different effect, *Commonwealth Trust v. Akotey*, (1926) A. C. (P. C.) 72.

Effect of
writs of
execution.

26.—(1) A writ of *fiery facias* or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when he received the same.

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

(2) In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution.

(3) The provisions of this section do not apply to Scotland.

Execution.]—See *ante*, sect. 146 of County Courts Act.

See *Murgatroyd v. Wright*, (1907) 2 K. B. 333; *Birstall Candle Co. v. Daniels*, (1908) 2 K. B. 254.

PART III.

PERFORMANCE OF THE CONTRACT.

Duties of
seller and
buyer.

27. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

See *Buddle v. Green*, (1857) 27 L. J. Ex. 33; *Woolfe v. Horne*, (1877) 2 Q. B. D. 355; *Dunlop v. Lambert*, (1839) 6 Cl. & Fin. 603; *Calcutta Co. v. De Mattos*, (1863) 32 L. J. Q. B. 322.

28. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

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——
Payment and delivery are concurrent conditions.

See *Bloxam v. Saunders*, (1825) 4 B. & C. 941; *Chinery v. Viall*, (1860) 29 L. J. Ex. 183; *Pickford v. Grand Junction Rail. Co.*, (1841) 8 M. & W. 378; *Paynter v. James*, (1867) L. R. 2 C. P. 348; *Baker v. Firminger*, (1859) 28 L. J. Ex. 130.

29.—(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence: Provided that, if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

Rules as to delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time (a).

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf (b); provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

NOTE.—(a) “Reasonable time.”—*Ellis v. Thompson*, (1838) 3 M. & W. 445; *Jones v. Gibbons*, (1853) 8 Ex. 920; *Pearl Mill Co. v. Ivy Tannery Co., Ltd.*, (1919) 1 K. B. 78; 88 L. J. K. B. 134, explaining *Jones v. Gibbons*, *supra*.

NOTE.—(b) “Holds the goods on his behalf.”—See *Farina v. Home*, (1846) 16 M. & W. 119; *Godts v. Rose*, (1855) 17 C. B. 229; *Buddle v. Green*, (1857) 27 L. J. Ex. 33.

Delivery to a person on the premises apparently authorised to receive them is a good delivery (*Galbraith v. Block*, (1922) 91 L. J. K. B. 649).

30.—(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

Delivery of wrong quantity.

(2) Where the seller delivers to the buyer a quantity of goods

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larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate (c).

NOTE.—(c) Where the contract was for the “remainder” of a cargo of goods, and an estimate given as to the amount, the whole of the remainder of the cargo passed under the contract, though it turned out to be considerably in excess of the estimate (*Harrison v. Micks, Lambert & Co.*, (1917) 86 L. J. K. B. 573; *Bekrend v. Produce Brokers Co.*, (1920) 3 K. B. 530).

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

See *Oxendale v. Wetherell*, (1829) 4 M. & Ry. 429; *Colonial Ins. Co. v. Adelaide Ins. Co.*, (1886) 12 A. C. 138; *Moore & Co. v. Landauer & Co.*, (1921) 90 L. J. K. B. 731.

Instalment deliveries.

31.—(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

See *Reuter v. Sala*, (1879) 4 C. P. D. 239; *Mersey Steel and Iron Co. v. Naylor*, (1884) 9 A. C. 434; *Dominion Coal Co. v. Dominion Iron and Steel Co.*, (1909) A. C. (P. C.) 293; *Ebbw Vale Steel Co. v. Blaina Iron Co.*, (1901) 6 C. C. 33; *Braithwaite v. Foreign Hardware Co.*, (1905) 2 K. B. 543.

Delivery to carrier

32.—(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *primâ facie* deemed to be a delivery of the goods to the buyer (a).

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself (b), or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit (c). Section 32.

(a) "Delivery of goods to buyer."—See *Wait v. Baker*, (1848) 2 Ex. 1; *Dunlop v. Lambert*, (1839) 6 Cl. & Fin. 600; *Badische Anilin Fabrik v. Basle Chemical Works*, (1897) A. C. 203; *Clemens Horst & Co. v. Biddell*, (1912) A. C. 18.

(b) "Delivery to himself."—*Clarke v. Hutchins*, (1811) 14 East, 475; *Buckman v. Levi*, (1813) 3 Camp. 414; *Norman v. Phillips*, (1845) 14 M. & W. 277.

(c) *Law and Bonar, Ltd. v. British America Tobacco Co., Ltd.*, (1916) 2 K. B. 605; 85 L. J. K. B. 1714.

33. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit. Risk where goods are delivered at distant place

See *Bull v. Robinson*, (1854) 10 Ex. 342; *Beer v. Walker*, (1877) 46 L. J. C. P. 677.

34.—(1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract (a). Buyer's right of examining the goods.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

NOTE.—(a) "In conformity with the contract."—See *Lorymer v. Smith*, (1822) 1 B. & C. 1; *Heilbutt v. Hickson*, (1872) L. R. 7 C. P. 438; *Khan v. Duché*, (1905) 10 Com. Ca. 87; *Boks & Co. v. Rayner*, (1921) 37 T. L. R. 519.

35. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. Acceptance.

See *Parker v. Palmer*, (1821) 4 B. & A. 387; *Chapman v. Morton*, (1843) 11 M. & W. 534; *Taylor v. Great Eastern Rail. Co.*, (1911) 1 K. B. 774; *Heilbutt v. Hickson* (*supra*).

Reselling part of the goods, although they have not been examined is an "act inconsistent with the ownership of the seller" (*E. Hardy & Co. v. Hillerns and Fowler*, (1923) 1 K. B. 658; 2 K. B. 490).

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Buyer not
bound to
return
rejected
goods.

36. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

See *Grimoldby v. Wells*, (1875) L. R. 10 C. P. 391.

Liability of
buyer for
neglecting
or refusing
delivery of
goods.

37. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

See *Bloxam v. Saunders*, (1825) 4 B. & C. 941; *Mersey Steel Co. v. Naylor*, (1884) 9 A. C. 434; *Braithwaite v. Foreign Hardware Co.*, (1905) 2 K. B. 543.

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

Unpaid seller
defined.

38.—(1) The seller of goods is deemed to be an “unpaid seller” within the meaning of this Act—

- (a) When the whole of the price has not been paid or tendered ;
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise (a).

(2) In this part of this Act the term “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

NOTE.—(a) “Dishonour of the instrument or otherwise.”]—See *Griffith v. Perry*, (1859) 28 L. J. Q. B. 204; *Gunn v. Bolckow, Vaughan & Co.*, (1875) L. R. 10 Ch. App. 491; *Goldshede v. Cottrell*, (1836) 2 M. & W. 20; *Imperial Bank v. London and S. Katherine Docks Co.*, (1877) 5 Ch. D. 195.

Unpaid
seller's rights.

39.—(1) Subject to the provisions of this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

- (a) A lien on the goods or right to retain them for the price while he is in possession of them ;

(b) In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them ;

(c) A right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

See *Kendal v. Marshall, Stevens & Co.*, (1883) 11 Q. B. D. 368; *Cassaboglou v. Gibb*, (1883) 11 Q. B. D. at p. 804; *Kemp v. Falk*, (1882) 7 A. C. 590; *Merchant Banking Co. v. Phoenix Co.*, (1877) 5 C. D. 205.

The purchaser of goods who has rejected them has no lien upon them though he has paid for them (*Lyons & Co. v. May & Baker*, (1923) 1 K. B. 685; 92 L. J. K. B. 675).

40. In Scotland a seller of goods may attach the same while in his own hands or possession by arrestment or pouding; and such arrestment or pouding shall have the same operation and effect in a competition or otherwise as an arrestment or pouding by a third party.

Attachment
by seller in
Scotland.

Unpaid Seller's Lien.

41.—(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :—

(a) Where the goods have been sold without any stipulation as to credit ;

(b) Where the goods have been sold on credit, but the term of credit has expired (a) ;

(c) Where the buyer becomes insolvent (b).

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodian for the buyer (c).

NOTE.—(a) “Credit has expired.”]—See *Martindale v. Smith*, (1841) 8 Q. B. 395.

NOTE.—(b) “Insolvent.”]—*Bloxam v. Morley*, (1825) 4 B. & C. 951; *Gunn v. Bolckow, Vaughan & Co.*, (1875) L. R. 10 Ch. App. 501.

NOTE.—(c) “Custodian for the buyer.”]—*Grice v. Richardson*, (1877) 3 A. C. 319, comp. *Cusack v. Robinson*, (1861) 30 L. J. Q. B. 264.

“Lien.”]—Is for the unpaid price of goods, not for custody of same, see *Somes v. British Empire Shipping Co.*, (1859) 30 L. J. Q. B. 229.

42. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

Part delivery.

See *Kemp v. Falk*, (1882) 7 A. C. 573; *Ex parte Chalmers* (1873), L. R. 8 Ch. App. 289; *Merchant Banking Co. v. Phoenix Co.*, (1877) 5 C. D. 205.

Section 43. **43.**—(1) The unpaid seller of goods loses his lien or right of retention thereon—
 Termination of lien.

- (a) When he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods (a);
- (b) When the buyer or his agent lawfully obtains possession of the goods (b);
- (c) By waiver thereof.

(2) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

NOTE.—(a) “**Transmission to the buyer.**”]—*Bolton v. Lancashire and Yorkshire Rail. Co.*, (1866) L. R. 1 C. P. 431.

NOTE.—(b) “**Lawfully obtains possession of the goods.**”]—*Cooper v. Bell*, (1865) 34 L. J. Ex. 161; *Schotsmans v. Lancashire and Yorkshire Rail. Co.*, (1867) L. R. 2 Ch. App. 332; *Knights v. Wiffen*, (1870) L. R. 5 Q. B. 660.

Stoppage in transitu.

Right of stoppage in transitu.

44. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

See *Lickbarrow v. Mason*, (1793) 6 East, 21, and notes thereto in 1 Smith's L. C., 12th edit., 772 *et seq.*; *Bethell v. Clarke*, (1887) 20 Q. B. D. 615; *Berndtson v. Strang*, (1868) L. R. 3 Ch. App. 588; *Lyons v. Hoffnung*, (1890) 15 A. C. 391; *Kendall v. Marshall, Stevens & Co.*, (1883) 11 Q. B. D. 356; *Ex parte Miles, In re Isaacs*, (1885) 15 Q. B. D. 39; *Reddall v. Union Castle Mail Steamship Co.*, (1915) 84 L. J. K. B. 360.

Duration of transit.

45.—(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee or custodier for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee or custodier.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

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(4) If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6) Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

See *Valpy v. Gibson*, (1847) 4 C. B. 887; *Schotsmans v. Lancashire and Yorkshire Rail. Co.* (*supra*); *Ex parte Barrow*, (1877) 6 C. D. 783; *Lyons v. Hoffnung* (*supra*); *Kendall v. Marshall, Stevens & Co.* (*supra*); *Ex parte Miles* (*supra*); *Bolton v. Lancashire and Yorkshire Rail. Co.*, (1866) L. R. 11 O. P. 431; *Ex parte Rosevear China Clay Co.*, (1879) 11 C. D. 560; *Kemp v. Falk*, (1882) 7 A. C. 588.

46.—(1) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

How stoppage *in transitu* is effected.

(2) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee or custodier in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

See *Whitehead v. Anderson*, (1842) 9 M. & W. 518; *McTigress*, (1863) 32 L. J. Adm. 97; *Booth Steamship Co. v. Cargo Fleet Iron Co.*, (1916) 2 K. B. 570; 85 L. J. K. B. 1577.

Re-sale by Buyer or Seller.

47. Subject to the provisions of this Act, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto (a).

Effect of sub-sale or pledge by buyer.

Section 47. Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee (b).

NOTE.—(a) “Seller has assented thereto.”—*Stoveld v. Hughes*, (1811) 14 East, 308; *Woodley v. Coventry*, (1863) 32 L. J. Ex. 185; *Merchant Banking Co. v. Phoenix Steel Co.*, (1877) 5 C. D. 205.

NOTE.—(b) See notes to *Lickbarrow v. Mason*, (1793) 6 East, 21, in Smith's L. C., 12th edit., 772; *Leask v. Scott*, (1877) 2 Q. B. D. 376; *Kemp v. Falk* (*supra*); *Sewell v. Burdick*, (1884) 10 A. C. 74.

Sale not generally rescinded by lien or stoppage *in transitu*.

48.—(1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage *in transitu*.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

See *Kemp v. Falk*, *supra*; notes to *Lickbarrow v. Mason*, *supra*; *Lord v. Price*, (1874) L. R. 9 Ex. 55; *Ex parte Stapleton*, (1879) 10 C. D. 586; *Lamond v. Davall*, (1847) 9 Q. B. 1030; *Johnson v. Credit Lyonnais*, (1877) 3 C. P. D. 32.

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

Remedies of the Seller.

Action for price.

49.—(1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

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(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery (a), and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

(3) Nothing in this section shall prejudice the right of the seller in Scotland to recover interest on the price from the date of tender of the goods, or from the date on which the price was payable, as the case may be (b).

NOTE.—(a) As to the meaning of these words see *Stein Forbes & Co. v. County Tailoring Co.*, (1917) 86 L. J. K. B. 448; also *Colley v. Overseas Exporters*, (1921) 90 L. J. K. B. 1301.

NOTE.—(b) See *Dunlop v. Grote*, (1845) 2 C. & R. 153; *Fessard v. Mugnier*, (1865) 34 L. J. C. P. 126; *Calcutta Co. v. De Mattos*, (1863) 32 L. J. Q. B. 328.

50.—(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance (a). Damage for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market (b) for the goods in question the measure of damages is *primâ facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept (c).

NOTE.—(a) “Non-acceptance.”—*Graves v. Legg*, (1854) 9 Ex. 709.

NOTE.—(b) “Available market.”—*Dunkirk Colliery v. Lever*, (1878) 9 C. D. 25; *Brown v. Muller*, (1872) L. R. 7 Ex. 319; *Roper v. Johnson*, (1873) L. R. 8 C. P. 167; *Diestal v. Stevenson*, (1906) 2 K. B. 345; *Ex parte Stapleton*, (1879) 10 C. D. 586; *Payzu v. Saunders*, (1920) 89 L. J. K. B. 17; (1919) 2 K. B. 581.

NOTE.—(c) If on a breach of contract to accept shares the seller retains the shares, he is entitled to recover the difference in the value of the shares at the time of the breach, though the value of the shares may afterwards rise (*A. K. A. S. Jamal v. Moolla Dawood, Sons & Co.*, (1916) L. R. P. C. 175).

Remedies of the Buyer.

51.—(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery. Damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *primâ facie* to be ascertained by the difference between the contract price and the market or current

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See notes to *Hadley v. Baxendale*, 2 Smith's L. C., 12th edit., 547; *Jones v. Gibbons*, (1853) 8 Ex. 920; *Lewis v. Clifton*, (1854) 14 C. B. 245; *Smeed v. Foord*, (1859) 28 L. J. Q. B. 178; *Grèbert Borgnis v. Nugent*, (1885) 15 Q. B. D. 85; *Hammond v. Bussey*, (1887) 20 Q. B. D. 93; *Ashmore v. Cox*, (1899) 1 Q. B. 436; *Diestal v. Stevenson* (*supra*); *Cory v. Thames Iron Works*, (1868) L. R. 3 Q. B. 181; *Thol v. Henderson*, (1881) 8 Q. B. D. 457; *Hinde v. Liddell*, (1875) L. R. 10 Q. B. 265; *Roper v. Johnson*, (1873) L. R. 8 C. P. 167; *Nickoll v. Ashton*, (1900) 2 Q. B. 298; *Hydraulic Co. v. McHaffie*, (1878) 4 Q. B. D. 670; *Charles Sharpe & Co., Ltd. v. Nosawa & Co.*, (1917) 2 K. B. 814; (1918) 87 L. J. K. B. 33; *John Hall & Co. Ltd. v. Showell*, (1918) 87 L. J. K. B. 1106; *Melachrino v. Nicholl*, (1920) 1 K. B. 693.

Measure of damages.—Where there is no market in which the goods can be bought the plaintiff is entitled as damages for the breach of contract to deliver, to the full amount of damages he has actually sustained, subject to the general principle that the damage must have been within the contemplation of the parties (*Montevideo Gas Co. v. Clan Line Steamers*, (1921) 37 T. L. R. 544).

"If no time fixed then at the time of refusal to deliver."—This rule does not apply to a case where the breach is an anticipatory breach (*Millett v. Van Heek & Co.*, (1921) 2 K. B. 369; 90 L. J. K. B. 671). *Quære* whether a contract to deliver goods within a reasonable time is a contract to deliver at a fixed time within the meaning of the sub-section (*ibid.*).

Specific performance.

52. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree (*a*).

The provisions of this section shall be deemed to be supplementary to, and not in derogation of, the right of specific implement in Scotland.

NOTE.—(*a*) This section substantially reproduces sect. 2 of the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97). See, as to specific delivery of goods in action in the county court, County Court Rules, Order XXV., r. 69. As to when goods are "ascertained" within the meaning of this section, see *Thames Sack and Bag Co., Ltd. v. Knowles & Co., Ltd.*, (1919) 88 L. J. K. B. 585; *Waite, In re v. Humphries*, (1927) 96 L. J. K. B. 179.

Remedy for breach of warranty.

53.—(1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may

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(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

See *Slater v. Hoyle and Smith*, (1920) 2 K. B. 11; *Taylor & Sons v. Bank of Athens*, (1922) 91 L. J. K. B. 776.

(3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

See *Slater v. Hoyle and Smith*, *supra*.

(4) The fact that the buyer has set up the breach of warranty as a diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

(5) Nothing in this section shall prejudice or affect the buyer's right of rejection in Scotland as declared by this Act.

As to what amounts to a warranty see judgments of House of Lords in *Heilbut, Symons & Co. v. Buckleton*, (1912) 82 L. J. K. B. 245. A defence of breach of warranty is not a defence which need be specially pleaded (*Bright v. Rogers*, (1917) 86 L. J. K. B. 804).

Consult *Heilbutt v. Hickson*, (1872) L. R. 7 C. P. 438; *Parsons v. Sexton*, (1847) 4 C. B. 809; *Bannerman v. White*, (1861) 31 L. J. C. P. 28; *Davis v. Hedges*, (1871) L. R. 6 Q. B. 687; *Randall v. Roper*, (1858) 27 L. J. Q. B. 266; *Smith v. Green*, (1875) 1 C. P. D. 92; *Randall v. Newson*, (1877) Q. B. D. 102; *Hammond v. Bussey*, (1887) 20 Q. B. D. 79; *Bostock v. Nicholson*, (1904) 1 K. B. 725; *Elbinger Actien Gesellschaft v. Armstrong*, (1874) L. R. 9 Q. B. 473; *Holdsworth v. Glasgow Bank*, (1880) 5 A. C. 317; *Bright v. Rogers*, (1917) 86 L. J. K. B. 804; *Heilbut, Symons & Co. v. Buckleton*, (1912) 82 L. J. K. B. 245; (1913) A. C. 30; *Wallis, Son & Wells v. Pratt & Haynes*, (1911) 80 L. J. K. B. 1058; (1911) A. C. 394; *T. & J. Harrison, Ltd. v. Knowles & Foster*, (1918) 87 L. J. K. B. 680.

54. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

See *Hydraulic Engineering Co. v. McHaffie*, (1878) 4 Q. B. D. 677; *Frébert Borgnis v. Nugent*, (1885) 15 Q. B. D. 85; *Agius v. Great Western Colliery Co.*, (1899) 1 Q. B. 413, and notes to *Hadley v. Baxendale*, 2 Smith's L. C., 12th edit., 547.

PART VI.

SUPPLEMENTARY.

Section 55.

Exclusion of
implied
terms and
conditions.

55. Where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage (a), if the usage be such as to bind both parties to the contract.

Consult *Calcutta Co. v. De Mattos*, (1863) 32 L. J. Q. B. 328; *Honck v. Muller*, (1881) 7 Q. B. D. 103; *Drummond v. Van Ingen*, (1887) 12 A. C. 284.

NOTE.—(a) “Usage.”—See notes to *Wigglesworth v. Dallison*, 2 Smith’s L. C., 12th edit., 620 *et seq.*, and *Sutro & Co. v. Heilbut, Symons & Co.*, *In re*, (1917) 2 K. B. 348; 86 L. J. K. B. 1226; *Miller, Gibb & Co. v. Smith & Tyrer*, (1917) 86 L. J. K. B. 1267.

Reasonable
time a ques-
tion of fact.

Rights, &c.
enforceable
by action.

Auction
sales.

56. Where, by this Act, any reference is made to a reasonable time the question what is a reasonable time is a question of fact.

57. Where any right, duty, or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

58. In the case of a sale by auction—

- (1) Where goods are put up for sale by auction in lots, each lot is *primâ facie* deemed to be the subject of a separate contract of sale :
- (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid (a) :
- (3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person (b) : Any sale contravening this rule may be treated as fraudulent by the buyer :
- (4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller (c).

Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

NOTE.—(a) “Retract his bid.”—*Payne v. Cave*, (1789) 3 I. R. 148; *Warlow v. Harrison*, (1858) 28 L. J. Q. B. 20; *Fenwick v. Macdonald*, (1904) 6 F. (Sc.) 850.

NOTE.—(b) “Auctioneer knowingly.”—*Mainprice v. Westley*, (1865) 34 L. J. Q. B. 229.

NOTE.—(c) “On behalf of the seller.”—*Thornett v. Haines*, (1846) 15 Section 53
J. & W. 372; *Mortimer v. Bell*, (1865) L. R. 1 Ch. App. 10. See also Notes.
McManus v. Fortescue, (1907) 2 K. B. 1; *Anderson v. Croall*, (1903) 6 F.
Sc. 153.

59. In Scotland where a buyer has elected to accept goods Payment
 which he might have rejected, and to treat a breach of contract as into court in
 only giving rise to a claim for damages, he may, in an action by Scotland
 the seller for the price, be required, in the discretion of the court when breach
 of warranty
 before which the action depends, to consign or pay into court the alleged.
 price of the goods, or part thereof, or to give other reasonable
 security for the due payment thereof.

[60. Repealed by Statute Law Revision Act, 1908.]

61.—(1) The rules in bankruptcy relating to contracts of sale
 shall continue to apply thereto, notwithstanding anything in this
 Act contained.

(2) The rules of the common law, including the law merchant, Savings.
 have in so far as they are inconsistent with the express provisions
 of this Act, and in particular the rules relating to the law of
 principal and agent and the effect of fraud, misrepresentation,
 duress or coercion, mistake, or other invalidating cause, shall
 continue to apply to contracts for the sale of goods.

(3) Nothing in this Act or in any repeal effected thereby shall
 affect the enactments relating to bills of sale, or any enactment
 relating to the sale of goods which is not expressly repealed by this
 Act.

(4) The provisions of this Act relating to contracts of sale do
 not apply to any transaction in the form of a contract of sale which
 is intended to operate by way of mortgage, pledge, charge, or other
 security.

(5) Nothing in this Act shall prejudice or affect the landlord's
 right of hypothec or sequestration for rent in Scotland.

62.—(1) In this Act, unless the context or subject matter Interpretation
 otherwise requires, tion of terms.

“Action” includes counterclaim and set off, and in Scotland
 condescendence and claim and compensation:

“Bailee” in Scotland includes custodier:

“Buyer” means a person who buys or agrees to buy goods:

“Contract of sale” includes an agreement to sell as well as a
 sale:

“Defendant” includes in Scotland defender, respondent, and
 claimant in a multiplepinding:

“Delivery” means voluntary transfer of possession from one
 person to another:

“Document of title to goods” has the same meaning as it has
 in the Factors Acts:

Section 62.

52 & 53 Vict.
c. 45.
53 & 54 Vict.
c. 40.

“Factors Acts” means the Factors Act, 1889, the Factors (Scotland) Act, 1890, and any enactment amending or substituted for the same :

“Fault” means wrongful act or default :

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale :

“Goods” include all chattels personal other than things in action and money, and in Scotland all corporeal moveables except money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale :

“Lien” in Scotland includes right of retention :

“Plaintiff” includes pursuer, complainer, claimant in a multipointing and defendant or defender counterclaiming :

“Property” means the general property in goods, and not merely a special property :

“Quality of goods” includes their state or condition :

“Sale” includes a bargain and sale as well as a sale and delivery :

“Seller” means a person who sells or agrees to sell goods :

“Specific goods” mean goods identified and agreed upon at the time a contract of sale is made :

“Warranty” as regards England and Ireland means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

As regards Scotland a breach of warranty shall be deemed to be a failure to perform a material part of the contract.

(2) A thing is deemed to be done “in good faith” within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he has become a notour bankrupt or not.

(4) Goods are in a “deliverable state” within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

[63. Repealed by Statute Law Revision Act, 1908.]

Short title.

64. This Act may be cited as the Sale of Goods Act, 1893.

SETTLED LAND ACT, 1925.

[15 GEO. V. c. 18.]

All the Settled Land Acts have been repealed by the Settled Land Act, 1925 (15 Geo. V. c. 18). The new Act extends to one hundred and twenty sections and five schedules. Those sections giving special powers to the court are printed below.

Jurisdiction is given to the county court by sect. 113 (3), as regards land not exceeding in value 500*l.*, or in annual rateable value 30*l.*; as regards capital money and securities in which the same is invested, not exceeding 500*l.*; and as regards personal chattels settled or to be settled, 500*l.*

Practice.—The proceedings should be commenced by petition (see Order XXXVIII. (*ante*, Part I.), by which the practice is regulated). If, during the course of the trial, the excess of jurisdiction appears on the evidence given, the judge ought not to strike the action or matter out, but he should do so if the want of jurisdiction appears on the petition itself (*Birks v. Silverwood*, (1871) L. R. 14 Eq. 101; 41 L. J. Ch. 638; *Thomson v. Flinn*, (1881) L. R. 17 Eq. 415; 43 L. J. Ch. 256; *sed quære* if the other party consents (see sect. 114 of the County Courts Act, 1888)); the action or matter may be transferred to the High Court (see Rule 5 of Order XXXIII., and Form 331).

Costs.—Even where the subject-matter of proceedings does not exceed 20*l.*, the judge may order costs to be taxed under column B (Order LIII. c. 12).

Appeal.—Any appeal from the county court under this Act is to a divisional court of the Chancery Division of the High Court. See R. S. C. Order 54D, r. 5. For practice on appeal, see *ibid.*, rr. 8—12.

9.—(2) As soon as practicable after a settlement, or an instrument which for the purposes of this Act is deemed to be a trust instrument, takes effect as such, the trustees of the settlement may, and on the request of the tenant for life or statutory owner shall, execute a principal vesting deed, containing the proper statements and particulars, declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named, being the tenant for life or statutory owner, and including themselves if they are the statutory owners, and such deed shall, unless the legal estate is already so vested, operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.

(3) If there are no trustees of the settlement, then (in default of a person able and willing to appoint such trustees) an application under this Act shall be made to the court for the appointment of such trustees.

12.—(1) If—

(a) any person who is bound under this Part of this Act to execute a conveyance, vesting deed or vesting assent or in whom settled land is wrongly vested refuses or neglects to execute the requisite conveyance, vesting deed or vesting assent within one month after demand in writing; or

(b) any such person is outside the United Kingdom, or cannot be found, or it is not known whether he is alive or dead; or

Procedure in the case of settlements and of instruments deemed to be trust instruments.

Power to make vesting orders as to settled land.

Section 12. (c) for any reason the court is satisfied that the conveyance, vesting deed or vesting assent cannot be executed, or cannot be executed without undue delay or expense ;

the court may, on the application of any person interested, make an order vesting the settled land in the tenant for life or statutory owner or person, if any, of full age absolutely entitled (whether beneficially or as personal representative or trustee for sale or otherwise), and, if the land remains settled land, the provisions of this Act relating to a principal vesting deed or a subsidiary vesting deed, as the case may be, shall apply to any order so made and every such order shall contain the like statements and particulars.

(2) No stamp duty shall be payable in respect of a vesting order made in place of a vesting or other assent.

Enforcement
of equitable
interest and
powers
against
estate owner.

16.—(6) If a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to this section, an application may be made to the court for directions as hereinafter provided.

(7) If an estate owner refuses or neglects for one month after demand in writing to transfer or create any such legal estate, or if by reason of his being outside the United Kingdom, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.

Deed of
Discharge
on termina-
tion of
settlement.

17.—(2) If, in the circumstances mentioned in sub-section (1) of this section and when the conditions therein mentioned have been complied with, the trustees of a settlement on being requested to execute a deed of discharge—

- (a) by the estate owner ; or
- (b) by a person interested under, or by the trustees of, a derivative settlement ; or
- (c) by the trustees of a conveyance on trust for sale ;

refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested, or trustees may apply to the court for an order discharging the first mentioned trustees as respects the whole or any part of the settled land, and the court may make such order as it may think fit.

Absolute
owners
subject to
certain
interests to
have the
powers of
tenant for
life.

21.—(1) Where a person of full age is beneficially entitled in possession to a legal estate subject to any equitable interests or powers, then, for the purpose of overreaching such interests or powers, he may, notwithstanding any stipulation to the contrary, by deed (which shall have effect as a principal vesting deed within the meaning of this Act) declare that the legal estate is vested in him on trust to give effect to all equitable interests and powers affecting the legal estate, and that deed shall be executed by two or more individuals approved or appointed by the court or a trust corporation, who shall be stated to be the trustees of the settlement for the purposes of this Act.

24.—(1) If it is shown to the satisfaction of the court that a tenant for life, who has by reason of bankruptcy, assignment, incumbrance, or otherwise ceased in the opinion of the court to have a substantial interest in his estate or interest in the settled land or any part thereof, has unreasonably refused to exercise any of the powers conferred on him by this Act, or consents to an order under this section, the court may, on the application of any person interested in the settled land or the part thereof affected, make an order authorising the trustees of the settlement, to exercise in the name and on behalf of the tenant for life, any of the powers of a tenant for life under this Act, in relation to the settled land or the part thereof affected, either generally and in such manner and for such period as the court may think fit, or in a particular instance, and the court may by the order direct that any documents of title in the possession of the tenant for life relating to the settled land be delivered to the trustees of the settlement.

Section 24.

As to a tenant for life who has parted with his interest.

(2) While any such order is in force, the tenant for life shall not, in relation to the settled land or the part thereof affected, exercise any of the powers thereby authorised to be exercised in his name and on his behalf, but no person dealing with the tenant for life shall be affected by any such order, unless the order is for the time being registered as an order affecting land.

(3) An order may be made under this section at any time after the estate or interest of the tenant for life under the settlement has taken effect in possession, and notwithstanding that he disposed thereof when it was an estate or interest in remainder or reversion.

34.—(1) If at any time there are no trustees of a settlement, or where in any other case it is expedient, for the purposes of this Act, that new trustees of a settlement be appointed, the court may, if it thinks fit, on the application of the tenant for life, statutory owner, or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder or otherwise, or, in the case of an infant, of his testamentary or other guardian or next friend, appoint fit persons to be trustees of the settlement.

Appointment of trustees by court.

(2) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall become and be the trustees or trustee of the settlement.

Provisions as to Undivided Shares.

36.—(1) If and when, after the commencement of this Act, settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration), at the cost of the trust estate, to convey the land to them, or assent to the land vesting in them as joint tenants, and in the meantime the land shall be

Undivided shares to take effect behind a trust for sale of the land.

Section 36. held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees.

(2) If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land shall be held by them (subject to any incumbrances affecting the settled land which are secured by a legal mortgage, but freed from any incumbrances affecting the undivided shares or not secured as aforesaid, and from any interests, powers and charges subsisting under the trust instrument which have priority to the trust for the persons entitled to the undivided shares) upon the statutory trusts.

(3) If the estate owner refuses or neglects for one month after demand in writing to convey the settled land so held in trust in undivided shares in manner aforesaid, or if by reason of his being outside the United Kingdom or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the conveyance cannot otherwise be made, or cannot be made without undue delay or expense, the court may, on the application of the trustees of the settlement, make an order vesting the settled land in them on the statutory trusts.

Variation of building or mining lease according to circumstances of district.

46.—(1) Where it is shown to the court with respect to the district in which any settled land is situate, either—

- (i) that it is the custom for land therein to be leased for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act; or
- (ii) that it is difficult to make leases for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act;

the court may, if it thinks fit, authorise generally the tenant for life or statutory owner to make from time to time leases of or affecting the settled land in that district, or parts thereof for any term or on any conditions as in the order of the court expressed, or may, if it thinks fit, authorise the tenant for life or statutory owner to make any such lease in any particular case.

(2) Thereupon the tenant for life or statutory owner, and, subject to any direction in the order of the court to the contrary, each of his successors in title being a tenant for life or statutory owner, may make in any case, or in the particular case, a lease of the settled land, or part thereof, in conformity with the order.

Power on dispositions to impose restrictions and make reservations and stipulations.

49.—(3) Where on a sale the consideration attributable to any timber or fixtures is by mistake paid to a tenant for life or other person not entitled to receive it, then, if such person or the purchaser or the persons deriving title under either of them subsequently pay the aforesaid consideration, with such interest, if any, thereon as the court may direct, to the trustees of the settlement or other persons entitled thereto or into court, the court may, on the application of the purchaser or the persons deriving title under him, declare that the disposition is to take effect as if the whole of the consideration had at the date thereof been duly paid to the trustees of the settlement or other persons entitled to receive the same.

The person, not entitled to receive the same, to whom the consideration is paid, and his estate and effects shall remain liable to make good any loss attributable to the mistake.

Section 49.

64.—(1) Any transaction affecting or concerning the settled land, or any part thereof, or any other land (not being a transaction otherwise authorised by this Act, or by the settlement) which in the opinion of the court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, may, under an order of the court, be effected by a tenant for life, if it is one which could have been validly effected by an absolute owner.

General power for the tenant for life to effect any transaction under an order of the court.

(2) In this section "transaction" includes any sale, extinguishment of manorial incidents, exchange, assurance, grant, lease, surrender, reconveyance, release, reservation, or other disposition, and any purchase or other acquisition, and any covenant, contract, or option, and any application of capital money (except as herein-after mentioned), and any compromise or other dealing, or arrangement; but does not include an application of capital money in payment for any improvement not authorised by this Act, or by the settlement; and "effected" has the meaning appropriate to the particular transaction; and the references to land include references to restrictions and burdens affecting land.

67.—(1) Where personal chattels are settled so as to devolve with settled land, or to devolve therewith as nearly as may be in accordance with the law or practice in force at the date of the settlement, or are settled together with land, or upon trusts declared by reference to the trusts affecting land, a tenant for life of the land may sell the chattels or any of them.

Sale and purchase of heirlooms under order of court.

(2) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3) A sale or purchase of chattels under this section shall not be made without an order of the court.

(4) Any reference in any enactment to personal chattels settled as heirlooms shall extend to any chattels to which this section applies.

87. The court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, 1882 to 1890, or this Act, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by the Settled Land Act, 1882, to the trustees of the settlement or to the court, and notwithstanding that no capital money is immediately available for the purpose.

Court may order payment for improvements executed.

92. The court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for the protection

Proceedings for protection or recovery of land

Section 92. of settled land, or of any action or proceeding taken or proposed to be taken for the recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

settled or
claimed as
settled.

Reference
of questions
to court.

93. If a question arises or a doubt is entertained—

- (a) respecting the exercise or intended exercise of any of the powers conferred by this Act, or any enactment replaced by this Act, or the settlement, or any matter relating thereto; or
 - (b) as to the person in whose favour a vesting deed or assent ought to be executed, or as to the contents thereof; or
 - (c) otherwise in relation to property subject to a settlement;
- the tenant for life or statutory owner, or the trustees of the settlement, or any other person interested under the settlement, may apply to the court for its decision or directions thereon, or for the sanction of the court to any conditional contract, and the court may make such order or give such directions respecting the matter as the court thinks fit.

Jurisdiction
and pro-
cedure.

113.—(3) The powers of the court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any county court within the district whereof is situate any part of the land which is to be dealt with in the court, or from which the capital money to be dealt with in the court arises under this Act, or in connexion with which the personal chattels to be dealt with in the court are settled.

(9) The provisions of the Trustee Act, 1925, relating to vesting orders and orders appointing a person to convey shall apply to all vesting orders authorised to be made by this Act.

SMALL DWELLINGS ACQUISITION ACT, 1899.

[62 & 63 VICT. c. 44.]

This Act empowers the local authority for any area to advance money as specified in the Act to a resident in any house within the area to acquire the same (sect. 1, sub-s. 1). The local authority has power in certain events to take possession or without taking possession to order a sale of the house (sect. 3). Where the local authority takes possession, they are to pay either an agreed sum or a sum equal to the value of the owner's interest in the house after deducting the amount of the advance unpaid and interest (sect. 5).

Jurisdiction.—The above-mentioned value, in the absence of a sale or in default of agreement, is to be settled by a county court judge as arbitrator, or if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge (sect. 5 (2) (b)). Where the local authority may take possession of a house, possession may be recovered (whatever the value of the house) under sects. 138—145 of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838 (sect. 5 (5)).

Practice.]—To any arbitration before the county court judge, or before an arbitrator appointed by him, the Arbitration Act, 1889, is to apply. In cases where possession is claimed, the local authority may recover as if it were the landlord and the proprietor of the house the tenant (see as to recovery of tenements, County Courts Act, 1888, sects. 138, 139).

3.—(1) Where the ownership of a house has been acquired by means of an advance under this Act, the house shall, until such advance with interest has been fully paid, or the local authority have taken possession or ordered a sale under this Act, be held subject to the following conditions (in this Act referred to as the statutory conditions), that is to say :—

- (a) Every sum for the time being due in respect of principal or of interest of the advance shall be punctually paid :
- (b) The proprietor of the house shall reside in the house :
- (c) The house shall be kept insured against fire to the satisfaction of the local authority, and the receipts for the premiums produced when required by them :
- (d) The house shall be kept in good sanitary condition and good repair :
- (e) The house shall not be used for the sale of intoxicating liquors, or in such a manner as to be a nuisance to adjacent houses :
- (f) The local authority shall have power to enter the house by any person, authorised by them in writing for the purpose, at all reasonable times for the purpose of ascertaining whether the statutory conditions are complied with.

(2) The proprietor of the house may with the permission of the local authority (which shall not be unreasonably withheld) at any time transfer his interest in the house, but any such transfer shall be made subject to the statutory conditions.

(3) Where default is made in complying with the statutory condition as to residence, the local authority may take possession of the house, and where default is made in complying with any of the other statutory conditions, whether the statutory condition as to residence has or has not been complied with, the local authority may either take possession of the house, or order the sale of the house without taking possession.

(4) In the case of the breach of any condition other than that of punctual payment of the principal and interest of the advance, the authority shall, previously to taking possession or ordering a sale, by notice in writing delivered at the house and addressed to the proprietor, call on the proprietor to comply with the condition, and if the proprietor—

- (a) within fourteen days after the delivery of the notice gives an undertaking in writing to the authority to comply with the notice ; and
- (b) within two months after the delivery of the notice complies therewith,

shall not take possession or order a sale, as the case may be.

(5) In the case of the bankruptcy of the proprietor of the house, or in the case of a deceased proprietor's estate being administered in bankruptcy under section one hundred and twenty-five of the Bankruptcy Act, 1883, the local authority may either take possession of the house or order the sale of the house without

Section 3.

Recovery of
possession
and disposal
of house.

taking possession and shall do so except in pursuance of some arrangement to the contrary with the trustee in bankruptcy.

5.—(1) Where a local authority take possession of a house, all the estate, right, interest, and claim of the proprietor in or to the house shall, subject as in this section mentioned, vest in and become the property of the local authority, and that authority may either retain the house under their own management or sell or otherwise dispose of it as they think expedient.

(2) Where a local authority take possession of a house, they shall, save as hereinafter mentioned, pay to the proprietor either—

(a) such sum as may be agreed upon; or

(b) a sum equal to the value of the interest in the house at the disposal of the local authority, after deducting therefrom the amount of the advance then remaining unpaid and any sum due for interest; and the said value, in the absence of a sale and in default of agreement, shall be settled by a county court judge as arbitrator, or if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge, and the Arbitration Act, 1889, shall apply to any such arbitration.

52 & 53 Vict.
c. 49.

(3) The sum so payable to the proprietor if not paid within three months after the date of taking possession shall carry interest at the rate of three per cent. per annum from the date of taking possession.

(4) All costs of or incidental to the taking possession, sale, or other disposal of the house (including the costs of the arbitration, if any) incurred by the local authority, before the amount payable to the proprietor has been settled either by agreement or arbitration, shall be deducted from the amount otherwise payable to the proprietor.

(5) Where the local authority are entitled under this Act to take possession of a house, possession may be recovered (whatever may be the value of the house) by or on behalf of the local authority either under sections one hundred and thirty-eight to one hundred and forty-five of the County Courts Act, 1888, or under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, and in either case may be recovered as if the local authority were the landlord and the proprietor of the house were the tenant.

51 & 52 Vict.
c. 43;
1 & 2 Vict.
c. 74.

Procedure
to ordering
sale.

6.—(1) Where a local authority order the sale of a house without taking possession, they shall cause it to be put up for sale by auction, and out of the proceeds of sale retain any sum due to them on account of the interest or principal of the advance, and all costs, charges, and expenses properly incurred by them in or about the sale of the house, and pay over the balance (if any) to the proprietor.

(2) If the local authority are unable at the auction to sell the house for such a sum as will allow of the payment out of the proceeds of sale of the interest and principal of the advance then due to the authority, and the costs, charges, and expenses aforesaid, they may take possession of the house in manner provided by this Act, but shall not be liable to pay any sum to the proprietor.

Suspension
of condition
as to
residence

7.—(1) An advance may be made to an applicant who intends to reside in a house, as if he were resident, if he undertakes to begin

his residence therein within such period not exceeding six months from the date of the advance, as the local authority may fix, and in that case the statutory condition requiring residence shall be suspended during that period.

(2) The local authority may allow a proprietor to permit, by letting or otherwise, a house to be occupied as a furnished house by some other person during a period not exceeding four months in the whole in any twelve months, or during absence from the house in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, and the condition requiring residence shall be suspended while the permission continues.

(3) Where the proprietor of a house subject to statutory conditions dies, the condition requiring residence shall be suspended until the expiration of twelve months from the death, or any earlier date at which the personal representatives transfer the ownership or interest of the proprietor in the course of administration; and where the proprietor of any such house becomes bankrupt, or his estate is administered in bankruptcy under section one hundred and twenty-five of the Bankruptcy Act, 1883, and in either case an arrangement under this Act is made with the trustee in bankruptcy, the condition as to residence shall, if the local authority think fit, be suspended during the continuance of the arrangement.

Section 7.

SMALL HOLDINGS AND ALLOTMENTS ACT, 1926.

[16 & 17 GEO. 5, c. 52.]

By sect. 7 (5) of this Act, passed to amend the Small Holdings and Allotments Acts, 1908 to 1919, jurisdiction is given to the county court, on application by the county council, to make an order for possession under sects. 138 to 145 of the County Courts Act, 1888, in cases where the council are entitled to take possession of a small holding under the Act. Such order may be made whatever may be the value of the holding, and as if the county council were the landlord and the owner of the holding were the tenant. Procedure is by plaint and summons.

SOLICITORS ACT, 1860.

[23 & 24 VICT. c. 127.]

By this Act (sect. 26) the penalty of 50*l.* incurred by any person who acts as an attorney or solicitor without being legally qualified can be recovered in a county court.

The county court has also jurisdiction to enforce a solicitor's lien upon property recovered or preserved by proceedings taken in such court.

Practice.—No special procedure.

26. Every person who acts as an attorney or solicitor contrary to the enactment in section 2 of 6 & 7 Vict. c. 73, or who in his own name or in the name of any other person, in anywise acts as a proctor in or with respect to any proceeding in the court of probate or the court for divorce and matrimonial causes, without being duly qualified so to act, shall be deemed guilty of a contempt of the court in which the action, suit, cause, matter, or proceeding in relation to which he so acts is brought, had, or

Section 26.

taken, and may be punished accordingly (a), and shall be incapable of maintaining any action or suit for any fee or reward for or in respect of anything done or any disbursement made by him in the course of so acting, and shall, in addition to any other penalty or forfeiture and to any disability to which he may be subject, forfeit and pay for every such offence the sum of 50*l.*, to be recovered, with full costs of suit, by action brought with the sanction of Her Majesty's Attorney-General, in the name of the incorporated law society, in any of the superior courts of law at Westminster, or in any county court, and such penalty shall be applied in like manner as fines imposed for practising without a stamped certificate are now by law applicable.

NOTE.—(a) But not by committal: *Reg. v. Judge of Brompton County Court* (1893), 2 Q. B. 195; 62 L. J. Q. B. 604.

Power to
court of
justice to
charge
property re-
covered with
payment of
costs.

28. In every case in which an attorney or solicitor shall be employed to prosecute or defend any suit, matter, or proceeding in any court of justice, it shall be lawful for the court or judge before whom any such suit, matter or proceeding has been heard, or shall be depending, to declare such attorney or solicitor entitled to a charge upon the property recovered or preserved, and upon such declaration being made such attorney or solicitor shall have a charge upon and against and a right to payment out of the property, of whatsoever nature, tenure, or kind the same may be, which shall have been recovered or preserved through the instrumentality of any such attorney or solicitor, for the taxed costs, charges, and expenses of or in reference to such suit, matter, or proceeding; and it shall be lawful for such court or judge to make such order or orders for taxation of and for raising and payment of such costs, charges, and expenses out of the said property as to such court or judge shall appear just and proper; and all conveyances and acts done to defeat, or which shall operate to defeat, such charge or right, shall, unless made to a *bonâ fide* purchaser for value without notice, be absolutely void and of no effect as against such charge or right: Provided always, that no such order shall be made by any such court or judge in any case in which the right to recover payment of such costs, charges, and expenses is barred by the Statute of Limitations.

No solicitor's lien exists on property or things recovered by mere negotiation and without litigation (*Meguerditchian v. Lightbound and Others*, (1917) 1 K. B. 297; 86 L. J. K. B. 94. On appeal, (1917) 2 K. B. 298; 86 L. J. K. B. 889; see also *Watkins v. Eden*, (1920) 2 K. B. 333; (1921) 90 L. J. K. B. 188).

SOLICITORS ACT, 1870.

[33 & 34 VICT. C. 28.]

By this Act solicitors are enabled to make binding agreements in writing with their clients for remuneration for their services, either by payment of a gross sum or by commission or percentage, or by salary, or otherwise; but if the agreement is made in respect of litigious business, the amount is not recoverable until the agreement has been examined and allowed by the taxing-officer of a court having power to enforce the agreement.

Jurisdiction as to work done in a county court to whatever amount, is exclusive; and as to work done otherwise than in a county court is exclusive up to 50*l.* (sect. 8).

Disputes as to Agreements for Remuneration.]—No action may be brought upon any such agreement; but every question respecting its validity or effect may be examined and determined, and the agreement enforced or set aside without action, on motion or petition of any person, or the representative of any person, or party to such agreement, being or alleged to be liable to pay, or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business, or any part thereof, was done, or a judge thereof, or if the business was not done in any court, then where the amount payable under the agreement exceeds 50*l.*, by the High Court, and where such amount does not exceed 50*l.*, by the county court which would have jurisdiction in an action upon the agreement (sect. 8).

Practice.]—An application under either sect. 8 or 10 must be by petition entitled in the matter of the Act and of the agreement; the same procedure shall be followed and costs allowed as in any other petition (see Order L. 4, *post*, p. 2424). As to procedure on petition, see Order XXXVIII., Part I.

3. In the construction of this Act, unless where the context Interpretation-otherwise requires, the words following have the significations of terms. hereinafter respectively assigned to them: that is to say,

The words "attorney or solicitor" mean an attorney, solicitor, or proctor, qualified according to the provisions of the Acts for the time being in force, relating to the admission and qualification of attorneys, solicitors, or proctors:

"Person" includes a corporation:

"Client" includes any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ, an attorney or solicitor, and any person who is or may be liable to pay the bill of an attorney or solicitor for any services, fees, costs, charges, or disbursements.

The Act does not apply to accounts between country solicitors and their London agents (*Ward v. Eyre*, (1880) 15 Ch. D. 130; 49 L. J. Ch. 657).

PART I.

AGREEMENTS BETWEEN ATTORNEYS OR SOLICITORS AND THEIR CLIENTS.

4. An attorney or solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such attorney or solicitor, whether as an attorney or solicitor or as an advocate or conveyancer, either by a gross sum, or by commission or percentage, or by salary or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated, subject to the provisions and conditions in this part of this Act contained: Provided always, that when any such agreement shall be made in respect of business done or to be done in any action at law or suit in equity, the amount payable under the agreement shall not be received by the attorney or solicitor until the agreement has been examined and allowed by a taxing officer of a court having power to enforce the agreement; and if it shall appear to such taxing officer that the agreement is not fair and reasonable he may require the opinion of a court or a judge to be taken thereon by motion or petition, and such court or judge shall have power either to reduce the amount payable under the agreement or to order the agreement to be cancelled and the costs, fees, charges, and disbursements in

The remuneration of attorneys and solicitors may be fixed by agreement.

Amount payable under agreement not to be paid until allowed by taxing officer.

Section 4. respect of the business done to be taxed in the same manner as if no such agreement had been made.

An agreement as to a solicitor's costs in a police court or at quarter sessions may be examined and set aside (*In re Jones*, (C. A.) (1896) 1 Ch. 222; 65 L. J. Ch. 191); an agreement is binding though signed only by the client (*In re Thompson, Ex parte Baylis*, (1894) 1 Q. B. 462; 63 L. J. Q. B. 187). An agreement not to charge anything for costs is not within the Act and may be made by parol (*Jennings v. Johnson*, (1873) L. R. 8 C. P. 425); but an agreement not in writing by a client to pay a lump sum in discharge of past costs is not binding (*In re Russell*, (1885) 30 Ch. D. 114; 54 L. J. Ch. 948). A formal agreement is not necessary, but the document relied on must be an agreement, not a mere casual letter (*Pontifex v. Farnham*, (1892) 62 L. J. Q. B. 344). An agreement by which the solicitor is to receive what is equivalent to a tenth part of the property recovered is clearly void (*In re Attorney and Solicitors Act*, 1870, (1875) 1 Ch. D. 573; 45 L. J. Ch. 45; see also *In re A Solicitor*, (1912) 1 K. B. 302; 81 L. J. K. B. 245).

6. Such an agreement shall be deemed to exclude any further claim of the attorney or solicitor beyond the terms of the agreement in respect of any services, fees, charges or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

Reservation of responsibility for negligence.

7. A provision in any such agreement that the attorney or solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such attorney or solicitor, shall be wholly void.

Examination and enforcement of agreements.

8. No action or suit shall be brought or instituted upon any such agreement; but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced or set aside, without suit or action, on motion or petition of any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business, or any part thereof, was done, or a judge thereof, or if the business was not done in any court, then where the amount payable under the agreement exceeds fifty pounds, by any superior court of law or equity or a judge thereof, and where such amount does not exceed fifty pounds, by the judge of a county court which would have jurisdiction in an action upon the agreement.

Sect. 8 does not apply to an action for damages for refusing to allow the solicitor to do the work, and earn the remuneration (*Rees v. Williams*, (1875) L. R. 10 Ex. 200; 44 L. J. Ex. 116). An appeal lies to a Divisional Court from the decision of a judge at chambers and not direct to the Court of Appeal, the matter not being one of "practice and procedure" within the meaning of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. V. c. 49, s. 31 (3)) (*In re Jackson*, (1915) 1 K. B. 371; 84 L. J. K. B. 548).

Improper agreements may be set aside.

9. Upon any such motion or petition as aforesaid, if it shall appear to the court or judge that such agreement is in all respects fair and reasonable between the parties, the same may be enforced by such court or judge by rule or order in such manner and subject to such conditions, if any, as to the costs of such motion or petition

such court or judge may think fit; but if the terms of such agreement shall not be deemed by the court or judge to be fair and reasonable, the same may be declared void, and the court or judge shall thereupon have power to order such agreement to be given up to be cancelled, and may direct the costs, fees, charges, and disbursements incurred or chargeable in respect of the matters included therein to be taxed in the same manner and according to the same rules as if such agreement had not been made; and the court or judge may also make such order as to the costs of and relating to such motion or petition, and the proceedings thereon, as to the said court or judge may seem fit.

Section 9.

The agreement must be not only fair in the sense that it was understood by the client, but must also be reasonable in amount, having regard to the work done (*In re Stuart, Ex parte Cathcart*, (1893) 2 Q. B. 201; 63 L. J. Q. B. 623).

10. When the amount agreed for under any such agreement has been paid by or on behalf of the client, or by any person chargeable with or entitled to pay the same, any court or judge having jurisdiction to examine and enforce such an agreement may, upon application by the person who has paid such amount, within twelve months after the payment thereof, if it appears to such court or judge that the special circumstances of the case require the agreement to be re-opened, re-open the same, and order the costs, fees, charges, and disbursements to be taxed, and the whole or any portion of the amount received by the attorney or solicitor to be repaid by him on such terms and conditions as to the court or judge may seem just.

Agreements may be re-opened after payment in special cases.

Where any such agreement is made by the client in the capacity of guardian, or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under such agreement, or with any part of such amount, the agreement shall before payment be laid before the taxing officer of a court having jurisdiction to enforce the agreement, and such officer shall examine the same, and may disallow any part thereof, or may require the direction of the court or a judge to be taken thereon by motion or petition; and if in any such case the client pay the whole or any part of the amount payable under the agreement, without the previous allowance of such officer or court or judge as aforesaid, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof for the amount so charged; and if in any such case the attorney or solicitor accept payment without such allowance, any court which would have had jurisdiction to enforce the agreement may, if it think fit, order him to refund the amount so received by him under the agreement.

11. Nothing in this Act contained shall be construed to give Prohibition validity to any purchase by an attorney or solicitor of the interest, of certain or any part of the interest, of his client in any suit, action, or other stipulations. contentious proceeding to be brought or maintained, or to give validity to any agreement by which an attorney or solicitor retained or employed to prosecute any suit or action, stipulates for payment only in the event of success in such suit, action, or proceeding.

12. Nothing in this Act contained shall give validity to any disposition, contract, settlement, conveyance, delivery, dealing, Not to give validity to contracts,

Section 12.

&c., which may be void in bankruptcy.

Provision in case of death or incapacity of the attorney.

or transfer which may be void or invalid against a trustee or creditor in bankruptcy, arrangement, or composition, under the provisions of the laws relating to bankruptcy.

13. Where an attorney or solicitor has made an agreement with his client in pursuance of the provisions of this Act, and anything has been done by such attorney or solicitor under the agreement, and before the agreement has been completely performed by him, such attorney or solicitor dies or becomes incapable to act, an application may be made to any court which would have jurisdiction to examine and enforce the agreement by any party thereto, or by the representatives of any such party, and such court shall thereupon have the same power to enforce or set aside such agreement, so far as the same may have been acted upon, as if such death or incapacity had not happened; and such court, if it shall deem the agreement to be in all respects fair and reasonable, may order the amount due in respect of the past performance of the agreement to be ascertained by taxation, and the taxing officer in ascertaining such amount shall have regard so far as may be to the terms of the agreement, and payment of the amount found to be due may be enforced in the same manner as if the agreement had been completely performed by the attorney or solicitor.

As to change of attorney after agreement.

14. If, after any such agreement as aforesaid shall have been made, the client shall change his attorney or solicitor before the conclusion of the business to which such agreement shall relate (which he shall be at liberty to do notwithstanding such agreement), the attorney or solicitor, party to such agreement, shall be deemed to have become incapable to act under the same within the meaning of section thirteen of this Act; and upon any order being made for taxation of the amount due to such attorney or solicitor in respect of the past performance of such agreement, the court shall direct the taxing master to have regard to the circumstance under which such change of attorney or solicitor has taken place; and, upon such taxation, the attorney or solicitor shall not be deemed entitled to the full amount of the remuneration agreed to be paid to him unless it shall appear that there has been no default, negligence, improper delay, or other conduct on his part affording reasonable ground to the client for such change of attorney or solicitor.

Agreements shall be exempt from taxation.

15. Except as in this part of this Act provided, the bill of an attorney or solicitor for the amount due under an agreement made in pursuance of the provisions of this Act shall not be subject to any taxation, nor to the provisions of the Act of the sixth and seventh Victoria, chapter seventy-three, and the Acts amending the same respecting the signing and delivery of the bill of an attorney or solicitor.

COUNTY COURT RULES. ORDER L. RULE 4.

THE SOLICITORS ACT, 1870.

Applications under 33 & 34 Vict. c. 23, ss 8, 10.

An application to the court under the Solicitors Act, 1870, shall be made by petition intituled in the matter of the Act and of the agreement, and the same procedure shall be followed and costs allowed as on any other petition to the court, regard being had to the amount of the subject-matter of the petition.

THE STAMP ACT, 1891.

Section 14.

[54 & 55 VICT. c. 39.]

14.—(1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom . . . notice shall be taken by the judge . . . of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument . . . of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.

(2) The officer . . . receiving the duty and penalty shall give a receipt for the same and make an entry in a book kept for that purpose of the payment and of the amount thereof, and shall communicate to the commissioners the name or title of the proceeding in which, and of the party from whom, he received the duty and penalty, and the date and description of the instrument, and shall pay over to such person as the commissioners may appoint the money received by him for the duty and penalty.

(3) On production to the commissioners of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.

Unstamped Document.—Where an unstamped or insufficiently stamped document is tendered in evidence, the judge should notice the defect. If the document may be legally stamped after execution, upon the receipt of the registrar for the unpaid duty, the penalty, and a further sum of 1*l.* being produced, it may be admitted, but otherwise if it cannot be legally stamped after execution. No appeal lies from the ruling of a county court judge holding that the stamp on a document is sufficient (*Mander v. Ridgway*, (1898) 1 Q. B. 501; 67 L. J. Q. B. 335); nor from the admission of an unstamped document without exacting a penalty (*Lowe v. Dorling*, (C. A.), (1906) 2 K. B. 772; 75 L. J. K. B. 1019). The penalty, or part thereof, is sometimes remitted upon petition to the proper authority.

STANNARIES COURT (ABOLITION) ACT, 1896.

[59 & 60 VICT. c. 45.]

Transfer of Jurisdiction of Stannaries Court.—By sect. 1 of this Act it is provided that the stannaries court is to cease to exist, except for the purpose of continuing and concluding pending proceedings, and that all the jurisdiction and powers of the court are (except as aforesaid) to be transferred to and vested in such of the county courts as the Lord Chancellor may by order direct, and are to be exercised subject to and in accordance with rules of court regulating the procedure in county courts (sub-s. 1).

County Court having Jurisdiction.—By order of the Lord Chancellor the jurisdiction and powers have been transferred to the county courts of

Cornwall; subject to special appointment the place of sitting of the judge is to be at Truro, of the registrar, at the court where proceedings may be commenced; pending proceedings were transferred to Truro (see Order, December 16th, 1896). References in any unrepealed statute to mines subject to the jurisdiction of the court of the vice-warden of the stannaries or within his cognizance are to be construed as applying to mines which would have been subject to the jurisdiction of that court if it had not been abolished (sect. 3).

Reference of Disputes to Arbitration.—In the event of any dispute arising between (a) any two or more mining companies, or (b) any mining company and His Royal Highness the Prince of Wales and Duke of Cornwall or any person having any estate or interest in the mine worked by or leased to that company, a judge of a county court exercising the jurisdiction of the stannaries court may, on the application of any party to the dispute, order the matter to be tried before himself, or before an arbitrator agreed upon by the parties, or an officer of the court; the Arbitration Act, 1889, is to apply to any such reference (sect. 4). The repeal effected by the schedule does not affect any proceedings pending in the court or any appeal from it pending at the commencement of the Act (sect. 5).

Nature of Jurisdiction.—With respect to the jurisdiction so transferred, it is sufficient to say that the stannaries court exercised jurisdiction both in equity and at common law. Until comparatively recent years, its equity jurisdiction was confined to questions relating to tin mines, and its common law jurisdiction to suits between tin-miners, but by divers statutory enactments this jurisdiction was extended over all mines or setts of metallic minerals and also over mines or setts in which non-metallic, as well as metallic, minerals are worked for in the same mine (see Acts 1836 and 1855).

Equity Jurisdiction.—The original equity jurisdiction of the court, though not strictly coterminous with the powers of the High Court, is believed to be an exclusive jurisdiction, and has been generally exercised for the purpose of enforcing the custom of cost-book; this jurisdiction has been at various times enlarged by statute. Hitherto, the county courts held within the district of the stannaries court have had no concurrent jurisdiction in equity cases within the jurisdiction of the latter court.

Common Law Jurisdiction.—The common law jurisdiction of the court in personal actions is substantially concurrent with that of the ordinary courts of law, except that under various royal charters confirming its common law jurisdiction the court appears to have had exclusive jurisdiction over tanners actually working in the mines; otherwise the stannaries court and the county court have hitherto exercised concurrent jurisdiction in common law matters.

For information as to the stannaries court and its jurisdiction, see Batten on the Stannaries Act, 1869.

Practice is governed by Order LI. (*post*, p. 2429), which deals separately with matters within the limits of county court jurisdiction and actions and matters beyond such limits.

Winding-up.—The stannaries court in the matter of a company for working mines within the stannaries, and not shown to be actually working mines, or to be engaged in any other undertaking beyond those limits, has no limit to its jurisdiction in winding-up matters (see Companies (Consolidation) Act, 1908, ss. 130 (4), 280). In *Dunbar v. Harvey*, C. A., (1913) 2 Ch. 530; 82 L. J. Ch. 452; 109 L. T. 285, a partnership of two formed to work metalliferous mines in Cornwall held a company, and that the county courts of Cornwall now have exclusive jurisdiction to wind up such a company. So even though the memorandum did not limit the company to working in Cornwall (*Radium Ore Mines, Ltd.*, C. A., (1913) 110 L. T. 57; 109 L. T. 707).

Court Fees.—See *post*, p. 2434.

STANNARIES COURT (ABOLITION) ACT, 1896.

Section 1.

[59 & 60 VICT. C. 45.]

1.—(1) The court of the vice-warden of the stannaries shall cease to exist, and all jurisdiction and powers of the said court and its officers shall be transferred to and vested in such of the county courts as the Lord Chancellor may by order direct, and be exercised subject to and in accordance with rules of court for regulating the procedure in county courts. Abolition of vice-warden's court.

(2) Provision may be made by order of the Lord Chancellor—

(a) For determining by, to, or before what officer, or in what office, may be done anything required to be done by, to, or before any officer or in any office of the said court of the vice-warden;

(b) (Repealed).

(c) For determining the place of sitting for the exercise of any jurisdiction transferred by this Act;

(d) With respect to the use and disposal of any property which at the commencement of this Act is held for the use of the said court or of any officer of the said court, and of any room or building which at that date is appropriated for the use of the said court or of the vice-warden, officers, and suitors thereof; and

(e) With respect to the custody of any records which at that date are under the custody of the said court.

2. There shall be paid to the persons who are at the commencement of this Act the vice-warden and officers of the court of the vice-warden of the stannaries such pensions, and on such conditions, and out of such funds (including the funds mentioned in section twenty-nine of the Stannaries Act, 1887, and any other funds available for the purpose), as may be fixed by the Treasury with the concurrence of His Royal Highness the Prince of Wales and Duke of Cornwall, regard being had to the date and form of appointment, and salary attached thereto, and to the nature and length of the services of those persons and to the amount and nature of the funds available for their pensions. Pensions and remuneration. 50 & 51 Vict. c. 43.

3. References in any unrepealed enactment to mines subject to the jurisdiction of the court of the vice-warden of the stannaries, or within the cognizance of the said vice-warden, shall be construed as applying to mines which would have been subject to the jurisdiction of the said court if it had not been abolished. Explanation of references to stannaries court.

4.—(1) In the event of any dispute arising between—

(a) Any two or more mining companies; or

(b) Any mining company and His Royal Highness the Prince of Wales and Duke of Cornwall, or any person having any estate or interest in the mine worked by or leased to that mining company;

Reference of certain disputes to arbitration.

a judge of a county court exercising the jurisdiction of the stannaries court may, on the application of any party to the dispute, order that the matter in dispute be tried before himself or before an arbitrator agreed on by the parties or an officer of the court, and the Arbitration Act, 1889, shall apply to any such reference.

(2) For the purposes of this section the expression "mining" 52 & 53 Vict. c. 49.

Section 4. company " shall mean any person or body of persons engaged in or formed for working mines within the stannaries.

5 and 6. Repealed.

Short title. 7. This Act may be cited as the Stannaries Court (Abolition) Act, 1896.

ORDER UNDER THE STANNARIES COURT (ABOLITION) ACT, 1896.

DATED DECEMBER 16, 1896.

I, Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by virtue of the Stannaries Court (Abolition) Act, 1896, and all other powers enabling me in that behalf, do hereby order as follows:—

Rule 1.

1. The county courts of Cornwall shall be the courts to and in which the jurisdiction and powers of the stannaries court are by the said Act transferred and vested.

2. Anything required to be done by, to, or before the registrar or any clerk of the stannaries court shall be done by, to, or before the registrar or any clerk of any of the county courts aforesaid.

3. All proceedings pending in the stannaries court at the commencement of the Act shall be transferred to the county court held at Truro, to be there completed in the same manner as if the said Act had not passed.

4. The place of sitting for the exercise of any of the jurisdiction—

(1) of the judge shall be at Truro, unless in any case he shall, on the ground that some other place will be more convenient for the suitors, otherwise direct;

(2) of the registrar shall be at the court where the proceedings shall have been commenced, unless in any case the judge shall, for the convenience of parties, otherwise direct.

5. Notwithstanding anything in these rules, the jurisdiction and powers of the stannaries court in regard to the winding-up of companies, and to all cases where the subject matter is not within the limits of the county court jurisdiction, shall be exclusively exercised by the court having bankruptcy jurisdiction in Cornwall.

6. The property, rooms, and building mentioned in section 1 (2) (d) of the Act shall be used and disposed of as may be agreed upon between the judge of the county courts of Cornwall and the corporation of Truro, subject to the approval of the Lord Chancellor.

7. Arrangements for the custody of the records in the same section mentioned shall be made by the corporation of Truro, in consultation with the judge of the county court, subject to the approval of the Lord Chancellor.

8. This order shall come into operation on the 1st of January, 1897.

ORDER UNDER THE STANNARIES COURT (ABOLITION) ACT, 1896.

I, Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by virtue of the Stannaries Court (Abolition) Act, 1896, and all other powers enabling me in this behalf, do hereby order as follows:—

The funds mentioned in section 29 of the Stannaries Act, 1887, that is to say, the funds standing to the credit of the accounts known as—

(1) the assessionable manors account, and

(2) the unclaimed moneys account;

and at the commencement of the Stannaries Court (Abolition) Act, 1896, held by the vice-warden and registrar of the stannaries in their joint names, shall be held by the Paymaster-General, subject to the same trusts and liabilities, and subject also to the provisions of section 2 of the last-named Act, and everything required to be done under the said section 29 by the vice-warden and registrar shall be done by the Paymaster-General.

THE COUNTY COURT (STANNARIES JURISDICTION) RULES, 1903.

ORDER LI.

As amended by County Court Rules, 1920.

THE STANNARIES COURT (ABOLITION) ACT, 1896 (59 & 60 VICT.
c. 45).

1. Proceedings commenced in a county court under the jurisdiction and powers transferred to and vested in such court under the Stannaries Court (Abolition) Act, 1896, shall be regulated by the following rules. Proceedings under 59 & 60 Vict. c. 45.

Sittings of the Court.

2. The days of the sitting of the court shall be those appointed for the transaction of the ordinary general business of the court held in the city or town mentioned in the name of the court, or such other days as the judge may from time to time appoint, either generally as days on which cases commenced under the stannaries jurisdiction will be tried, or specially for the trial of any particular action, matter, or other proceeding. Sittings of the court.

3. The judge may try or partly try any action, matter, or other proceeding at any place within the district of the court as fixed for the purposes of the stannaries jurisdiction. Where action may be tried.

4. Where application is made to the judge for the trial or part trial of an action, matter, or other proceeding at a place in which a court is not held, the party making the application shall file a præcipe undertaking to provide at his expense a place to the satisfaction of the judge in which the action, matter, or proceeding may be tried, and to pay the necessary expenses of the judge and officers so attending. Undertaking for expenses of trial at place where court not held.
[Conf. Form 369.]

Pursers' and Creditors' Suits abolished.

5. Pursers' and creditors' suits shall be abolished. Pursers' and creditors' suits abolished.

Rule 6.

Winding-up of Companies.

Proceedings
for winding
up com-
panies.

Costs of
solicitors,
counsel, and
witnesses in
winding-up
cases.

6. Proceedings for the winding-up of companies shall be regulated by, and costs in such proceedings shall be taxed under, the statutory provisions, rules, and scales of costs for the time being in force for the winding-up of companies in the county courts.

7.—(1) Solicitors practising as advocates according to the usage prevailing in the stannaries court before the first day of January, 1897, will be recognised as such, and entitled to fees as such, when they appear in the character of advocates in any winding-up proceedings before the judge in person at any sitting of the court; but charges in both characters in respect of the same matter or act done in court by the same solicitor will not be allowed.

(2) In attendances before the judge out of court, or before the registrar, solicitors will be considered as attending in that character only, and entitled to fees and necessary expenses as such.

(3) Upon attending as advocates they will be entitled to fees not exceeding the following:—

On the hearing of any original petition, 2*l.* 2*s.* to 5*l.* 5*s.*

On motions of course, 10*s.* 6*d.*

Other motions, 1*l.* 1*s.*

(4) On the hearing or argument of or upon a special motion in any winding-up, the registrar will be at liberty to treat it as an original petition, and allow fees of advocates accordingly.

(5) On the winding-up of companies the registrar in taxing the costs of advocates or solicitors' fees is to have regard to the solvency of the estate or fund, the importance of the matters in issue, and the pecuniary value of the interests involved.

(6) When counsel are retained to attend before the court, or before the judge out of court, or upon the examination of witnesses out of court, the usual and reasonable fees of counsel for such attendance may be allowed on taxation, if in the opinion of the court such attendance be desirable.

(7) In the allowance to witnesses the scale of allowances sanctioned by the county court rules is to be adopted.

Actions or Matters within Limits of County Court Jurisdiction.

Proceedings
in cases
within
limits of
county court
jurisdiction.

Transfer of
actions from
one court
to another
for hearing,
and re-trans-
fer after
hearing.

51 & 52 Vict.
c. 43, s. 85.

8. Proceedings in actions or matters within the limits of the ordinary jurisdiction of the county courts under the County Courts Act, 1888, shall be regulated by, and costs in such proceedings shall be taxed under, the statutory provisions, rules, and scales of costs for the time being in force in the county courts.

9.—(1) Where an action or matter commenced in one court is transferred for hearing to any other court, the provisions of section eighty-five of the County Courts Act, 1888, shall apply to such action or matter; but the judge may after the hearing direct the action or matter to be transferred back to the court in which it was commenced: and in that case the certified copy of the proceedings mentioned in the said section eighty-five shall be returned by post to the registrar of such last-mentioned court, with a certified copy of all the proceedings in the court in which the action or matter was heard, and of the order of transfer; and all proceedings subsequent to judgment shall be taken in the court to which such action or matter is transferred back.

(2) When any transfer is made the costs of the copies of the proceedings, and any fees payable to the registrar of either court,

shall be paid by the party on whose application the transfer is made, unless the transfer is made by the judge without any application to transfer being made to him, in which case such costs and fees shall be paid by the plaintiff in the action or matter.

(3) The registrar by whom any copies are to be transmitted may require deposit of the costs of such copies, and payment of his fees before making or transmitting such copies.

(4) The judge may in any case direct by which of the parties such costs and fees are ultimately to be borne; and if he directs them to be borne by any party other than the party by whom they are paid in the first instance, they shall be allowed to such last-mentioned party as costs in the action or matter.

9A. Proceedings in actions within the limits of the extended jurisdiction conferred by the County Courts Act, 1903, shall be regulated by, and costs in such proceedings shall be taxed under, the statutory provisions, rules, and scales of costs for the time being in force in the county courts and applicable to such actions. Proceedings in actions under 3 Edw. VII. c. 42.

Actions or Matters beyond Limits of County Court Jurisdiction.

10. Proceedings in actions or matters exceeding the limits of the jurisdiction of the county courts under the County Courts Act, 1888, as extended by the County Courts Act, 1903 (hereinafter called proceedings under the stannaries jurisdiction), shall be regulated by the following rules. Proceedings in cases beyond limits of county court jurisdiction.

11. The records and papers in any proceeding under the stannaries jurisdiction shall be intituled with the name of the court, and marked with the words "stannaries jurisdiction." Proceedings, how intituled.

12. All actions, suits, and proceedings which before the first day of January, 1897, were called actions, and commenced in the stannaries court by writ of summons, shall be called actions, and shall be commenced by entering a plaint and issuing a summons. Actions to be commenced by plaint.

13. The præcipe for the entry of a plaint, and the particulars, shall state an address for service, which shall be within the district of the court, and at which it shall be sufficient to leave all instruments and documents in the action required to be served upon the plaintiff. Matters to be stated in præcipe and particulars.

14. Immediately on the filing of the præcipe the registrar shall enter a plaint and issue a summons. Such summons shall be an ordinary summons, unless the claim of the plaintiff is for a debt or liquidated demand in money, in which case the plaintiff may at his option cause a special default summons to be issued in accordance with the county court rules for the time being in force as to such summonses. Plaint and summons.

15. Where an ordinary summons is issued, such summons shall be made returnable on a day not less than 30 clear days from the filing of the præcipe, unless all parties concur in asking for an earlier day to be fixed. If the judge has already appointed a day or days within two months from the date of the filing of the præcipe for the hearing of cases commenced under the stannaries jurisdiction, the summons shall be made returnable on such day or one of such days. If no such days have been appointed, the registrar shall before issuing the summons apply to the judge to fix a day on which the action will be heard, and the summons shall be made returnable on the day so fixed. Return-day of ordinary summons.

Rule 16.**Particulars.**

Service of
summons
and proof
thereof.

16. Particulars of demand shall be filed at the time of the entry of the plaint, and a copy thereof shall be forthwith sent to the judge.

17.—(1) Service of an ordinary summons may be effected—

- (a) by delivering the same to the defendant personally; or
- (b) in the cases mentioned in Rules 12 to 22, 24, 26 and 27 (both inclusive) of Order VII., in the manner prescribed by those rules; or

- (c) under an order for substituted service as prescribed by Order VII. Rule 40.

(2) Service may be effected in accordance with Order VII. Rule 33.

(3) Where the plaintiff wishes the summons to be served otherwise than by a bailiff, he shall so request in the præcipe; and the proviso to Order VII. Rule 33, shall apply.

(4) Where the service is effected otherwise than by a bailiff, a copy of the summons, with the date and place and mode of service indorsed thereon, and an affidavit of service according to the form in the Appendix, with such modifications as circumstances may require, shall within three clear days after the day of service, or such further time as may be allowed by the registrar, be delivered or transmitted to the registrar by the plaintiff.

Form 37.

Time of
service of
ordinary
summons.

18. An ordinary summons shall be served twenty clear days at least before the return day, unless the defendant consents to accept shorter service. If it is not so served the plaintiff shall apply to have a fresh day fixed for the hearing, so as to admit of service being effected in accordance with this rule.

Fixing trial
of special
default sum-
mons where
affidavit of
defence
delivered.

19. Where a defendant to a special default summons delivers an affidavit of defence or is let in to defend, a day shall be fixed for the trial, and the registrar shall send by post to both plaintiff and defendant notice of trial twenty clear days at least before the day so fixed. If the judge has already appointed a day or days within one month of the day on which the affidavit of defence is received by the registrar for the hearing of cases commenced under the stannaries jurisdiction, the registrar shall fix such day or one of such days for the trial. If no such days have been appointed the registrar shall apply to the judge to fix a day on which the action will be tried, and shall give notice of trial for the day so fixed.

Appearance
to ordinary
summons.

[Conf.
Form 374.]

20. A defendant to an ordinary summons may enter an appearance in such action by filing a præcipe.

Address for
service where
affidavit of
defence de-
livered or
appearance
entered.

21. Where a defendant to a special default summons delivers an affidavit of defence or is let in to defend, or a defendant enters an appearance to an ordinary summons, the affidavit or notice of appearance shall state his name, address and description, and if he appears or defends by a solicitor, the name of his solicitor, and shall also state an address for service, which shall be within the district of the court, and at which it shall be sufficient to leave all instruments or documents in the action required to be served on such defendant.

Settlement
of issues
to be tried.

22.—(1) The parties to an action may at any time before the return day agree upon the file a statement of the issues to be tried.

(2) If no such statement is filed, or if it appears to the judge that the issues of fact in dispute are not sufficiently defined by the

statement filed, the judge may direct the parties to prepare and file issues or further issues, as the case may be.

Rule 22.

(3) If the parties are unable to agree upon a statement of the issues or further issues, any party may, whether the judge has or has not directed issues or further issues to be filed, apply under Order XV. to have the issue or further issues settled by the court; and such issues or further issues shall be settled accordingly by the registrar, or, if the parties so request, by the judge.

23.—(1) Where a defendant intends to object to the jurisdiction of the court he shall file a notice of such objection, together with a concise statement of the grounds thereof, at least ten clear days before the return day; and the provisions of Order X. Rule 10, shall apply to any such notice, or any failure to give such notice.

Objection
to juris-
diction.

(2) Where such notice is given, any party may apply to the judge in accordance with Order XV. for an order directing that the question of jurisdiction be decided separately before the action is brought on for trial; and the judge may make such order accordingly, or may direct that the decision of such question be reserved till the trial of the action.

24. Notice of a demand for a jury shall be given in writing to the registrar fifteen clear days at least before the return day, and the registrar shall forthwith give notice thereof to the other party, and the summonses to the intended jurors shall be delivered to the bailiff forthwith.

Notice of
demand for
jury.
Forms 142—
144.

25. Subject to the foregoing rules, the proceedings in an action commenced under the stannaries jurisdiction shall be regulated by the statutory provisions and rules for the time being in force regulating the proceedings in actions in the county courts.

General pro-
visions as to
proceedings.

26. Where no other provision is made by the statutory provisions or rules for the time being in force, the practice and procedure in force in the High Court shall apply to proceedings commenced in a county court under the stannaries jurisdiction. Provided that the procedure under Order XIV. of the Rules of the Supreme Court shall not be resorted to in the county court.

Procedure of
High Court
(except under
Order XIV.)
to apply
where no
other pro-
vision made.

27. If in the course of any action or matter which has been commenced as being within the limits of the ordinary jurisdiction of the county courts it appears that the subject-matter of such action is beyond such limits, but within the limits of the stannaries jurisdiction, the proceedings shall not be invalidated, but the action shall thenceforth proceed in all respects, as to costs and otherwise, as if it had been commenced under the stannaries jurisdiction: And in like manner, if in the course of any action which has been commenced under the stannaries jurisdiction it appears that the subject-matter of such action is within the limits of the ordinary jurisdiction of the county courts, the proceedings shall not be invalidated, but such action shall thenceforth proceed in all respects, as to costs and otherwise, as if it had been commenced as being within the limits of the ordinary jurisdiction of the court.

Provisions
as to pro-
ceedings
commenced
under
ordinary
jurisdiction
which should
have been
commenced
under
stannaries
jurisdiction
and *vice*
versâ.

28. The costs of actions commenced under the stannaries jurisdiction shall be allowed and taxed according to the rules and scales of costs for the time being in force in the county courts, and applicable to the subject-matter of such actions.

Costs of
action under
stannaries
jurisdiction.

Section 50.

—

inquiry, valuation, or report to be made by any officer of the court, or other person, as such court or judge may think fit: Provided, that where the sum in dispute in respect of duty on such assessment does not exceed fifty pounds, the accountable party may, having given notice of appeal and delivered a statement of the grounds thereof as hereinbefore directed, appeal to the judge of the county court in England, the sheriff court in Scotland, or the assistant barrister's court in Ireland, for the district, county or division in which the appellant shall be resident, or the property be situate; and every such judge shall have jurisdiction to hear and determine the matter of such last-mentioned appeal, with the like power and authority as are by this section given to a judge of Her Majesty's Court of Exchequer.

For Order XLII., see *ante*, p. 2012, under title Finance Acts.

THE TELEGRAPH ACT, 1878.

[41 & 42 VICT. c. 76.]

See also 55 & 56 Vict. c. 59, and 6 & 7 Geo. V. c. 40.

Jurisdiction.—By sect. 4 of this Act, should any difference arise between the Postmaster-General and the authority having the control over streets and public roads, the difference must be referred to the police or stipendiary magistrate having jurisdiction within the district, and *if there be no such magistrate, to the judge of the county court for the district.*

Practice is governed by Order L. r. 11 (*post*, p. 2436), which points out how the application to the judge is to be initiated, and how it is to be prosecuted.

Appeal from the award of the judge lies to the Railway Commissioners; either party to the reference, if dissatisfied with the award, may within twenty-one days, require that the difference be referred to the said Commissioners (sect. 4). *Postmaster-General v. Hutchings*, (1916) 85 L. J. K. B. 1008.

In the *National Telephone Co. v. Tunbridge Wells Corporation*, (1901) 48 W. R. 686; 83 L. T. 525; (C. A.), 85 L. T. 368, it was held that a licensee from the Postmaster-General cannot exercise any powers under sect. 4 of the 1878 Act without the consent in London of the county council, and in any urban sanitary district outside London, of the urban sanitary authority and elsewhere of the county council, and that the licensee is subject to any terms and conditions which such authority may attach to its consent without appeal; and that prohibition will lie against a judge attempting to act as referee.

Note. By the Electricity (Supply) Act, 1919 (9 & 10 Geo. 5, c. 100), s. 21, the consent of the local authority is not required for the erection of overhead wires of an electric line, if the Board of Trade has given consent to such erection, but the Board of Trade before giving consent must give the local authority an opportunity of being heard.

Costs to be taxed under column B, unless the judge otherwise directs.

4. Where any difference (a) arises under this Act or the Telegraph Act, 1863, between the Postmaster-General and any body or person having any power, jurisdiction, or control over (b) or relating to

Differences relating to a street or public road to be determined by the stipendiary

(a) As to "difference," see 6 & 7 Geo. V. c. 40, sect. 1.

(b) An urban district council not being liable to repair the road, and which can require the frontagers to make it good under s. 150 of the

Section 4.
 —
 magistrate,
 county court
 judge, or
 sheriff.

31 & 32 Vict.
 c. 119.

a street or public road, or having power under the last-mentioned Act to give or withhold a consent to the placing of telegraphs and posts in, under, upon, along, or across a street or public road, such difference shall in England or Wales and Ireland be referred to the police or stipendiary magistrate having jurisdiction within the district in which the difference has arisen, or if there be no such magistrate, then to the judge of the county court having jurisdiction within such district, and in Scotland to the sheriff, and such magistrate, judge, and sheriff are respectively empowered and required to hear and determine such difference, and sections thirty to thirty-three, both inclusive, of the Regulation of Railways Act, 1868, shall apply to every difference so referred to such magistrate, judge, or sheriff (as the case may be) in like manner as if he were an arbitrator appointed pursuant to those sections, and as if the Postmaster-General, body, or person between whom the difference has arisen were companies within the meaning of those sections.

Provided always, that in case either the Postmaster-General or the body or person between whom the difference has arisen shall be dissatisfied with the award or decision of such magistrate, judge, or sheriff, the party so dissatisfied may within twenty-one days after such award or decision, require, by a notice in writing given to the other party, that the difference shall be referred to the Railway Commissioners.

COUNTY COURT RULES. ORDER L. RULE 11.

Rule 11.
 —
 Applications
 under 41 &
 42 Vict. c. 76,
 s. 4.
 Particulars
 and affidavit.

11.—(1) Any difference referred to the judge under sect. 4 of the Telegraph Act, 1878, may be so referred by either of the parties to the difference filing with the registrar an application to the judge to hear and determine such difference, which application shall be intituled in the matter of the Act and of the difference, and shall be entered and numbered and reckoned as a plaint.

(2) Particulars shall be appended or annexed to the application, containing—

(a) a concise statement of the grounds on which the application is made, and of the relief or order which the applicant claims;

(b) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor;

and the application shall be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made.

Public Health Act, 1875, is not the body “having the control of” the road (*Postmaster-General v. Hendon Urban District Council*, (1914) 1 K. B. 564; 83 L. J. K. B. 618) See also *Postmaster-General v. Hutchings*, (1916) 85 L. J. K. B. 1008. As to jurisdiction of the county court where telephone lines are injured by the working of an electric tramway laid by a local authority, see *Postmaster-General v. Blackwood and Fleetwood Tram Co.* (1920), 89 L. J. K. B. 408.

Under the Telegraph Construction Act, 1916, s. 1, a dispute between the Postmaster-General and the lessee or occupier only of private land as to the placing of a line across his land cannot be referred to the county court, but must be referred direct to the Railway and Canal Commission (*Postmaster-General v. Brooks*, (1922) 2 K. B. 176; 91 L. J. K. B. 689).

Rule 11.

Copies for
judge and
respondents
Fixing day
of hearing
by registrar.

Fixing day
of hearing
by judge.

Notice to
parties.

[Conf.
Forms 419,
420.]

Service on
respondents.

By whom
service may
be effected.

Mode of
service.

Where service
effected
otherwise
than by
bailiff.

Form 37.

Affidavits by
respondents.

(3) The applicant shall deliver to the registrar with the application, particulars, and affidavit, a copy thereof for the judge, and a copy for each respondent to be served.

(4) On the filing of the application the registrar shall fix the hearing thereof before the judge for any court appointed to be held within twenty-eight days from the date of the application, but the date of hearing shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents ten clear days at least before the date so fixed.

(5) If there is no such court available, the registrar shall send notice of the application to the judge, who shall, as soon as conveniently may be, appoint a day for the hearing of the application. Such day shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents ten clear days at least before the date so fixed.

(6) On the day for the hearing of the application being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the application will be heard, and shall issue the copies of the application, particulars, and affidavit, under the seal of the court, for service on the respondents, together with notices signed by the registrar himself and under the seal of the court, stating the place at which and the day and hour on and at which the application will be heard, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

(7) The copies and notices mentioned in the last preceding paragraph shall be served on each respondent ten clear days at least before the day fixed for the hearing, unless such respondent, or his solicitor on his behalf, agrees to accept shorter service.

(8) Such copies and notices may be served—

- (a) by a bailiff of a court ;
- or, at the request of the applicant or his solicitor,
- (b) by the applicant, or some clerk or servant in his permanent and exclusive employ ; or
- (c) by the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

(9) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post.

(10) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also deliver or transmit to the registrar an affidavit of the service of such document, according to the form in the Appendix, with such variations as the circumstances of the case may require.

(11) Any affidavit intended to be used by any respondent on the hearing of the application shall be filed, and a copy thereof

Rule 11. — shall be served on the applicant four clear days at least before the hearing of the application, or, if short service of the notice of the application has been accepted, in such reasonable time before the hearing as the date of service will allow.

Attendance for cross-examination. (12) A deponent to an affidavit shall on notice from the other side attend the hearing for cross-examination, and witnesses may be orally examined on hearing of the application in the same manner as on the hearing of an action.

Procedure on application. (13) Subject to the provisions of sect. 4 of the Telegraph Act, 1878, and the enactments therein referred to, the procedure on an application shall be the same as the procedure in an action commenced in the court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such application accordingly; and in the application of such provisions and rules the application shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the application shall be deemed to be the return day, and the applicant and respondent shall be deemed to be plaintiff and defendant respectively.

Award. (14) The award of the judge shall be prepared by the registrar and signed by the judge, and shall be sealed, filed, and served on all persons affected thereby, and shall be enforceable in the same manner as a judgment or order of the court.

(15) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission.

Costs. (16) Costs awarded by the judge shall be taxed on such scale as the judge shall direct, and in default of such direction shall be taxed under column B.

THE TITHE ACT, 1891.

[54 & 55 VICT. c. 8.]

THE TITHE RENTCHARGE (RATES) ACT, 1899.

[62 & 63 VICT. c. 17.]

Jurisdiction Exclusive.]—Payment of tithe rentcharge can be enforced against the owner by proceedings in the county court, and in no other manner (sect. 2, sub-s. 1; *R. v. Paterson*, (1895) 1 Q. B. 31; 64 L. J. Q. B. 20). The court having jurisdiction is the court of the district in which the lands, or any part thereof, out of which the tithe rentcharge issues, are situate (*ib.*).

To be paid by the Owner.]—By virtue of this Act tithe rentcharge is in all cases to be paid by the owner of the lands (sect. 1, sub-s. 1), if it becomes payable after the passing of the Act (sect. 10, sub-s. 1).

The Act imposes no personal liability on occupier or owner in respect of tithe, and can only be enforced by distress or the appointment of a receiver (see *post*, p. 2440). No judgment summons can issue for non-payment of tithe. See sect. 2 (9).

Contracts made after the Act for payment of tithe rentcharge by the occupier are void, as are contracts to reimburse the landlord money paid by him for tithe rentcharge (sect. 1, sub-s. 1; *Ludlow v. Pike*, (1904) 1 K. B. 531; 73 L. J. K. B. 274, followed in *Tuff v. Guild of Drapers*, (1913) 1

K. B. 40; 82 L. J. K. B. 174); subsisting contracts bind to this extent, that the occupier will be bound to repay to the owner the amount which he properly pays. The owner may in such case enforce the repayment by distress in accordance with the Tithe Act, 1836 (sect. 1, sub-s. 3).

Time for taking Proceedings.]—Proceedings must be commenced within two years from the date on which the tithe rentcharge becomes payable (sect. 10 (2)), but not until it has been in arrear for not less than three months (sect. 2 (1)).

As tithe rentcharge is payable half-yearly, on the 1st day of April and the 1st day of October in each year (Tithe Act, 1925, sect. 2), any application for the recovery of two years' arrears must therefore be filed during the second three months of the current half-year.

A payment made to the tithe-owner under a mistake of fact may be recovered after two years, notwithstanding that the tithe-owner meanwhile has lost his remedy (*Durrant v. Ecclesiastical Commissioners*, (1880) 6 Q. B. D. 234).

Practice.]—To enforce payment the procedure is special, and is governed by the Act and rules. The tithe-owner must apply to the registrar, and file with him a notice of application with as many copies as there are persons to be served (Rule 2; Forms 1, 2, 3). If he has several applications to make, they should be filed at the same time (Rule 52). The registrar must fix a day for the hearing, and cause one of the above copies and a prescribed notice to be served on the owner (Rule 4, Form 4). Service may apparently be made in one of the modes prescribed by Rules 44 to 50; and must be made at least ten clear days before the day appointed for the hearing (Rules 4, 54).

When Occupier liable to repay Owner.]—When the occupier is liable to repay the owner, in the cases before mentioned, the landowner is bound to give notice of such liability to the tithe-owner. If he fails to do so he cannot afterwards recover from the occupier without a special certificate from the court (sect. 2, sub-s. 6; Rules 36, 37, 38; Forms 28, 29, 30; see *Hughes v. Rimmer*, (1893) 2 Q. B. 314). If the occupier's liability notice has been served on the tithe-owner before he applies to the county court, he must file with his notice of application a copy of the occupier's liability notice (Rule 3).

The registrar must then cause the occupier to be served in the same manner as the landowner with the notice of application, and also with the prescribed notice (Form 4).

If the tithe-owner is served with the occupier's liability notice after filing his application, he must file a copy with the registrar, who must then cause notices as aforesaid to be served on the occupier (Rule 6). If filed too late for ten days' notice to be given to the occupier, the registrar must appoint another day for the hearing, and give notice to the tithe-owner and the landowner (Rule 7; Form 7).

Limitation of Time.—Tithe rent charge is apparently "rent" within the meaning of the Real Property Limitation Act, 1833 (3 & 4 Wm. IV. c. 27) (*Asplen v. Pullin*, (1917) 1 K. B. 187; 86 L. J. K. B. 237). Its recovery is barred if unpaid for sixty years (*Ib.* sect. 29).

When Owner of Lands Unknown.]—Where the tithe-owner states in his notice of application that he does not know the landowner, or if service cannot be effected by post on the person named as landowner, proceedings may be taken without naming him (sect. 2, sub-s. 7; Rule 13).

Additional Service.]—If the tithe-owner states in his notice of application that additional service is required, it may be made as prescribed (Rules 14, 48).

Applications by Agents.]—The agent of the tithe-owner may apply on his behalf although not a solicitor. If required, he must prove his authority (sect. 5, sub-s. 1; Rule 12).

Notice of Opposition.—Order by Default.]—A respondent intending to oppose must, five clear days, at least, before the hearing, file a notice with the registrar, who must send notice to the applicant on the same day (Rules

5, 54; Forms 5, 6). If no notice is given, neither the attendance of the applicant or evidence will be required, and the court may make an order as hereinafter mentioned forthwith (Rules 8, 56); this order may, under the general or special directions of the judge, be made by the registrar (Rule 56).

If the respondent appears and desires to oppose, although he has filed no notice of opposition, the court may on terms fix another day for the hearing to allow the notice of opposition to be given (Rule 8).

Leave to Oppose.—If the respondent files notice of opposition too late, but before an order has been made, the court may, on terms, give him leave to oppose, and fix another day for the hearing, notice of which must be given to all parties (Rule 9).

Hearing.—When no Appearance.—Where notice of opposition has been given but the respondent does not appear, the application may be granted without proof of applicant's title, with costs (Rule 10).

When Respondent Appears.—If the respondent appears, the case will be heard in the ordinary way, and such evidence must be called and taken as is necessary (Rule 57). The proceeding not being commenced by plaint is a "matter," and the evidence ought, it is believed, to be given *viva voce*.

Grounds of Opposition.—Grounds of opposition not mentioned in the notice of opposition will not be entertained, except on such terms as to adjournment, payment into court, costs or otherwise as the court thinks fit (Rule 11).

Order.—Where Land not Occupied by Owner.—If the lands are not occupied by the owner, the order must find the amount due, and appoint a receiver of the rents and profits (sect. 2, sub-ss. 1, 3; Form 8).

If it appears that the lands are held at one rent together with lands in another parish, the court must apportion it. Notice must be given by the registrar, and then objections to the apportionment may be made to and heard by the court (Rules 25, 26, 27, 28; Forms 18 to 21).

The person appointed receiver must, in the absence of special reason to the contrary, be the person, if any, named by the applicant in his notice of application. If none is named, or the court does not appoint him, the court must appoint a fit and proper person (Rule 17).

When Lands Occupied by Owner.—If the lands, *i.e.*, the whole of the lands (*Ecclesiastical Commissioners v. Uppjohn*, (1913) 1 K. B. 501; 82 L. J. K. B. 435) are occupied by the owner, the court, instead of appointing a receiver, must appoint an officer of the court to distrain in accordance with sect. 85 of the Tithe Act, 1836 (sect. 2, sub-s. 2; Form 9). If he finds that there is not sufficient distress, he must report to the applicant and to the court. The applicant's remedy will then be to obtain possession of the lands under sect. 82 of the Tithe Act, 1836 (sect. 2, sub-s. 2; Rule 24; Form 17). An order for sale cannot be made (*Bailey v. Badham*, (1888) 30 Ch. D. 84).

When the fact that the owner is occupier is discovered by a receiver after appointment he must report the fact to the court (Form 12). The court may then appoint an officer to distrain as above. The receiver must be appointed, unless for special reason the court otherwise orders. The order must be suspended for at least ten days (Rule 23; Form 13).

Notice of the order must be given to the alleged owner, and he may, by notice filed with the registrar within the period of suspension, object to the order. The registrar must then fix a day for the hearing of the objection, and give notice to the owner. He must also suspend the order until the hearing (Rule 23; Forms 14, 15, 16).

When Lands let at Insufficient Rent.—If the receiver discovers that the lands are let at such a rent as will not enable him to recover the requisite sum from the occupier, he must make a report to the court (Rule 29). The court, if satisfied that there is a *prima facie* case, may give notices to owner and occupier to appear in not less than ten clear days (Rule 30).

On the return-day the court may appoint an officer to distrain. The receiver must be appointed in the absence of any special reasons (Rule 31).

Receivers.—Security.]—Any receiver, not a permanent officer of the court, must give such security, if any, as the court directs (Rule 17). Subject to the special rules, the court will have the same power over receivers as in ordinary cases, but the court may not order a sale of land (sect. 2, sub-s. 4).

Moneys received by the receiver must be paid into court after certain deductions (Rule 21), and the registrar must pay them out to the applicant until his claim is satisfied (Rule 22).

The receiver must give notice to the occupier of his appointment, and if the occupier refuses to attorn to him, may obtain an order from the court authorising him to distrain in the name of the owner (Rule 18; Forms 10, 11).

Remission of Tithe.]—Where the court is satisfied that if the sum claimed for tithe is paid, the total amount paid for twelve months will exceed two-thirds of the annual value of the lands, it must order the remission of the excess, and it will not then be recoverable. This provision applies only to lands used solely for agricultural or pastoral purposes, or for the growth of timber or underwood (sect. 8; Forms 26, 27).

Recovery of Rates on Tithes.]—If the ordinary methods of recovery of rates on tithes fail, the collector may apply to the court for an order for payment by the owner of the land out of the tithe payable by him. The order may be enforced by appointment of a receiver or of an officer to distrain, as the case may be (sect. 6; Rules 40, 41; Form 35).

Redemption Money.]—Sect. 10, sub-s. 4, of the Act applies to redemption money, and therefore the county court has, under sect. 2, jurisdiction to make an order for the recovery of the consideration money and expenses incident on the redemption of tithes (*Reg. v. Paterson*, (1895) 1 Q. B. 31; 64 L. J. Q. B. 20).

Appeal.]—An appeal lies to the High Court in the same manner as in other cases for error in point of law or equity, or in the admission or rejection of evidence. The right of appeal is not limited by any condition as to amount, and is conferred upon "any party in any action or matter under the Act," who is aggrieved (see sect. 120, County Courts Act, 1888, and sect. 7 of Tithe Act, 1891, *post*, p. 2445).

Costs and Fees.]—No costs of solicitor or witness will be allowed where the amount claimed is paid without further proceedings (sect. 5 (2)). As to costs, see sect. 5, sub-s. 2; Rules 42, 43, 52; fees may not exceed those named in the schedule to the Act (*post*, p. 2447); fees, charges, and expenses incidental to any distress under the Act are the same as are payable under the Law of Distress Amendment Act, 1888 (*ante*, p. 1999) (sect. 2 (8)).

All costs must be paid by or apportioned between the parties as the court thinks just (Rule 42); costs must be taxed by the registrar, and subject to the Act and rules, the ordinary scales as well as allowances to witnesses will have effect (Rule 43).

54 & 55 VICT. c. 8.

1.—(1) Tithe rentcharge as defined by this Act issuing out of any lands shall be payable by the owner of the lands, notwithstanding any contract between him and the occupier of such lands, and any contract made between an occupier and owner of lands, after the passing of this Act, for the payment of the tithe rentcharge by the occupier shall be void.

(2) Where the occupier is liable under any contract made before the passing of this Act to pay the tithe rentcharge, then he shall cease to be bound by that part of his contract, but he shall be liable to pay to the owner such sum as the owner has properly paid on account of the tithe rentcharge which such occupier is liable under his said contract to pay, exclusive of any costs incurred or paid by the owner in respect of such tithe rentcharge, and every receipt given for such sum shall state expressly that the sum paid is in respect of that tithe rentcharge: Provided that

Liability of owner to pay tithe rentcharge, and modification of contracts with tenants.

Section 1. where the lands, out of which any tithe rentcharge issues, are occupied by several occupiers who have contracted to pay the tithe rentcharge, any of such occupiers shall be liable only to pay such proportion of the sum paid by the owner of the lands on account of that tithe rentcharge as the rateable value of the lands occupied by him bears to the rateable value of the whole of the lands occupied by such occupiers.

(3) Such sum shall be recoverable from the occupier by distress in like manner as is provided by sections eighty-one and eighty-five of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-one, and the enactments amending those sections, and not otherwise.

Recovery of
tithe rent-
charge
through
county court.

2.—(1) Where any sum due on account of tithe rentcharge issuing out of any lands is in arrear for not less than three months, the person entitled to such sum may, whatever is the amount, apply to the county court of the district in which the lands or any part thereof are situate, and the county court, after such service on the owner of the lands as may be prescribed, and after hearing such owner if he appears and desires to be heard, may order that the said sum, or such part thereof as appears to the court to be due, be, together with the costs, recovered in manner provided by this Act, and tithe rentcharge as defined by this Act shall not be recovered in any other manner.

(2) Where it is shown to the court that the lands are occupied by the owner thereof, the order shall be executed by the appointment by the court of an officer who, subject to the direction of the court, shall have the like powers of distraint for the recovery of the sum ordered to be paid as are conferred by the Tithe Acts on the owner of a tithe rentcharge for the recovery of arrears of tithe rentcharge, and no greater or other powers; and if there is no sufficient distress the person entitled to the sum ordered to be recovered may proceed to obtain possession of the lands under section eighty-two of the Tithe Act, 1836.

6 & 7 Will. IV.
c. 71.

This sub-section applies only when the owner is in occupation of the whole of the lands (*Ecclesiastical Commissioners v. Uppjohn*, (1913) 1 K. B. 501; 82 L. J. K. B. 435). Compare *Peed v. King*. (1894) 11 T. L. R. 18.

(3) In any other case the order shall be executed by the appointment by the court of a receiver of the rents and profits of the lands, and of any other lands which would be liable to be distrained upon for the tithe rentcharge to which the order refers under the provisions of section eighty-five of the Tithe Act, 1836, and where any of such lands are held at one rent together with other lands in another parish, the court shall apportion the rent between the said lands and the lands in the other parish in proportion to their rateable value, in which case the payment of such apportioned rent by the occupier to the receiver shall in every respect, as between the occupier and the owner of the lands, be deemed to be a payment on account of the total rent payable to the owner of such lands.

(4) Subject to the prescribed regulations, the county court shall have the same powers over receivers as in any other case, and may confer on the person appointed receiver any powers which the court can confer upon persons appointed receivers, but the court shall not have power to order the sale of lands.

(5) Any sum ordered by the court under this section to be

Section 2.

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recovered shall be payable by a trustee in bankruptcy, sheriff, or officer of a court who is in possession of the lands, in like manner as if it were tithe rentcharge recoverable under the Tithe Acts.

(6) Where the occupier of the lands out of which the tithe rentcharge issues is liable under any contract made before the passing of this Act to pay the tithe rentcharge, and is consequently liable by virtue of this Act to pay the amount thereof to the owner of the lands, the owner of the lands shall serve notice of such liability on the owner of the tithe rentcharge, and thereupon, before an order under this section is made, there shall be such service on the occupier in addition to the owner as may be prescribed, and a hearing of such occupier if he appears and desires to be heard. Any owner of the lands who fails to serve such notice as aforesaid on the owner of the tithe rentcharge, shall not be entitled to recover from the occupier any sum which he has paid on account of tithe rentcharge as aforesaid, unless and until he has, after notice to the occupier of his application for the same, obtained from the county court a certificate that there was good and sufficient cause for the failure to give such notice, and that the occupier has not been prejudiced thereby.

(7) Rules under this Act may regulate the procedure, practice and costs under this Act in county courts, and may direct what service shall be good service for the purposes of this Act on the owner or occupier of any lands or the owner of any tithe rentcharge, and may provide that, if the owner of any lands is not known, any proceeding under this Act may be taken against the owner of the lands without naming the person who is the owner.

(8) The fees payable on the proceedings under this section shall not exceed those set forth in the schedule to this Act, and the fees, charges, and expenses in or incidental to any distress under this Act shall be the same as are for the time being payable under the Law of Distress Amendment Act, 1888.

51 & 52 Vict.

c. 21.

(9) Nothing in this Act shall impose or constitute any personal liability upon any occupier or owner of lands for the payment of any tithe rentcharge, or any other sum recoverable or payable under this Act, and the court shall not, by virtue of this Act, or of the County Courts Act, 1888, have any power to imprison any such occupier or owner by reason only of the non-payment of such tithe rentcharge or other sum, and shall in any other case have no other or greater powers of fine or imprisonment than are conferred by the County Courts Act, 1888.

51 & 52 Vict.

c. 43.

3.—(1) The Lord Chancellor may, after consultation with the rule committee of county court judges, make rules for carrying this Act into effect, and for regulating, providing, and prescribing any matter authorised by this Act to be regulated, provided, or prescribed by rules under this Act. In framing such rules regard shall be had to making the procedure as simple and inexpensive as is practicable.

(2) Every rule under this Act shall be laid before each House of Parliament within forty days next after it is made, if Parliament is then sitting, or, if not, within forty days after the commencement of the then next ensuing session, and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said House shall have sat,

Section 3. — praying that any such rule may be annulled, Her Majesty may thereupon, by Order in Council, annul the same; and the rule so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Lands
occupied
rent free,
etc.

4. Where a receiver appointed under this Act of the rents and profits of any lands satisfies the county court that the lands are let on such terms as not to reserve a rent sufficient to enable the receiver to recover from the owner thereof the sum ordered to be recovered, the court, after such service on the owner and occupier of the lands as may be prescribed, and after hearing such owner and occupier if they appear and desire to be heard, may direct that the order for such recovery shall be executed as if the occupier were the owner of the lands: Provided that any such occupier shall be entitled in addition to any other remedy, unless he would have been liable to pay the tithe rentcharge under any contract made before the passing of this Act, to deduct from any sums at any time becoming due from him to the landlord under whom he holds, any amount which shall have been recovered from him under this section in respect of tithe rentcharge or costs, with interest thereon at the rate of four per centum per annum: Provided further, that such occupier shall be entitled, notwithstanding anything in this Act, to recover from such landlord by action at law any such amount which shall have been recovered from him under this section as aforesaid as money paid on the account of such landlord.

Restrictions
as to costs.

5.—(1) An application to a county court for an order under this Act may be made on behalf of the tithe-owner by his agent, although not a solicitor.

(2) On any application to a county court for an order under this Act, no costs either of a solicitor or of a witness shall be allowed in any case where the amount claimed is paid without further proceedings, nor where notice of intention to apply for time to pay the tithe-owner's claim has been given (except in cases where costs could be allowed by the court on a judgment summons), and when notice of opposition has been given within the prescribed time, the costs of a solicitor shall only be allowed for work done subsequent to the notice.

Rating of
owner of
tithe rent
charge.

6.—(1) Any rate to which tithe rentcharge is subject shall be assessed on and may be recovered from the owner of the tithe rentcharge, in the like manner and by the like process as on and from any occupying ratepayer; and so much of any Act as authorises any rate on tithe rentcharge to be assessed on or recovered from the occupier of any lands out of which the tithe rentcharge issues is hereby repealed (a).

(2) If the collector of the rate satisfies the county court that he is unable to recover in manner aforesaid any rate assessed on the owner of any tithe rentcharge, the court may, after such service on the owners of the tithe rentcharge, and of the lands

(a) By the Tithe Rentcharge (Rates) Act, 1899 (62 & 63 Vict. c. 17), s. 1, the owner of tithe rentcharge attached to a benefice is liable to pay only one half of any rate to which the Act applies, which is assessed on him as owner of that tithe rentcharge, the other half to be paid by the Commissioners of Inland Revenue.

Section 6.

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out of which the tithe rentcharge issues, as may be prescribed, and after hearing such owners, if they appear and desire to be heard, order the owner of the lands to pay such tithe rentcharge to the collector until the amount of the rate, and any costs allowed by the court, are fully paid; and the order may be executed as if it were an order under this Act for the payment of a sum due on account of the tithe rentcharge.

(3) The court may, if satisfied that the circumstances justify it, make such order as aforesaid in respect of any future rate, either generally or during the time limited by the order.

(4) The expression "rate" in this section means a poor rate, highway rate, general district rate, borough rate, and every other rate assessed on an owner of tithe rentcharge by a public authority for public purposes; and the expression "collector" means the overseer, surveyor of highways, rate-collector, or other person authorised, for the time being, to collect the rate.

7. If any party in any action or matter under this Act shall be dissatisfied with the determination or direction of the judge of the county court in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the rules of the Supreme Court regulating the procedure on appeals from inferior courts to the High Court. Power of appeal.

8.—(1) Where a sum is claimed on account of tithe rentcharge issuing out of any lands, and the county court is satisfied that, if the sum claimed is paid, the total amount paid on account of the tithe rentcharge for the period of twelve months next preceding the day on which the sum claimed became payable, will exceed two-thirds of the annual value of the lands as ascertained and entered in the assessment for the purpose of Schedule B. to the Income Tax Act, 1853, or as certified as herein-after mentioned, the court shall order the remission of so much, whether the whole or part of the sum claimed, as is equal to the excess, and the amount so ordered to be remitted shall not be recoverable; and if the court is satisfied that neither such remission, nor the liability thereto, has been taken into account in estimating the rateable value of the tithe rentcharge, the court may remit such amount of any then current rate assessed on the owner of the tithe rentcharge as appears to the court to be proportionate to the amount of the remission of tithe rentcharge. Remission of tithe rentcharge when exceeding two-thirds annual value of land.
16 & 17 Vict c. 34.

(2) Where the lands out of which any tithe rentcharge issues are assessed for the purposes of the said Schedule B. together with other lands, the surveyor of taxes for the parish in which the lands are so assessed, on the application of the owner or occupier of the lands, shall divide the annual value in such assessment between the lands out of which any tithe rentcharge issues and the other lands, and give notice of the annual value of the lands as determined on such division to the applicant and to the owner of the tithe rentcharge; and if either of them is dissatisfied with the annual value so determined, he may appeal to the general commissioners of income tax for the division in which the lands are assessed, and those commissioners, after due notice to and hearing the parties or their agents if any of them wishes to be so heard,

Section 8. shall finally determine the proper division of the annual value; and the annual value of lands so determined as aforesaid shall, for the purposes of this section, be the annual value of the lands as ascertained for the purpose of the said Schedule B.

(3) For the purposes of this section the owner of tithe rentcharge shall have the same right of appeal as the owner of lands, whether under the enactments relating to the said assessment or under this section.

(4) If in any case the annual value of any lands is not ascertained and entered in the assessment for the purpose of the said Schedule B., the general commissioners of income tax for the division in which the lands are situate shall, on the application of the owner or occupier of the lands, ascertain the annual value of the lands for the purpose of the said Schedule B., and inform the applicant of the same.

(5) The commissioners of taxes shall on demand and payment of one shilling give a certificate of the amount of the annual value of any lands under this section.

6 & 7 Will. IV.
c. 71.

(6) Where it appears from any award that a special apportionment has been made in pursuance of section fifty-eight of the Tithe Act, 1836, whereby tithe rentcharge has been charged specially upon certain closes of land in different proportions, and to the exclusion of certain of them, the court shall not grant a remission under this section unless satisfied that the applicant would have been entitled to such remission if no such special apportionment had been made.

(7) Where two or more tithe rentcharges issue out of the same lands, and a remission of tithe rentcharge has been made by a county court under this section, the amount paid by the owner of the lands on account of tithe rentcharge shall be divided between the owners of such tithe rentcharges in proportion to the amount thereof as fixed by the apportionment or any altered apportionment.

(8) This section shall not apply to any lands other than those used solely for agricultural or pastoral purposes or for the growth of timber or underwood.

Definitions.

9.—(1) A reference in this Act to the “owner” of lands or tithe rentcharge—

(a) if the ownership of the lands or rentcharge is vested in the Queen in right of her crown, means the commissioners of woods, in substitution for the Queen; and

(b) if the ownership of the lands or rentcharge is vested in the Duke of Cornwall, means the keeper of the records of the duchy of Cornwall, in substitution for the Duke of Cornwall; and

(c) in any other case, means the same officers or persons as are mentioned in the Tithe Act, 1836.

6 & 7 Will. IV.
c. 71, ss. 12,
13. -

(2) In this Act, unless the context otherwise requires—

The expression “tithe rentcharge” means tithe rentcharge issuing out of lands and payable in pursuance of the Tithe Acts, and includes any rentcharge into which a corn rent has, either before or after the passing of this Act, been converted under the Tithe Act, 1860, and which is subject to the like incidents as such tithe rentcharge as aforesaid; but does not include a rentcharge payable under the Extraordinary Tithe Redemption Act, 1886,

23 & 24 Vict.
c. 93.
49 & 50 Vict.
c. 54.

nor a rentcharge payable under the Tithe Act, 1860, in respect of the tithes on any gated or stinted pasture, nor a sum or rate payable for each head of cattle or stock turned on land subject to common rights or held or enjoyed in common. Section 9.
23 & 24 Vict.
c. 93.

The expression "prescribed" means prescribed by rules under this Act.

10.—(1) This Act shall not extend except so far as relates to the assessment and recovery of rates, to tithe rentcharge issuing out of the lands of a railway company. Application
of Act and
saving.

(2) A sum on account of tithe rentcharge shall not be recoverable under this Act unless proceedings for such recovery have been commenced before the expiration of two years from the date at which it became payable.

(3) Nothing in this Act shall alter the priority of any tithe rentcharge in relation to any other charge or incumbrance upon any lands.

(4) Any enactment in the Tithe Acts or in the Extraordinary Tithe Redemption Act, 1886, directing any expenses, rentcharge, or other sums to be recovered as tithe rentcharge, shall, as respects any sum becoming due after the passing of this Act, be construed to refer to the recovery of tithe rentcharge under this Act, save that the owner of the lands shall not be entitled to obtain any remission under this Act.

11. Repealed by Statute Law Revision Act, 1908.

12.—(1) This Act shall not extend to Scotland or Ireland.

(2) This Act may be cited as the Tithe Act, 1891.

(3) The Tithe Act, 1836, and the enactments amending the same passed before the passing of this Act are in this Act referred to and may be cited as the Tithe Acts. Extent of
Act and
short titles.

SCHEDULE.

FEES UNDER SECTION 2 OF THE TITHE ACT, 1891.

Where the sum claimed does not exceed five pounds:

For notice of application to the court One shilling.

For making the order One shilling and sixpence.

Where the sum claimed exceeds five pounds:

For notice of application to the court { One shilling for every five pounds and fraction above five pounds or any multiple of five pounds of the sum claimed.

For making the order { One shilling and sixpence for every five pounds and fraction above five pounds or any multiple of five pounds of the sum claimed.

But the total fee in any one case shall not exceed—

For notice of the application Ten shillings.

For making the order Fifteen shillings.

Note.—The above fees are repeated in the County Court Fees Order, 1925, Fee No. 50.

RULES UNDER THE TITHE ACT, 1891.

(Power derived from Section 3 of this Act.)

DATED APRIL, 1891, AND AMENDED APRIL, 1926, AND MAY, 1927.

Short title.

1. The following rules may be cited as "The Tithe Rentcharge Recovery Rules, 1891," and shall apply so far as may be practicable to all proceedings under the Tithe Act, 1891 (in these rules referred to as the Act).

PROCEDURE ON APPLICATION FOR RECOVERY OF
TITHE RENTCHARGE.Application
for order for
recovery.

Forms 1, 2, 3.

2. A person claiming to be entitled to a sum due on account of tithe rentcharge, who desires to obtain an order of court for the recovery thereof, in these rules called the applicant, shall file with the registrar of the court a notice of application according to the form in the Appendix which is applicable to the case, and as many duplicates or copies thereof as there may be persons to be served therewith.

No proceedings shall be invalid by reason only that the applicant has filed a notice of application according to one of the forms in the Appendix and that form proves not to be the form applicable to the case.

Filing by
applicant of
occupier's
liability
notice.

3. Where a notice under sub-section 6 of section 2 of the Act, that the occupier of the lands is liable to pay the amount of the tithe rentcharge to the owner of the lands (in these rules called an occupier's liability notice) has been served before the notice of application has been filed the applicant shall on filing his notice of application file at the same time a copy of the occupier's liability notice.

Service of
notice of
application.
Form 4.

4. The registrar of the court shall appoint a day for the hearing of the application, and shall cause to be served on the owner of the lands out of which the tithe rentcharge issues, and, where an occupier's liability notice has been filed, on that occupier, one of the notices of application together with a notice according to the form in the Appendix. The service shall be made at least ten clear days before the day appointed for the hearing of the application.

Any owner and any occupier of lands on whom a notice of application is to be served is in these rules referred to as a respondent.

Notice of
opposition.
Form 5.
Form 6.

5. A respondent desirous of opposing an application shall, at least five clear days before the day appointed for the hearing, file with the registrar of the court notice of his opposition according to the form in the Appendix, and the registrar shall on the same day send notice thereof to the applicant according to the form in the Appendix.

Filing of
occupier's
liability
notice where
served after
notice of
application.
Change of
day fixed for
hearing on
service of

6. Where an applicant is served with an occupier's liability notice, after he has filed a notice of the application and before an order has been made he shall file a copy of the notice with the registrar as soon as possible after the receipt thereof, and the registrar shall thereupon cause a notice of the application to be served on the occupier as hereinbefore provided.

7. Where a copy of an occupier's liability notice has been filed with the registrar so short a time before the day originally appointed for the hearing that the ten clear days' notice required by these rules cannot be given to the occupier of the lands, then

Rule 7.

occupier's liability notice after application.
Form 7.
Order made without hearing where no notice of opposition.
See Forms 8 and 9.

Notice of opposition out of time.

Order where no appearance after giving notice of opposition.

Grounds of opposition not entertained unless mentioned in notice.

Proof of authority by agent making application.

Proceedings against owner of lands without naming him.

Additional service when desired by applicant.

the registrar shall appoint another day for the hearing in lieu of that originally appointed, and shall name that day in his notice to the occupier, and give notice of the change of day to the applicant and the owner of the lands.

8. Where no notice of opposition is given and the amount claimed and costs have not been paid into court, then subject to the proviso hereinafter contained the facts stated in the notice of application shall be deemed to be admitted, and the court on the day appointed for the hearing may, without requiring attendance by or on behalf of the applicant, make an order for the recovery of the amount claimed and costs; and for that purpose shall either appoint a receiver or if the applicant has stated in his notice of application that the lands are occupied by the owner appoint an officer to distrain:

Provided that if a respondent appears on the day appointed for the hearing of the application and desires to oppose the application the court may, but on such terms as to payment into court, costs or otherwise as the court thinks fit, appoint another day for the hearing in lieu of that originally appointed, in order that such respondent may file his notice of opposition.

9. Where a respondent files notice of opposition after the time limited by these rules for such notice, but before an order is made by the court, the court may allow that respondent an opportunity of being heard on such terms as to payment into court costs or otherwise as the court thinks fit; and in that case the court shall appoint another day for the hearing, and cause notice to be given to the applicant and the respondent of the day so appointed.

10. Where notice of opposition has been given but no respondent appears at the hearing of the application, the court may, without requiring proof of the applicant's title to the tithe rent charge claimed, make an order for the recovery of the amount claimed and costs and for that purpose shall appoint a receiver or an officer to distrain as the case may be.

11. A ground of opposition not mentioned in the notice of opposition shall not be entertained by the court except on such terms as to adjournment, payment into court, costs, or otherwise as the court thinks fit.

12. Where a notice of application is filed with the registrar by anyone as agent for a person claiming to be entitled to a sum due on account of the rentcharge, that agent shall, if required, produce a written authority from the person so claiming, or satisfy the registrar that he has general authority to collect tithe rentcharge on behalf of such person.

13. Where the applicant states in his notice of application that he does not know, or cannot ascertain, the owner of the lands, or where it is found that service on the person named in the application as owner of the lands cannot be effected by post as hereinafter provided, any proceeding under the Act may be taken against the owner of the lands without naming him, and notices and documents may be served accordingly.

14. Where an applicant in his notice of application states his desire that in addition to service on the person named in the notice

Rule 14.

of application as owner of the lands there shall also be service on the owner of the lands, through the occupier or through the person receiving the rents and profits of the lands for or on behalf of the owner, and states the name of the occupier or person, then such additional service shall be made as in these rules provided, and such service shall be deemed to be good service on the owner of the lands, though the person named in the application as owner of the lands is not such owner.

PROVISIONS AS TO RECEIVER.

Appointment
of receiver.

See Form 8.

Identification
of lands
liable to be
distrained
on under
s. 85 of the
Tithe Act,
1836.

See Form 8,
and Forms
2, 3.

Persons to be
appointed
receiver.

15. The appointment of a receiver shall extend to any other land, which would be liable to be distrained upon for the tithe rentcharge to which the order refers under section eighty-five of the Tithe Act, 1836.

16. An applicant may in his notice of application specify, by their names and situation or other sufficient description, the lands which would be liable to be distrained on under the said section eighty-five other than those out of which the tithe rentcharge issues, and in that case the lands so specified shall be added to the schedule to the order appointing a receiver: but if the lands have not been so specified, or have been specified inaccurately, it shall be the duty of the receiver as soon as possible to specify such lands to the court, or to make any corrections which may be necessary in the specification of the lands given by the applicant.

17. Where an applicant in his notice of application states that he desires a certain person therein named to be receiver, the court shall appoint that person to be receiver unless for special reasons the court otherwise determines.

Where no such statement is made in the notice of application, or where the court does not appoint the person named in the notice of application to be receiver, the court shall appoint such person to be receiver as the court thinks fit.

The receiver, if not a permanent officer of the court, shall give such security (if any) as may be required by the court.

Notice by
receiver to
occupiers of
land of his
appointment.

Form 10.

Ascertain-
ment of par-
ticulars of
tenancy
from
occupier.

Where tenant
refuses to
attorn,
receiver to
apply to
court.

Form 11.

Payments
by receiver.

18. The receiver shall, on his appointment, give notice as soon as possible of his appointment to the occupiers of the lands of which he is receiver, and shall require them to attorn as tenants to him, and to give him such particulars as he may require with respect to their tenancies.

19. Where an occupier of lands refuses to give to the receiver such particulars as he may require with respect to his tenancy, the receiver shall apply to the court to issue a summons requiring the attendance of such occupier as a witness, and, if necessary, requiring the production of any books, deeds, papers, and writings in his possession or control.

20. Where an occupier of lands refuses to attorn tenant to a receiver, and it becomes necessary to enforce the payment of rent in arrear, the receiver shall apply to the court to make an order authorising the receiver to distrain in the name of the owner of the lands, or such other order as the court thinks just under the circumstances of the case.

21. The receiver shall pay into court without delay any sums received by him on account of the rents and profits of the lands, but may deduct therefrom the costs of any distress made by him,

and also as remuneration for his services such amount as may have been allowed by the court not exceeding in any case five per cent. on the amount of the rents and profits received by him.

Rule 21.

Application of money paid into court by receiver.

22. The registrar shall pay to the applicant any sums so paid into court by the receiver until the amount ordered by the court to be recovered is fully satisfied. When that amount has been so satisfied, the registrar shall discharge the order for a receiver, and pay the balance, if any, of any sums paid into court by the receiver to the person entitled to the rents and profits of the lands on the application of that person.

23. Where the receiver finds that any of the lands of which he is appointed receiver are occupied by the owner thereof, he shall, unless the owner pays the sum ordered to be recovered or attorns tenant to the receiver, make a report thereon to the court, and on any such report the court may make an order directing that the order for recovery be executed against the lands in question in manner provided by the Act where the lands are occupied by the owner thereof, but the operation of the order shall be suspended for ten clear days, or, if the owner gives notice of objection, for such further time as the court directs.

Procedure where receiver finds that lands are occupied by the owner.

Forms 12. and 13.

Notice of the order shall be given to the person whom the registrar alleges to be the owner, stating that unless he files with the registrar notice of objection before that time, the order will take effect ten clear days after the day on which it was made.

Forms 14 and 15.

If notice of objection is filed, the registrar shall cause a day to be fixed for the hearing of the objection and give notice thereof to the person who has filed notice of objection, and the registrar shall further suspend the operation of the order accordingly.

Form 6.

Where an order is made under this rule the court shall appoint the person who has been appointed receiver to be the officer to distrain upon the lands, unless for special reasons the court otherwise determines.

REPORT THAT THERE IS NO SUFFICIENT DISTRESS.

24. Where the officer appointed by the court to distrain on lands occupied by an owner finds that there is no sufficient distress on the lands, and that it would be useless to attempt any further distress, he shall make a report in writing to that effect to the applicant and to the court.

Report of result of distress by officer.

Form 17.

APPORTIONMENT OF RENT WHERE A RECEIVER IS APPOINTED.

25. Where it appears to the court either from the notice of application, or at the hearing of an application, that any of the lands of the rents and profits of which a receiver is to be appointed are held at one rent together with other lands in another parish, the court shall, on the appointment of a receiver or as soon thereafter as possible, apportion the rent in proportion to the rateable value of the lands as appearing in the valuation list, or if none, in the then last poor rate, and the apportionment shall take effect immediately it is made.

Apportionment of rent on making order for recovery.

Form 8, and see Forms 2, 3.

26. Where no order of apportionment has been made and a receiver finds that any lands of the rent and profits of which he is appointed receiver are held at one rent together with other lands in another parish, he shall apply to the court to apportion that rent, and the court shall make an apportionment accordingly.

Apportionment where rent not apportioned on making order.

Form 18.

Rule 27.

Notice to
applicant and
respondent
of appor-
tionment.
Form 18.
Hearing of
objection
to appor-
tionment.
Forms 19—
21.

27. Notice of an apportionment made under the last preceding rule shall be given by the registrar to the applicant and the respondent, and if neither applicant nor respondent before the expiration of five clear days of the service of the notice file a notice of objection, the apportionment shall take effect.

28. Where an applicant or respondent before the expiration of five clear days files a notice of objection to the apportionment so made, the registrar shall appoint a day not less than ten days after the filing of the notice of objection for the hearing thereof, and on the hearing the court shall make such order in relation thereto as the court thinks just. Notice shall be given to the respondent and applicant of the day appointed for hearing the objections at least six clear days before the time appointed.

**PROCEDURE WHERE LANDS ARE LET AT A RENT NOT SUFFICIENT
TO ENABLE THE RECEIVER TO RECOVER THE SUM ORDERED
TO BE PAID.**

Report by
receiver,
that lands
are not let
at sufficient
rent.

29. Where a receiver appointed under the Act finds that the lands or any of them are let on such terms as not to reserve a rent sufficient to enable him to recover the sum ordered to be recovered, he shall make a report in writing to the court to that effect, together with a statement stating the terms on which the lands are let and showing the sum ordered to be recovered, the costs to be recovered, the sum, if any, already recovered, and the sum remaining due in respect of the sum ordered to be recovered and costs, and also showing whether under the order of recovery he is receiver of any lands besides those in respect of which he made such report.

Notice of
report and
opportunity
for hearing.
Forms 22
and 23.

30. The court, if satisfied on such report that a *prima facie* case is made out for making an order under section four of the Act shall cause notice to be given—

- (i.) to the occupier of the lands, naming a day for the hearing of the matter, and informing him that, unless the sum due is sooner paid, the order for recovery may be directed to be executed against him as if he was owner of the lands, and that if he has any objection to urge against such direction, he may appear and be heard on the day named, but that if he does not appear, the direction may be given in his absence;
- (ii.) to the applicant and the owner of the lands, naming the day fixed for the hearing and informing them that they may appear and be heard on that day.

The notice shall be given not less than ten clear days before the day named for the hearing.

Order of
court on
hearing.
Form 24.

31. The court, after hearing the occupier of the lands, the respondent, and the applicant, if they or any of them appear and wish to be heard, may make an order appointing an officer to distrain on the said lands for the amount mentioned in the order, and in any such order shall give such directions as to the continuance of the receiver or otherwise as the court thinks fit.

The order of distress shall include such sum on account of the costs incurred, either in respect of the duties of the receiver or otherwise, up to the date of the order as may be allowed by the court.

Where an order is made under this rule, the court shall appoint

the person who has been appointed receiver to be the officer to distrain upon the lands, unless for special reasons the court otherwise determines.

Rule 31.

REMISSION OF TITHE RENTCHARGE UNDER SECTION 8 OF THE ACT.

32. Where a respondent desires to obtain a remission in respect of his tithe rentcharge under section eight of the Act, he shall, in his notice of opposition, specify his intention to apply for such remission, and shall also state whether there is more than one tithe rentcharge issuing out of the lands.

Notice of intention to apply for a remission.

The respondent shall produce on the hearing of the application the certificate of the annual value of the lands.

See Forms 25 and 26.

33. Where it appears to the registrar from the statement of the respondent or otherwise, that there is more than one tithe rentcharge issuing out of the lands in respect of which the application for remission is to be made, he shall cause notice to be served on the owner of any tithe rentcharge issuing out of the lands, other than that in respect of which the application is made, before an order for remission is made.

Notice of application for remission to other owner of tithe rentcharge on same land.

34. If on the hearing of an application by the owner of one tithe rentcharge issuing out of any lands, an order for remission is made, and the owner of another tithe rentcharge issuing out of those lands appears and applies at the hearing for an order for the recovery of any sum due on account of his tithe rentcharge, the court may, if the respondent appears at the hearing, make an immediate order for the recovery of any sum due on account of such other tithe rentcharge, and direct that the orders for the recovery of the two tithe rentcharges be simultaneously executed.

Form 25.

Order of recovery of second tithe rentcharge on the same lands granted on hearing of application.

35. The registrar shall at the cost of the applicant send to the overseers of the parish a certified copy of any order for the remission of a rate affecting that parish, and any collector of rates shall be entitled on application to obtain from the court a certified copy of any order for remission made by that court within the year last past in respect of rates assessed on an applicant.

Certificate of remission of rates.

See Form 27.

CERTIFICATE WHERE OCCUPIER'S LIABILITY NOTICE HAS NOT BEEN SERVED.

36. Where an owner of land has failed to serve an occupier's liability notice, and wishes to obtain a certificate from the court under sub-section six of section two of the Act, he shall send an application to the registrar according to the form in the Appendix, and shall at the same time send a copy or duplicate of the application to the occupier in respect of whose liability to pay the tithe rentcharge the notice has not been served.

Application for certificate where occupier's liability notice not served.

Form 28.

37. The registrar shall appoint a day for the hearing of the application, and shall send notice of the day appointed to the said owner and occupier, and in the notice to the occupier shall state that he may appear and be heard on that day in opposition to the granting of a certificate.

Day to be appointed for hearing of application for certificate.

The notice shall be given not less than ten clear days before the day named for the hearing.

Forms 29 and 30.

38. All costs of any such application shall be paid by the owner of land making the same, unless the court is of opinion that the opposition to the application is frivolous or vexatious.

Costs of application.

Rule 39.**PROCEDURE FOR THE RECOVERY OF RATES.**

Notice of
application
by collector
of rates.
Form 31.

See Forms 32,
33 and 34.

Application
by collector
for enforce-
ment of
order.

See Form 35.

Order as to
rates where
order has
been ob-
tained for
recovery of
tithe rent-
charge.

Costs at
discretion
of court.

Taxation of
costs.

Address for
service.

39. Where a collector is unable to recover any rate assessed on the owner of tithe rentcharge by proceeding against such owner as against an occupying ratepayer, and desires to obtain an order of the court under sub-section two, or under sub-sections two and three of section six, of the Act, he shall send to the registrar a notice of such application according to the form in the Appendix, and as many duplicates or copies thereof as there are persons to be served therewith.

On the filing of such application the same procedure shall be followed, as far as applicable, as to the serving of notice of the application, as to notice of opposition, as to the hearing of the application and the making of an order, as on an application for recovery of tithe rentcharge, with the substitution of the rate collector for the applicant, and the owner of the tithe rentcharge and the owner of the lands out of which the tithe rentcharge issues for the respondent, and of an order for the recovery of rates under section six of the Act for an order for the recovery of tithe rentcharge.

40. An order on the owner of lands to pay the tithe rentcharge to the collector until the amount of the rate and any costs allowed by the court are fully paid shall further order that, if any sum due on account of tithe rentcharge is not within three months paid to the collector by the owner of the lands, the order will be enforced on the *ex parte* application of the collector, either by appointing a receiver or by appointing an officer of the court to distrain upon the lands as the case may be.

41. Where a collector makes an application for the enforcement of an order on the owner of the lands to pay the tithe rentcharge to him, and an order has already been made in respect of arrears of tithe rentcharge on the application of the person entitled thereto, the court, instead of making the order provided in the foregoing rule, may order that any money recovered, either by a receiver or by an officer of the court appointed to distrain, shall be applied first in payment of the costs allowed by the court, and of the amount due on account of the rates.

COSTS.

42. Subject to the provisions of the Act and these rules, all costs of and incident to any application to the court or any proceeding under the Act or these rules shall be paid by or apportioned between the parties to the application in such manner as the court thinks just, and, in the absence of any special direction, shall abide the event of the application.

43. Subject to the provisions of the Act and these rules, all costs shall be taxed by the registrar of the court, and the same scale of costs shall have effect, and the same allowances shall be made to witnesses as in similar proceedings under the County Courts Act, 1888.

SERVICE OF NOTICES AND DOCUMENTS.

44. Any person other than an applicant may give an address for service by sending a copy of an address in England or Wales to the registrar stating that it is to be an address for service.

The address given in an applicant's notice of application shall, if an address in England or Wales, be taken to be his address for service.

Rule 44.

—

45. Any notice or other document may be served on an applicant, owner, or occupier of lands, or any other person by sending the notice or other document by registered letter through the post to the address for service of the person to be served, or if no address for service has been given, to his last known address in England or Wales.

Service of notices, etc.

46. Where any proceeding under the Act is taken against an owner of lands without naming him, then service of any notice or document may be sufficiently effected as follows:—

Service where proceedings taken without naming owner of land.

- (i.) A copy of the notice or document shall be delivered at the house of the occupier of the lands, if one can be found on the lands, with a direction to such occupier to forward the same to the person to whom he pays rent; and
- (ii.) One or more copies of the notice or document shall be posted on some conspicuous part or parts of the lands.

47. Where, from any cause, the service of a notice or document cannot be made according to the foregoing provisions of these rules, the court may, upon an affidavit showing sufficient grounds, make such order for substituted service, or for the substitution for service of notice by advertisement or otherwise as the court thinks fit.

Substituted service by order of court.

48. Where service is required under these rules to be made on an owner of lands through the occupier or through the person receiving the rents and profits of the lands for or on behalf of the owner, the registrar shall send a copy of the document to be served by registered letter through the post to that occupier or person, having previously endorsed on the copy a request to that occupier or person to send the same to the person to whom he pays rent or for whom he receives rent, as the case may be.

Service where additional service is desired.

49. Where land is owned by two or more owners of land, either as joint owners or otherwise, service of a notice or document on one of such owners who is in receipt of the whole or part of the rents and profits of the land shall, unless the court otherwise directs, be deemed to be good service on all the owners, other than an owner in possession.

Service of owner in receipt of rents and profits good service on other owners.

50. The foregoing provisions as to the service of any notice or document shall apply where any notice or document is to be given, delivered, or sent under these rules.

Provision as to service of notice to apply to

SUPPLEMENTAL.

51. Where any proceedings are taken by a joint owner of a tithe rentcharge, or against a joint owner of lands when such proceedings should, in the opinion of the court, have been taken by or against all the joint owners, then on application by any such joint owner, the court may adjourn the proceedings in order that the other owners may be joined as parties, on such conditions as to payment of costs or otherwise as the court thinks fit.

giving of notice, etc. Joinder of new parties.

Rule 52.

Applications
in same court
to be made
at the same
time.

52. Where an applicant has several applications to make in the same court for the recovery of tithe rentcharge in the same parish, he shall so far as possible file notices of such applications simultaneously, so that the court may deal with them at the same time, and if an applicant neglects to file such notices simultaneously the court may disallow any extra costs which in the opinion of the court have been occasioned by such neglect on the part of the applicant.

Conduct of
proceedings.

53. Where there are joint owners of a tithe rentcharge or of lands out of which tithe rentcharge issues, or where more than one application is made in respect of tithe rentcharge issuing out of the same lands, the court may order any proceedings taken to be taken jointly, and may order which person shall have the conduct of the proceedings.

Clear days.

54. In these rules the expression "clear days" means that in all cases where any particular number of days is prescribed for the doing of any act or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day.

Non-com-
pliance with
rules not to
render pro-
ceedings
void.

55. Non-compliance with any of these rules, or any rules incorporated therewith, or with any rule of practice for the time being in force, shall not render any proceedings void unless the court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court shall think fit.

Exercise of
powers of
court.

56. The registrar may, under the general or special directions of the judge, exercise any powers or perform any duties of the court under these rules, and in these rules the expression "court" includes a judge or registrar exercising the powers of the court in chambers as well as in open court, but the registrar shall not deal with or decide any matter which is opposed or in which notice of opposition has been given and the person who has given notice of opposition appears, except on the application of the persons appearing in the matter.

County court
procedure to
apply where
no procedure
provided.

57. Where any matter or thing is not specially provided for under these rules, the same procedure shall be followed and the same provisions shall apply so far as practicable as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act.

Forms in
Appendix.

58. The forms in the Appendix where applicable, and where they are not applicable forms of the like character with such variations as circumstances may require, shall be used.

APPENDIX.—FORMS.

1.

Notice of Application where the Owner of the Lands is also Occupier.

Tithe Act, 1891.

In the county court of

holden at

I [insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is

the agent for A. B., the person entitled to the sum due (address and description)], give notice that I apply for an order for the recovery of the sum of pounds shillings and pence, due in respect of the tithe rentcharge issuing out of the lands described in the first part of the schedule to this application for the period of [*insert period*], and which became payable on the day of 19 .

The owner of the said lands is [*insert name, address, and description of owner of the lands*], and the owner is himself the occupier thereof [*or I do not know or cannot ascertain the owner of the lands*].

I shall apply that the order for recovery be executed by the appointment of an officer to distrain under subsection 2 of section 2 of the Act.

[*This paragraph, and also the second part of the schedule which corresponds to it, should be struck through if the applicant is unable to give the required particulars.*] The lands in the same parish as those described in the first part of the schedule and occupied by the same person as those lands as owner thereof, are described in the second part of the schedule.]

Dated this day of 19 .

A. B.

[*or E. F., agent for A. B., the person entitled to the sum due.*]

SCHEDULE OF LANDS.

PART I.—Lands out of which tithe rentcharge issues.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

PART II.—Lands in the same parish occupied and owned by the same person as those in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

2.

Notice of Application where Owner of Lands is not the Occupier.

Tithe Act, 1891.

In the county court of holden at .

I [*insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is the agent for A. B., the person entitled to the sum due (address and description)*], give notice that I shall apply for an order for the recovery

of the sum of pounds shillings and pence, due in respect of the tithe rentcharge issuing out of the lands described in the first part of the schedule to this application, for the period of *[insert period]* and which became payable on the day of 19

The owner of the said lands is *[insert name, address, and description of owner of the lands]* *[or I do not know or cannot ascertain the owner of the lands]* and the occupier thereof is M. N. *(insert name and address)*, *[these words should be struck out, unless the applicant can give the required information: who holds the lands at one rent together with lands in the parish of]*.

[If these words are struck out or no name inserted an officer of the court will be appointed receiver]: [I shall apply that the order for recovery be executed by the appointment of X. Y. *(insert name and address)* as the receiver under subsection three of section two of the Act.]

I have received no notice under subsection six of section two of the Act, that the occupier is liable to pay the amount of the tithe rentcharge to the owner of the lands.

[Where additional service is required insert these words]: [I desire that additional service on the owner of the lands be made through M. N., the occupier thereof, or through P. Q. *(insert name and address)* the person who receives the rents and profits of the lands for or on behalf of the owner of the lands.]

[This paragraph, and also the second part of the schedule which corresponds to it should be struck out if the applicant is unable to give the required particulars.] [The lands described in the second part of the schedule are in the same parish as those described in the first part of the schedule, and are occupied by M. N. either as owner or as tenant under the same landlord under whom he occupies the lands described in the first part of the schedule.]

Dated this day of 19

A. B.

[or W. F., agent for A. B., the person entitled to the sum due.]

SCHEDULE OF LANDS.

PART I.—Lands out of which the tithe rentcharge issues.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

PART II.—Lands occupied by M. N. in the same parish as those in Part I.

Name and Description of Lands.	Parish in which situate.	County in which situate.

3.

Notice of Application where Occupier's Liability Notice is Filed.

Tithe Act, 1891.

In the county court of

holden at

I [*insert name, address, and description of applicant, or if application be made by agent, his name, address, and description, and statement that he is the agent for A. B., the person entitled to the sum due (address and description)*], give notice that I shall apply for an order for the recovery of the sum of pounds shillings and pence, due in respect of the tithe rentcharge issuing out of the lands described in the first part of the schedule to this application, for the period of [*insert period*], and which became payable on the day of 19 .

The owner of the said lands is [*insert name, address, and description of owner of the lands*] [*or I do not know or cannot ascertain the owner of the lands*], and the occupier thereof is M. N. [*insert address and description*], [*these words should be struck out unless the applicant can give the required information: who occupies the lands at one rent together with lands in the parish of .*].

[*If these words are struck out or no name inserted an officer of the court will be appointed receiver*]: [I shall apply that the order for recovery be executed by the appointment of X. Y. (*insert name and address*) as the receiver under subsection three of section two of the Act.]

Where additional service is required *insert these words*: [I desire that additional service on the owner of the lands be made through M. N., the occupier thereof or through P. Q. (*insert name and address*) the person who receives the rents and profits of the lands for or on behalf of the owner of the lands.]

[*This paragraph and also the second part of the schedule which corresponds to it should be struck through if the applicant is unable to give the required particulars.*] [The lands described in the second part of the schedule are in the same parish as those described in the first part of the schedule, and are occupied by M. N. either as owner or as tenant under the same landlord under whom he occupies the lands described in the first part of the schedule.]

Dated this day of 19 .

A. B., owner of the tithe rentcharge

[*or E. F., agent for A. B., the person entitled to the sum due.*]**SCHEDULE OF LANDS.****PART I.—Lands out of which the tithe rentcharge issues.**

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.
<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>
<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>
<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>	<i>[Faint, illegible text]</i>

PART II.—Lands occupied by M. N. in the same parish as those in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

4.

Notice to Respondent to be served with the Duplicate Notice of Application.

Tithe Act, 1891.

No. of application

In the county court of holden at
A. B., applicant (*insert address and description*).
[C. D.], owner of the lands (*insert, if known, address and description.*) [not known]
[M. N., occupier of the lands (*insert address and description*).] } Respondents.

To [*insert name, address, and description of owner of the lands, if known*], the owner of the land out of which the tithe rentcharge mentioned in the notice of application sent herewith issues.

[*To be inserted where occupier's liability notice has been filed.*] [And to M. N. occupier of the said lands.]

Take notice that the application by A. B., of which a copy is sent herewith, will be heard at the sitting of the court to be holden at (*insert courthouse*) on the . . . day of . . . 19 . . . at the hour of . . . in the . . . noon, and that if you wish to oppose the application you must, five clear days before the day appointed for the hearing, file with the registrar of this court the notice of opposition given below.

And take notice that if you intend to apply for time to pay, or for a remission in respect of the tithe rentcharge, you must in giving notice of opposition specify that intention.

Dated this . . . day of . . . 19 . . .

Registrar.
£ s. d.

Amount of tithe rentcharge claimed
Costs of this notice
Amount upon the payment of which you will incur no further costs

If you do not give notice of opposition or (whether you have or have not given such notice) do not appear on the day appointed for the hearing, the court may make an order against you in your absence.

5.

Notice of Opposition.

Tithe Act, 1891.

No. of application

In the county court of holden at
In the matter of the application of A. B.

To the registrar of the county court of

Take notice that I wish to oppose the application of A. B., of which I have received notice, on the ground [*here state grounds, e.g., that I am not the*

owner of the lands in respect of which the application is made ; or that the applicant is not the owner of the tithe rentcharge mentioned in the notice of application ; or that the amount claimed in respect of the tithe rentcharge has been paid ; or any other grounds that are intended to be relied on] [or (and) I intend to apply for a remission in respect of such tithe rentcharge or (and) for time to pay the claim].

[Here, if the owner of the lands, state name, address, and description of the occupier.] [And I state that M. N. is the occupier of such land.]

[This paragraph should be struck out except where an order for remission is applied for.] [And I state that there is no other tithe rentcharge issuing out of the lands except that in respect of which the application is made or that there is, besides the tithe rentcharge in respect of which the application is made, a tithe rentcharge issuing out of the lands in respect of (e.g., great or small) tithe of which P. Q. (insert name and address), is owner.]

Dated the day of 19 .

C. D., owner of the lands
(or G. K., solicitor of C. D.)
or M. N. occupier of the lands
(or G. K., solicitor of M. N.)

6.

Notice to Applicant of Notice of Opposition.

No. of application .

Tithe Act, 1891.

In the county court of , holden at .

A. B., Applicant.

[C. D., owner of the lands [not known] } Respondents.
[M. N., occupier of the lands]

To A. B., applicant.

Take notice that C. D., owner of the lands in respect of which the application is made [or M. N., occupier of the lands in respect of which the application is made] has given notice of opposition in the above matter on the ground that [insert ground stated in notice of opposition] [or (and) that he intends to apply for a remission in respect of the tithe rentcharge or (and) for time to pay the claim].

The application will be heard at the sitting of the court to be holden at (insert courthouse) on the day of 19 , at the hour of in the noon.

Dated this day of .

Registrar.

7.

Notice of Change of Day appointed for hearing Application.

[Heading as in Form 6.]

To A. B., applicant [or to C. D., owner of the lands in respect of which the application is made].

Take notice that for the purpose of giving M. N., the occupier of the lands in respect of which the application is made, an opportunity of being heard, the day for hearing the above application is changed, and the application will now be heard at the sitting of the court to be holden at (insert courthouse) on the day of 19 at the hour of in the noon.

Dated this day of 19 .

Registrar.

8. *Order on Application where Lands not occupied by the Owner.***Order on Application where Lands not occupied by the Owner.***[Heading as in Form 6.]*

It is this day ordered that the sum of pounds shillings and pence be recovered, together with costs in respect of tithe rentcharge issuing out of the lands described in [the first part of] the schedule to this order, due for the period of ; and for the purpose of recovering that sum, together with costs. X. Y. *[here insert name, address, and description of person appointed receiver]* is hereby appointed to receive the rents and profits of these lands, and also the rents and profits of any other lands *[insert these words if a description of the lands can be given]* *[or of the lands described in the second part of the said schedule]*, which would have been liable to be distrained upon for the tithe rentcharge under the provisions of section 85 of the Tithe Act, 1836 ; and that the tenants of the said lands are to attorn and pay their rents in arrear and growing rents to the receiver.

(To be added where apportionment of rent is made at the time of making the order.)

And whereas it appears that the above-mentioned lands *[or a certain part of the above-mentioned lands, namely those known as [insert description of lands]]* are held at one rent together with other lands, situate in a different parish, it is further ordered that out of the total rent payable in respect of the lands situate in the two parishes, the sum of *[15*l.*]* shall be taken as payable for the purpose of the Tithe Act, 1891, in respect of the lands situate in the parish of of which X. Y. is appointed receiver.

By the court.

Dated the day of 19 .

Registrar of the court.

SCHEDULE OF LANDS.**PART I.—Lands out of which the tithe rentcharge issues.**

Name or Description of Lands.	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

PART II.—Lands which would be liable to be distrained on under section 85 of the Tithe Act, 1836.

Name or Description of Lands.	Parish in which situate.	County in which situate.

9.

Order for Distress where the Owner of the Lands is in Occupation.*[Heading as in Form 6.]*

It is this day ordered that the sum of pounds shillings and pence, be recovered, together with costs in respect of tithe rentcharge issuing out of the lands described in the [first part of the] schedule to this order, due for the period of , and for the purpose of such recovery X. Y., an officer appointed by this court, shall distrain upon those lands and also on the lands *[insert these words if a description of the lands can be given : described in the second part of the same schedule]* which are liable to be distrained on under section 85 of the Tithe Act, 1836, for the said sum together with pounds shillings and pence for costs, and also the costs of the distress, and that for the making of such distress this order shall be such officer's warrant.

By the court.

Dated the day of 19 Registrar of the court.

SCHEDULE OF LANDS.**PART I.—Lands out of which the tithe rentcharge issues.**

Name or Description of Lands:	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

PART II.—Lands liable to be distrained on under section 85 of the Tithe Act, 1836, other than those described in Part I.

Name or Description of Lands.	Parish in which situate.	County in which situate.

10.

Notice to Occupier of Lands of Receiver's Appointment.*[Heading as in Form 6.]*

To M. N., occupier of the lands described in the schedule.

I, X. Y. *[insert name and address]*, hereby give you notice that under an order of court made in the above matter on the day of , I have been appointed receiver of the rents and profits of the lands described in the schedule and occupied by you, and I require you, within days, to attend tenant to me and to give me information as to the following

matters with regard to your tenancy [*insert matter as to which information is required*].

Dated this day of 19 X. Y., Receiver.

Note.—A form of attornment is sent herewith.

SCHEDULE OF LANDS.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. Road, in the parish of , in the county of .]

Form of Attornment.

[*Heading as in Form 6.*]

I, M. N., hereby attorn and become tenant to you X. Y., of the land described in the schedule according to the terms and conditions contained in [*here insert description, date, and particulars of instrument under which the lands are held*] and at the rent of £ thereby reserved.

In witness whereof I have hereunto set my hand this day of 19 .

M. N.,

O. P. [*insert name and description*]
witness to the signature of the said M. N.

SCHEDULE OF LANDS TO ATTORNMENT.

[*As in Receiver's notice of appointment.*]

11.

Order for Distress in Name of Owner of Lands.

[*Heading as in Form 6.*]

It is this day ordered that X. Y., the receiver of the rents and profits of the lands described in the schedule to this order, be at liberty to distress upon those lands for the rent due in respect thereof, and that such distress may be made in the name of the owner of the lands.

By the court,

Dated the day of 19 .

Registrar of the court.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish, &c., in which situate.	County in which situate.	Name of Occupier.

12.

Report of Receiver that Lands of which he is appointed Receiver are Occupied by the Owner thereof.

[*Heading as in Form 6.*]

To the registrar of the county court of holden at
I, X. Y., who have been appointed receiver of the lands described in the
schedule [together with other lands] by an order of the court dated the
day of 19 , report to the court that the lands described in
the schedule are occupied by the owner thereof, and the owner has not paid
the sum ordered to be recovered to me, and has not attorned tenant to me.

The name of the owner is (*insert name and address*), or is not known.

Dated the day of 19 .

X. Y.,
Receiver.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.

13.

Order where Receiver reports that Lands of which he is appointed Receiver are Occupied by the Owner.

[*Heading as in Form 6.*]

It is this day ordered that the order made in this matter on the day
of 19 , appointing X. Y. to be receiver of certain lands described in
the schedule shall be discharged [so far as regards the lands described in the
schedule], and the said X. Y. [*or R. S. an officer appointed by the court*]
shall distrain upon those lands for the amount of pounds shillings
and pence ordered to be recovered together with the sum of pounds
shillings and pence for costs, and also the costs of distress, and
that for the making of such distress this order shall be such officer's
warrant.

By the court.

Dated the day of 19 .

Registrar of the court.
day the day of

The operation of this order is suspended till

19 Dated the day of 19 .

Registrar of the court.

SCHEDULE OF LANDS.

[*Schedule of Lands as in last Form.*]

14.

Notice to Owner of Lands that an Order has been made on Receiver's Report that Lands of which he has been appointed Receiver are Occupied by the Owner.

[Heading as in Form 6.]

To [C. D.] the owner of the lands described in the schedule to this notice.

Take notice that the order, a copy of which is sent herewith, has been made in the above matter, and that if you have any objection to make against that order you must file notice thereof with me before the day of 19 .

A form of notice of objection is sent herewith.

Dated the day of 19 .

Registrar.

SCHEDULE OF LANDS.

[Schedule of Lands as in last Form.]

15.

Notice of Objection by Owner of Lands.

[Heading as in Form 6.]

To the registrar of the county court of holden at

Take notice that I, C. D., owner of the lands referred to in the order of court dated the day of 19 , of which I have received notice object to that order on the ground that [insert grounds on which order is objected to].

C. D.

Dated this day of 19 .

16.

Notice of Day Appointed for Hearing Objection.

[Heading as in Form 6.]

To C. D.

Take notice that the objection to the order of the court, dated the day of , of which you have given notice, will be heard at the sitting of the court to be holden at (insert courthouse) on the day of 19 at the hour of in the noon.

Dated this day of 19 .

Registrar.

17.

Report by Officer ordered to Distrain that there is no sufficient Distress

[Heading as in Form 6.]

To the registrar of the court, and to A. B., applicant.

I, X. Y., the officer appointed to distrain under an order made on the day of on the lands described in the order, report that there is no sufficient distress upon the lands, and that it would be useless to attempt any further distress.

Dated the day of 19

X. Y.

18.

Notice of Apportionment of Rent.*[Heading as in Form 6.]*

To A. B., applicant, and to C. D., owner of the lands described in the schedule [*(insert this if M. N. is a respondent)*] and to M. N. occupier of these lands.]

Take notice that whereas a receiver has been appointed of the rents and profits of the said lands [together with other lands] under an order of this court dated the day of , made upon the application of the said A. B., and whereas it is found that those lands are held at the same rent with other lands situate in a different parish, and X. Y., the receiver appointed as aforesaid, has applied to the court to make an apportionment of rent; Now the court has apportioned the rent so that out of the total rent payable in respect of the lands situate in the two parishes the sum of £ shall for the purpose of the Tithe Act, 1891, be taken to be payable in respect of the lands of which the said X. Y. has been appointed receiver situate in the parish of and described in the schedule.

Further take notice that, if within five clear days of the service of this notice you do not file with me notice of objection, the above apportionment will take effect.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Name of Parish in which situate.	Name of County in which situate.	Number on Parish Apportionment.

19.

Notice of Objection to Apportionment of Rent.*[Heading as in Form 6.]*

To the registrar of the county court of holden at I, A. B., C. D., or M. N., hereby give notice that I object to the apportionment of rent made for the purpose of the Tithe Act, 1891, of which you have given me notice, dated the day of .

Dated this day of 19 .

A. B., C. D., or M. N.

20.

Notice of Day fixed for Hearing of Objection by Respondent to Apportionment of Rent.*[Heading as in Form 6.]*

To A. B., applicant, and to C. D., owner of the lands [or M. N., occupier of the lands.]

Take notice that the objection to the apportionment, of which you have given notice [or of which A. B., C. D., or M. N. has given notice] dated the day of , will be heard at the sitting of the court to be holden at (insert courthouse) on the day of 19 , at the hour of . in the noon.

Dated this day of 19 .

Registrar.

21.

Order of Court where Apportionment is objected to.*[Heading as in Form 6.]*

It is this day ordered that the apportionment of rent made in this matter dated the day of , [is hereby varied (*here state variation*)], and as varied] shall take effect from this date.

By the court.

Dated this day of 19 .

Registrar of the court.

22.

Notice to Occupier of Lands that Order under Section 4 of the Act may be made upon him.*[Heading as in Form 6.]*

To M. N., occupier of the lands described in the schedule to this notice.

Whereas X. Y. was, by an order of this court, dated the day of 19 , appointed receiver of the rents and profits of the said lands of which you are occupier, for the purpose of recovering the sum of pounds shillings and pence ordered by the court to be recovered on account of the tithe rentcharge thereon with costs, and he has satisfied the court that the lands are let on such terms as not to reserve a rent sufficient to enable him to recover that sum and costs.

Take notice that the court may direct the order for recovery to be executed as if you were the owner of the lands, and if you have any objection to urge against such direction being given, you must appear before the court, holden at (insert courthouse) on the day of 19 , at the hour of in the noon, and such objection will be heard by the court, but that if you do not appear the court may make such direction in your absence.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

[Here describe the lands, *e.g.*, Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road, in the parish of in the county of .]

23.

Notice to Owner of Lands that Order under Section 4 of the Act may be made upon the Occupier.

[Heading as in Form 6.]

To [C. D.], the owner of the lands described in the schedule to this notice. Whereas X. Y. was, by an order of this court dated the day appointed receiver of the rents and profits of the lands described in the schedule to this notice for the purpose of recovering the sum of pounds shillings and pence ordered by the court to be recovered on account of the tithe rentcharge thereon with costs, and he has satisfied the court that the lands are let on such terms as not to reserve a rent sufficient to enable him to recover that sum and costs.

Take notice that the court may direct the order for recovery to be executed against M. N., the occupier of the said lands, as if he were owner, and that if you wish to be heard in reference to that matter you must appear before the court holden at (insert courthouse) on the day of 19 , at the hour of in the noon, and the court will hear you, but that if you do not appear the court may make such order in your absence.

Dated this day of 19 Registrar.

SCHEDULE OF LANDS.

[Here describe the lands, e.g., Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road, in the parish of , in the county of .]

24.

Order of Court under Section 4 of the Act.

[Heading as in Form 6.]

It is this day ordered that X. Y., as officer appointed by this court [or R. S., an officer appointed by this court] shall distrain upon the lands described in the schedule to this order for the sum of pounds shillings and pence [the balance] due on an order for the recovery of tithe rentcharge made by this court the day of , together with pounds shillings and pence for costs, and also the costs of distress, and that for the making of such distress this order shall be such officer's warrant.

[It is also ordered that X. Y. shall continue to be receiver of the lands [till the day of], or shall cease to be receiver of the lands or any direction the court gives in the matter.]

By the court,

Dated this day of 19 Registrar of the court.

SCHEDULE OF LANDS.

[Here describe the lands, e.g., Brue Farm, in the parish of , in the county of , or so much of Brue Farm as is situate in the parish of , in the county of , or the house known as No. , Road, in the parish of , in the county of .]

25.

Notice to Owner of Second Tithe Rentcharge of Application for Remission.*[Heading as in Form 6.]*

To O. P., owner of the tithe rentcharge issuing out of the lands described in the schedule in respect of (*e.g., great or small*) tithe.

Take notice that an application has been made by A. B. for the recovery of the sum of pounds shillings and pence due on account of the tithe rentcharge issuing out of the lands described in the schedule in respect of (*e.g., small or great*) tithe, and that C. D. (or M. N.) a respondent, has given notice that he will apply for a remission in respect of such tithe rentcharge.

The application will be heard at the sitting of the court to be holden at (*insert courthouse*) on the day of 19 , at the hour of in the noon.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment.

26.

Order of Remission in respect of Tithe Rentcharge.*[Heading as in Form 6.]*

It is ordered this day that, of the sum of pounds shillings and pence claimed by A. B. on account of the tithe rentcharge issuing out of the lands described in the schedule to this order, the sum of pounds shillings and pence is hereby remitted and shall not be recoverable.

By the court,

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

27.

Order of Remission of Rates in respect of Tithe Rentcharge.

[Heading as in Form 6.]

It is ordered that the amounts mentioned in the third column of the schedule below shall be remitted and not recoverable in respect of the rates mentioned in the second column of that schedule assessed on the person mentioned in the first column thereof.

By the court.

Dated the day of 19 .

Registrar.

SCHEDULE.

Owner of Tithe Rentcharge.	Name of Rate.	Amount remitted.

28.

Application by Owner of Lands for Certificate in respect of Failure to give Occupier's Liability Notice.

Tithe Act, 1891.

In the county court of , holden at .

I, C. D. (*insert name and address*), owner of the lands described in the schedule to this application, give notice that I shall apply for a certificate from the court that there was good and sufficient cause for my failure to give an occupier's liability notice in respect of the said lands to M. N. the occupier thereof, and that M. N. (*insert name and address*) has not been prejudiced thereby.

Dated this day of 19 . A. B.

SCHEDULE OF LANDS.

Name or Description of Land	Parish in which situate.	County in which situate.

29.

Notice to Occupier of Owner's Application to the Court in respect of Failure to serve Occupier's Liability Notice.

Tithe Act, 1891.

In the county court of , holden at .

In the matter of the application of C. D.

To M. N., occupier of the lands described in the schedule.

Take notice that C. D. has given notice of an application to this court for a certificate that there was good and sufficient cause for his failure to give

[and sub-section (3)] of section six of the Tithe Act, 1891, in respect of [insert name of rate or rates] rate due from the owner of the tithe rentcharge issuing out of the lands described in the schedule.

The owners of the lands are [insert names and addresses of owners].

The owner of the tithe rentcharge is [insert name and address of owner].

The rate due amounts with costs to £

I have taken the following proceedings for the recovery of the rate [insert description and date of proceeding, e.g., distress under warrant of justices].

Dated the day of 19 .

C. D., collector.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.	Number in Parish Apportionment, if known.

32.

Notice to Owner of Tithe Rentcharge or Owner of Lands to be served with the Duplicate Notice of Rate Collector's Application.

Tithe Act, 1891.

No. of application .

In the county court of , holden at
A. B., applicant [collector of rates for the of ; whose address is].

[E. F.], owner of land (insert, if known, name, address, and description).

C. D., owner of the tithe rentcharge (insert address and description).

To E. F., the owner of the tithe rentcharge issuing out of the lands mentioned in the notice of application sent herewith.

Or

To [C. D.], the owner of land out of which the tithe rentcharge mentioned in the notice of application sent herewith issues.

Take notice that the application by A. B., of which a copy is sent herewith, will be heard at the sitting of the court to be holden at (insert court-house) on the day of 19 , at the hour of in the noon, and that if you wish to oppose the application you must, five clear days before the day appointed for the hearing, file with the registrar of this court the notice of opposition given below.

Dated this day of 19 .

Registrar.

£ s. d.

Amount of rate claimed .

Costs of this notice .

Amount upon payment of which you will incur no further costs .

If you do not give notice of opposition or appear on the day appointed for the hearing, the court may make an order against you in your absence.

33.

Notice of Opposition.

Tithe Act, 1891.

No. of application

In the county court of, holden at
 In the matter of the application of A. B. rate collector.

To the registrar of the county court of

Take notice that I wish to oppose the application of A. B., of which I have received notice, on the ground [*here state grounds, e.g., that I am not the owner of the land in respect of which the tithe rentcharge issues; or that I am not the owner of the tithe rentcharge mentioned in the notice of application; or that the amount claimed in respect of the rate has been paid; or any other grounds that are intended to be relied on.*]

Dated the . . . day of . . . 19 . . .

E. F., owner of the tithe rentcharge

(*or G. K., solicitor of E. F.*).

C. D., owner of the lands

(*or G. K., solicitor of C. D.*).

34.

Notice to Rate Collector of Notice of Opposition.

No. of application

Tithe Act, 1891.

In the county court of, holden at

A. B., rate collector, applicant.

E. F., owner of tithe rentcharge.

C. D., owner of the lands.

To A. B., rate collector.

Take notice that E. F., owner of the tithe rentcharge in respect of which the application is made [*or C. D., owner of the lands out of which the tithe rentcharge issues*] has given notice of opposition in the above matter on the ground that [*insert ground stated in notice of opposition*].

The application will be heard at the sitting of the court to be holden at (*insert courthouse*) on the . . . day of . . . 19 . . ., at the hour of . . . in the . . . noon.

Dated this . . . day of

Registrar. :

35.

Order under Section 6 of the Tithe Act, 1891, for Recovery of Sum due on account of Rates.

Tithe Act, 1891.

In the county court of, holden at, the . . . day of . . . 19 . . .

A. B., rate collector.

E. F., owner of tithe rentcharge.

[C. D.], owner of lands [*not known*].

It is this day ordered that C. D. pay to A. B. any sum which is now due or which may become due on account of the tithe rentcharge owned by E. F. issuing out of the lands described in the schedule to this order unti

the sum of pounds shillings and pence, the amount due in respect of the [*insert name of rate*] rates assessed on the said C. D. in respect of that tithe rentcharge and costs [and any sum which may become due in respect of any such rate] [until the day of 19], is fully paid.

And further it is ordered that should default be made by the said C. D. in obeying this order the said A. B. may apply to this court for the appointment of a receiver or of an officer to distrain as the case may be.

By the court.

Dated this day of 19 .

Registrar.

SCHEDULE OF LANDS.

Name or Description of Lands.	Parish in which situate.	County in which situate.

TITHE COMMUTATION, &c., ACT, 1868.

[31 & 32 VICT. c. 89.]

By sect. 3, Disputes as to costs incurred in the enfranchisement of tithe or as to compensation to be paid to the steward, are to be referred to the Commissioners of Tithe. The costs incurred by them in ascertaining the same may be recovered in the county court.

By sect. 4, Where an enclosure has been authorised by Parliament and a valuer appointed, the commissioners may require such valuer or other person who shall have charge of or be in possession of any documents relating to the enclosure to deliver the same to them at their office. In case of neglect or default the commissioners may summon such person before the county court judge for the county in which the lands are situated.

TRADE UNION ACT, 1913.

[2 & 3 GEO. 5, c. 30.]

Sect. 3, sub-s. 1, places restrictions on any trade union (defined by sect. 2) from applying the funds of the union to certain political purposes; also provides for making rules, to be approved by the Registrar of Friendly Societies, with that object. Sect. 3, sub-s. 2, provides for any complaint of a breach of these rules being heard and remedied by an order of the Registrar of Friendly Societies, final as between the parties to the dispute, and which order on being recorded in the county court can be enforced as an order of that Court.

Practice is governed by Order XLII, *post*, p. 2476.

Registrar's duties are defined by m. 3—6.

Judge's duty is confined to a discretion as to the costs of the proceedings for enforcement of the order.

Section 3.

Restriction
on applica-
tion of funds
for certain
political
purposes.

3.—(1) The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects), unless the furtherance of those objects has been approved as an object of the union by a resolution for the time being in force passed on a ballot of the members of the union taken in accordance with this Act for the purpose by a majority of the members voting; and where such a resolution is in force, unless rules, to be approved, whether the union is registered or not, by the Registrar of Friendly Societies, are in force providing—

- (a) That any payments in the furtherance of those objects are to be made out of a separate fund (in this Act referred to as the political fund of the union); and
- (b) That a member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt, and that contribution to the political fund of the union shall not be made a condition for admission to the union.

(2) If any member of a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Registrar of Friendly Societies, and the Registrar of Friendly Societies, after giving the complainant and any representative of the union an opportunity of being heard, may, if he considers that such a breach has been committed, make such order for remedying the breach as he thinks just under the circumstances; and any such order of the Registrar shall be binding and conclusive on all parties without appeal and shall not be removable into any court of law or restrainable by injunction, and on being recorded in the county court, may be enforced as if it had been an order of the county court. In the application of this provision to Scotland the sheriff court shall be substituted for the county court, and "interdict" shall be substituted for "injunction."

(3) [Sets out the political objects to which this section applies.]

NOTE.—See Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. V., c. 22), sect. 4 and Schedule.

COUNTY COURT RULES. ORDER XLIB.

THE TRADE UNION ACT, 1913, SECTION 3.

Certificate of order under 2 & 3 Geo. 5, c. 30, s. 3. Form 431A.

1. Where on the complaint of a member of a trade union (in these rules referred to as "the complainant") that he is aggrieved by a breach by the union of any rule made in pursuance of section three of the Trade Union Act, 1913, an order for remedying the breach has been made by the Registrar of Friendly Societies

Rule 1.

under the said section, the Registrar shall, upon application made by or on behalf of the complainant, grant a certificate of the order made by him, signed by him and sealed with the seal of the registry, according to the form in the Appendix.

2. If a solicitor is employed for the purpose by the complainant, there shall be allowed to such solicitor for the costs of obtaining the certificate five shillings, and such costs shall be entered on the certificate by the Registrar. Costs of obtaining certificate.

3. On the presentation of the certificate to the registrar of the county court in the district of which the complainant resides, or to the registrar of the county court in which the registered office of the trade union, if registered, or the general office of the trade union, if unregistered, is situate, with a note of presentation appended thereto according to the form in the Appendix and a copy of the certificate written on foolscap paper, the registrar, shall on payment of the prescribed fee (if any) seal the certificate and record the same by pasting it into the then current minute book of the Court on or about the last page of such book, and shall seal and date the copy of the certificate, and return it to the person presenting the certificate. Presentation and recording of certificates.

4. If a solicitor is employed for the purpose by the complainant, there shall be allowed to such solicitor for the costs of recording a certificate five shillings, which, with the fee (if any) for recording the certificate, shall be entered by the registrar on the certificate and the copy thereof. Costs of recording certificate.

5.—(1) Where a certificate of an order made by the Registrar of Friendly Societies has been recorded under these rules, then, in case of non-compliance with the order, execution may issue out of the court in which the certificate is recorded against the goods and chattels of the union in default, in the same or the like manner as if the order of the Registrar of Friendly Societies had been made by the court in which the certificate has been recorded. Execution on default of compliance with order.

(2) The party applying for execution shall satisfy the registrar as to the amount in payment of which default has been made. Proof of amount due.

(3) The entry on the certificate of the costs, if any, allowed for obtaining the certificate, and of the costs and fee (if any) allowed for recording the certificate, shall be an authority for the registrar to add the said costs and fee to the amount to be recovered by execution. Cost of obtaining and recording certificate.

(4) The warrant of execution shall be according to the form in the Appendix, *post*, p. 2479. Form of warrant.
Form 432B.

6.—(1) The County Court Rules for the time being in force as to proceedings for the recovery of money due under judgments or orders of the county court otherwise than by execution, or for the enforcement of such judgments or orders otherwise than by execution, shall, with the necessary modifications, apply to proceedings for the recovery of money due under, or the enforcement of, any order of the Registrar of Friendly Societies of which a certificate has been recorded pursuant to these rules. Other proceedings for enforcement of order.

(2) For the purposes of any such proceedings the certificate of the order shall be deemed to be a judgment or order of the county union. Complainant and trade union

Rule 6.

deemed to be
plaintiff and
defendants:

court in which the certificate has been recorded, and the complainant shall be deemed to be the plaintiff and the trade union or the trustees or any other officer of the union authorised by the rules thereof to bring or defend or cause to be brought or defended any legal proceedings on behalf of the union shall be deemed to be defendants.

Costs.

(3) The costs of any such proceedings shall be in the discretion of the judge; and if the union are ordered to pay such costs the judge may order the costs and fee (if any) allowed for obtaining and recording the certificate to be included in the costs so ordered to be paid. The costs shall be taxed on such scale as the judge shall direct.

Payment out
of court.

Where certi-
ficate lost or
destroyed.

7. No money shall be paid out of court without production of the sealed copy of the certificate. Provided that in the event of such copy being lost or destroyed another copy may be sealed and given to the proper person, upon proof by affidavit or otherwise to the satisfaction of the registrar of the county court that the person applying is the proper person, and that he is entitled to the money in court.

FORMS.

431A.

THE TRADE UNION ACT, 1913, SECTION 3.

Certificate to be given by Registrar of Friendly Societies.

I hereby certify that on the day of , 19 , the Registrar of Friendly Societies, on the complaint of [here state name and address of complainant] against [here state name of trade union] whose registered or general office is situated at that he was aggrieved by a breach by the said union of a rule made in pursuance of section 3 of the Trade Union Act, 1913, made an order pursuant to the said section in the following terms, viz., [here set out the order made by the Registrar].

Costs of obtaining this certificate .

Dated this day of 19 .

(Signed.)

Registrar of Friendly Societies.

Note of Presentation to be Appended.

The above certificate is presented by me to be recorded in the County Court of holden at in accordance with the provisions of section 3 of the Trade Union Act, 1913, and the rules made thereunder.

Signature of complainant or his solicitor.

Address.

Date.

432B.

THE TRADE UNION ACT, 1913, SECTION 3.

Warrant of Execution.

In the County Court of holden at

In the matter of an order made by the Registrar of Friendly Societies under section 3 of the Trade Union Act, 1913, on the complaint of A.B. of [address] complainant against The [name of trade union] of [registered (or general) office].

Whereas on the day of the Registrar of Friendly Societies on the complaint of the above-named complainant against the above-named trade union made an order pursuant to section 3 of the Trade Union Act 1913, in the following terms, viz. : [here set out the order made by the Registrar].

And whereas a certificate of the said order has been duly registered in this court pursuant to section 3 of the said Act and the rules made thereunder :

And whereas default has been made by the said union in payment according to the said order :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said union, wheresoever they may be found within the district of this court, the sum stated at the foot of this warrant, being the amount due to the complainant under the said order, together with the costs of this execution ; and to seize and take any money or bank notes (whether of the Bank of England or of any other Bank) and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said union which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 19 .

By the Court

Registrar.

To the High Bailiff of the said Court, and others the bailiffs thereof.

Amount for which order was obtained	.	.	.
Paid since date of order	.	.	.
Costs of obtaining and registering certificate of order	.	.	.
Remaining due	.	.	.
Poundage for issuing this warrant	.	.	.
Total amount to be levied (with fees for execution of warrant as indorsed hereon)	.	.	.

£	s.	d.

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the trade union.

Application was made to the Registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

Here state for the information of the high bailiff the place, &c., where the goods are stated to be.

SEE BACK.

[For indorsement of fees for execution of warrant, see Form 163.]

TRUSTEE ACT, 1925.

[15 GEO. V. c. 19.]

Jurisdiction.—By sect. 67 of the County Courts Act, 1888, jurisdiction was conferred on county courts under the Trustee and Trustees Relief Acts then in force, in cases in which the trust estate or fund to which the action or matter relates did not exceed in amount or value 500*l*. The Trustee Act, 1893, practically repealed the whole of those Acts, but this Act is now repealed by the Trustee Act, 1925, which consolidates the law relating to trustees. Sect. 67 (1) of the new Act provides that “the court” in the Act means the High Court, and also the Chancery Courts of the County Palatine of Lancaster and Durham, or the county court, where those courts respectively have jurisdiction. The effect of these two sections, assisted by sect. 38 of the Interpretation Act, 1889, is that county courts can exercise all the powers of the court under the Trustee Act, 1925, where the trust estate or fund does not exceed 500*l*. in amount or value.

Practice.—The court in which to take proceedings is determined by sect. 75 of the County Courts Act, 1888, to be that within the district of which the persons making the application or any of them reside; the proceedings are governed by Order XXXVIII., *ante*, Part I. All matters, except those under sect. 63 of the 1925 Act, shall be commenced by filing a petition (Rule 1): but in those under sect. 63 an affidavit containing particulars mentioned in Rule 9 shall be filed with the registrar.

Costs.—In proceedings under sects. 67 and 70 of the County Courts Act, 1888, or under the equitable jurisdiction of the court, the judge may order the costs to be taxed under column B, where the subject-matter does not exceed 20*l*. See Ord. LIII., r. 12.

Appeal for error in point of law or equity lies under sect. 120 of the County Courts Act, 1888.

POWERS OF THE COURT.

Appointment of New Trustees.

Power of
court to ap-
point new
trustees.

41.—(1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

In particular and without prejudice to the generality of the foregoing provision, the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a lunatic or a defective, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

4 & 5 Geo. 5,
c. 47.

(2) The power conferred by this section may, in the case of a deed of arrangement within the meaning of the Deeds of Arrangement Act, 1914, be exercised either by the High Court or by the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed.

(3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

- (4) Nothing in this section gives power to appoint an executor or administrator. **Section 41.**

NOTE.—But where an executor or administrator has paid all debts and has cleared the estate and only holds the balance for the persons in law entitled to the same, he becomes a trustee and the court has power under this section to appoint a new trustee jointly with the executor or administrator (*Eaton v. Danes*, (1894) 29 L. J. N. C. 146; *Ponder v. Ponder*, (1921) 90 L. J. Ch. 426).

42. Where the court appoints a corporation, other than the Public Trustee, to be a trustee either solely or jointly with another person, the court may authorise the corporation to charge such remuneration for its services as trustee as the court may think fit. **Power to authorise remuneration.**

43. Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust. **Powers of new trustee appointed by the court.**

Vesting Orders.

44. In any of the following cases, namely :—

- (i.) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power ; **Vesting orders of land.**
- (ii.) Where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—
- (a) is under disability ; or
 - (b) is out of the jurisdiction of the High Court ; or
 - (c) cannot be found, or, being a corporation, has been dissolved ;
- (iii.) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land ;
- (iv.) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead ;
- (v.) Where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land ;
- (vi.) Where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement ;
- (vii.) Where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient ;

Section 44. the court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct :

Provided that—

- (a) Where the order is consequential on the appointment of a trustee the land or interest therein shall be vested for such estate as the court may direct in the persons who on the appointment are the trustees ; and
- (b) Where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

Orders as to
contingent
rights of
unborn
persons.

45. Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order
in place of
conveyance
by infant
mortgagee.

46. Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

Vesting
order conse-
quential on
order for sale
or mortgage
of land.

47. Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as that court thinks fit in the purchaser or mortgagee or in any other person :

Provided that, in the case of a legal mortgage, the estate to be vested in the mortgagee shall be a term of years absolute.

Vesting
order con-
sequential
on judgment
for specific
performance,
&c.

48. Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare—

- (a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Act ; or
- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary

settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act ;

Section 48.

and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

49. A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

Effect of vesting order.

(a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate or interest as the court directs ; or

(b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the court directs ;

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

50. In all cases where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Power to appoint person to convey.

51.—(I) In any of the following cases, namely :—

Vesting orders as to stock and things in action.

(i.) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power ;

(ii.) Where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action—

(a) is under disability ; or

(b) is out of the jurisdiction of the High Court ; or

(c) cannot be found, or, being a corporation, has been dissolved ; or

(d) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled ; or

(e) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him ;

(iii.) Where it is uncertain whether a trustee entitled alone or

Section 51.

jointly with another person to stock or to a thing in action is alive or dead ;

- (iv.) Where stock is standing in the name of a deceased person whose personal representative is under disability ;
- (v.) Where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient ;

the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the court may appoint :

Provided that—

- (a) Where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees ; and
- (b) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

(2) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer :

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act, may transfer the stock to himself or any other person, according to the order, and the Bank of England and all other companies shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section it shall not be lawful for the Bank of England or any other company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Act is to be exercised.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

Vesting
orders of
charity
property.

52. The powers conferred by this Act as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

Vesting
orders in
relation to
infant's
beneficial
interests,

53. Where an infant is beneficially entitled to any property the court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order—

- (a) appointing a person to convey such property ; or
- (b) in the case of stock, or a thing in action, vesting in any per-

son the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit. Section 53.
—

54. Where the High Court has power under this Part of this Act to make orders in relation to lunatics and defectives who are trustees, the Judge or Master in Lunacy shall, save as provided in this section, have no power to make such an order : Jurisdiction of the High Court in regard to lunatics.
Provided that where—

- (a) a lunatic or defective has become a trustee of mortgaged property merely by reason of the mortgage having been paid off ;
- (b) an order in lunacy is made authorising the exercise of a power to appoint a trustee ;
- (c) an order in lunacy is made for giving effect to a contract made before the lunatic or defective was under disability ;
- (d) a lunatic or defective is beneficially entitled to some interest in the property but holds the property or some interest therein under an express, implied or constructive trust ;

the High Court and the Judge or Master in Lunacy shall, in accordance with rules to be made by the Lord Chancellor, have concurrent jurisdiction.

55. Where a vesting order is made as to any land under this Act or under the Lunacy Act, 1890, as amended by any subsequent enactment, or under any Act relating to lunacy in Northern Ireland, founded on an allegation of any of the following matters namely— Orders made upon certain allegations to be conclusive evidence.

- (a) the personal incapacity of a trustee or mortgagee ; or
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved ; or
- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor ; or
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead ; or
- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested ;

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order ; but this section does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

56. The powers of the court to make vesting orders under this Act shall extend to all property in any part of His Majesty's dominions except Scotland. Application of vesting order to property out of Scotland.

Section 57.*Jurisdiction to make other Orders.*

Power of court to authorise dealings with trust property.

57.—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

(4) This section does not apply to trustees of a settlement for the purposes of the Settled Land Act, 1925.

Persons entitled to apply for orders.

58.—(1) An order under this Act for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any interest in land, stock, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Power to give judgment in absence of a trustee.

59. Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to charge costs on trust estate.

60. The court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

Power to relieve trustee from personal liability.

61. If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of

trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same.

Section 61.

NOTE.—To claim relief under this section a trustee must act both honestly and reasonably (*In re Grindley* (C. A.), (1898) 2 Ch. 593; 67 L. J. Ch. 624; *Perrins v. Bellamy* (C. A.), (1899) 1 Ch. 797; 68 L. J. Ch. 397; *In re Mackay*, (1911) 1 Ch. 300; 80 L. J. Ch. 237; *Palmer v. Emerson*, (1911) 2 Ch. 758; 80 L. J. Ch. 418). Provided the trustee acts reasonably and honestly, relief is not confined to executive or administrative blunders but extends to payments to a person not entitled (*In re Allsop*, (1914) 1 Ch. 1; 83 L. J. Ch. 42). The section applies to actions for an account as well as to breaches of trust (*In re Kay*, (1897) 2 Ch. 518; 66 L. J. Ch. 759).

A claim for relief under this section need not be pleaded (*In re Pawsons' Settlements Trusts*, (1917) 86 L. J. Ch. 380).

62.—(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

Power to make beneficiary indemnify for breach of trust.

(2) This section applies to breaches of trust committed as well before as after the commencement of this Act.

Payment into Court.

63.—(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court; and the same shall, subject to rules of court, be dealt with according to the orders of the court.

Payment into court by trustees.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker, or other depositary, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(5) Every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid, or delivered.

PART V.

GENERAL PROVISIONS.

64.—(1) All the powers and provisions contained in this Act Application with reference to the appointment of new trustees, and the dis- of Act to

Section 64.
 ———
**Settled
 Land Act
 Trustees.**

charge and retirement of trustees, apply to and include trustees for the purposes of the Settled Land Act, 1925, and trustees for the purpose of the management of land during a minority, whether such trustees are appointed by the court or by the settlement, or under provisions contained in any instrument.

(2) Where, either before or after the commencement of this Act, trustees of a settlement have been appointed by the court for the purposes of the Settled Land Acts, 1882 to 1890, or of the Settled Land Act, 1925, then, after the commencement of this Act—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, though no trustees for the purposes of the said Acts were thereby appointed; or

(b) if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being for the purposes of the said Acts or the personal representatives of the last surviving or continuing trustee for those purposes,

shall have the powers conferred by this Act to appoint new or additional trustees of the settlement for the purposes of the said Acts.

(3) Appointments of new trustees for the purposes of the said Acts made or expressed to be made before the commencement of this Act by the trustees or trustee or personal representatives referred to in paragraph (b) of the last preceding subsection or by the persons referred to in paragraph (a) of that subsection are, without prejudice to any order of the court made before such commencement, hereby confirmed.

Trust
 estates not
 affected by
 trustee
 becoming
 a convict.

33 & 34 Vict.
 c. 23.

65. Property vested in any person on any trust or by way of mortgage shall not, in case of that person becoming a convict within the meaning of the Forfeiture Act, 1870, vest in any such administrator as may be appointed under that Act, but shall remain in the trustee or mortgagee, or pass to his co-trustee in right of survivorship or devolve on his personal representative as if he had not become a convict:

Provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

Indemnity
 to banks, &c.

66. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to the Bank of England, and to all persons for any acts done pursuant thereto, and it shall not be necessary for the Bank or for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it.

Jurisdiction
 of the
 "court."

67.—(1) In this Act "the court" means the High Court, and also the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, or the county court, where those courts respectively have jurisdiction.

(2) The procedure under this Act in palatine courts and county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.

THE WAGES ATTACHMENT ABOLITION ACT, 1870.

[33 & 34 Vict. c. 30.]

1. No order for the attachment of the wages of any servant, No order of labourer, or workman shall be made by the judge of any court of attachment record or inferior court. of wages after passing of Act.

The wages of servants, labourers or workmen cannot be attached (see *Jones v. Thompson*, (1858) 27 L. J. Q. B. 234; *Dresser v. Jones*, (1859) 28 L. J. C. P. 281). This will not prevent the attachment of the quarterly salary of a secretary to a company (*Gordon v. Jennings*, (1882) 9 Q. B. D. 45; 51 L. J. Q. B. 417), nor of a superannuation allowance (*Booth v. Trail*, (1880) 12 Q. B. D. 8; 53 L. J. Q. B. 24), nor of a pension (*Willcock v. Terrell* (C. A.), (1878) 3 Ex. D. 323). By the Merchant Shipping Act, 1894, seamen's wages, whether due or accruing, cannot be attached (57 & 58 Vict. c. 60, s. 163).

[For Workmen's Compensation Act, see Part IV.]

PART VI.

EMERGENCY LEGISLATION.

The legislation due to the war, referred to as "Emergency Legislation" in so far as it now directly affects the County Courts of England.

EMERGENCY STATUTES, &c.

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EMERGENCY LEGISLATION.

GENERAL NOTE AS TO EFFECT OF EMERGENCY LEGISLATION.

To deal with the many difficulties arising during the period of the war, various statutes and orders were, from time to time, passed, with the view of obviating or relieving them. These statutes are not improperly described as "Emergency Legislation."

During the progress of the war and since the suspension of hostilities many of these have been repealed.

The most important of these statutes were the Courts (Emergency Powers) Acts of 1914, with the amending and amplifying Acts of 1916, 1917 and 1919 (repealed), and the Increase of Rent and Mortgage Interest (Restrictions) Acts, consolidated in the Increase of Rent and Mortgage Interest (Restrictions) Act of 1920, which Act has been amended by the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, the Rent Restrictions (Notices of Increase) Act, 1923, the Rent and Mortgage Interest Restrictions Act, 1923, and the Prevention of Eviction Act, 1924, which may be cited together as "The Rent and Mortgage Interest Restrictions Acts, 1920 to 1925."

The whole of the Courts (Emergency Powers) Acts are now repealed, except as to orders made before August 31st, 1922. They cease, therefore, to be of any practical value and are not retained in this edition.

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACTS, 1920 TO 1925, PP. 2503-2556.

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17), repealed all the former statutes, in so far as they were in existence at the time of the Act of 1920 coming into force (July 2nd, 1920), and all proceedings pending at such time are to be deemed to have been com-

menced under this Act (sect. 19, sub-s. (3)). It was to continue in force till June 24th, 1923, but by 13 & 14 Geo. 5, c. 7, was continued until July 31st, 1923, then by the Rent and Mortgage Interest Restrictions Act, 1923, till June 24th, 1925, and by the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925, till December 25th, 1927, for England, and May 28th, 1928, for Scotland. These dates have now, by the Expiring Laws Continuance Acts, 1927 and 1928, been extended for two years. In the Act of 1920 business premises were for the first time included, but subject to certain modifications (sect. 13; but this section has now expired by time). Business premises are not now within the Acts. The general purpose of the legislation is to prevent the raising of rents, or the increase of mortgage interest in respect of certain small classes of dwelling-houses and properties, *except in so far as is permitted by the Act*, and as a necessary corollary to these restrictions, to prevent the landlord or mortgagee recovering the houses or properties *except under the exceptional circumstances mentioned in the Act*.

Owing to the shortage of housing accommodation it was found impossible to allow the 1920 Act to expire at the time originally fixed, and various Acts have been passed from time to time prolonging its duration, and amending and extending it.

The first of these Acts was the Rent and Mortgage Interest Restrictions Act, 1923 (13 & 14 Geo. 5, c. 32), which, together with the 1920 Act (the Principal Act) and the Rent Restrictions (Notices of Increase) Act, 1923 (13 & 14 Geo. 5, c. 13), and the Prevention of Eviction Act, 1924 (14 & 15 Geo. 5, c. 5), and the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925 (15 & 16 Geo. 5, c. 32), at present contain the law on this subject.

The statutes are now to continue in force in England till December 25th, 1929, in Scotland till May 28th, 1930, but the Act of 1923 (Part II.) set out certain restrictions which were to remain in force after the principal Act expired, and until June 24th, 1930, unless Parliament by resolution otherwise determines, and now these restrictions are to continue in force until five years after the expiration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended, *i.e.*, in England until five years after the 25th of December, 1929.

It having been found that in practice a large number of landlords demanded and obtained the extra rent permitted by the earlier statutes without giving the tenants any notice or any proper notice to quit, and all such payments having been declared illegal and recoverable by the tenants, the Rent Restrictions (Notices of Increase) Act, 1923, was passed to deal with the position which had thus been created.

Its effect is that a valid notice to quit is to be implied in all cases where it was not given, and thus to render the extra payments of rent legal from the time when the notice, if given, would have been effective; but the operation of the Act is only to be retrospective as from December 1st, 1922.

Provision is also made for rent validated by the Act, or sums recovered or deducted by the tenant from December 1st, 1922, being paid or repaid by the tenant by instalments, except where the tenant quits the premises.

A landlord wishing to recover rent validated by this Act must give the tenant notice in the form prescribed in the Act.

The Act also provides that where the tenant obtains a certificate from the sanitary authority that the house is not in reasonable repair, the County Court may stop the payment of the instalments, and whilst the house remains in an improper condition, the instalments under the Act are to be deemed to have been paid. See where the house comes into the possession of the landlord on or after July 31st, 1923, heading "Decontrolment," *post*, p. 2501.

General Effects of the Acts of 1920 and 1923, as amended.—Subject to the provisions in the Acts no increase of rent or mortgage interest beyond the "standard rent" and "standard rate of interest" is recoverable in respect of premises within the Act.

"Standard rent" is the rent at which the dwelling-house or business premises were let on August 3rd, 1914, or where they were not let on that

date the rent at which they were last let before that date, or if let after August 3rd, 1914, the rent at which they were first let (sect. 12, sub-s. (1) (a), Act of 1920).

NOTE.—Where let under a lease or agreement at a progressive rent, the standard rent for such premises is for the time being the maximum rent payable thereunder, and where at the time the standard rent is to be calculated the rent was less than the rateable value, the rateable value is the standard rent.

Duty of Landlord as to Statement of what is "Standard Rent."—It is the duty of the landlord of premises to which the Act applies, on being so requested by the tenant in writing, to supply him with a statement in writing as to what is the standard rent. If he fails without reasonable excuse to do so for fourteen days, or supplies a statement false in any material particular, he is liable to a fine not exceeding 10*l.* (sect. 11 of principal Act).

It is also his duty when giving notice of any increase of rent prescribed by sect. 3 (2) of the Act to use the form given in Sched. I. to the Act or a form giving substantially the same particulars. See Form, *post*, p. 2533, though now by sect. 6 (1) of the 1923 Act the County Court may amend the notice if satisfied that its invalidity was due to a *bonâ fide* mistake, on such terms as respects arrears of rent or otherwise as the Court may think right.

"Standard rate of interest" is the interest which was payable on the mortgage on August 3rd, 1914. If created since that date, then the original rate of interest (sect. 12, Act of 1920).

Application of Act to Premises.]—The Act applies to premises or part thereof let as separate premises (a) where the standard rent or rateable value does not exceed:—

- (a) In the Metropolitan Police District or the City of London, 105*l.* a year;
- (b) In Scotland, 90*l.* a year;
- (c) Elsewhere 78*l.* a year;

Every such house or part thereof is, if separately let, to be deemed to be separate premises (sect. 12, sub-s. (2), Act of 1920).

NOTE.—The Act does *not* apply to a dwelling-house *bonâ fide* let at a rent which includes payment in respect of *board, attendance*, or use of furniture; but as to use of furniture *only* see sect. 12, sub-s. (2), and sect. 10 of Act of 1923, which now require that the amount properly charged for attendance or use of furniture must be a substantial part of the whole rent.

The Act is not excluded if the premises, being a dwelling-house, part of the same is used as a shop or office, or for business, trade or professional purposes.

The Act does not apply if the premises are let *together with land*, other than the site of the house, except where the rateable value of the land alone would be less than a quarter of the rateable value of the dwelling-house. The county court may decide this latter question, and its decision thereon is final and conclusive (sec. 12, Act of 1920).

Any rooms in a dwelling-house separately let wholly or partly as a dwelling are to be treated as part of a dwelling-house let as a separate dwelling (sect. 12, sub-s. (8), Act of 1920, though now by sect. 7 of the Act of 1923 certain increases in the rents of sub-tenancies are authorised. See *post*, p. 2547.

The Act does not apply to a dwelling-house erected after, or in course of erection on, April 2nd, 1919, or to any dwelling-house which has been since that date or was at that date being *bonâ fide* reconstructed by way of conversion into two or more separate and self-contained flats or tenements (sect. 12, sub-s. (9) Act of 1920). See *post*, p. 2525. See also "Decontrolment," *post*, p. 2501.

Application of Act to Mortgages.]—The Act applies to mortgages where the mortgaged property consists of or comprises *one or more of the premises to which the Act applies*, or any interest therein.

The Act does *not* apply to an equitable charge by deposit of title deeds or

otherwise, or to a mortgage created *after* the passing of the Act, or to a mortgage of such premises together with land, if the rateable value of the premises is less than one-tenth of the rateable value of the land; but where the rateable value of the premises is more than one-tenth of the rateable value of the land, the Act contains provisions by which the mortgagee may apportion the mortgage money between the premises and the land, and thus create in effect two mortgages. When this is done the Act will no longer apply to the mortgage of the land (sect. 12, sub-s. (4), Act of 1920).

The county court has no jurisdiction in the case of such an apportionment. Any disagreement thereon is to be settled by an arbitrator appointed by the President of the Surveyors' Institution (sect. 12).

For definition of "rateable value," see sect. 12, sub-s. (1) (e).

Section 1 of the Act of 1920.]—Section 1 of the principal Act declares that, where rent or mortgage interest to which the Act applies has been since *March 25th, 1920*, or is hereafter increased, then if the increased rent or mortgage interest exceeds by more than the amount permitted by the Act the standard rent or rate of interest, the amount of such excess is irrecoverable.

It results from the fixing of this date that the Act had a retrospective operation of about three months.

It must be borne in mind that at this date the Increase of Rent and Mortgage Interest Acts of 1915 and 1919 were in force, but applied only to dwelling-houses let at lower rents, and did not apply to business premises at all. Probably March 25th was decided on as it was common knowledge that the former Acts were about to expire and that the new legislation which was imminent would apply to houses at higher rents, and that the power to raise rents would be to some extent increased. Many persons, in anticipation of this legislation, had given notices to determine tenancies, and in some cases had raised rents.

The Act declares that where a landlord or mortgagee has raised the rent or mortgage interest between March 25th, 1920, and the time the Act came into operation—July 2nd, 1920—he may cancel the increase and repay the money, in which case the rent or interest shall not be deemed to have been increased (sect. 1, *proviso*).

The object of this clause is not very clear. If the increase between these dates related to dwelling-houses and mortgaged properties already within the protection of the Acts of 1915 and 1919, and the effect of the increase was to raise the rent or interest beyond that permitted by those Acts, it was illegal, and the increased rent and interest could be recovered under those Acts by any one who paid it. If the increase between the dates related to houses or business premises (*a*) coming for the first time within the protection of the new Act, and the effect of the increase was to raise the rent or interest over the amount permitted by the Act of 1920, such excess is recoverable under sect. 14 of the Act. If the increase did not have the effect of raising the rent or mortgage interest beyond the maximum now permitted by the Act, there would seem to be no necessity to return it.

No penalty is attached to raising rents or interest beyond the amounts allowed by the Act, except that the excess is irrecoverable in law and, if it has been paid, may be recovered, now to a limited extent.

Again, it must be remembered that there was no prohibition as to raising rents or interest before March 25th, 1920, in respect of premises not within the now repealed Acts, or in respect of business premises. A contract to raise the rent or mortgage interest of such premises made before March 25th, 1920, was legal. The result of such a contract might well be, in the case of rent, to secure a rent higher than would have been permitted by the present Act. To take a concrete case: if premises in the country were let at

(*a*) "Premises" is the word used in the rules made under that Act, and includes a house or part of a house used as a separate dwelling, and formerly premises used for business, trade or professional purposes, or for the public service (sects. 12 and 13), but sect. 13 has now expired, and the Act no longer applies to purely business premises.

60*l.* a year in 1914 and *before* March 25th, 1920, the rent was by agreement raised to 90*l.* a year, this contract would appear to be good and enforceable, though the "standard rent" of such premises in 1914 plus the additions permitted by the statute of 1920 may not together amount to 90*l.* a year. It seems clear, however, that in such a case no further increase could now be made, unless it should happen that the "standard rent" in 1914 of the house to which the Act now applies plus the permitted statutory additions should together amount to over 90*l.* a year, in which case the rent can still be increased to the sum to which they amount. Should the "standard rent" with the permitted statutory additions amount to less than 90*l.* a year, the rent remains as fixed by the contract, and it is believed the excess cannot be reclaimed by the tenant.

It is only where the increase has been made between March 25th, 1920, and July 2nd, 1920, and this increase has raised the rent beyond the standard rent plus the statutory permitted additions, that the excess is irrecoverable, or if paid may be recovered.

Permitted Increases in Rent.—Very considerable increases of rents are permitted by the Act of 1920. These increases may be gathered from the Act itself (Sect. 2 (1)), but the following points are worthy of notice :—

- (a) The interest at six or eight per cent. which may be added for improvements or structural alterations—not decorations or repairs—is subject to the power of the county court, on the application of the tenant, to suspend or reduce such increase on the ground that the improvements or structural alterations were unnecessary.
- (b) The 15 per cent. (5 per cent. only for the first year in cases to which the repealed Acts apply) which is permitted to be added to the standard rent must be calculated on the *net* rent. This means that where the landlord either by agreement pays the rates, or the rates are by statute (*i.e.*, the Acts relating to apportionment) payable by him instead of by the occupier, the 15 per cent. is calculated not on the standard rent, but on the standard rent less the rates.

He arrives at the net rent, the 5 or 15 per cent. of which he may add to the standard rent, in the following way. He has to discover first what part of the standard rent at the time the standard rent has to be calculated, generally August 3rd, 1914, was payable by him for rates. He then deducts this from the standard rent, and so arrives at the net rent. He must then take 5 or 15 per cent. of this net rent so arrived at, which he may then add to the standard rent.

This sounds involved. Take the simplest illustration. Assume the standard rent payable in August, 1914, was 7*s.* 8*d.* a week, and the landlord out of that sum was at the time paying 1*s.* a week for the rates. Then 6*s.* 8*d.* a week is the net rent on which the addition must be calculated; 15 per cent. of 6*s.* 8*d.* is 1*s.* This, added to the standard rent, makes the rent 8*s.* 8*d.*

In any other case, *e.g.*, where the tenant pays the rates, the permitted increase is added to the standard rent. See sect. 12, sub-s. (1) (c).

- (c) Any rates payable by the landlord in respect of the dwelling-house over and above those payable by him on August 3rd, 1914, may also be added to the rent.

Where no rates were payable at this date then any increase since the time when the rates first became payable may be added. "Rates" includes water rents and charges.

If rates which have been legally added to the rent are reduced, the rent must be reduced *pro rata*. See *post*, p. 2505.

- (d) Where the landlord is responsible for all repairs, then, in addition to the other permitted increases, an amount not exceeding 25 per cent. of the *net* rent (see *supra*) may be added to the standard rent. If only responsible for part of the repairs, then such lesser amount than 25 per cent. may be added as may be agreed, or, in the absence of

agreement determined by the county court, on application of the landlord or tenant, to be fair and reasonable.

It is important to remember that the word "repairs" in this section of the Act means not only such repairs as may be necessary that the premises may be reasonably fit for human habitation, but includes any repairs required for the purpose of keeping premises in "good and tenantable repair," and *the landlord is deemed to be responsible for any repairs for which the tenant is under no express liability.* See sect. 2, sub-s. (5), and sect. 18 (5) of the Act of 1923.

The meaning of this last clause is not clear. It is believed that it cannot mean to impose on the landlord a liability to keep all premises within the Act in good and tenantable repair except where the tenant is under an express liability to do so. The words are contained only in a defining section, and only apply to sect. 2 of the Act. This section only speaks of repairs which the landlord is responsible for in whole or in part. It would seem that if he is content to abandon the 25 per cent. of the net rent, or such portion as he might demand, there is no power *under the Act* to compel him to do repairs. Even where he adds the 25 per cent. or such part as he is entitled to, and does not do the repairs, the only penalty he suffers is that after three months such increase, and also the increase under sub-s. (2) (c), may be suspended by the county court until the repairs are executed.

What it is believed to mean is that where the landlord claims the additional rent for repairs he must do all the repairs, and carry them out in such a way that the premises are kept in good and tenantable repair, and cannot claim any aid from the tenant, except in a case where the tenant is under an express liability to repair.

Where any authorised addition to the rent, dependent on the liability of the landlord to do repairs, has been made, the tenant or sanitary authority may apply, after three months, to the county court for a suspension of that increase, and *also the increase of 15 per cent. permitted by the Act*, on the ground that the house is not in a reasonable state of repair. If the court is satisfied that this is so, and that the state of disrepair is not due to the tenant's neglect or breach of agreement, it shall suspend these increases until satisfied that the house is in a proper state of repair (sect. 2), and see now additional rights given to the tenant in cases of disrepair by sects. 5 and 10 of the Act of 1923.

The tenant is given increased rights under sects. 5 and 18 of the Act of 1923. See *post*, pp. 2546, 2552.

NOTE.—Any transfer to a tenant of any burden or liability previously borne by the landlord is to be deemed an alteration of the rent, and where the result is that the terms are less favourable to the tenant than the previous terms, the rent is deemed to be increased (sect. 2, sub-s. (3)).

By sect. 7, sub-s. (1), of the Act of 1923, in addition to the increases set out above, the rent of sub-tenancies of part of a dwelling house may apparently be increased by 10 per cent. of the net rent of the dwelling house comprised in the sub-tenancy and the rent of the house increased by 5 per cent. where a sub-tenancy exists. The notice required by sect. 3, sub-s. (2), of the principal Act need not be given. The landlord can demand of his tenant particulars of the sub-tenancies. The meaning of sect. 7 is far from clear.

Time when increased Rent may be Demanded.—It must be remembered that increased rent could formerly only be demanded where the landlord, but for the Act, would be entitled to possession of the premises. See *Kerr v. Bryde*, (1923) L. R. A. C. 16. Whatever the agreement under which the tenant holds, it must have expired, or been forfeited, or determined by due notice to quit, before the increases permitted by the Act were recoverable, though now by the Rent Restrictions (Notices of Increase) Act, 1923, such a notice to determine the tenancy, where notice to increase the rent has been given, is to be implied. Four clear weeks' notice (one in the case of increase for rates) of intention to raise the rent is required by sect. 3, sub-s. (2) of the Act of 1920.

The notice is not a good notice if given before the passing of the Act (sect. 3, sub-s. (3)), but it may be given before the termination of the tenancy, though it could not take effect until the tenancy had terminated. Where, however, a valid notice of increase has once been given no fresh notice need be served on any subsequent tenant (sect. 3, sub-s. (2)).

Permitted Increase in Mortgage Interest.—The rate of interest on a mortgage to which the Act applies may be increased from the standard rate of interest (see *ante*, p. 2493) to an amount not exceeding 1 per cent. per annum, with a maximum interest of $6\frac{1}{2}$ per cent. per annum.

During the first year, except for mortgages within the present Act, but to which the repealed statutes did not apply, the increase is not to exceed $\frac{1}{2}$ per cent. per annum (sect. 4, Act of 1920).

Mortgage interest increased between March 25th, 1920, and July 2nd, 1920, may be repaid and then the rate shall not be deemed to have been increased. See note, *ante*, p. 2493, as to repayment of rent increased between these dates.

Restrictions on Landlord's Right to Possession.—The landlord's right to recover possession of a dwelling-house was restricted by sect. 5 of the Act of 1920 (now sect. 4 of the Act of 1923), which amends and to some extent extends the former section, which is now repealed. Generally it may be said on the question of the landlord's right to possession, that he cannot recover the premises or eject the tenant from his dwelling-house, unless (Act of 1923, s. 4):—

- (a) The tenant fails to pay the rent, or breaks or does not perform some obligation of tenancy imposed by the contract of tenancy or the Act;
- b) The tenant or his sub-tenant or any person residing or lodging with him is guilty of conduct which is a nuisance or annoyance to neighbours or has been convicted of using or allowing the premises to be used for an immoral or illegal purpose, or he or the person residing with him has been guilty of waste, or neglect or default by which the condition of the dwelling-house has deteriorated, and the court thinks the tenant has not taken the steps he should have taken to get rid of such person or such under-tenant.
- (c) The tenant has given notice to quit, and in consequence the landlord has contracted to sell or let the dwelling-house, or taken other steps as a result of which he would be seriously prejudiced if he could not obtain possession; or
- (d) The landlord reasonably requires the premises for occupation as a residence for himself or for any son or daughter of his over eighteen years of age or some person *bonâ fide* residing with him, or in his whole time employment or in the whole time employment of some tenant from him, or with whom conditional on housing accommodation being provided a contract for employment has been entered into, and the court is satisfied (except where otherwise provided) that alternative accommodation is available reasonably suitable to the means and needs of the tenant and his family as regards extent, character and proximity to place of work, and which is either a dwelling-house to which the Act applies, or premises to be let as a separate dwelling on terms which give the tenant security of tenure reasonably equivalent to the security he enjoys under the Act. See *post*, p. 2497, where alternative accommodation is not a condition of the order.
- (e) The landlord is a local authority or statutory undertaking, and reasonably requires the premises for the purpose of carrying out statutory duties or powers, or for any purpose the court thinks sufficient in the public interest, and alternative accommodation as aforesaid exists; or
- (f) The landlord became so after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient; or

- (g) A former tenant who gave up occupation in consequence of service in any of His Majesty's forces during the war requires it again as a residence;
- (h) The tenant has without consent at any time after July 31st, 1923, assigned or sub-let the whole of the house, or part of same, the remainder being already sub-let;
- (i) The dwelling-house consists of, or includes licensed premises and the tenant, a licence holder, has committed an offence, or not conducted the business to the satisfaction of the justices, or police authority, or carried it on in a way detrimental to the public interest, or if for any reason the licence has been refused.

NOTE.—Clauses (h) and (i) are new (Act of 1923).

Even though any of the above circumstances are proved, it is still in the discretion of the court to make or refuse such an order or judgment (sect. 4, sub-s. (1)).

The expressions "landlord" and "tenant" include any person from time to time deriving title under the original landlord or tenant (sect. 12, sub-s. (1)(f)).

Several points relative to the above exceptions are worthy of consideration. Under exception (a), *ante*, p. 2496—"the tenant fails to pay the rent." Rent is legally due on the very day it becomes due. Often perfectly responsible and eligible tenants take a little latitude in payment, and this is acquiesced in by the landlord. It is thought that when the court can imply an agreement to this effect from the conduct of the parties, or even a custom acquiesced in by the landlord, it will not be bound to deprive the tenant of the benefit of the Act. Still it must be understood that tenants who do not pay their rent on the day on which it is due, run considerable risk of losing the benefits of the Act. Under the same exception (a) where "an obligation of the tenancy or under this Act has not been performed." The obligations of tenancy imposed on a tenant by the Act seem to be the following—that when retaining possession under the Act he observes the conditions of the original contract of tenancy though it may not have been made with himself (sect. 15, sub-s. (1), of Act of 1920) and that he allows the landlord reasonable access to the premises for executing repairs, he, the landlord, is entitled to execute (sect. 16, sub-s. (2), of Act of 1920).

Under exception (b), *ante*, p. 2496, it must be noticed that it is only a "conviction" for using or allowing the premises to be used for an immoral or illegal purpose which the court may treat as a justification for making the order for possession, though using the premises for such purposes may be a ground of giving possession if the effect is that the conduct of the house is a nuisance or annoyance to neighbours under the same clause.

Under exception (c) the provision which allows possession to be given where the landlord is seriously prejudiced by the act of the tenant in himself giving notice to quit is a useful one. Somewhat contradictory decisions were given under the old Act of 1915 as to whether this could be deemed a satisfactory reason for making the order. See *Hunt v. Bliss*, (1920) 89 L. J. K. B. 174, and *Green-Price v. Webb*, (1920) 89 L. J. K. B. 216.

Under exception (d) the words "or to reside with him," which appeared in the 1920 Act are omitted, and the words "or for any son or daughter of his over eighteen years of age" appear in their stead.

See now where the house is required by the landlord as a residence for himself, or his son or daughter (*post*, pp. 2511, 2543).

Under the same exception (d) the words "alternative accommodation reasonably suitable to the means and needs of the tenant and his family as regards extent, character and proximity to place of work and which must be either a dwelling-house to which the Act applies, or separate premises securing to the tenant as satisfactory security of tenure as he had under the Act" are new, and to some extent an extension of the words used in the 1920 Act.

Apparently a part of a house cannot now be considered satisfactory alternative accommodation.

Alternative Accommodation.]—Alternative accommodation is not to be

a condition of the order or judgment for possession under sect. 4 (1) —(1) When the tenant was in the employment of the landlord, or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment. This is a new and useful provision. (2) Where a county agricultural committee (or Minister of Agriculture pending formation of such committee) gives certificate that the landlord requires the house for occupation of a person engaged on work necessary for proper working of an agricultural holding, or with whom conditional on housing accommodation being provided a contract for employment on such work has been entered into. If such a certificate is obtained it is apparently not in the power of the county court to refuse possession. (3) Where the landlord gave up the house in consequence of service in any of His Majesty's forces during the war. (4) Where the dwelling-house is required by the landlord as a residence for himself, or for any son or daughter of his over eighteen years of age, the application is now generally governed by the Prevention of Eviction Act, 1924 (*post*, p. 2554), which repeals paragraphs iv. and v. of sub-s. 1 of sect. 4 of the Act of 1923, and lays down what has been called the "greater hardship test." It is immaterial when the landlord bought the dwelling-house, so long as he did not buy after 5th May, 1924. The question on any such application to be considered by the court is: Would greater hardship be caused by refusing than by granting the application?

Alternative accommodation is not the test, though it must be taken into consideration in deciding the question of greater hardship.

Powers of the Court.]—Very extensive powers are given to the court to adjourn, suspend or postpone any order or judgment for the recovery or possession of premises either at the time the order or judgment is given or made or at any subsequent time before it is executed, and to impose terms when granting such a concession (sect. 4, sub-s. (2)). Even where the order or judgment was made or given before the passing of the Act of 1920, the court may rescind or vary the same on the tenant's application if it should be of opinion that the order or judgment would not have been made or given if the Act had been in force (sect. 4, sub-s. (3), Act of 1923).

Sub-tenants.]—An order or judgment for recovery of possession under the Act against the tenant or ejectment therefrom does not affect the right of any sub-tenant to whom the premises or part thereof have been lawfully let before the commencement of the proceedings against the tenant (sect. 4, sub-s. (5)). The sub-tenant becomes tenant to the landlord.

NOTE.—A tenant may lawfully sub-let the premises, or part thereof, unless he is by agreement restrained from so doing. If he is so restrained he cannot give any title to possession to a sub-tenant. After various decisions as to the right of a statutory tenant to sub-let it has at length been decided that a statutory tenant, *i.e.*, a tenant who has received proper notice to quit, and holds over under the statute, may create a valid sub-tenancy of part of the premises but not of the whole. *Roe v. Russell*, (1928) 2 K. B. 117; 97 L. J. K. B. 290.

In this connection it is important to note that the definition of tenant (sect. 12, sub-s. (1) (g), of the 1920 Act) includes not only a sub-tenant but also includes the widow of a tenant dying intestate, who was residing with him at the time of his death, or, where the tenant dies intestate leaving no widow, or is a woman, then it includes such member of the tenant's family so residing as aforesaid as may in default of agreement be decided by the county court.

Penalties.]—If an order or judgment for possession or ejectment is obtained by the landlord by misrepresentation, the court may order him to pay the former tenant such sum as is sufficient to compensate him for the damage or loss he has sustained (sect. 4, sub-s. (6)).

Where the landlord has obtained possession since July 31st, 1923, under para. (d) of sub-s. 1 of sect. 4 by misrepresentation, the court may direct that the dwelling-house is not to be excluded from the operation of the Act by reason of the landlord having come into possession thereof, and in such case

the Act continues to apply to the dwelling-house (sect. 4, sub-s. (7)). (This clause first appears in the Act of 1923.)

Any person who, with intent to deceive, makes a false entry in a rent-book showing, or purporting to show, any tenant as being in arrears for any sum which is irrecoverable under any of the rent restriction Acts, or where, the entry having been made by or on behalf of the landlord, he refuses or neglects to delete such entry within seven days of request made by or on behalf of the tenant, is liable to a fine not exceeding 10*l*. The onus is on such person to prove that he acted innocently and without intent to deceive (sect. 14, sub-s. (2), of Act of 1920).

Distress.—No distress for rent of premises within the Act can be levied without the consent of the county court, and on such an application the court has the same extensive powers to adjourn, postpone, etc., as under sect. 5, sub-s. (2), of the Act (sect. 6 of Act of 1920). This jurisdiction is generally exercised by the registrar, but there is a right of appeal to the judge.

Exception.—Under sect. 160 of the County Courts Act, 1888, *i.e.*, where, an execution being already in, the landlord requires the bailiff to distrain for rent due to him to the limited extent to which this is permitted by the section, no leave is required (sect. 6 of Act of 1920).

This provision as to distress was in addition to the powers given by the Courts Emergency Acts now repealed.

Restriction on calling in Mortgages.—A mortgage to which the Act applies (see *ante*, p. 2492) cannot be called in, nor can steps be taken for foreclosure or sale, or otherwise enforcing the security or recovering the mortgage money, when:—

- (a) The interest permitted by the Act is paid, and is not more than twenty-one days in arrear; and
- (b) The covenants are kept; and
- (c) The mortgagor keeps the property in proper repair and pays the interest and instalments of principal recoverable under any prior encumbrance (sect. 7 of Act of 1920).

Exceptions.—(1) The above does not apply to a mortgage where the principal money is repayable by periodical instalments extending over a term not less than ten years from the creation of the mortgage, nor affect any power of sale exercisable by a mortgagee *in possession on March 25th, 1920*, nor apply when the mortgagor *consents* to the powers conferred by the mortgage being exercised (sect. 7).

(2) Where the mortgage is of *leaseholds*, and the mortgagee satisfies the county court that his security is wearing out or otherwise in jeopardy, and that it is reasonable the mortgage should be called in, the court may authorise him to do so, but may attach a condition that, if the mortgagor pays the mortgagee within a fixed time such part of the principal mortgage money as appears to correspond to the diminution of the security, the order shall not take effect (sect. 7, *proviso*).

A mortgage includes a land charge under the Land Transfer Acts, 1875 and 1897 (sect. 12 (*h*)).

The expressions "mortgagee" and "mortgagor" include any person from time to time deriving title under the original mortgagee or mortgagor (sect. 12, sub-s. (*f*)).

Premiums.—No fine, premium or other pecuniary consideration, other than the rent, may be required for granting, renewing or continuing a tenancy or sub-tenancy of premises within the Act. Where such a fine, etc., has been given since March 25th, 1920, it is recoverable.

Exceptions.—(1) An agreement for premises where such an illegal consideration has been given made between March 25th, 1920, and July 2nd, 1920, to which premises the present Act applies but the repealed Acts of 1915 and 1919 did not apply, is to be, *without prejudice to the operation of this section*, voidable at the option of either party (sect. 8).

(2) The section does not apply to the grant, renewal or continuance of a lease for fourteen years or more.

The taking of a fine, premium, etc., is made an offence punishable by a fine not exceeding 100*l.*, and the illegal fine, premium, etc., may be ordered to be repaid (sect. 8, sub-s. (2)).

This clause seems to apply even where the fine, premium, etc., was taken innocently between March 25th, 1920, and July 2nd, 1920, but it is confidently believed in such a case no penalty could or would be imposed.

Again, it was not unusual under the Act of 1920 for a landlord to require articles of furniture, etc., belonging to him to be purchased at an exorbitant price as a condition of the grant, renewal or continuance of a tenancy or sub-tenancy, or for the tenant to make a like demand as a condition of giving up possession. The Act of 1923 deals with this, and in either case requires that the vendor shall, if called on by the purchaser to do so, state in writing the price demanded for such furniture, etc., and if such price is unreasonable it is to be treated as a fine, premium, etc., and is made illegal and recoverable as under sect. 8 of the principal Act, and sect. 15, sub-s. (2), of the principal Act. The penal provisions of these sections are also to apply. See sect. 9, sub-ss. (1) and (2), of Act of 1923.

On the other hand a tenant retaining possession under the Act may neither ask for, nor receive, except from the landlord, any money or other consideration as a condition of giving up possession. If he does ask or take any such valuable consideration he makes himself liable to a fine not exceeding 100*l.*, and to an order for the return of such consideration (sect. 15, sub-s. (2)).

Letting of Furnished Houses.—Limitations are, by sects. 9 and 10 of the Act of 1920, imposed on the letting of furnished dwelling-houses, or parts of such houses. Section 9 is retrospective as well as prospective. Section 10 only applies to lettings after July 2nd, 1920.

By sect. 9 where a furnished dwelling-house or part of a furnished dwelling-house is let at a profit of more than 25 per cent. in excess of the normal profit, *i.e.*, the profit which might reasonably have been expected on August 3rd, 1914, the amount of such excess is irrecoverable, or if paid may be recovered by the tenant. This section applies to houses let under the repealed Acts, as well as to those let under the present Act.

Section 10 makes it an offence, punishable by fine not exceeding 100*l.*, to let, after the passing of the Act, any furnished dwelling-house or part thereof which is within the Act, at a rent which yields to the lessor an extortionate profit. In considering whether the profit is extortionate, regard must be had to all the circumstances, and in particular to the margin of profit (25 per cent.) allowed under sect. 9.

The jurisdiction under sect. 9 is given to the county court. The jurisdiction under sect. 10 where proceedings for a fine are taken is apparently given to a court of summary jurisdiction, but proceedings may be taken in the county court to recover the excess of profit even under sect. 10 where an order has not been made by the court imposing the fine.

By sect. 10, sub-s. (2), of the Act of 1923, the words "landlord and tenant" are substituted for the expressions "lessor and lessee" as in those sections used.

Business Premises.—(Now expired.)

Notice to Quit.—A tenant who under the Act retains possession of premises must, if he wishes to quit, give the notice required by his agreement, or if no notice is required he must give not less than three months' notice. On the other hand, a landlord who obtains an order or judgment for possession or ejectment need give no second notice to quit to the tenant (sect. 15, sub-s. (1), of Act of 1920).

General.—Where the Act has once become applicable to any premises or mortgage thereon, it continues to apply, whether or not the premises continue to be premises to which the Act applies (sect. 12, sub-s. (6)), but see sect. 2 (1) of the Act of 1923.

Where the rent payable in respect of premises is less than two-thirds of the rateable value, the Act does not apply to that rent or tenancy (nor to any mortgage by the landlord from whom the premises are held of his interest

therein), but the Act applies to such premises as if no such tenancy existed or had ever existed (sect. 12, sub-s. (7)).

NOTE.—A house let, say, in 1914, at so much under value, would not give a fair standard for the “standard rent.” Consequently the Act does not apply to the rent or tenancy, but in considering what would be the maximum rent legally demandable the rateable value in 1914 has to be considered instead of the rent actually paid. See definition “standard rent” (sect. 12, sub-s. (1) (a)). It is not so easy to see why the Act should not apply to a mortgage by the landlord of his interest in the premises.

It may be the Legislature was of opinion that, if a landlord chose to let the house or houses at considerably less than rateable value, the security was depreciated and there was no good reason why the mortgagee should not foreclose if he so desired.

Any sums paid before or after the passing of the Act for rent or mortgage interest which either by the Act or by the repealed Acts is made irrecoverable may be recovered from the landlord, or mortgagee, or his personal representative, and any such sum, or any other sum, recoverable from the landlord or repayable by him under the provisions of the Act may be deducted from rent or mortgage interest (sect. 14, sub-s. (1), of Act of 1920), but a landlord, in respect of rent becoming payable to him in consequence of an amendment of his notice of increase by a county court, can only recover such arrears for six months from the date of the order (sect. 8, sub-s. (1)), and a tenant can only recover sums made irrecoverable by sect. 14, sub-s. (1), of the principal Act within six months from the time of payment or in respect of payments made before the passing of the Act of 1923 within six months of the passing of that Act (sect. 8, sub-s. (2), of the Act of 1923).

If the interest of a tenant is in any way determined, any lawful sub-tenant becomes (subject to the provisions of the Act) the tenant of the landlord on the same terms as he held from the tenant (sect. 15, sub-s. (3)).

Acceptance of Rent.—Acceptance of rent after the expiration of notice to quit, for a period not exceeding three months, is not to prejudice any right to possession, but if an order for possession is made the rent so paid is to be treated as mesne profits.

NOTE.—This is a very useful provision. A landlord after his notice expired who accepted rent from the tenant, at all events under the name of “rent,” created a new tenancy and the notice to quit was consequently bad.

Jurisdiction of County Court.—Section 17, sub-s. (2), of the Act gives a general jurisdiction to the county court to deal with *any claim or other proceedings* arising out of the Act or any of its provisions, notwithstanding that the claim, on account of the amount or otherwise, would not be within the jurisdiction of the court. The jurisdiction of the High Court, except in so far as the Act expressly declares that the proceedings are not to be taken therein, is not in words excluded, but the same section declares that if a person takes any proceedings in the High Court which he could have taken in a county court *he shall recover no costs*.

New Provisions contained in Act of 1923.—Of what may be called entirely new provisions as opposed to amendments contained in the Act of 1923, the following may be mentioned:—

Decontrolment.—Where the landlord of a house to which the Acts apply was in possession of the whole house at the date of the passing of the Act of 1923 (July 31st, 1923) or comes into possession of it after this date, then from such time that he comes into possession, the principal Act is to cease to apply to such house (sect. 2, sub-s. (1)).

This clause is not to apply to a part of a house lawfully sub-let, though the tenant comes into possession of such part, and if the landlord is in or gets possession of part of the house the Act ceases to apply to such part, though a sub-tenant may be in lawful possession of another part (sect. 2, sub-s. (1)).

The section does not apply where the landlord recovers possession of the house for non-payment of rent (sect. 2, sub-s. (1)), nor in some cases where the order for possession is rescinded. See *post*, pp. 2539–41.

Where the house is by lease or agreement demised or let for a period ending *not earlier than one year after the date fixed at the time at which the lease is granted for the expiration of the principal Act*, and the term is not less than two years, the principal Act ceases to apply to the house, and a premium or fine may be stipulated for, but, even in such a case the right of any sub-tenant is preserved (sect. 1, sub-s. (2) (3)).

NOTE.—The words in italics are new. See Rent and Mortgage Interest (Restrictions Continuation) Act, 1925, *post*, p. 2555.

Possession means actual possession ; and a landlord is not to be deemed in possession by reason only of a change of tenancy made with his consent (sect. 2, sub-s. (3)).

Again, where such a lease or agreement as is described in sec. 2, sub-s. (2), *supra*, has been entered into *before* the passing of the 1923 Act which expires at some date after June 24th, 1923, at a rent which after, but not before, this date exceeds the statutory rent, the landlord may by three months' notice in writing, expiring not earlier than December 21st, 1923, or later than March 31st, 1924, determine the lease or tenancy, but the lessee or tenant may within a month from such notice give the landlord notice in writing that he elects to abide by the lease or agreement and its terms, and then the lease or agreement is to remain in full force including the rent reserved, unaffected by the principal Act (sect. 3 of Act of 1923).

The county court has now power, on application of landlord or tenant, to determine summarily any question as to amount of rent, standard rent, or net rent of any house within the Act, or as to the increase of rent permitted by the Act of 1920 and the Act of 1923 (sect. 11, sub-s. (1), of Act of 1923), even though no action is pending in the court.

Restrictions after expiry of Principal Act.—Even after the principal Act has expired, if proceedings to recover or eject are taken against the tenant (called the sitting tenant) the court may refuse to make the order if it appears harsh or oppressive that it should be made or may stay or suspend the order on terms, and if the terms are complied with subsequently discharge or rescind it (sect. 12, sub-s. (1)), or may direct that the tenancy of the sitting tenant be treated as a subsisting tenancy and may set aside any notice to quit and determine the fair increase of rent (if any) to be paid (sect. 12, sub-s. (2)). This must not be done if greater hardship would be caused to the landlord by the exercise of such powers than would be caused to the tenant by the refusal (sect. 12, sub-s. (3)).

Even in such cases the rights of sub-tenants are provided for and protected (sect. 12, sub-s. (4)).

Sect. 12 does not apply to proceedings for the recovery of small houses within the Small Tenements Recovery Act, 1838, and on application of the sitting tenant any such proceedings are to be discontinued (subject to rules which may be made for transfer to the county court) (sect. 12, sub-s. (6)).

A sitting tenant of the house which is not in reasonable repair owing to the landlord's default may ask the court to reduce the rent until the repairs are done, and the court is given power to make such reduction (sect. 13).

The county court may, where the house is in occupation of a sitting tenant, on the application of the landlord, restrain the mortgagee from calling in his mortgage or enforcing his security on recovering the principal money if this would cause the landlord exceptional hardship, and rescind or vary any order made for this purpose (sect. 14, sub-s. (1)).

When such an order is made restrictions may be imposed on the mortgagee. These restrictions are set out in sect. 14, sub-s. (2).

Sect. 14 does not apply to a mortgage where money is repayable by instalments extending over a term of not less than ten years.

Reference committees may be appointed by the Minister of Health, to whom questions may be referred by the county court under this part of the Act (sect. 12, sub-s. (5)).

Rules are to be made as to these reference committees (sect. 15), and power is given also to the Lord Chancellor to make rules for giving effect to this part of the Act.

This part of the Act (*i.e.*, the part relating to the restrictions after expiry of the principal Act) remains in force *until five years after the expiration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920*, as amended unless Parliament otherwise determines.

NOTE.—The words, *supra*, in italics are new. See Rent and Mortgage Interest (Restrictions Continuation) Act, 1925.

COURTS (EMERGENCY POWERS) ACT, 1914.

[4 & 5 GEO. 5, c. 78.]

AN ACT TO GIVE, IN CONNEXION WITH THE PRESENT WAR, FURTHER POWERS TO COURTS IN RELATION TO THE REMEDIES FOR THE RECOVERY OF MONEY, AND IN RELATION TO OTHER SIMILAR MATTERS. [*For all practical purposes repealed.*]

Continued by Expiring Laws Continuance Acts only so far as relates to orders made by any court before the 31st day of August, 1922.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

(As amended by Rent and Mortgage Restrictions Act, 1923.)

[10 & 11 GEO. 5, c. 17 (*aa*).]

[13 & 14 GEO. 5, c. 32.]

NOTE.—Some of the cases cited below were decided under former Acts, now repealed. They must not be regarded as necessarily of authority under the present Acts.

AN ACT TO CONSOLIDATE AND AMEND THE LAW WITH RESPECT TO THE INCREASE OF RENT AND RECOVERY OF POSSESSION OF PREMISES IN CERTAIN CASES, AND THE INCREASE OF THE RATE OF INTEREST ON, AND THE CALLING IN OF SECURITIES ON SUCH PREMISES, AND FOR PURPOSES IN CONNECTION THEREWITH.

[2ND JULY, 1920.]

Be it enacted, etc.

Restrictions on Increase of Rent and Mortgage Interest.

1. Subject to the provisions of this Act, where the rent of any dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the twenty-fifth day of March nineteen hundred and twenty, or is hereafter, increased (*a*), then, if the increased rent or the increased rate of interest exceeds by more than the amount permitted under this Act the standard rent or standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be :

(*a*) *King v. York*, (1919) 88 L. J. K. B. 839. The rent cannot be raised to a new tenant except as permitted by the Act. The Act operates *in rem*

(*aa*) See General Note on the Act, *ante*, pp. 2490 *et seq.*

Restriction
on increasing
rent and
mortgage
interest.

and not in personam : *Epsom Grand Stand Association v. Clarke*, (1919) W. N. 170 ; *Brakspear v. Barton*, (1924) 93 L. J. K. B. 801 ; *Ellen v. Goldstein*, (1920) 89 L. J. Ch. 586. An hotel may be a dwelling-house, as may also a house or flat used partly for lodgers if there is a substantial user of it by the tenant for residential purposes (*Colls v. Parnham*, (1922) 1 K. B. 325 ; 91 L. J. K. B. 335). See, as to rent of cottage given as part of his wages to an agricultural labourer and the power to deduct an increased rent under the Corn Production Act, 1917 (7 & 8 Geo. 5, c. 46), and the orders made thereunder, *Baker v. Wood*, (1920) 89 L. J. K. B. 344. Where by agreement made on March 12th, 1920, increased rent was stipulated for to commence on March 26th, 1920, which rent exceeded by more than the permitted additions the standard rent in 1914, such increase is irrecoverable (*Raikes v. Ogle*, (1921) 1 K. B. 576 ; 90 L. J. K. B. 588. See also *Glossop v. Ashley*, (1921) 2 K. B. 451 ; 90 L. J. K. B. 1237). *Poplar Assessment Committee v. Roberts*, (1922) 2 A. C. 93 ; 91 L. J. (H. L.) 449, which case decided that the Act does not affect the rateable value of the hereditaments to which it applies.

If the premises are let at less than the standard rent the landlord cannot, after notice, raise the rent to the standard rent, and any permitted increases must be calculated upon the standard rent, and not the actual rent (*Dufty v. Palmer*, (1924) 2 K. B. 35 ; 93 L. J. K. B. 548).

If the tenant becomes a bankrupt and his trustee in bankruptcy disclaims the tenant's interest in the premises is at an end, and he cannot claim the benefit of the Act, *Parkinson and Exors. v. Noel* (1923) 1 K. B. 117 ; 92 L. J. K. B. 261.

Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-house or the rate of interest on any such mortgage since the said date, but before the passing of this Act, he may cancel such increase and repay any amount paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.

Permitted
increases in
rent.

2.—(1) The amount by which the increased rent of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say :—

(a) Where the landlord has since the fourth day of August nineteen hundred and fourteen incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding six, or, in the case of such expenditure incurred after the passing of this Act, eight per cent. of the amount so expended :

Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly :

(b) An amount not exceeding any increase in the amount for the time being payable by the landlord in respect of rates over the corresponding amount paid in respect of the

yearly, half-yearly or other period which included the third day of August nineteen hundred and fourteen, or in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which included the date on which the rates first became payable thereafter :

Where the rates are increased by an increase in the rateable value and the landlord has to pay such increased rate, he may raise the rent to the extent he is so obliged to pay without transgressing this section of the Act, though the rate itself has not been increased (*Steel and Another v. Mahoney*, (1918) 34 T. L. R. 327).

Only the net and not the gross increase in rates may be added. The landlord cannot take into account the advantage he gets by compounding for them (*Nicholson v. Jackson*, House of Lords, (1921) 90 L. J. K. B. 1121; *Conolly v. Whelan*, (1920) Ir. L. T. 18). As to the period over which the rate extends and the period for which the increase can be demanded, see *Cardiff Corporation v. Isaacs* (1921), 90 L. J. K. B. 1108.

Where the increase, on account of increase of rates, has been properly made, but the rates are subsequently reduced, the rent must be henceforward reduced *pro rata* (*Strickland v. Palmer*, (1924) 2 K. B. 572; 93 L. J. K. B. 1033).

- (c) In addition to any such amounts as aforesaid, an amount not exceeding fifteen per centum of the net rent :

Provided that, except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the amount of such addition shall not, during a period of one year after the passing of this Act, exceed five per cent. :

- (d) In further addition to any such amounts as aforesaid—

(i.) where the landlord is responsible for the whole of the repairs, an amount not exceeding twenty-five per cent. of the net rent ; or

(ii.) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the county court to be fair and reasonable having regard to such liability :

NOTE.—Before the landlord, who is responsible for part repairs only, can give notice of increase under this clause (clause (d)) the amount for which the tenant is responsible must have been ascertained, either by agreement or determined by the county court (see *Bourne v. Litton*, (1924) 1 K. B. 231; 2 K. B. 10; 93 L. J. K. B. 553; *Brakspear v. Barton*, (1924) 93 L. J. K. B. 801; *Jones v. Phillips and Geen*, (1925) 1 K. B. 659; 94 L. J. K. B. 413).

- (e) In the case of dwelling-houses let by a railway company to persons in the employment of the company, such additional amount, if any, as is required in order to give effect to the agreement dated the first day of March nineteen hundred and twenty, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement,

whether made before or after the passing of this Act, extending or modifying that agreement.

Apparently inserted to carry out an arrangement as to pay of railway servants; dated March 1st, 1920.

NOTE.—Further increases are now permitted in the case of sub-tenancies (see sect. 7 of Act of 1923, *post*, p. 2547).

(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (d) of the foregoing sub-section, the tenant or the sanitary authority may apply to the county court for an order suspending such increase, and also any increase under paragraph (c) of that sub-section, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair.

The court on being satisfied by the production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied.

This sub-section is not repealed, but increased rights are given to the tenant by sects. 5 and 18 of the 1923 Act. The obtaining a certificate from the sanitary authority that the house is not in a reasonable state of repair, and serving the landlord with a copy thereof, is made *prima facie* a defence to any claim by the landlord for increased rent under para. (c) or para. (d) of sub-sect. (1) of sect. 2 of the principal Act (*i.e.*, the increases of 15 per cent. and 25 per cent.) unless the condition of the house is due to the tenant's neglect or default or breach of agreement (sect. 5 of Act of 1923).

Under the former section the tenant had to wait for three months after the increase before applying to the court, and the court then could only suspend the increases until the repairs had been done.

Sect. 18 prescribes what the certificate of the sanitary authority shall deal with, and makes such a certificate signed by the proper officer evidence, also the certificate of the county agricultural committee (under sect. 5, sub-s. (11) of the principal Act), and declares that the expression "repairs" shall be deemed to mean "good and tenable repair."

See *Morgan v. Liverpool Corporation*, (1927) 96 L. J. K. B. 234.

(3) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the

result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act: Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

See *Artizans Labourers Dwellings Co., Ltd. v. Whittaker*, (1919) 88 L. J. K. B. 859; *Hornsby v. Maynard*, (1925) 1 K. B. 514; 94 L. J. K. B. 380; *Ebner v. Lascelles*, (1928) 97 L. J. K. B. 497.

(4) On any application to a sanitary authority for a certificate or report under this section a fee of one shilling shall be payable, but, if the authority as the result of such application issues such a certificate as aforesaid, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

See sect. 18 of Act of 1923.

(5) For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

See sect. 18, sub-s. (5) of Act of 1923. See *ante*, p. 2495.

See *Proudfoot v. Hart*, (1890) 25 Q. B. D. 42.

(6) Any question arising under sub-section (1), (2) or (3) of this section shall be determined on the application either of the landlord (a) or the tenant by the county court, and the decision of the court shall be final and conclusive.

"Final and conclusive" in the above sub-section means that they are so in special applications under these sub-sections only, otherwise the general right of appeal, on a question of law raised under the Rent Acts, from the county court to the High Court remains (*Strickland v. Palmer*, (1924) 2 K. B. 572; 93 L. J. K. B. 1033).

(a) The word "landlord" in the above clause includes, in relation to a sub-tenancy, not only the person who is immediate landlord of the sub-tenant, but also the landlord of that person (sect. 7 (3) of Act of 1923).

A county court judge, however, had no jurisdiction to entertain an action to determine what is the proper standard rent as a purely abstract question. He could only deal with it when it arose in connection with some dispute (*Broomhall v. Property Agents and Owners, Ltd.*, (1922) 1 K. B. 311; 91 L. J. K. B. 332), though he had jurisdiction under sect. 12, sub-s. (3), to make an apportionment of the rent of a house to which the Act applies, though no action is pending (*Rex v. Marylebone County Court Judge*, (1923) 1 K. B. 365; 92 L. J. K. B. 367).

This is altered by sect. 11 of the Act of 1923. See *post*, p. 2549.

3.—(1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which, but for this Act, the landlord would be entitled to obtain possession, or any increase in the rate of interest on a mortgage except

Limitation as to permitted increases in rent.

respect of a period during which, but for this Act, the security could be enforced.

It was finally decided by the House of Lords in the case of *Kerr v. Bryde*, (1923) 92 L. J. (H. L.) that no notice of increase was valid unless a valid notice to quit had been given, and the term had expired, but this has been virtually repealed by the Rent Restrictions (Notices of Increase) Act, 1923, which, where notice to increase the rent has been given, declares that a notice to quit shall be implied. See *post*, p. 2535.

Newell v. Crayford Cottage Society, (1922) 1 K. B. 656; 91 L. J. K. B. 626.

Although rent could not be raised until the determination of the tenancy by notice or otherwise (A. C. 16), yet notice to increase the rent may be given during the continuance of the tenancy, though it can only operate after. The notice to increase and the notice to quit may be given at the same time (*Hill v. Hasler*, (1921) 3 K. B. 643; (1922) 91 L. J. K. B. 134). See new Act.

The former Act applied even where the tenant himself has given notice to quit and then holds over; but see sect. 5, sub-s. (1) (c), of this Act, *post*, p. 2510.

Schmidt v. Christy, (1922) 2 K. B. 60; 91 L. J. K. B. 629. Under Act of 1920 even on granting new tenancy to under-tenant notice to quit was necessary before standard rent could be increased.

(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house to which this Act applies is increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four clear weeks, or, where such increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice in writing (a) of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act, or in a form substantially to the same effect. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

(a) NOTE.—The court may now amend a defective notice on terms (sect. 6 of Act of 1923, *post*, p. 2546).

See *Bridges v. Chambers*, (1919) 88 L. J. K. B. 500; *Hill v. Hasler* (*supra*). Where the landlord claimed a greater increase than he was entitled to under the Act the notice was held to be invalid, though it substantially conformed to the form required by the Act (*Penfold and Thompson v. Newman*, (1922) 1 K. B. 645; 91 L. J. K. B. 528).

The notice to increase is necessary, not only where a tenant is in occupation under the Act after the expiry of his tenancy, but also (subject to the exception at the end of the above sub-section) in the case of a new tenant (*Schmidt v. Christy*, (1922) 2 K. B. 60; 91 L. J. K. B. 629).

(3) A notice served before the passing of this Act of an intention to make any increase of rent which is permissible only by virtue of this Act shall not be deemed to be a valid notice for the purpose of this section.

4. The amount by which the increased rate of interest payable in respect of a mortgage to which this Act applies may exceed the standard rate, shall be an amount not exceeding one per cent. per annum :

Permitted increase in rate of mortgage interest.

Provided that—

- (a) the rate shall not be increased so as to exceed six and a half per cent. per annum ; and
- (b) except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the increase during a period of one year after the passing of this Act shall not exceed one-half per cent. per annum.

The mortgagee is only entitled to the above increases, and not to increases which might have been lawful under the repealed Act of 1915 (*Hollings v. Cooper*, (1922) 91 L. J. Ch. 297).

Further Restrictions and Obligations on Landlords and Mortgagees.

Restriction on right to possession

Section 4 of Act of 1923 substituted for sect. 5 of principal Act.

Sect. 4 for 5.—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given, unless—

NOTE.—A publichouse which contains dwelling-house accommodation is “a dwelling-house” within the Act (*Waller & Son, Ltd. v. Thomas*, (1921) 1 K. B. 541). *Quære*, if it may not also be business premises within sect. 13 of the Act, which section has, however, now expired.

Where the action to recover possession is brought in the High Court and the Act is relied upon as a defence, no order for summary judgment can be made under Order XIV. (*Gill v. Luck*, (1924) 93 L. J. K. B. 60).

An action against a trespasser for the recovery of premises *prima facie* within the protection of the Rent Restriction Act, is not an action arising out of the Act within the meaning of sect. 17, sub-s. (2) of the Act of 1920 (*Gunter v. Davis*, (1925) 1 K. B. 124 ; 94 L. J. K. B. 352).

- (a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed ; or

See *ante*, p. 2497.

A lessee of a term must continue to pay rent to his landlord though the premises were requisitioned by the War Office, who entered into possession of them (*Whitehall Court, Ltd. v. Ettlinger*, (1920) 89 L. J. K. B. 126).

If a statutory tenant commits breaches of covenant of the lease under which he held the premises he is not entitled to relief under the Conveyancing Act, 1881, for the provisions of this Act as to relief are not applicable to a statutory tenant (*Brewer v. Jacobs*, (1923) 92 L. J. K. B. 359).

- (b) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing

the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person, and, where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant; or

"Convicted of using the premises or allowing them to be used for an immoral or illegal purpose." A tenant convicted of receiving at the premises goods knowing them to have been stolen is within this clause, and may be ejected (*Schneiders and Sons v. Abrahams*, (1925) 1 K. B. 301; 94 L. J. K. B. 408).

(c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

A departure of the tenant without giving any notice to quit does not satisfy the requirements of this clause (clause (c)) (*Standingford v. Bruce*, (1926) 95 L. J. K. B. 223).

Where the tenant gave notice to quit, and during the currency of such notice, with the landlord's consent, sub-let the premises for the remainder of the unexpired notice, it was held that the person so obtaining possession of the premises was not a sub-tenant within the meaning of the Act; and though he had not given notice to quit, the landlord was entitled to an order for recovery of the premises against him (*Lord Hylton v. Heal*, (1921) 2 K. B. 438; 90 L. J. K. B. 606).

The words of this clause (c) must be strictly complied with before an order for possession is made under it. Thus, where the tenant agreed with the landlord, who wished to sell the house with vacant possession, for a consideration to give notice to quit and deliver up the house on the termination of such notice, and afterwards refused to do so, no order for possession can be made, for no "notice to quit" had been given by the tenant (*Barton v. Fincham*, (1921) 2 K. B. 291 90 L. J. K. B. 451; *De Vries v. Sparks*, (1927) 137 L. T. 441).

NOTE.—As to liability to be sued for double rent under the Rent Act of 1737, see *Crook v. Whitehead*, (1919) 35 T. L. R. 522; and *Green Price v. Webb*, (1919) 36 T. L. R. 29. See also *Hunt v. Bliss*, (1920) 89 L. J. K. B. 174. If the tenant gives notice to quit and then remains in possession he is liable to pay double rent under the Act of 1737, notwithstanding the provisions of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, as amended by sect. 1 of the Increase of Rent, &c. (Amendment) Act, 1918 (*Flannagan v. Shaw*, (1920) 3 K. B. 96), even where after expiration of the notice the landlord assigns his reversion to another (*Northcote v. Roche*, (1921) 37 T. L. R. 364).

In the cases where the application is made under clause (a), (b) or (c) (*supra*), no question of alternative accommodation can arise (*Waller & Son, Ltd. v. Thomas*, (1921) 1 K. B. 541).

Where a closing order for the house has been made by a local authority and the tenant has not given up possession in the stipulated time, he cannot retake possession of the house after the house has been repaired. He is not protected by the Act (*Blake v. Smith*, (1921) 90 L. J. K. B. 1140).

(d) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any son or daughter of his over eighteen years of age, or for any person *bonâ fide* residing with him, or for some person engaged in his whole time employment or in the whole time employment of some tenant from him or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, and (except as otherwise provided by this sub-section) the court is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character, and proximity to place of work and which consists either of a dwelling-house to which this Act applies, or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies ;

See now, where the dwelling-house is required by the landlord as a residence for himself, or for any son or daughter over eighteen years of age, and no alternative accommodation is available, sect. 1 of the Prevention of Eviction Act, 1924 (*post*, p. 2554), substituted for paragraphs (iv.) and (v.) of sub-s. 1 of this section. The effect seems to be that if alternative accommodation is available, such an application ought to be made under clause (d), *supra*. If there is no alternative accommodation the application should be based on sect. 1 of the Prevention of Eviction Act, which lays down the test of greater hardship (*Thompson v. Rolls*, (1926) 2 K. B. 426 ; 95 L. J. K. B. 901).

See *Crutchley v. White*, (1920) 89 L. J. K. B. 815 ; *Rex v. Rogers*, (1918) W. N. 128 ; *Smith v. Bridgen*, (1920) W. N. 106. Where the house is so required, the onus is on the tenant to show the absence of "alternative accommodation." See *Bazalgette v. Hampson*, (1920) 89 L. J. K. B. 476. The alternative accommodation must be available at the time the action is before the court, and, generally speaking, the onus is upon the landlord seeking an order of possession to satisfy the court that this is so (*Neville v. Hardy*, (1921) 1 Ch. 404 ; 90 L. J. Ch. 158 ; also *Kimpson v. Markham*, (1921) 2 K. B. 157 ; 90 L. J. K. B. 393). The mere fact of a tenant having another dwelling-place does not necessarily absolve the landlord from showing that alternative accommodation for the house he desires to recover is available (*Flint v. Ead*, (1922) 91 L. J. K. B. 132). The Act applies to tenancies for fixed terms in the same way as to continuing tenancies which are determinable by a notice to quit ; see *Cruise v. Terrell*, (1922) 1 K. B. 664 ; 91 L. J. K. B. 499.

The person for whom the house is required (if a servant) must not only have been engaged for a whole-time employment but have been actually working for the landlord at the time of the application to the court. *Spencer v. Fox*, (1922), 91 L. J. K. B. 929. Now it is sufficient if a contract for such employment has been entered into. See *supra*, sub-s. (d).

or,

(e) the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of a

local authority, or statutory undertaking, or for any purpose which, in the opinion of the court, is in the public interest, and the court in either case is satisfied as aforesaid as respects alternative accommodation ; or

The Rent Restriction Acts impose no obligation on a local authority seeking to recover possession of a dwelling-house of showing that alternative accommodation is available where the premises are required for an improvement scheme under the Housing, Town Planning, etc., Acts. See sect. 128 of Housing Act, 1925 (15 Geo. 5, c. 14), and *Parry v. Harding*, (1925) 1 K. B. 111 ; 94 L. J. K. B. 37.

- (f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances ; or

The court is, in an application for possession under this clause, entitled to consider who are persons in actual occupation at the time, even though one of those persons may be a lodger in the house. The amount of furniture the tenant requires may also be one of the circumstances to be taken into account by the judge (*Chiverton v. Ede*, (1921) 2 K. B. 30 ; 90 L. J. K. B. 491).

- (g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war ;

That the landlord reasonably requires the premises for a new tenant does not justify the court in making an order for possession, as a new tenant is not a person named in the Act (*Price v. Pritchard*, (1920) 89 L. J. K. B. 162).

Under clause (g), *supra*, it is not the returned soldier who acquires any right to eject the tenant in occupation of the house he gave up to serve in the forces. The court can make the order under this clause, as under the other clauses of sect. 5, only if the action is brought by the landlord of the premises and he alleges this as his reason for desiring an order of recovery (*Goodwin v. Rhodes*, (1921) 2 K. B. 182 ; 90 L. J. K. B. 533 ; *Messenger v. Hutton*, (1921) 37 T. L. R. 464).

- (h) the tenant without the consent of the landlord has at any time after the thirty-first day of July, nineteen hundred and twenty-three, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let ; or

- (i) the dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the licensing justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused ;

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

The county court judge is not deprived of the discretion conferred on him from extending the time for possession owing to the fact that the original order was one made by consent (*Rossiter v. Langley*, (1925) 1 K. B. 741; 44 L. J. K. B. 400).

In every case the judge, before making an order for possession, must take into consideration every circumstance that may affect the interest of the landlord or tenant, including the financial hardship, if any, which the tenant must suffer if the order was made (*Williamson v. Pallant*, (1924) K. B. 173; 93 L. J. K. B. 726).

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (d) of this sub-section—

- (i.) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

It must be shown not only that the landlord let, but that the tenant, took the dwelling-house in consequence of the employment (*Frederick Braby & Co. v. Bedwell*, (1926) 1 K. B. 456; 95 L. J. K. B. 412).

This sub-section was held to apply though after the tenant left the employment he continued to occupy the house at a higher rent than before, but the facts were exceptional (*Lever Bros. v. Caton*, (1921) 37 T. L. R. 664).

- (ii.) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding, or with whom, conditional on housing accommodation being provided, a contract for employment on such work has been entered into;
- (iii.) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or
- (iv.) where the landlord or the husband or wife of the landlord became the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age; or
- (v.) where the landlord or the husband or wife of the landlord did not become the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the court is satisfied that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.

The above paragraphs (iv.) and (v.) printed in italics are repealed by the Prevention of Eviction Act, 1924 (14 & 15 Geo. 5. c. 18, sect. 1), *post*, p. 2554, as respects pending as well as future proceedings, and the following paragraph is substituted therefor :—

Where the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the fifth day of May, nineteen hundred and twenty-four) for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the court is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or the tenant, that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.

The test is now, where the house is required by a landlord for a residence for himself or for his son or daughter over eighteen years of age, would greater hardship be caused by refusing the application than by granting it. This is the test irrespective of the date at which the landlord purchased the house, or any interest therein, so long as he has not purchased since May 5th, 1924.

The question of alternative accommodation only enters into the matter as being one of the factors to be considered in deciding the question of greater hardship.

See Prevention of Eviction Act, 1924, *post*, p. 2554.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

NOTE.—The Prevention of Eviction Act, 1924, contains a clause similar to the above (clause 3), where the order or judgment would not, in the opinion of the court, have been made or given if the Prevention of Eviction Act

had been in force at the time it was made. See sect. 2 of this Act, *post*, p. 2554.

The word "may" in the above sub-section means "may" and not "shall." It is entirely in the judge's discretion (*Taylor v. Faires*, (1921) 90 L. J. K. B. 391).

The above sub-section does not apply where the order sought to be rescinded or varied was made by consent (*Wellesley v. White*, (1921) 2 K. B. 204; 90 L. J. K. B. 926); but see as to general power of the county court judge to extend the time for giving possession even where the order was made by consent of the parties *Rossiter v. Langley*, (1925) 1 K. B. 741; 94 L. J. K. B. 400 (*Wellesley v. White*, *supra*, distinguished).

(4) Notwithstanding anything in section one hundred and fifty-four of the County Courts Act, 1888, or in section one of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct. 51 & 52 Vict. c. 43.
1 & 2 Vict. c. 74.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant.

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

(7) The provisions of the last preceding sub-section shall apply in any case where the landlord has, after the thirty-first day of July, nineteen hundred and twenty-three, obtained an order or judgment for possession or ejectment on any of the grounds specified in paragraph (d) of sub-section (1) of this section, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or concealment of material facts, and in any such case the court may, if it thinks fit, in addition to making an order for payment of compensation by the landlord to the former tenant, direct that the dwelling-house shall not

be excluded from this Act by reason of the landlord having come into possession thereof under the said order or judgment, and, if such a direction is given, this Act shall apply and be deemed to have applied to the dwelling-house as from the date mentioned in such direction.

No agreement between parties can give the judge jurisdiction which by sect. 5 of the Act he is forbidden to exercise except under the conditions laid down in the section (*Barton v. Fincham*, (1921) 37 T. L. R. 386).

Restriction
on levy of
distress for
rent.

6. No distress for the rent of any dwelling-house to which this Act applies shall be levied except with the leave of the county court, and the court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by the last preceding section of this Act in relation to applications for the recovery of possession :

Provided that this section shall not apply to distress levied under section one hundred and sixty of the County Courts Act, 1888.

4 & 5 Geo. 5,
c. 78.

The provisions of this section shall be in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914 (a), or any Act amending or extending the same, except so far as those provisions are repealed by this Act.

(a) The Courts (Emergency Powers) Act, 1914, is now virtually repealed.

The court to which application is made for leave to distrain in exercising its discretion is not restricted to the consideration of whether inability to pay is due to the war, but must look at all other questions raised under this section, such for example as the question whether the rent is really due and payable by the tenant (*Townsend v. Charlton*, (1922) 1 K. B. 700; 91 L. J. K. B. 714).

Restriction
on calling in
of mort-
gages.

7. It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as—

(a) interest at the rate permitted under this Act is paid and is not more than twenty-one days in arrear; and

(b) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed; and

A mortgagor out of possession cannot rely on the fact that he cannot enter to do the repairs required by the covenant (*Walters v. Smith*, (1917) 33 T. L. R. 154). Interest is not paid merely from the fact that the mortgagee is in possession and in receipt of the rents (*Walters v. Smith*, *supra*).

(c) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured :

When any of the conditions of the mortgage set out in the above section are once broken, the mortgagor loses the protection of the Act and a sub-

sequent compliance does not revive the protection (*Evans v. Horner*, (1925) 11 Ch. 177).

As to what is "a proper state of repair," see *Woodfield v. Bond*, (1922) 2 Ch. 40; 91 L. J. Ch. 561.

This section applies retrospectively where the writ for foreclosure or sale was issued before the prohibition came into operation (*Welby v. Parker*, (1916) 2 Ch. 1). "Mortgage." See *London County and Westminster Bank v. Tomkins*, (1918) 1 K. B. 515; 87 L. J. K. B. 662.

Provided that—

- (i.) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was on the twenty-fifth day of March nineteen hundred and twenty a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage; and
- (ii.) if, in the case of a mortgage of a leasehold interest the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this section shall not apply to such mortgage; but any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the court directs pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security.

See sect. 14 of Act of 1923, as to rights of mortgagee after the expiry of the principal Act.

8.—(1) A person shall not, as a condition of the grant, renewal, Restriction
or continuance of a tenancy or sub-tenancy of any dwelling-house on premiums.
to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the twenty-fifth day of March nineteen hundred and twenty, the amount or value thereof shall be recoverable by the person by whom it was made or given:

See sect. 9 of Act of 1923, *post*, p. 2548.

See now sect. 2, sub-s. (2), of Act of 1923, allowing premium to be obtained in certain cases where a lease of his dwelling-house has been granted, *post*, p. 2541; also sect. 3 as to the rights of parties where a lease or agreement for a term was granted before the Act of 1923 came into force.

NOTE.—The assignment of a lease or residue of a term for valuable consideration is not within the prohibition contained in this sub-section (*Mason, Herring and Brooks v. Harris*, (1921) 1 K. B. 653; 90 L. J. K. B. 993). The word “grant” in the sub-section probably refers to the creation of a tenancy between the grantor and the grantee, and not an assignment of a tenancy (*id.*) even where the tenant who surrenders the remainder of his term for valuable consideration induces the landlord to grant a new tenancy to the person who pays him the consideration (*Remington v. Larchin*, (1921) 3 K. B. 404; 90 L. J. K. B. 1248).

Provided that, where any agreement has been made since the said date but before the passing of this Act for the tenancy of a house to which this Act applies, but the enactments repealed by this Act did not apply, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy.

See Courts (Emergency Powers) Act, 1917, sect. 4 (1), now repealed.

NOTE.—Where after the passing of the Act of 1923 a valid lease or agreement for the letting of the dwelling-house for a term ending after June 24th, 1926, is entered into, being a term of not less than two years, the principal Act ceases to apply to the house and a premium or fine may be stipulated for, but the right of the sub-tenant is still preserved (sect. 2, sub-s. (2), of Act of 1923).

NOTE.—The words in italics are repealed. The words substituted are “not earlier than one year after the date fixed at the time at which the lease is granted, for the expiration of the principal Act.” See Rent and Mortgage Interest (Restrictions Continuation) Act, 1925, sect. 1, 3 (b).

The whole transaction must be looked at. If under the guise of lease and premium the agreement amounts to one to pay more than the standard rent, it is a bad agreement and unenforceable (*Rush v. Matthews*, (1926) 1 K. B. 492; 95 L. J. K. B. 409).

Limitation
on rent of
houses let
furnished.

9.—(1) Where any person lets, or has, before the passing of this Act, let any dwelling-house to which this Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged is yielding or will yield to the lessor a profit more than twenty-five per cent. in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per cent. shall be

irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee.

(2) For the purpose of this section, "normal profit" means the profit which might reasonably have been expected from a similar letting in the year ending on the third day of August nineteen hundred and fourteen.

See purchase of furniture at unreasonable price, sect. 9 of Act of 1923, *post*, p. 2548.

10. Where any person after the passing of this Act lets any dwelling-house to which this Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the lessor a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under the last preceding section of this Act, is extortionate, then, without prejudice to any other remedy under this Act, the lessor shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent so far as it exceeds the amount permitted by the last preceding section of this Act shall be irrecoverable and that the amount of any such excess shall be repaid to the lessee, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

11. A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds

Application and Interpretation of Act.

12.—(1) For the purposes of this Act, except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let:

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard

Penalty for excessive charges for furnished lettings.

Statement to be supplied as to standard rent.

Application and interpretation.

rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent ;

See *Marchbank v. Campbell*, *Woodhead v. Putnam*, (1923) 1 K. B. 245 and 252 ; 92 L. J. K. B. 137, as to determining the standard rent of a dwelling-house created by the division of an existing dwelling-house into flats or tenements, also *Lelyveld v. Peppercorn*, (1924) 2 K. B. 638 ; 93 L. J. K. B. 1057.

Where premises were let in 1914 at a peppercorn or nominal rent on building lease, such rent being less than two-thirds of the rateable value, within sect. 12 (7) of the Rent Act of 1920, the county court judge has no power for the purpose of ascertaining the rent of part of the premises in 1924, to fix a hypothetical standard rent of the whole premises. The Rent Restriction Acts deal only with real and not with imaginary rents (*Joy v. Eppner*, (1925) 1 K. B. 362 ; 94 L. J. K. B. 157).

- (b) The expression "standard rate of interest" means, in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest ;
 - (c) The expression "net rent" means, where the landlord at the time by reference to which the standard rent is calculated paid the rates chargeable on, or which but for the provisions of any Act would be chargeable on the occupier, the standard rent less the amount of such rates, and in any other case the standard rent ;
- See *Westcott v. Bowes*, (1925) 94 L. J. K. B. 492.
- (d) The expression "rates" includes water rents and charges, and any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded ;
 - (e) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a dwelling-house or a part of dwelling-house first assessed after that date, the rateable value at which it was first assessed ;
 - (f) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor ; (a)

A tenant who, having legally sublet part of the dwelling-house, gives notice to his landlord to quit the same, and at its termination gives up possession of such part as he had retained is not subsequently liable for use and occupation, because the under-tenant, by virtue of the Act, remains in possession of the part sublet to him (*Reynolds v. Bannerman*, (1922) 1 K. B. 719).

(a) A bankrupt tenant cannot claim the benefit of this Act, for he is no longer the tenant in law, whether his trustee does or does not disclaim the tenancy (*Reeves v. Davies*, (1921) 90 L. J. K. B. 675 ; *Parkinson v. Noel*, (1923) 92 L. J. K. B. 361).

An executor, though not in occupation of the house, is entitled to be considered the tenant and entitled to the protection of the Act (*Collis v. Flower*, (1921) 1 K. B. 409; 90 L. J. K. B. 282; *Mellows v. Low*, (1923) 92 L. J. K. B. 363).

A person who has taken premises after the tenant has given notice to quit for the unexpired term of such notice does not, after the expiration of the notice, become an under-tenant entitled to the protection of the Act (*Lord Hylton v. Heal*, ante, p. 2510).

- (g) The expression "landlord" also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions "tenant and tenancy" include sub-tenant and sub-tenancy, and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court;

As to the term "landlord," see cases under former Acts (*Stovin v. Farebrass*, (1919) 35 T. L. R. 273; *Vernon Investment Association v. Welch*, (1919) 35 T. L. R. 511; *Artizans Labourers and General Dwellings Co., Ltd. v. Whittaker*, (1919) 88 L. J. K. B. 859; *Epsom Grand Stand Association, Ltd. v. Clarke*, (1919) 35 T. L. R. 525). A husband, whose wife was a statutory tenant of a dwelling-house, and who was living with her at the time of her death is entitled to the benefit of the above clause (g), and is entitled as administrator to his wife, to maintain an action for possession commenced by the wife against a sub-tenant (*Salter v. Lask*; *Lask v. Cohen*, (1925) 1 K. B. 584; 94 L. J. K. B. 522). See also notes to sect. 2 (1) of Act of 1923, post, p. 2539.

- (h) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897; 38 & 39 Vict. c. 87.
 (i) The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament. 60 & 61 Vict. c. 65.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed (a)—

(a) See *Callaghan v. Bristowe*, (1920) 89 L. J. K. B. 817, where rooms above a garage were held to be let as a separate dwelling.

- (a) in the metropolitan police district, including therein the City of London, one hundred and five pounds;

See *Wood v. Wallace*, (1921) 90 L. J. K. B. 319. The rent reserved of a flat was £100 a year in the metropolitan police district, but 10s. a week was also reserved for services in connection with the flat. Held that the rent did not exceed £100 a year and the Act accordingly applied.

- (b) in Scotland, ninety pounds; and
 (c) elsewhere, seventy-eight pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies :

Provided that—

- (i.) this Act shall not, save as otherwise expressly provided, apply to a dwelling-house *bona fide* let at a rent which includes payments in respect of board, attendance, or use of furniture ; (a) and

(a) See now sect. 10 (1) of the Act of 1923, *post*, p. 2548, which excludes this section unless the payment for attendance or furniture is a substantial part of the whole rent.

See *Remon v. City of London Real Property Co. Ltd.*, (1921) 89 L. J. K. B. 1105; 1 K. B. 49. At the time when the tenancy expired no Rent Restriction Act applied to it, but the tenant continued in possession until the Act of 1920 came into force, and it was held that the tenant was protected from eviction by the landlord. By the provisions of this Act the landlord cannot retain possession of premises to which the Act applies though he has succeeded in resuming peaceable possession of them, but against the will of the tenant (*id.*).

See *Hocker v. Solomon*, (1922) 91 L. J. Ch. 8, where the court held that the furniture left by the landlord was of trifling importance and, indeed, negligible, and consequently the dwelling-house was not excluded from the Act by the terms of the above proviso; also *Nye v. Davis*, (1922) 2 K. B. 56; 91 L. J. K. B. 545, where, the landlord having covenanted with the tenant of a flat to provide a person to carry up his coals daily and to take away the refuse, it was held that these duties constituted "attendance" within the meaning of the sub-section. See also as to attendance *Michael v. Phillips*, (1924) 1 K. B. 16; 93 L. J. K. B. 21. See now sect. 10 of Act of 1923.

See *Carwardine v. Wood*, (1923) 2 K. B. 185; 92 L. J. K. B. 593, and *King v. Millen*, (1922), 2 K. B. 647; (1923) 92 L. J. K. B. 123, where landlord gave tenant with others the use of hall and staircase and agreed to keep them properly cleaned, held this was not attendance within the meaning of the sub-section. See sect. 10 of Act of 1923.

Dick v. Duncan, (1923) 92 L. J. Ch. 320; see also *Crane v. Cox*, (1923) 92 L. J. K. B. 544, where the court held that "use of furniture" meant use of something substantial in the shape of furniture. See now Act of 1923, which overrules such cases as *Wilkes v. Goodwin*, (1923) 2 K. B. 86; 92 L. J. K. B. 580. The above cases are now of little value, as sect. 10 of the Act of 1923 enacts that payment for use of furniture or attendance is not to be taken into account unless it forms a substantial part of the whole rent.

In *Prout v. Hunter*, (1924) 2 K. B. 736; 93 L. J. K. B. 993, three flats were let unfurnished by the plaintiff to the defendant. They were within the protection of the Rent Acts. The tenant let two of the flats, having furnished them, to sub-tenants as furnished flats. Held on the authority of the case of *Glossop v. Ashley*, (1922) 1 K. B. 1, that as the status of the premises themselves could alone be regarded, and as they were as between the tenant and the under tenants, in fact furnished flats, they were no longer protected by the Rent Acts, but could be recovered by the original landlord from the tenant and under tenants, but consult *Leslie & Co. v. Cumming*, (1926) 2 K. B. 417; 95 L. J. K. B. 1007. See also *Gidden v. Mills*, (1926) 95 L. J. K. B. 1.

- (ii.) the application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes ; and

See *Phillips v. Hallahan*, (1925) 1 K. B. 756; 94 L. J. K. B. 694, where shop and dwelling-house above were let separately, though to same person. Held that the shop being business premises was not within the Rent Acts, though the upper part of the building still remained so.

NOTE.—This case turned almost entirely on the fact that the county court judge found that the lettings were *bona fide* two separate and distinct lettings. See *Hyman v. Stewart*, (1925) 94 L. J. K. B. 715.

(iii.) for the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one quarter of the rateable value of the house, be treated as part of the house, but, subject to this provision, this Act shall not apply to a house let together with land other than the site of the house.

“Land or premises let together with a house.”—This only includes unprotected land let with a dwelling-house which is protected by the Act: Where business premises and a dwelling-house are let together the clause (iii.) does not apply (*Read v. Goater*, (1921) 1 K. B. 611; 90 L. J. K. B. 580).

In *Wellesley v. White*, (1921) 2 K. B. 204, Lush, J., expressed an opinion that “the word ‘house’ contained in the clause is not necessarily confined to the dwelling-house itself, but may include the garden and buildings used with the house,” *i.e.*, the appurtenances of the dwelling-house, and this no doubt is so.

(3) Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

The judge may apportion the rent though no action is pending in which a question arises as to the standard rent, see *Rex v. Marylebone County Court Judge*, (1923) 92 L. J. K. B. 367, and *cp. Broomhall v. Property Agents and Owners*, (1921) 91 L. J. K. B. 332.

In apportioning the standard rent the county court judge may not take into account the fact that the tenant enjoys exemption from rates and gas, water and other amenities at the landlord’s expense. Only the rent in 1914 can be regarded (*Bainbridge v. Congdon*, (1925) 2 K. B. 261; 94 L. J. K. B. 682).

Where, though the three upper floors of a house had been converted into two flats, the general character of the building as a dwelling-house was not altered, the tenant of the basement, who paid 11s. 9d. weekly rent, the rent of the whole house being 60l. per annum, was held entitled to obtain apportionment of the rent from the county court (*Abrahart v. Webster*, (1924) 93 L. J. K. B. 1119), reversing decision of Divisional Court. Where a flat was first let as a whole in 1922, though a part of it had been let to the same tenant before August, 1914, it was held that the standard rent was that at which it was let in 1922, and that no apportionment of the rent could be made (*Lelyveld v. Peppercorn*, (1924) 93 L. J. K. B. 1057), but this case was doubted by Banks, L.J., in *Barrett and Evans v. Hardy Brothers, Ltd.*, (1925) 2 K. B. 220; 94 L. J. K. B. 665, which case decided that this section is applicable where an order for apportionment of the rateable value is

necessary in order to ascertain whether a house or part thereof is one to which the Rent Restrictions Act applies; not only to cases where it is known by its rent or rateable value that the whole house is within the Act, but even where the house, if let as a whole, would exceed in rent the jurisdiction of the Act.

No order can be made under this sub-section where there has been a *bona fide* reconstruction of the premises within sub-s. 9 of this section (*Darrall v. Whitaker*, (1923) 92 L. J. K. B. 882. See also *Sutton v. Begley*, (1923) 2 K. B. 694; 92 L. J. K. B. 1086; *Joy v. Eppner*, (1925) 1 K. B. 362.

Where the tenant in consideration of a tenancy at less than the standard rent consented to give and gave the landlord the use of certain rooms in the house. Held the county court judge was right in not taking into account the value of these rooms and adding the same to the rent charged. Rent in the Rent Restriction Acts means rent payable in money (*Hornsby v. Maynard*, (1925) 1 K. B. 514; 94 L. J. K. B. 380).

In *Phillips v. Potter*, (1925) 94 L. J. K. B. 819, the county court was held entitled to apportion the rent of part of a house, which in 1914 as a whole was outside the limit of the Act, being situate in the country and let at a rental of 85l. a year.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein, except that it shall not apply—

(a) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage; or

(b) to an equitable charge by deposit of title deeds or otherwise (a); or

(a) Even where the equitable charge contains a covenant to execute a legal mortgage (*London County and Westminster Bank v. Tomkins*, (1918) 1 K. B. 515; 87 L. J. K. B. 662).

(c) to any mortgage which is created after the passing of this Act.

(5) When a mortgage comprises one or more dwelling-houses to which this Act applies and other land, and the rateable value of such dwelling-houses is more than one-tenth of the rateable value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and at the expiration of the said calendar month's notice this Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned:

Provided that the mortgagor shall, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution.

(6) Where this Act has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies.

See *Phillips v. Barnett*, (1921) 2 K. B. 799; *Williams v. Perry*, (1924) 1 K. B. 936; 93 L. J. K. B. 521. In *Phillips v. Hallahan*, (1925) 1 K. B. 756, premises which consisted of a shop with a dwelling house above when they became vacant in 1923 were let to a tenant, but under separate lettings. Held that the shop portion, being let separately, was not within the protection of the Act.

(7) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

See notes to sect. 2 (1) of Act of 1923. See *Brooks v. Liffen*, (1928) 2 K. B. 347; 97 L. J. K. B. 326. A dwelling-house which falls under this subsection does not become decontrolled by the operation of sect. 2 (1) of the Act of 1923.

"Rateable value."—These words mean the net and not the gross rateable value (*Waller & Son, Ltd. v. Thomas*, (1921) 1 K. B. 541; 90 L. J. K. B. 656). Where a house was let at 30l. a year, the landlord paying rates and taxes which amounted to 31l. 18s. a year, and the rateable value of house in 1914 was 40l. a year, it was held that the rent was not less than two-thirds of the rateable value (*Mackworth v. Hellard*, (1921) 90 L. J. K. B. 693; 2 K. B. 755). See, where the landlord had mortgaged the dwelling-house, and attorned tenant to the mortgagee at a nominal or pepper-corn rent, and where it was accordingly held that this subsection applied (*Jenkinson v. Wright*, (1925) 2 K. B. 645; 94 L. J. K. B. 17). Per Lord Darling: The owner of a long lease of which a substantial part remains unexpired may be the "landlord" within the meaning of the Rent Act, 1923, *idem*. See also *Joy v. Eppner*, (1925) 1 K. B. 362, *ante*, p. 2520.

A person who occupies premises as a dwelling-house rent free cannot claim the protection of the Rent Restriction Acts (*Bracey v. Pales*, (1927) 1 K. B. 818; 96 L. J. K. B. 305).

See as to the effect of this section where tenant agreed to buy the house, but the contract was rescinded by the former landlord for breach of the conditions of the contract of purchase. Held that after this the tenant was not protected by the Rent Acts. *Turner v. Watts*, (1928) 97 L. J. K. B. 92. In Court of Appeal, (1928) 97 L. J. K. B. 403.

(8) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling shall, for the purposes of this Act, be treated as a part of a dwelling-house let as a separate dwelling.

(9) This Act shall not apply to a dwelling-house erected after or in course of erection on the second day of April, nineteen

hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being *bona fide* reconstructed by way of conversion into two or more separate and self-contained flats or tenements ; but, for the purpose of any enactment relating to rating, the gross estimated rental or gross value of any such house to which this Act would have applied if it had been erected or so reconstructed before the third day of August nineteen hundred and fourteen, and let at that date, shall not exceed—

Where a large house, the rateable value of which was in 1914 60*l.* gross, and 48*l.* net, was in 1921 let on lease for five years at 100*l.* a year, and the lessee let four rooms in the same to a sub-tenant at 80*l.* a year on lease, it was held that this apportionment or division of the house was not a reconstruction by way of conversion, and that the sub-tenant was entitled to ask the county court to apportion the rent (*Sutton v. Begley*, (1923) 92 L. J. K. B. 1086.

See *Woodward v. Samuels*, (1920) 89 L. J. K. B. 689.

Where three dwelling-houses, each within the Act, were converted by the owner into a large factory, it was decided that the factory was a new building and that it was not within the Act (*Phillips v. Barnett*, (1922) 1 K. B. 222 ; 91 L. J. K. B. 198. See also *Sinclair v. Powell*, (1922) 1 K. B. 393 ; 91 L. J. K. B. 220 ; *Phillips v. Potter*, (1925) 94 L. J. K. B. 819, and *Marchbank v. Campbell*, (1923) 1 K. B. 245 ; *Lelyveld v. Peppercorn*, (1924) 93 L. J. K. B. 1057 ; *Darrall v. Whitaker*, (1923) 92 L. J. K. B. 882 ; *Stockham v. Easton*, (1924) 1 K. B. 52 ; (1923) 92 L. J. K. B. 926 ; *Abraham v. Webster*, (1925) 1 K. B. 563 ; (1924) 93 L. J. K. B. 1119, reversing the Divisional Court. This last case decides that where the upper floors of a house were reconstructed, but the basement, which had been let to a tenant before the reconstruction as a separate dwelling-house, was not altered in the process of the reconstruction, the basement was still within the operation of the Act.

9 & 10 Geo. 5,
c. 35.

(a) if the house forms part of a housing scheme to which section seven of the Housing, Town Planning, etc., Act, 1919, applies, the rent (exclusive of rates) charged by the local authority in respect of that house ; and

(b) in any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid.

(10) Where possession has been taken of any dwelling-houses by a Government department during the war, under the Defence of the Realm Regulations, for the purpose of housing workmen, this Act shall apply to such houses as if the workmen in occupation thereof at the passing of this Act were in occupation as tenants of the landlords of such houses.

Application
to business
premises.

13.—This section, which related to business premises, has expired and is repealed by the Statute Law Revision Act, 1927. A dwelling-house may be used for business purposes if it is used by the tenant partly for her own residence, and partly for letting rooms as lodgings (*Tompkins v. Rogers*, (1921) 2 K. B. 94 ; 90 L. J. K. B. 591). If a dwelling-house and business premises were let together in one letting they were both protected by the Act (*Read v. Goater*, (1921) 90 L. J. K. B. 580).

General.

14.—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee (a).

Recovery of sums made irrecoverable, etc.

(a) This section gave a general power to recover from the landlord rent which was irrecoverable by him (and not as under the Courts (Emergency Powers) Act, 1917, sect. 5, six months overpayment only). This question of the right of a tenant to recover is now regulated by sect. 8 of the Rent and Mortgage Interest Restrictions Act, 1923 (*post*, p. 2547), which gives a right to recover within six months of payment only, and not after, except in the case of rent paid before the passing of the Act of 1923, which must be sued for (not necessarily recovered, see *Lewis v. McKay*, (1924) 2 K. B. 136; 93 L. J. K. B. 840), within six months of the passing of the Act of 1923. See also, *Williams v. Britannic Merthyr Steam Coal Co.*, (1924) 2 K. B. 334; 99 L. J. K. B. 983, and *post*, p. 2547; *Bayley v. Walker*, (1925) 1 K. B. 447; 94 L. J. K. B. 430.

(2) If—

- (a) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of any such Act is irrecoverable; or
- (b) where any such entry has, before the passing of this Act, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord shall, on summary conviction, be liable to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

15.—(1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice :

Conditions of statutory tenancy.

It was held by a divisional court that a tenant who had received notice to quit, and continued in possession under the Act could (unless prevented by his agreement) assign the premises (*Keeves v. Dean*; *Nunn v. Pelligrini*, (1923) 2 K. B. 804; 92 L. J. K. B. 917), but these decisions were reversed in the Court of Appeal, see (1924) 1 K. B. 685; 93 L. J. K. B. 203, and accordingly it was taken to be the law that what has come to be known as a "statutory tenant" could not assign or part with his interest in his tenancy to another person, but it has now been held by the Court of Appeal that, if not forbidden to sublet in his contract of tenancy, he may sublet a part but not the whole of the premises of which he is in possession as statutory tenant. See *Roe v. Russell*, (1928) 2 K. B. 117; 97 L. J. K. B. 290. See sect. 4, sub-sect. 1 (h) of Act of 1923, *post*, p. 2544.

If the tenant becomes bankrupt and his trustee in bankruptcy disclaims, the tenant cannot claim to remain in possession under the Act (*Reeves v. Davies*, (1921) 2 K. B. 486). Though "standard rent" means the rent paid in 1914, the landlord may, notwithstanding the above sub-section, in fixing rent to be paid after notice, go back to the standard rent, though this was not the rent being paid by the tenant at the time of the expiration of the notice to quit (*Glossop v. Ashley*, (1921) 37 T. L. R. 827). This case was affirmed on appeal, though the above proposition declared by McCardie, J., was neither approved nor dissented from, being unnecessary for the decision of the case; see (1921) 90 L. J. K. B. 1237; (1922) 1 K. B. 1. *Vernon Investment Association v. Welch*, (1919) 35 T. L. R. 511.

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(2) Any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord, and any person acting in contravention of this provision shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

See sect. 2 of Act of 1923, *post*, p. 2536.

See *Lord Hyllon v. Heal*, *ante*, p. 2510; *Reynolds v. Bannerman*, (1922) 91 L. J. K. B. 651.

Minor
amendments
of law.
32 & 33 Vict.
c. 41.

16.—(1) Section three of the Poor Rate Assessment and Collection Act, 1869, shall, except so far as it relates to the metropolis,

have effect as though for the limits of value specified in that section there were substituted limits twenty-five per cent. in excess of the limits so specified, and that section and section four of the same Act shall have effect accordingly.

(2) It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

(3) Where the landlord of any dwelling-house to which this Act applies has served a notice to quit on a tenant, the acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits.

See *Hartell v. Blacker*, (1920) 89 L. J. K. B. 838, where the general rule is laid down that acceptance of money tendered as rent is an acknowledgment of the tenancy and waiver of the notice to quit, even where the landlord accepts the money "for use and occupation, but not as rent"; but see *Davies v. Bristow and Penrhos College, Ltd. v. Butler*, (1921) 3 K. B. 428; 90 L. J. K. B. 164, where the decision in *Hartell v. Blacker* was disapproved of and not followed. Both of these decisions were decisions of divisional courts. The decision in *Davies v. Bristow* seems to rest on the view propounded in *Hunt v. Bliss*, (1919) 89 L. J. K. B. 174, that after notice is given and has expired the so-called tenant is not an ordinary tenant but what is called a "statutory tenant." It will be noticed that *Davies v. Bristow* was decided before the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act of 1920; but see the judgments of Bankes, L.J., and Scrutton, L.J., in *Shuter v. Hersch*, (1922) 1 K. B. 433; 91 L. J. K. B. 263. The decision in *Hartell v. Blacker* cannot now be considered as good law, though *Shuter v. Hersch* was also decided by the two Lords Justices sitting as a divisional court.

It is not necessary to give a statutory tenant notice to quit before, or with each notice of increase of rent. Once there is a statutory tenancy and proper notice of increase of rent given, this notice becomes operative from the time fixed by the statute, notwithstanding that the statute (sub-sect. 3, *supra*) gives on y a right to take rent for three months without prejudice to his position (*Shuter v. Hersch*, *supra*).

17.—(1) The Lord Chancellor may make such rules and give Rules as to such directions as he thinks fit for the purpose of giving effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

(2) A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, and, if a person takes proceedings under this Act in the High Court which he could have

taken in the county court, he shall not be entitled to recover any costs.

See *Wolff v. Smith*, (1923) 2 Ch. 393 ; 92 L. J. Ch. 635, where this section was applied.

The case must be tried by the judge alone. There is no power to require a jury. See Administration of Justice Act, 1920 (10 & 11 Geo. 5, c. 81), sect. 3 (2), which came into operation when the Juries Act, 1918, expired.

"Arising out of this Act," A successful action against a trespasser for possession of premises does not "arise out of this Act." Consequently the successful plaintiff who brings such an action in the High Court is *prima facie* entitled to his costs (*Gunter v. Davis*, (1925) 1 K. B. 125 ; 94 L. J. K. B. 352) ; but see *Russoff v. Lipovitch*, (1925) 1 K. B. 628 ; 94 L. J. K. B. 355, which decides that the county court has jurisdiction where the plaintiff sues to recover possession of a house let at over 100*l.* a year, and which the defendant claims to retain under the Rent Restriction Act. The judgments pronounced in this case throw some doubt on the decision in *Gunter v. Davis* (*supra*).

Application
to Scotland
and Ireland.

18.—(1) This Act shall apply to Scotland, subject to the following modifications :—

- (a) "Mortgage" and "encumbrance" mean a heritable security including a security constituted by absolute disposition qualified by back bond or letter ; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security ; "covenant" means obligation ; "mortgaged property" means the heritable subject or subjects included in a heritable security ; "rateable value" means yearly value according to the valuation roll ; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen ; "assessed" means entered in the valuation roll ; "land" means lands and heritages ; "rates" means assessments as defined in the House Letting and Rating (Scotland) Act, 1911 ; "Lord Chancellor" and "High Court" mean the Court of Session ; "rules" means act of sederunt ; "county court" means the sheriff court ; "sanitary authority" means the local authority under the Public Health (Scotland) Act, 1897 ; "mesne profits" means profits ; the Board of Agriculture for Scotland shall be substituted for the Minister of Agriculture and Fisheries ; the twenty-eighth day of May shall be substituted for the twenty-fourth day of June ; the reference to the county agricultural committee shall be construed as a reference to the body of persons constituted with respect to any area by the Board of Agriculture for Scotland under subsection (2) of section eleven of the Corn Production Act, 1917 ; references to levying distress shall be construed as

1 & 2 Geo. 5,
c. 53.

60 & 61 Vict.
c. 38.

7 & 8 Geo. 5,
c. 46.

references to doing diligence ; the reference to the President of the Surveyors' Institution shall be construed as a reference to the Chairman of the Scottish Committee of the Surveyors' Institution ; a reference to section five of the Housing, Town Planning, etc. (Scotland) Act, 1919, ^{9 & 10 Geo. 5, c. 60.} shall be substituted for a reference to section seven of the Housing, Town Planning, etc., Act, 1919 ; and a reference to section one of the House Letting and Rating (Scotland) Act, 1911, shall be substituted for a reference to section three of the Poor Rate Assessment and Collection Act, ^{32 & 33 Vict. c. 41.} 1869 :

(b) Nothing in paragraph (b) of sub-section (1) of the section of this Act relating to permitted increases in rent shall permit any increase in rent in respect of any increase after the year ending Whitsunday nineteen hundred and twenty in the amount of the rates payable by the landlord other than rates for which he is responsible under the House Letting and Rating (Scotland) Act, 1911 :

(c) Paragraph (d) of sub-section (1) of the section of this Act relating to application and interpretation shall not apply :

(d) Where any dwelling-house, to which the Acts repealed by this Act applied, is subject to a right of tenancy arising from a yearly contract or from tacit relocation, and ending at Whitsunday nineteen hundred and twenty-one, the year ending at the said term of Whitsunday shall be deemed to be a period during which, but for this Act, the landlord would be entitled to obtain possession of such dwelling-house.

(2) This Act shall apply to Ireland subject to the following modifications :—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor :

(b) A reference to section fifteen of the Summary Jurisdiction ^{14 & 15 Vict. c. 92.} (Ireland) Act, 1851, shall be substituted for the reference to section one of the Small Tenements Recovery Act, 1838 :

(c) The expression " mortgage " includes a charge by registered disposition under the Local Registration of Title (Ireland) ^{54 & 55 Vict. c. 66.} Act, 1891, and any notice of the apportionment of the principal money secured by a mortgage, if and when the notice becomes operative under this Act, and the award of any arbitrator with reference to any such apportionment may be registered under the enactments relative to the registration of deeds or titles as the case requires :

(d) The expression " rateable value " means the annual rateable value under the Irish Valuation Acts : Provided

that, where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may, on the application of the landlord or tenant, make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise :

- (e) The following paragraph shall be substituted for paragraph (ii.) of sub-section (1) of section five of this Act :

(ii.) Where the court is satisfied that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding : or

- (f) The following sub-section shall be substituted for sub-section (9) of section twelve of this Act :

(9) This Act shall not apply to a dwelling-house erected after, or in course of erection on, the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being *bona fide* reconstructed by way of conversion into two or more separate and self-contained flats or tenements ; but the rateable value of any such dwelling-house to which this Act would have applied if it had been erected or so reconstructed before the said date shall be ascertained as though the rent for the purposes of section eleven of the Valuation (Ireland) Act, 1852, were the rent for which a similar dwelling-house might have been reasonably expected to let on the third day of August nineteen hundred and fourteen, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the dwelling-house in its actual state, and all rates, taxes, and public charges, if any (except tithe rent charge), being paid by the tenant :

- (g) The medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act and in the First Schedule thereto, and the issue of certificates and the payment of fees in connection with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland :

- (h) This Act shall not apply to any dwelling-house provided

by a local authority under the Labourers (Ireland) Acts, 1883 to 1919, or under any of those Acts.

19.—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. Short title,
duration,
and repeal.

(2) Except as otherwise provided, this Act shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-three :

Provided that the expiration of this Act or any part thereof shall not render recoverable by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule :

Provided that without prejudice to the operation of section thirty-eight of the Interpretation Act, 1889, nothing in this repeal shall render recoverable any sums which at the time of the passing of this Act were irrecoverable, or affect the validity of any order of a court, or any rules or directions made or given under any enactment repealed by this Act, all of which orders, rules, and directions if in force at the date of the passing of this Act shall have effect as if they were made or given under this Act, and any proceedings pending in any court at the date of the passing of this Act, under any enactment repealed by this Act, shall be deemed to have been commenced under this Act. 52 & 53 Vict.
c. 63.

See *Rawlinson v. Alger*, (1921) 90 L. J. K. B. 497, as to the effect of sub-section (3) on section 14 of the Act, which section allows overpayments of rent or mortgage interest to be recovered.

SCHEDULES.

FIRST SCHEDULE.

FORM OF NOTICE BY LANDLORD.

Sections 3
and 18.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

Date

To
Address of premises to which
this notice refers

TAKE NOTICE that I intend to increase the rent of l. s. d. per
at present payable by you as tenant of the above-named premises by the
amount of l. s. d. per

The increase is made up as follows :—

(a) l. s. d. under paragraph (a) of sub-section (1) of section two
of the Act, being six [eight] per cent. on l. s. d. expended
by me since [insert date] on improvements and structural altera-
tions, and consisting of*

- (b) *l. s. d.* under paragraph (b) of sub-section (1) of section two of the Act, on account of an increase in the rates payable by me from *l. s. d.* per to *l. s. d.* per in respect of the premises.
- (c) *l. s. d.* under paragraph (c) of sub-section (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l. s. d.* The standard rent is *l. s. d.*
- (d) *l. s. d.* under paragraph (d) of sub-section (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l. s. d.* The standard rent is *l. s. d.*

The increase under head (b) will date from , being one clear week from the date of service (a) of this notice, and the remaining increases from , being four clear weeks from the date of this notice.

† The increase under head (d) is on account of my responsibility for repairs, for no part [part only] of which are you under an express liability.

‡ At any time or times, not being less than three months after the day of 19 , you are entitled to apply to the county court for an order suspending the increases under heads (c) and (d) above if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable on any application for a certificate, but, if the certificate is granted, you can deduct this sum from your rent. The address of the sanitary authority is

Signed
Address

(a) Amended by Act of 1923, sect. 6, sub-s. (2).

* Here state improvements and alterations effected.

† Where the tenant is under an express liability for part of the repairs, the increase under head (d) is to be settled in default of agreement by the county court.

‡ This paragraph need not be included if there is no increase under head (d).

Section 19.

SECOND SCHEDULE. ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5, c. 97.	The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.	The whole Act.
7 & 8 Geo. 5, c. 25.	The Courts (Emergency Powers) Act, 1917.	Ss. 4, 5 and 7.
9 & 10 Geo. 5, c. 7.	The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919.	The whole Act.
9 & 10 Geo. 5, c. 90.	The Increase of Rent, &c. (Amendment) Act, 1919.	The whole Act.

RENT RESTRICTIONS (NOTICES OF INCREASE) ACT, 1923 (a).

[13 & 14 GEO. 5, c. 13.]

AN ACT TO AMEND THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, WITH RESPECT TO THE EFFECT OF NOTICES TO INCREASE RENT GIVEN THEREUNDER; AND FOR PURPOSES CONSEQUENTIAL THEREON.

[7TH JUNE, 1923.]

Be it enacted, etc.

1.—(1) Where notice of intention to increase rent has, whether before or after the passing of this Act, been served on a tenant in conformity with sub-section (2) of section three of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act), and a notice to terminate the tenancy was necessary in order to make such increase effective, the notice of intention to increase the rent shall have effect and shall be deemed always to have had effect as if it were or had been also a notice to terminate the existing tenancy on the day immediately preceding the day as from which the increase is or was first to take effect, or on the earliest day thereafter on which if it had been a notice to terminate the tenancy, it would have been effective for that purpose, and in the latter case a notice of increase served before the passing of this Act shall be deemed to have had effect as if such earliest date had been specified in the notice as the date as from which the increase was to take effect :

Effect of notices to increase rent under principal Act.
10 & 11 Geo. 5, c. 17.

See *Aston v. Smith*, (1924) 2 K. B. 143 ; 93 L. J. K. B. 733.

Provided that—

(a) nothing in this Act shall entitle a landlord after the passing of this Act to recover from a tenant, in respect of any period before the first day of December, nineteen hundred and twenty-two, the increase of rent made valid by this Act, or any sums which have been recovered from the landlord before that date by means of deductions from rent or otherwise, or any rent due before that date which has not been paid by reason of such deductions having been made therefrom ; but section fourteen, sub-section (1), of the principal Act shall not apply to an increase of rent made valid by this Act which was paid by, or recovered from, a tenant prior to the first day of December, nineteen hundred and twenty-two ;

(a) This Act has been dealt with in the consideration of the Principal Act of 1920, *ante*, p. 2508.

- (b) nothing in this Act shall affect the right to enforce any judgment of a court of competent jurisdiction given before the fifteenth day of February, nineteen hundred and twenty-three, or render recoverable any sum paid under such a judgment.

(2) Any increase of rent made valid by this Act is hereinafter referred to as a validated increase of rent.

Payment of
arrears by
instalments.

2.—(1) The amount due under this Act on account of any arrears of rent, that is to say,—

- (a) any validated increase of rent in respect of the period from the first day of December, nineteen hundred and twenty-two, to the date of the passing of this Act, both inclusive ; and
- (b) any sum which during the said period has been recovered by the tenant from the landlord by deductions from rent or otherwise, and which would not have been so recoverable had this Act been then in force ;

shall be payable by instalments with and as part of the periodical payments of rent, each instalment being fifteen per cent. of the standard rent for the week, month, or other period for which the rent is payable, fractions of a penny being disregarded ; and such instalments shall continue payable until the whole of the amount of such arrears is paid off :

Provided that—

- (i.) the tenant may at any time pay to the landlord the full amount of such arrears subject to the deduction of the aggregate amount of the instalments (if any) already paid ; and
- (ii.) if a tenant by whom any such instalments are payable gives up possession of the premises either voluntarily or on any order or judgment of a court, the balance of the sum payable by instalments shall immediately become due and recoverable.

(2) A landlord claiming that a sum on account of arrears of rent is due to him under this Act shall serve on the tenant a notice to that effect, and the notice shall specify the amount so claimed and the amount of the instalments claimed to be payable, and the first instalment shall not be payable until after the expiration of one clear week from the date of the notice. If such notice contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive.

(3) The notice shall be in the form contained in the Schedule to this Act, or in a form substantially to the same effect, and the landlord shall furnish the tenant with details in writing showing how the amount claimed is arrived at, and how the amount of the instalments has been calculated.

(4) Any question as to the amount of arrears due from a tenant, or the amount of any instalment, shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

See *Strickland v. Palmer*, (1924) 2 K. B. 572; 93 L. J. K. B. 1033.

3.—(1) A tenant who becomes by virtue of this Act liable to pay any sum by way of rent or on account of arrears, or the sanitary authority, may apply to the county court for an order suspending such liability on the ground that the house is not in all respects reasonably fit for human habitation or that it is otherwise not in a reasonable state of repair, and section two of the principal Act shall apply as if the application had been made under subsection (2) of that section.

Power to suspend liability if premises unfit for human habitation or in state of disrepair.

(2) Where the liability in respect of the payment of instalments is so suspended, the instalments which would have become payable during the period of suspension, shall, for the purpose of calculating the aggregate amount of instalments paid, be deemed to have been paid.

(3) Where a tenant has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any sum which the tenant is by virtue of this Act liable to pay by way of rent or on account of arrears in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes any such sum), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved :

Provided that the foregoing provision shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

(4) For the purposes of this Act, a certificate of a sanitary authority shall specify what works (if any) require to be executed in order to put the house into a reasonable state of repair.

(5) An instrument purporting to be a certificate of a sanitary

authority and to be signed by an officer of the authority shall, without further proof, be taken to be a certificate of the authority unless the contrary is proved.

(6) A sanitary authority may appoint a committee for the purposes of this Act and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under this Act.

4. This Act may be cited as the Rent Restrictions (Notices of Increase) Act, 1923, and shall be construed as one with the principal Act, except that this Act shall not extend to Ireland.

Short title
and con-
struction.

Section 2.

SCHEDULE.

FORM OF NOTICE BY LANDLORD.

Rent Restrictions (Notices of Increase) Act, 1923.

Date .

To

Address of premises to }
which this notice refers }

TAKE NOTICE that I claim that the sum of _____ is due to me from you as tenant of the above premises on account of arrears of rent under the above-mentioned Act.

The amount due on account of such arrears is payable by instalments with, and as part of, your weekly [*monthly, or other periodical*] rent until the amount of such arrears is paid off. The first instalment will be payable on the day of _____ *.

The amount of the instalments claimed by me is _____ a week [*month, or other period, as the case may be*].

If you wish to dispute the amount of the sum claimed or of the instalments, you are entitled to apply to the county court of _____.

You are entitled to apply to the county court for an order suspending any sum due from you by way of rent, or on account of arrears, under the above-mentioned Act, if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable, but, if the certificate is granted, you can deduct this sum from the sum due from you as aforesaid. The address of the sanitary authority is _____.

If at any time you give up possession of the above premises, either voluntarily or on an order or judgment of the court, the balance of the sum payable by instalments will immediately become due.

A statement is sent herewith showing how the amount of the above claim is arrived at, and how the amount of the instalments has been calculated.

Signed
Address

* The date to be inserted will be the first rent day after the expiration of one clear week from the date of the notice.

RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923 (a).

[13 & 14 GEO. 5, c. 32.]

AN ACT TO AMEND AND PROLONG THE DURATION OF THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, AND ANY ENACTMENT AMENDING THAT ACT, AND TO MAKE PROVISION AS TO THE RENT AND RECOVERY OF POSSESSION OF PREMISES IN CERTAIN CASES AFTER THE EXPIRY OF THAT ACT, AND FOR PURPOSES IN CONNECTION THEREWITH.

[31ST JULY, 1923.]

Be it enacted, etc.

PART I.

AMENDMENT AND PROLONGATION OF DURATION OF PRINCIPAL ACT.

1. Subject to the provisions of this Act, the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act), shall continue in force *until the twenty-fourth day of June, nineteen hundred and twenty-five*.

Words in italics repealed. Now the Act is to continue in force till December 25th, 1929 (see *ante*, p. 2491). Prolongation of duration of principal Act. 10 & 11 Geo. 5, c. 17.

2.—(1) Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house :

This is what is called the decontrollment section. It has caused great trouble and given rise to many conflicting decisions, some of which are righted by the decision of the Court of Appeal, *Lloyd v. Cook* (*infra*), and the cases heard and decided together with this case.

The expression "landlord" in the above sub-section is not to be construed in its strict legal sense as requiring a tenant and contract of tenancy, but in the looser sense of owner, or in the still looser sense of a person who at a later stage is going to appear as a landlord contesting with a tenant the terms of his tenancy.

Nowhere in the Rent Acts is the word "landlord" used in its technical sense as meaning necessarily a person between whom and the tenant a contractual relationship of landlord and tenant exists. See *Lloyd v. Cook* (reported with other cases), (1928) 97 L. J. K. B. 657. The Divisional Court had in the case of *Lloyd v. Cook* held that, though the landlord was in possession of the whole house in 1923, as the two rooms in question had never been let before they were controlled by the Rent Acts, though let

(a) This Act has been largely dealt with in the consideration of the principal Act of 1920, pp. 2491 *et seq.*

Exclusion of dwelling-houses from application of principal Act in certain cases.

subsequently to the period at which the landlord had been in possession of the whole of the house.

The Court of Appeal has reversed this decision, (1928) 97 L. J. K. B. 657, holding that where a person who is landlord can prove, either that he was in possession of the whole of the dwelling-house on the 31st of July, 1923, or at any time since that date, the Rent Acts cease to apply to the house, and to every part of it, and a subsequent letting of the house or any part of it cannot revive control.

The decision in *Cohen v. Gold*, (1927) 1 K. B. 865; 96 L. J. K. B. 419, upon which the Divisional Court in *Lloyd v. Cook* (*supra*) had largely based their decision, is now expressly overruled; and the decision in *Ratinsky v. Jacobs*, (1928) 97 L. J. K. B. 566, approved. (This was a case where a Divisional Court had refused to follow *Cohen v. Gold* and *Lloyd v. Cook*, *supra*.)

In *Goudge v. Broughton* (where a Divisional Court had given a similar decision to that first given in *Lloyd v. Cook*) the Court of Appeal reversed the decision on the same grounds as in *Lloyd v. Cook*. (See (1928) 97 L. J. K. B. 657.)

In *Simpson v. Miatt* (another of the cases heard by the Court of Appeal with the case of *Lloyd v. Cook*) a Divisional Court, relying on the erroneous decision in *Lloyd v. Cook*, had once again held that, as the landlord who was in possession of the whole premises had never before sub-let them, the Rent Acts applied to a subsequent letting. This decision was also reversed. (See *Lloyd v. Cook*, *supra*.)

In *Bartram v. Brown* (another of the cases heard by the Court of Appeal with the case of *Lloyd v. Cook*) the action was brought for putting in a distress without leave of the Court. Both the County Court judge and the Divisional Court had found that the landlord never was in actual possession of the whole house. The Court of Appeal agreed with this, and this appeal was consequently dismissed.

Although in this case the landlord never was in possession of the whole house he had granted two long leases of the premises, thus it was argued, decontrolling the house under sect. 2 (2) of the Act of 1925. The County Court judge had held that the house had not become decontrolled by the grant of these leases, as neither of them was made to a *sitting* tenant, and that sect. 2 (2) meant a lease granted to a tenant already in possession as tenant.

Both the Divisional Court and the Court of Appeal agreed with the County Court judge in this view of the meaning of sect. 2 (2) of the Act of 1923. (See *Lloyd v. Cook*, *supra*.)

In *Barker v. Hutson* (another of the cases heard by the Court of Appeal with the case of *Lloyd v. Cook*) the owners of the house were in actual possession of the whole house in 1926. They sub-let the whole house to "B," who sub-let two rooms to "H." He asked for apportionment of the rent against his landlord "B" and obtained it. This decision was once again upheld by a Divisional Court on the authority of the erroneous decision in *Lloyd v. Cook*. The Court of Appeal reversed the decision, holding that the house having once after July 31st, 1923, come into the possession of the owners was for ever after decontrolled. Control did not revive either on the letting of the whole house to "B" or on "B's" sub-letting of the two rooms.

See also *Jewish Maternity Home Trustees v. Garfinkle*, (1926) 95 L. J. K. B. 766; *Hall v. Rogers*, (1925) 133 L. T. 44; *Finey v. Gongoltz*, (1926) 2 K. B. 322; 95 L. J. K. B. 770; *Oakley v. Wilson*, (1927) 96 L. J. K. B. 783.

See *Dunbar v. Smith*, (1926) 1 K. B. 360; 95 L. J. K. B. 242, but compare *Catts v. Curry*, (1926) 1 K. B. 460; 95 L. J. K. B. 414; *Doulin v. Parcell* (1927) 136 L. T. 633. See *Brooks v. Liffen*, (1928) 1 K. B. 441; 97 L. J. K. B. 326. See also *Barton v. Keeble*, (1928) 1 Ch. 517; 97 L. J. Ch. 215.

Provided that, where part of a dwelling-house to which the principal Act applies is lawfully sub-let and the part so sub-let is

also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and, if the landlord is in, or comes into possession of, any part not so sub-let, the principal Act shall cease to apply to that part, notwithstanding that a sub-tenant continues in, or retains, possession of any other part by virtue of the principal Act :

Provided also that, where a landlord comes into possession under an order or judgment made or given after the passing of this Act, on the ground of non-payment of rent, the principal Act shall, notwithstanding anything in the foregoing provisions of this sub-section, continue to apply to the dwelling-house.

(2) Where, at any time after the passing of this Act, the landlord of a dwelling-house to which the principal Act applies grants to the tenant a valid lease of the dwelling-house for a term ending at some date *after the twenty-fourth day of June, nineteen hundred and twenty-six*, being a term of not less than two years, or enters into a valid agreement with the tenant for a tenancy for such a term, the principal Act shall, as from the commencement of the term, cease to apply to the dwelling-house, and nothing in the principal Act shall be taken as preventing or invalidating the payment of any agreed sum as part of the consideration for such lease or agreement :

"The tenant" in the above sub-section means the tenant already in possession. See *Bartram v. Brown*, (1928) 97 L. J. K. B. 674.

Words in italics repealed. The words substituted therefor are "not earlier than one year after the date fixed at the time at which the lease is granted for the expiration of the principal Act." See Rent and Mortgage Interest (Restrictions Continuation) Act, 1925.

Provided that, where part of the dwelling-house is lawfully sub-let at the commencement of the term, and is a dwelling-house to which the principal Act applies, that part shall, notwithstanding anything in the foregoing provisions of this sub-section, continue to be a dwelling-house to which the principal Act applies.

(3) For the purposes of this section, the expression "possession" shall be construed as meaning "actual possession," and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent.

3. Where before the passing of this Act the landlord of a dwelling-house to which the principal Act applies has granted to the tenant a valid lease of the dwelling-house for a term ending at some date after the twenty-fourth day of June, nineteen hundred and twenty-three, or has entered into a valid agreement with the tenant for a tenancy for such a term, and the rent thereby reserved is reserved at a rate which after but not before such last mentioned

Determina-
tion of
certain
leases and
tenancies.

date exceeds the standard rent and the increases permitted under the principal Act or this Act, the landlord may, by three months' notice in writing expiring not earlier than the twenty-first day of December, nineteen hundred and twenty-three, and not later than the thirty-first day of March, nineteen hundred and twenty-four, determine the said lease or tenancy, provided that, if within one month of the receipt of such notice the lessee or tenant shall give to the landlord notice in writing that he elects to abide by the said lease or agreement and the terms thereof, then the said lease or agreement shall remain in full force and effect in every respect including the amount of the rent thereby expressed to be reserved unaffected by the principal Act or this Act.

Restriction
on right to
possession.

4. The following section shall be substituted for section five of the principal Act, namely (a) :—

“ 5.—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

“(a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed ; or

“(b) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person, and where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant ; or

“ Using premises for an immoral or illegal purpose.” See *Schneiders and Sons v. Abrahams*, (1925) 1 K. B. 301 ; 94 L. J. K. B. 408.

“(c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession ; or

(a Dealt with generally under the principal Act of 1920. See *ante*, p. 2509.

“Giving up possession without more is not the same thing as giving notice to quit.” See *Standingford v. Bruce*, (1926) 1 K. B. 466. An agreement to give up possession on or before a certain date is not a notice to quit within the meaning of this clause (*De Vries v. Sparks*, (1927) 137 L. T. 441).

- “(d) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any son or daughter of his over eighteen years of age, or for any person *bonâ fide* residing with him, or for some person engaged in his whole time employment or in the whole time employment of some tenant from him or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, and (except as otherwise provided by this sub-section) the court is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character, and proximity to place of work and which consists either of a dwelling-house to which this Act applies, or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies ; or

NOTE.—See as to the position of a landlord requiring the house for himself, or for his son or daughter over eighteen years of age, where alternative accommodation is not available, sect. 1 of the Prevention of Eviction Act, 1924, substituted for paragraphs (iv.) and (v.), *post*, of this section, p. 2554.

- “(e) the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, or statutory undertaking, or for any purpose which, in the opinion of the court, is in the public interest, and the court in either case is satisfied as aforesaid as respects alternative accommodation ; or

Notwithstanding the provisions of the Rent Restriction Acts as to alternative accommodation (and the wording of the above clause), a local authority may still by virtue of sect. 128 of the Housing Act, 1925, when the house is required for the purpose of exercising their powers under that Act, obtain possession of the house without the necessity of providing or showing alternative accommodation (*Parry v. Harding*, (1925) 1 K. B. 111; 94 L. J. K. B. 37).

- “(f) the landlord became the landlord after service in any of His Majesty’s forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances ; or

- “(g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty’s forces during the war; or
- “(h) the tenant without the consent of the landlord has at any time after the thirty-first day of July, nineteen hundred and twenty-three, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let; or

(See *ante*, p. 2528.)

- “(i) the dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the licensing justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused;

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

“The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (d) of this sub-section—

- “(i.) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or
- “(ii.) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding, or with whom, conditional on housing accommodation being provided, a contract for employment on such work has been entered into; or
- “(iii.) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty’s forces during the war; or

NOTE.—Paragraphs (iv.) and (v.) are repealed, and sect. 1 of the Prevention of Eviction Act, 1924, substituted for them, see *post*, p. 2554.

“(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the

case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

“(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

See like section in Prevention of Eviction Act, 1924, sect. 2, *post*, p. 2554.

“(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, or in section one of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

51 & 52 Vict.
c. 43.
1 & 2 Vict.
c. 74.

“(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenants.

“(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former

tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

“(7) The provisions of the last preceding sub-section shall apply in any case where the landlord has, after the thirty-first day of July, nineteen hundred and twenty-three, obtained an order or judgment for possession or ejectment on any of the grounds specified in paragraph (d) of sub-section (1) of this section, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or concealment of material facts, and in any such case the court may, if it thinks fit, in addition to making an order for payment of compensation by the landlord to the former tenant, direct that the dwelling-house shall not be excluded from this Act by reason of the landlord having come into possession thereof under the said order or judgment, and, if such a direction is given, this Act shall apply and be deemed to have applied to the dwelling-house as from the date mentioned in such direction.”

Suspension
of increase
of rent on
ground of
disrepair.

5.—(1) Where the tenant of a dwelling-house to which the principal Act applies has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any increase of rent permitted under paragraph (c) or paragraph (d) of sub-section (1) of section two of the principal Act in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes such increase), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved :

Provided that this section shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

(2) When, after the issue of any such certificate, the landlord has executed to the satisfaction of the sanitary authority the repairs which require to be executed in order to put the dwelling-house into a reasonable state of repair, the authority shall, on the application of the landlord and upon payment of a fee of one shilling, issue a report to that effect.

Notice of
increase of
rent.

6.—(1) The county court, if satisfied that any error or omission in a notice of intention to increase rent, whether served before or

After the passing of this Act, is due to a *bonâ fide* mistake on the part of the landlord, shall have power to amend such notice, by correcting any errors and supplying any omissions therein, which, if not corrected or supplied, would render the notice invalid, on such terms and conditions as respects arrears of rent or otherwise as appear to the court to be just and reasonable, and, if the court so directs, the notice as so amended shall have effect and be deemed to have had effect as a valid notice.

(2) The form of notice in the First Schedule to the principal Act shall be amended by the substitution of the words "date of service of this notice" for the words "date of this notice."

See *Williams v. Britannic Merthyr Steam Coal Co.*, (1924) 2 K. B. 334; 193 L. J. K. B. 983. See *post*, p. 2548. The county court judge has power to amend the notices of increase under this section although not accompanied by notices to quit.

7.—(1) Where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, then, in addition to any increases permitted by paragraphs (a) to (e) of sub-section (1) of section two of the principal Act, an amount not exceeding ten per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of that dwelling-house, and an amount equivalent to five per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of the dwelling-house comprised in the tenancy. Sub-section (2) of section three of the principal Act shall not apply as respects any increase permitted under this sub-section.

Permitted increases of rent of sub-tenancies.

(2) Where part of any such dwelling-house is so sub-let, the tenant shall, on being so requested in writing by the landlord, supply him, within fourteen days thereafter, with a statement in writing of any sub-letting, giving particulars of occupancy, including the rent charged, and should the tenant without reasonable excuse fail to do so or supply a statement which is false in any material particulars he shall be liable on summary conviction to a fine not exceeding two pounds.

(3) In sub-section (6) of section two of the principal Act the expression "landlord" shall, in relation to a sub-tenancy, be taken to include not only the person who is immediate landlord of the sub-tenant but also the landlord of that person.

8.—(1) No increase of rent which becomes payable by reason of an amendment of a notice of increase made by order of the county court under this Act shall be recoverable in respect of any

rental period which ended more than six months before the date of the order.

Limitation
on recovery
of over-
payments or
arrears.

(2) Any sum paid by a tenant or mortgagor which, under sub-section (1) of section fourteen of the principal Act, is recoverable by the tenant or mortgagor shall be recoverable at any time within six months from the date of payment but not afterwards, or in the case of a payment made before the passing of this Act, at any time within six months from the passing of this Act but not afterwards (a).

The effect of this section, read with sect. 6, is that the landlord, where his notice is amended under sect. 6, can only recover or retain rent paid during six months before the notice was validated. Rent paid before this time and before the passing of the Act of 1923 can still be recovered by the tenant within six months of the passing of the Act of 1923 by virtue of sect. 14, sub-s. 1 of the Act of 1920 (*Williams v. Britannic Merthyr Steam Coal Co.*, (1924) 2 K. B. 334; 93 L. J. K. B. 983; *Bayley v. Walker*, (1925) 1 K. B. 447; 94 L. J. K. B. 430).

(a) It is sufficient if proceedings for recovery are commenced within the six months, though judgment may not be recovered till after six months have expired (*Lewis v. McKay*; *Algate v. Vugler*; *Clark v. Potter* (reported together), (1924) 2 K. B. 136; *Diment v. Roberts*, (1925) 1 K. B. 9; 93 L. J. K. B. 1038).

13 & 14 Geo.
5, c. 13.

(3) Nothing in this section shall affect the operation of the Rent Restriction (Notices of Increase) Act, 1923.

Excessive
charges for
furniture,
&c., taken
over in con-
nection with
tenancies.

9.—(1) Where the purchase of any furniture or other articles is required as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of a dwelling-house to which the principal Act applies, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable price of the articles, the excess shall be treated as if it were a fine or premium required to be paid as a condition of the grant, renewal, or continuance, and the provisions of section eight of the principal Act, including penal provisions, shall apply accordingly.

(2) Where a tenant who by virtue of the principal Act retains possession of a dwelling-house to which that Act applies requires that furniture or other articles shall be purchased as a condition of giving up possession, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable price of the articles, the excess shall be treated as a sum asked to be paid as a condition of giving up possession, and the provisions of sub-section (2) of section fifteen of the principal Act (including penal provisions) shall apply accordingly.

Amendment
of provisions
of the

10.—(1) For the purposes of proviso (i.) to sub-section (2) of section twelve of the principal Act (which relates to the exclusion

of dwelling-houses from the principal Act in certain circumstances), principal
 a dwelling-house shall not be deemed to be *bonâ fide* let at a rent Act as to
 which includes payments in respect of attendance or the use of houses let
 furniture unless the amount of rent which is fairly attributable with furni-
 to the attendance or the use of the furniture, regard being had to ture, &c.
 the value of the same to the tenant, forms a substantial portion of
 the whole rent.

(2) In sections nine and ten of the principal Act (which relate
 to limitation of rent of houses let with furniture and penalties for
 excessive charges for such lettings) the expressions "landlord"
 and "tenant" shall respectively be substituted for the expressions
 "lessor" and "lessee."

11.—(1) The county court shall have power on the application Power of
 of a landlord or a tenant to determine summarily any questions county court
 as to the amount of the rent, standard rent or net rent of any to determine
 dwelling-house to which the principal Act applies, or as to the questions as
 increase of rent permitted under that Act or this Part of this Act. to standard
 rent, &c.

(2) The Lord Chancellor may, by rules and directions made and
 given under section seventeen of the principal Act, provide for
 any questions arising under or in connection with the principal
 Act or this Part of this Act being referred by consent of the parties
 interested for final determination by the judge or registrar of a
 county court sitting as an arbitrator or by an arbitrator appointed
 by such judge.

PART II.

RESTRICTIONS AFTER EXPIRY OF PRINCIPAL ACT.

12.—(1) If proceedings are taken against the person who on the Restriction
twenty-fourth day of June, nineteen hundred and twenty-five, on right to
 is tenant of a dwelling-house to which the principal Act then possession in
 applies (hereinafter referred to as "the sitting tenant") for the certain cases
 recovery of possession of the dwelling-house or for the ejectment after the
 of the tenant therefrom at any time after that day, should it expiry of the
 appear to the court that the proceedings are harsh or oppressive principal
 or that exceptional hardship would be caused to the sitting tenant Act.
 by the making or giving of an order or judgment for possession or
 ejectment, the court may refuse to make or give such an order or
 judgment or may adjourn the application for or stay or suspend
 execution of any such order or judgment or postpone the date of
 possession for such period or periods, and subject to such condi-
 tions as it thinks proper, and, if such conditions are complied with,
 the court may, if it thinks fit, discharge or rescind any such order
 or judgment.

(2) For the purpose of the exercise of its jurisdiction under this section, the court may direct that the tenancy of the sitting tenant shall be treated as a subsisting tenancy notwithstanding the determination of the same by any notice to quit or similar notice or otherwise, and may set aside and annul any such notice accordingly, and shall have power to determine what increase of rent (if any) is fair and reasonable, regard being had to the character and condition of the dwelling-house and the rents of similar dwelling-houses in the locality.

(3) The court shall not exercise any of the powers given to it under the foregoing provisions of this section in any case where it is satisfied that greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it.

(4) In any such proceedings an order or judgment for possession or ejectment against the sitting tenant of the dwelling-house shall not, unless the court otherwise directs, be operative against a sitting tenant of a part of the dwelling-house which, *on the twenty-fourth day of June, nineteen hundred and twenty-five*, is lawfully sub-let to him and is a separate dwelling-house to which the principal Act applies, and the court shall, in relation to that part of the dwelling-house and the sitting tenant thereof, have all the like powers and jurisdiction as it has in relation to the whole dwelling-house and the sitting tenant thereof.

(5) In order to assist the court in the determination of questions arising under this Part of this Act in relation to the rent, character or condition of dwelling-houses, the Minister of Health may establish reference committees to whom such questions may be referred by the court for consideration and report.

(6) The foregoing provisions of this section shall not apply to proceedings against a sitting tenant under the Small Tenements Recovery Act, 1838, and any such proceedings shall, on the application of the sitting tenant, be discontinued, subject to any provision that may be made by rules under this Part of this Act for transfer to the county court.

The words, *supra*, in italics repealed. The words substituted therefor are "the day at the end of which the principal Act expires," *i.e.*, December 25th, 1929 (for England). See Preliminary Notes, *ante*, p. 2490.

1 & 2 Vict.
c. 74.

Reduction
of rent
pending the
execution
of repairs.

13.—(1) If the county court on the application of a sitting tenant is satisfied by the production of a certificate of the sanitary authority and such further evidence (if any) as may be adduced that the dwelling-house is not in a reasonable state of repair and that the condition of the dwelling-house is not due to the tenant's neglect or default or breach of express agreement, the court may

order that the rent shall be reduced until the court is satisfied on the report of the sanitary authority or otherwise that the necessary repairs (other than any repairs for which the tenant is liable) have been executed, and subject to the terms of the order the rent shall be payable at such reduced rate as may be specified therein until the court is so satisfied.

(2) The powers of the county court under this section may be exercised by the court in any proceedings against a sitting tenant to which the last preceding section of this Act applies.

14.—(1) Where a dwelling-house in the occupation of a sitting tenant is subject to a mortgage to which the principal Act applied, the county court may, on the application of the landlord, make an order restraining the mortgagee from calling in his mortgage or taking steps for enforcing his security or for recovering the principal money thereby secured, if it is satisfied that such calling in, enforcement or recovery would cause exceptional hardship to the landlord. The county court may, on the application of the mortgagee or landlord, rescind or vary any order so made if satisfied that by reason of any material change in circumstances, rescission or variation is necessary or proper.

Restriction on calling in of mortgages.

(2) The restrictions imposed on a mortgagee by an order under this section may be imposed subject to such conditions as regards increase of interest or otherwise and for such time as appears to the court to be proper, but so nevertheless that the restrictions shall cease to be operative if at any time after the making of the order—

- (a) interest is more than twenty-one days in arrear ; or
- (b) any covenant by the mortgagor (other than the covenant for the repayment of the principal money secured) is broken or not performed ; or
- (c) the mortgagor fails to keep the property in a proper state of repair or to pay the interest and instalments of principal recoverable under any prior encumbrance ; or
- (d) the sitting tenant ceases to be tenant of the dwelling-house.

(3) This section shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage.

15.—(1) The constitution and procedure of reference committees established under this Part of this Act shall be such as may be prescribed by regulations made by the Minister of Health.

Regulations as to reference committees.

(2) In addition to any questions that may be referred to a reference committee by the county court under this Part of this

Act, provision may be made by the regulations for the reference to and determination by a reference committee of any questions in relation to the rent payable or to be paid by a sitting tenant which may be submitted to them by the tenant and landlord.

(3) Before any regulation under this section is made it shall be laid in draft before both Houses of Parliament, and such regulation shall not be made unless both Houses by resolution approve the draft, either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the Minister of Health may make the regulation in the form in which it has been approved, and the regulation on being so made shall be of full force and effect.

Rules as to
procedure.

16. The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving full effect to the provisions of this Part of this Act relative to legal proceedings.

Duration of
Part II.

17. This Part of this Act shall continue in force *until the twenty-fourth day of June, nineteen hundred and thirty :*

Provided that, if a resolution is passed by both Houses of Parliament for the repeal of this Part of this Act on some earlier date, it shall be lawful for His Majesty in Council to repeal this Part of this Act on such date as may be specified in that behalf in the resolution.

Words in italics repealed. The words substituted therefor are "five years after the expiration of the principal Act." See Rent and Mortgage Interest (Restrictions Continuation) Act, 1925.

PART III.

GENERAL.

Certificates
of sanitary
authorities
and definition
of repairs.

18.—(1) For the purposes of the principal Act and this Act, a certificate of a sanitary authority as to the condition of a dwelling-house shall specify what works (if any) require to be executed in order to put the dwelling-house into a reasonable state of repair, and on any application to a sanitary authority for a certificate or report for the purposes aforesaid a fee of one shilling shall be payable, but if the authority, as a result of such application, issues a certificate to a tenant, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

(2) On any application to a county agricultural committee for a certificate for the purpose of paragraph (ii.) of sub-section (1) of section five of the principal Act, a fee shall be payable by the applicant to the county agricultural committee of such amount as the Minister of Agriculture and Fisheries shall by regulation determine.

(3) An instrument purporting to be a certificate or report of a sanitary authority or of a county agricultural committee and to be signed by an officer of the authority or committee shall, without further proof, be taken to be a certificate or report of the authority or committee unless the contrary is proved.

(4) A sanitary authority may appoint a committee for the purposes of the principal Act and this Act, and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under the principal Act or this Act.

(5) For the purposes of this Act, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

19. This Act shall apply to Scotland subject to the following modifications :— Application to Scotland.

(a) The twenty-eighth day of May, nineteen hundred and twenty-eight, shall be substituted for the twenty-fifth day of December, nineteen hundred and twenty-seven ; the Scottish Board of Health shall be substituted for the Minister of Health ; references to the registrar of a county court shall not apply ; and " excisable liquor " shall be substituted for " intoxicating liquor " ;

Amended by sect. 1 (e) of the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925.

(b) for removing doubts, it is hereby declared that nothing in the principal Act affects the operation of the House Letting and Rating (Scotland) Act, 1920, and the reference in sub-section (2) of section one of the last mentioned Act to the provisions of Acts repealed by the principal Act shall be construed as a reference to the provisions of section three of the principal Act. 10 & 11 Geo. 5, c. 8.

20. This Act may be cited as the Rent and Mortgage Interest Restrictions Act, 1923, and shall be construed as one with the principal Act, save that this Act shall not apply to Ireland, and the principal Act, the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, the Rent Restrictions (Notices of Increase) Act, 1923, and this Act may be cited together as the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923. Short title, construction and extent. 13 & 14 Geo. 5, c. 7.

PREVENTION OF EVICTION ACT, 1924.

[14 & 15 GEO. 5, C. 18.]

AN ACT TO PREVENT UNREASONABLE EVICTION OF TENANTS.

[14TH JULY, 1924.]

Be it enacted, etc.

Amendment
of 13 & 14
Geo. 5, c. 32,
s. 4, ss. (1).
10 & 11
Geo. 5, c. 17.

1. Paragraphs (iv.) and (v.) of sub-section (1) of the section which by section four of the Rent and Mortgage Interest Restrictions Act, 1923, is substituted for section five of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, are hereby repealed as respects pending as well as future proceedings, and the following paragraph shall be substituted therefor:

(iv.) Where the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the fifth day of May, nineteen hundred and twenty-four) for occupation as a residence for himself or for any son or daughter of his over eighteen years of age and the court is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or the tenant, that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.

Application
of Act to
pending
proceedings.

2.—(1) Where any order or judgment has been made or given before the passing of this Act but not executed, and in the opinion of the court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court, on application by the tenant, may rescind or vary the order or judgment in such manner and subject to such conditions as the court shall think fit for the purpose of giving effect to this Act.

(2) Where a landlord has, on or after the fifteenth day of April, nineteen hundred and twenty-four, taken possession of a dwelling-house under a judgment or order so rescinded as aforesaid, such possession shall not in any case exclude the dwelling-house from the operation of the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923.

Short title.

3. This Act may be cited as the Prevention of Eviction Act, 1924, and shall be construed as one with the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923, and those Acts and this Act may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924.

RENT AND MORTGAGE INTEREST (RESTRICTIONS
CONTINUATION) ACT, 1925.

[15 & 16 GEO. 5, c. 32.]

AN ACT TO PROLONG THE DURATION OF THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, AS AMENDED BY ANY SUBSEQUENT ENACTMENT, AND TO POSTPONE THE DATE OF EXPIRY OF PART II. OF THE RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, AND FOR PURPOSES CONSEQUENTIAL THEREON.

[28TH MAY, 1925.]

Be it enacted, etc.

1.—(1) The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by any subsequent enactment, shall continue in force until the twenty-fifth day of December, nineteen hundred and twenty-seven, and in Scotland until the twenty-eighth day of May, nineteen hundred and twenty-eight.

Prolongation
of 10 & 11
Geo. 5, c. 17,
and Part II.
of 13 & 14
Geo. 5, c. 32.

(2) Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, shall continue in force until five years after the expiration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, so amended as aforesaid.

(3) Accordingly the Rent and Mortgage Interest Restrictions Act, 1923, shall have effect as if—

- (a) in section one thereof for the reference to the twenty-fourth day of June, nineteen hundred and twenty-five, there were substituted a reference to the twenty-fifth day of December, nineteen hundred and twenty-seven ;
- (b) in section two thereof for the words “ after the twenty-fourth day of June, nineteen hundred and twenty-six ” there were substituted the words “ not earlier than one year after the date fixed at the time at which the lease is granted for the expiration of the principal Act ” ;
- (c) in section seventeen thereof for the reference to the twenty-fourth day of June, nineteen hundred and thirty, there were substituted a reference to five years after the expiration of the principal Act ;
- (d) in section twelve thereof for the references to the twenty-fourth day of June, nineteen hundred and twenty-five, there were substituted references to the day at the end of which the principal Act expires ;
- (e) in section nineteen thereof at the beginning of paragraph (a) there were inserted the words “ the twenty-eighth day of May, nineteen hundred and twenty-eight, shall be sub-

stituted for the twenty-fifth day of December, nineteen hundred and twenty-seven."

Short title. 2. This Act may be cited as the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925; and the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924, and this Act may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925.

NOTE.—By the Expiring Laws Continuance Acts, 1927 and 1928, the dates fixed by the above Act have been extended for a further period of two years.

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) RULES, 1920, DATED JULY 9, 1920, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 (10 & 11 GEO. 5, c. 17).

Preliminary.

10 & 11 Geo. 5, c. 17. The following Rules under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (in these Rules referred to as the Act), shall apply to the county courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

4 & 5 Geo. 5, c. 78. Rule 3 of these Rules, as to applications under the Courts (Emergency Powers) Act, 1914, shall apply also to the High Court; and the rules made under that Act shall have effect subject to that Rule.

These Rules may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, and shall come into operation on the 15th day of July, 1920.

S. R. & O. 1916, No. 63. On the coming into operation of these Rules the following Rules, viz. :—
S. R. & O., 1919, No. 623. The Increase of Rent and Mortgage Interest (War Restriction) Rules, 1916, dated the 29th January, 1916, and the like Rules, 1919, dated the 21st May, 1919, shall be annulled without prejudice to anything done thereunder, and these Rules shall apply to all proceedings pending under the Rules hereby annulled on the day when these Rules come into operation.

Applications under Section 2; Section 9; Section 12, sub-section (1 g) or (3); Section 6; or Section 5, sub-section (6).

Applications under 10 & 11 Geo. 5, c. 17, s. 2, sub-ss. 1 and 3, s. 6, or s. 5, sub-s. 6. 1. An application to the county court under the Act—
(a) to determine any question or make any order or declaration relating to increase of rent under section 2, or section 9; or
(b) to apportion the rent or rateable value of the property under sub-section 3 of section 12; or
(c) for leave to distrain under section 6; or
(d) by a member of the tenant's family under section 12, sub-section (1 g); or
(e) for compensation under section 5, sub-section (6);
may be made in the case of (e) to the court in which the order or judgment complained of was obtained, and in all other cases to the court in the district of which the premises are situate.

Applications under sect. 7, proviso 2. 2.—(1) An application to the county court under the Act for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest to which the Act applies, pursuant to the second proviso to section 7, may be made—

- (a) to the court in the district of which the mortgaged property is situate; or
- (b) to the court in the district of which the mortgagor resides or carries on business; or

(c) the mortgagee resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and 51 & 52 Vict. the mortgagor resides or carries on business in the district of any other court mentioned in the said section, either to the court in the district of which the mortgagee resides or carries on business, or to the court in the district of which the mortgagor resides or carries on business.

3.—(1) Subject to the provisions of this Rule, the Courts (Emergency Powers) Rules and the County Courts (Emergency Powers) Rules as to applications to the High Court or to the county court for leave to foreclose or realise any security to which the Courts (Emergency Powers) Act, 1914, applies, shall cease to apply to mortgages of leasehold interests to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies: and this Rule shall apply in lieu thereof.

(2) An application under the last preceding Rule for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest shall if and so far as an application for leave to foreclose or realise the security is required under the Courts (Emergency Powers) Act, 1914, be deemed to be also an application for leave to foreclose or realise the security under that Act, and no separate application under that Act shall be necessary.

(3) If during the progress of the proceedings on any such application it shall be made to appear to the court that the mortgage is one to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, does not apply, but that leave to realise or enforce the security is required under the Courts (Emergency Powers) Act, 1914, and that the amount of the principal sum secured by the mortgage does not exceed five hundred pounds, the application may proceed in the county court as an application for leave to foreclose or realise the security under the last mentioned Act and the County Courts (Emergency Powers) Rules, and those Rules shall apply accordingly: but if the amount of the principal sum secured by the mortgage exceeds five hundred pounds the application shall not proceed under the last mentioned Act, unless the respondent consents to the county court having jurisdiction in the matter, in which case the court shall have jurisdiction to deal with the application as an application for leave to foreclose or realise the security under the last mentioned Act and Rules, and those Rules shall apply accordingly.

(4) If it shall be made to appear to the court that the mortgage is one to which neither of the above mentioned Acts applies, the application shall be struck out.

4. An application under these Rules (other than the applications referred to in Rules 19 and 20) shall be made by means of a summons according to such one of the forms in the Appendix as shall be applicable to the case, entitled "In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920."

Preparation, Filing, &c., of Summonses.

5. The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served: Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office: and the registrar shall examine, complete, seal and sign the summons and copies, and return the copies to the applicant for service.

Service and Substituted Service.

6.—(1) The summons shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons unless the judge or registrar gives leave for shorter service. On an application by the Sanitary Authority under section 2, sub-section (2) notice in writing of the summons shall be given to the tenant by the Sanitary Authority.

Mode of service.

(2) Service shall be effected in accordance with the provisions of Order LIV., Rules 2 and 3, of the County Court Rules, as to service of notice of an interlocutory application.

Substituted service.

(3) The practice of the courts as to substituted service of summonses and notices shall apply to summonses under these Rules.

Applications to Registrar.

Application to registrar.

7. Any application under these Rules may be made to the registrar, subject to the following provisions :—

- (a) The registrar may in any case, and shall on the application of either party, made on the hearing of the application, and before the registrar has given his decision, refer the matter to the judge :
- (b) The judge may vary or rescind any determination or order made by the registrar, and may make such determination or order as may be just :
- (c) An application for such variation or rescission shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications ; and the notice shall be filed within four clear days from the date of the determination or order of the registrar, and if it is not so filed no such application shall be allowed to be made without leave of the judge.

Evidence in Support of Application.

Evidence in support of application.

8. No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party.

Power to hear Cases in Private.

Power to hear cases in private.

9. The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

Transfer of Proceedings.

Transfer of proceedings.

10. If during the progress of the proceedings on any application it shall be made to appear to the judge that the same could be more conveniently heard in some other court, it shall be competent to the judge to transfer the same to such other court ; and in any such case the provisions of section 85 of the County Courts Act, 1888, and section 10 of the County Courts Act, 1919, and of Order VIII., Rule 9, of the County Court Rules shall apply.

Decisions of Court.

Decisions of court.

11. On the hearing of the application, or at any adjournment thereof, the court, on proof of the service of the summons, if the respondent does not appear, shall—

- (a) in the case of an application under section 2 or section 9 or section 5, sub-section (6) determine the question raised or make or refuse the order or declaration asked for ; or
- (b) in the case of an application under sub-section (3) of section 12 apporportion the rent or rateable value ; or
- in the case of an application under section 6 give or refuse leave ; or
- (d) in the case of an application under section 7 make or refuse an order authorising the mortgagee to call in or enforce the mortgage ; or
- (e) in the case of any application make such other determination, order or declaration in the matter as the court shall think fit.

Power to impose Conditions.

Power to impose conditions on application by mortgagee.

12. On an application for an order authorising a mortgagee to call in and enforce a mortgage, the court may, after considering all the circumstances of the case and the position of all the parties, make or refuse to make the order subject to such conditions as the court may think fit.

Certificates, Orders or Declarations on Applications.

13. When the court has given its decision on any application, a certificate of the determination of the court, or an order or declaration in accordance with the decision of the court, shall be prepared and sealed and signed by the registrar, and duplicates thereof shall be delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the parties; but it shall not be necessary for the party in whose favour a certificate or order or declaration is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

General Provisions as to Procedure on Applications.

14. Subject to the provisions of the Act and these Rules, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and with respect to the discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application under the Act.

15.—This rule, relating to court fees, is annulled. The fees payable under the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924, are contained in the County Courts Fees Order, 1925, and are as follows:—

46.—(i.) On an application for leave to distrain. For every 10s. or fraction thereof of the amount to be distrained for, 6d. Maximum fee, 5s.

(ii.) On an application for apportionment . . . 10s.

(iii.) On every other application . . . 5s.

This fee is not payable on an application for suspension or extension of, or for stay or suspension or extension of execution on, a judgment or order of possession.

(iv.) On a request for arbitration . . . £1 10s.

Costs.

16.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court.

(2) The court may either fix the amount of such costs, or direct the scale upon which they are to be taxed. In the event of no such direction being given they shall be taxed upon Column A of the Higher Scale.

(NOTE.—Paragraph (2) amended and paragraphs (3), (4) and (5) annulled by Rent (Restrictions) Rules, 1928.)

(6) The court may direct that any costs allowed shall be payable by the opposite party, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, that they shall be included in the security; and any order directing payment of costs shall be included in the certificate or order, and shall be enforceable in the same manner as an order for payment of costs made in an action.

Forms.

17.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses, applications, certificates and orders under the Act and these Rules.

(2) The registrar of any court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

Proceedings for the Recovery of Rent or Mortgage Interest, or for the Recovery of Possession of Tenements or Ejectment of Tenants.

On proceedings for recovery of rents or mortgage interest, or for recovery of possession or ejectment regard to be had to the Act.

Death of tenant intestate.

18. Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any premises to which the Act applies, or for the ejectment of a tenant from any such premises, the court shall, before making an order for the recovery of such rent or interest, or for recovery of possession or ejectment, satisfy itself that such order may properly be made, regard being had to the provisions of the Act.

See *Salter v. Lask*, (1925) 1 K. B. 584; 93 L. J. K. B. 685.

Death of Tenant Intestate.

19. Where, on the death of a tenant intestate, a member of his family requires the decision of the Court under the latter part of section 12, sub-section 1 (g) of the Act, the judge shall give such directions as to the procedure to be followed, and the notices to be given to and the attendance of all such persons as may be interested as he shall think fit, and he (or the registrar, if so directed by him) shall consider what may be urged (either orally or in writing) by or on behalf of such persons, and thereupon give his decision: provided that the registrar's decision may be varied by the judge pursuant to Rule 7. Rule 13, relating to certificates of decisions, shall apply to a decision under this sub-section if so directed by the judge.

Applications for Stay, Rescission or Variation of Orders or Judgments.

20. An application to the court for stay, suspension, discharge, rescission or variation of orders or judgments under section 5, sub-section (2) or (3) may be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

NOTE.—Extended to include applications under Prevention of Eviction Act, 1924, by r. 1 of 1924, *infra*.

RENT (RESTRICTIONS) RULES, 1924.

Applications for stay, rescission or variation of orders or judgments.

1. Rule 20 of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, shall be extended to include applications under section 2, sub-section (1) of the Prevention of Eviction Act, 1924 and where the application is to be heard by the judge either in the first instance or on reference or appeal from the registrar and the judge is not sitting, the registrar may, on application in that behalf and on such terms (if any) as he shall think fit, stay proceedings under the judgment, order, or execution until the matter can be dealt with by the judge.

2. These Rules may be cited as the Rent (Restrictions) Rules, 1924.

Dated the 6th day of August, 1924.

THE RENT (RESTRICTIONS) RULES, 1923, DATED AUGUST 7, 1923, MADE BY THE LORD CHANCELLOR UNDER THE RENT AND MORTGAGE INTEREST RESTRICTIONS ACTS, 1920 AND 1923 (10 & 11 GEO. 5, C. 17 AND 13 & 14 GEO. 5, C. 32).

1. The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920 (S. R. & O., 1920, No. 1261), (hereinafter referred to as the principal Rules) other than Rules 2, 3, 12, 19 and 20, shall be extended to include applications under Part I of the Rent and Mortgage Interest Restrictions Act, 1923 (hereinafter referred to as the 1923 Act) except under sub-section (2) of section 11, and the forms prescribed by the principal Rules shall be used with the necessary modifications accordingly.

2.—(1) This paragraph, relating to court fees, is annulled. For court fees payable under these Acts, see *ante*, p. 2559.

(2) The costs of any such original application under the 1923 Act whether the same could or could not have been made under the principal Act shall be in the absolute discretion of the court and the court in every such case shall fix the amount of such costs.

3. The court may exercise the power of amendment conferred by sub-section (1) of section 6 of the 1923 Act either on an original application by landlord or tenant in that behalf as directed by the foregoing Rule 1, or, where proceedings before the court are pending in which the validity of any notice of increase is in question or is material, on request by either party at any time in the course of those proceedings.

4.—(1) Where parties desire to have any questions arising under the principal Act or Part I of the 1923 Act settled by arbitration pursuant to the provisions of sub-section (2) of section 11 of the 1923 Act, they shall sign and deliver to the county court of the district in which the demised premises are situate a request in writing in accordance with the form set out in the Appendix to these Rules, which shall stand as Form 17 in the Appendix to the principal Rules.

(2) On receipt of the application in the case where with the consent of the parties the arbitration is to be before a person nominated by the judge, the judge shall proceed forthwith to nominate an arbitrator and notify the nomination to the parties.

The arbitrator, whether the judge, registrar, or other person, shall, after communication with the parties, fix an early date convenient to the parties for the arbitration in the court buildings or some other place convenient to the parties, and after hearing the parties or their representatives and the evidence, he shall give his determination in writing either at the arbitration or afterwards as soon as may be, and shall deliver the same to each of the parties or their representatives.

(3) The Arbitration Act, 1889 (52 & 53 Vict. c. 49), shall not apply to an arbitration under sub-section (2) of section 11 of the 1923 Act.

(4) Annulled. See note to Rule 2 (1), *supra*.

5. These Rules may be cited as the Rent (Restrictions) Rules, 1923.

APPENDIX.

1.

Summons for Determination of Question or Declaration or Order relating to Increase of Rent under Section 2, sub-sections (1) or (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

	No. of Application .
A.B. (address and description)	Applicant,
and	
C.D. (address and description)	Respondent,
, of .	

TAKE NOTICE, that you are hereby summoned to attend this Court on the , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , for the determination, pursuant to the above-mentioned Act, of a question [or for a declaration or order] relating to the increase of rent of certain premises [or of part, that is to say (*here specify the part*) , of certain premises], to which the said Act applies, situate at , and known as , of which the applicant is the tenant and you the respondent are the landlord [or of which you the respondent are the tenant and the applicant is the landlord], the question being [in respect of the transfer to the tenant of certain burdens and liabilities previously borne by the landlord] [or in respect of the transfer to the landlord of certain burdens and liabilities previously borne by the tenant], [or (*here state the question to be determined or the declaration or order asked for*)] and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination or declaration or order made as the Court may think just

Dated this day of , 19 .

By the Court,
Registrar.

To (*the Respondent, naming him*).

2.

Summons for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

	No. of Application .
A.B. (address and description)	Applicant,
and	
C.D. (address and description)	Respondent.
To , of	

TAKE NOTICE, that you are hereby summoned to attend this Court on the , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for an order that notwithstanding the provisions of the above-mentioned Act, the said may be at liberty to call in and enforce a certain mortgage to which the said Act applies, dated the day of , granted by you the

respondent to the applicant [or to and assigned by him to the applicant] on certain leasehold property situate at , and known as , on the ground that the security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (the Respondent, naming him).

3.

(Certificate on Application for Determination of Question or Declaration or Order relating to Increase of Rent, under Section 2, sub-sections (1) or (3).

In the County Court of , holden at .
In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between Applicant,
A.B. (address and description) and
C.D. (address and description) Respondent.

On the application of , and upon hearing .

This Court doth pursuant to the above-mentioned Act determine and declare [or order] as follows—

[(a) that as the result of the transfer to the applicant, A.B., [or the respondent, C.D.,] the tenant of certain premises [or of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of the following burdens and liabilities formerly borne by the respondent, C.D., [or by the applicant, A.B.,] the landlord, that is to say (*here specify the burdens and liabilities transferred*) the terms on which the said premises are held are on the whole less favourable to the tenant than the previous terms, and that the rent of the said premises has thereby been increased for the purposes of the said Act by the sum of a week [or are on the whole not less favourable to the tenant than the previous terms, and that the rent of the said premises has not been increased for the purposes of the said Act]:

[or (b) that as the result of the transfer to the applicant, A.B., [or the respondent, C.D.,] the landlord of certain premises [or of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of the following burdens and liabilities previously borne by the respondent, C.D., [or the applicant, A.B.,], the tenant, that is to say (*here specify the burdens and liabilities transferred*) , and the increase of rent in respect of such transfer, the terms on which the said premises are held are on the whole more favourable to the tenant than the previous terms, and that the increase of rent in respect of such transfer is to be deemed not to be an increase of rent for the purposes of the said Act [or are on the whole less favourable to the tenant than the previous terms, and that the increased rent in respect of such transfer is to be deemed to be an increase of rent for the purposes of the said Act to the extent of a week]]

[or as the case may be].

for (*here state the decision of the Court on the question or matter the subject of the application*).]

[Add, if so ordered,

And it is ordered that the respondent, C.D., [or the applicant, A.B.,
] do, on or before the day of , 19 , pay to the appli-
cant, A.B., [or to the respondent, C.D.,] his costs of this
application, which are hereby allowed at the sum of £].
Dated day of , 19 .

By the Court,
Registrar.

To (the Applicant and Respondent, naming them).

4.

*Order on Application for Order authorising Mortgagee to call in and
enforce Mortgage.*

In the County Court of , holden at .
In the Matter of the Increase of Rent and Mortgage Interest (Restrictions)
Act, 1920.

No. of Application .

Between

A.B. (address and description)

Applicant,

and

C.D. (address and description)

Respondent.

On the application of , and upon hearing .

This Court being satisfied that the security of the applicant on certain
leasehold property situate at , and known as , under a certain
mortgage to which the above-mentioned Act applies, dated the day of
 , granted by the respondent to the applicant [or to , and assigned
by him to the applicant], is seriously diminishing in value, or is otherwise in
jeopardy, and that it is reasonable that the said mortgage should be called
in and enforced, doth pursuant to the above-mentioned Act order that
notwithstanding the provisions of the said Act the applicant, A.B.,
be at liberty and he is hereby authorised to call in and enforce the said
mortgage.

[If any conditions imposed, add subject to the following conditions, that is
to say :—

].
[Or, It is ordered that the application of the applicant A.B., for an
order authorising him to call in and enforce a certain mortgage to which the
above-mentioned Act applies, on certain leasehold property situate at
and known as , dated the day of , 19 , granted by the
respondent C.D., to the applicant, A.B. [or to , and assigned
by him to the applicant, A.B.,] be and the same is hereby dismissed.

Add, if so ordered,

And it is ordered that the applicant, A.B., be allowed as against
the respondent, C.D., his costs of his application, which are hereby
allowed at the sum of £ .

And it is ordered that the said sum of £ be added to the security
created by the said mortgage [or that the respondent, C.D., do pay
the said sum of £ to the applicant A.B., on or before the
day of , 19].

[Or, And it is ordered that the applicant, A.B., do, on or before the
day of , 19 , pay to the respondent, C.D., his costs of
this application, which are hereby allowed at the sum of £ .]

Dated this day of , 19 .

By the Court,
Registrar

To (the Applicant and Respondent, naming them).

5.

Summons for Apportionment of Rent or Rateable Value of Property under Section 12, sub-section (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B. (address and description)

Applicant,

and

C.D. (address and description)

Respondent.

To , of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , for the apportionment of the rent on the 3rd day of August, 1914 [or (if the property was last let before or first let after the 3rd August, 1914, insert the date at which it was so let; see Act, Section 12, sub-section 1 (a) [or the rateable value on the 3rd day of August, 1914 [or (if the property was first assessed after that date, insert the date at which it was first assessed)] of certain property situate at and known as and comprising certain premises [or part, that is to say (*here specify the part*) of certain premises] situate at and known as for the purpose of determining the standard rent [or the rateable value] of the said premises [or of the above-mentioned part of the said premises] for the purposes of the above-mentioned Act, and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.To (*the Respondent, naming him*).

6.

Certificate on Application for Apportionment of Rent or Rateable Value.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B. (address and description)

Applicant,

and

C.D. (address and description)

Respondent.

On the application of , and upon hearing .

This Court, for the purpose of determining the standard rent [or rateable value] of certain premises [or of part, that is to say (*here specify the part*) of certain premises] to which the above-mentioned Act applies, situate at , and known as , and comprised in a certain property known as , doth pursuant to the above-mentioned Act declare that the rent at which the said property was let on the 3rd day of August, 1914 [or if the property was last let before that date or first let after that date, on the day of , 19 (*the date on which it was so let*)], shall be appor-

£ to the remainder of the said property.

£ to the remainder of the said property.

Dated this day of , 19 .

To (the Applicant and Respondent, naming them).

7.

In the County Court of _____, holden at

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions)
Act, 1920.

Between

No. of Application

A.B. (address and description)

Applicant,

and

C.D. (*address and description*)

Respondent.

To _____, of _____.

TAKE NOTICE that you are hereby summoned to attend this Court on the _____ day of _____, at the hour of _____ in the _____ noon, on the hearing of an application under Section 2, sub-section (2) of the said Act _____ on the part of _____ of _____ for a declaration that certain premises [or of part, that is to say (*here specify the part*) _____ of certain premises] to which the said Act applies, situate at _____ and known as _____ of which the applicant [*or where the applicant is the Sanitary Authority state the name of the tenant*] is the tenant, and you, the respondent, are the landlord, are not in all respects reasonably fit for human habitation [or are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect or default, or breach of express agreement, if any, and for an order suspending the increase of rent pursuant to Section 2, sub-section (2) of the said Act until further order, or for such other declaration and order in that behalf, as the Court may think fit, and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19

By the Court,
Registrar.

To (the Respondent, naming him).

8.

Order on Application for Order of Suspension and Declaration relating to Increase of Rent, under Section 2, sub-section (2).

In the County Court of holden at .
In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.
No. of Application .
Between Applicant,
A.B. (address and description) and
C.D. (address and description) Respondent.

On the application of and upon hearing .
The Court being satisfied that certain premises [or of part, that is to say (here specify the part) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant [or where the Sanitary Authority is the applicant state the name of the tenant] is the tenant, and the respondent is the landlord, are not in all respects reasonably fit for human habitation [or are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect or default, or breach of express agreement, doth declare accordingly and doth order, pursuant to Section 2, sub-section (2) of the said Act that the increase of rent of be suspended until respondent, upon notice of application in that behalf, shall have satisfied the Court that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed [or (such other declaration or order as the Court thinks fit)].
[Or it is ordered that the application of the said be, and the same is hereby dismissed.]
[Add order as to costs, if any : see Form 6.]
Dated this day of 19 .
By the Court,
Registrar.

To (the Applicant and Respondent, naming them).

9.

Notice of the Application under Section 5, sub-section (2) or (3) for Stay, Suspension, Discharge, Rescission, or Variation of Order or Judgment.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.
In the County Court of holden at .
No. of Application .
Between Applicant,
A.B. (address and description) and
C.D. (address and description) Respondent.

TAKE NOTICE, that the applicant, A.B., [or the respondent C.D.,] intends to apply to the Judge of this Court on the day of 19 , at the hour of in the noon, to stay, [suspend, discharge, rescind or vary] the order [or judgment] made [or given] in this matter on the day of , 19 , whereby it was ordered [or adjudged] that (here recite order or judgment) , and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that the grounds of my intended application are that (*here set out circumstances*) .

Dated this day of , 19 .

(Signed)

Applicant [*or Respondent*],
[*or Applicant's* [*or Respondent's*]
Solicitor].

To (*the Respondent or Applicant, naming him*),
and to Messrs. , his solicitors,
and to the Registrar of the Court.

10.

Order on Application under Section 5, sub-section (2) or (3) for Stay, Suspension, Discharge, Rescission, or Variation of Order or Judgment.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at

No. of Application .

Between

A.B. (*address and description*)

Applicant,

and

C.D. (*address and description*)

Respondent.

On the application of for the stay, suspension [*discharge, rescission or variation*] of the order made [*or judgment given*] in this matter on the day of , 19 , whereby it was ordered [*or adjudged*] that (*here recite order or judgment*) .

and upon hearing

It is ordered that the said order [*or judgment*] be and the same is hereby stayed, or suspended [*discharged or rescinded or varied*] as follows :—
(*here set out terms of order*).

[*Or, It is ordered that the application of the said be and the same is hereby dismissed.*]

[*Add order as to costs, if any : see Form 7.*]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the Applicant and the Respondent, naming them*).

11.

Summons on Application for Determination of Question or Declaration and Order under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B. (*address and description*)

Applicant,

and

C.D. (*address and description*)

Respondent.

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of , 19 , at the hour of in the noon, on the hearing of an application on the part of of the particulars of which are hereunto annexed.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (the Respondent, naming him).

PARTICULARS.

To be appended or annexed to summons and, if on separate paper, with heading as in summons.]

1. On or about the day of , 19 , the Respondent let certain premises [or a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at and known as to the Applicant at a rent of a week [*or a month, or as the case may be*], which rent includes payment in respect of furniture.

2. The Applicant alleges that the rent charged for the premises so let to him is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914.

3. The Applicant therefore applies to the Court under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920—

- (a) for a declaration that it is proved to the satisfaction of the Court that the rent charged on the letting of the said premises by the Respondent to the Applicant is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, and for an assessment by the Court of the amount of such last-mentioned profit; and
- (b) for an order that the said rent, so far as it exceeds such sum as would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable; and
- (c) for an order that the amount of any payment of rent in excess of such sum made by the Applicant in respect of any period after the passing of the said Act shall be repaid to the Applicant, and may, without prejudice to any other mode of recovery, be recovered by the Applicant by means of deductions from any subsequent payment of rent; and
- (d) for an order providing for the costs of this application.

Dated this day of , 19

Applicant
[or Applicant's Solicitor].

12.

Order on Application under Section 9.

In the County Court of holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B. (*address and description*)

and

Applicant,

C.D. (*address and description*)

Respondent.

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing

The Court doth declare that it is proved to its satisfaction that the rent charged on the letting by the Respondent to the Applicant of certain premises

[or a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at and known as at a rent of a week [or a month, or as the case may be], which rent included payment in respect of the use of furniture, is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, which last-mentioned profit is hereby assessed by the Court at the sum of a week [or a month, or as the case may be].

And it is ordered that the said rent to the extent of a week [or as the case may be] being the amount by which the said rent exceeds the sum of per week [or as the case may be], which would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable.

And it is further ordered that the sum of , being the amount of the payments of rent in excess of the said sum of per week (or as the case may be) made by the Applicant in respect of the period of the said letting after the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, shall be repaid to the Applicant, and may, without prejudice to any other method of recovery, be recovered by the Applicant by means of deductions from any subsequent payments of rent.

[Add, if so ordered—

And it is ordered that the Respondent do pay the said sum of to the Applicant on the day of [or by instalments of for every days, the first payment to be made on the day of].]

[Add also, if so ordered—

And it is ordered that the Respondent do on or before the day of pay to the Applicant his costs of this application, which are hereby allowed at the sum of .]

[Or, if application fails—

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing ,

It is ordered that the said application be and the same is hereby dismissed. *Add directions, if any, as to costs*].]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the Applicant and Respondent, naming them*).

13.

Summons for leave to distrain.

In the County Court of , holden at .

In the Matter of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1925.

No. of Application .

Between

A.B.

Applicant,

and

C.D.

Respondent.

To , of .

TAKE NOTICE, that you are hereby summoned to attend this Court at (at the Office of the Registrar of this Court situate at) on the day of , 19 , at o'clock in the noon, on the hearing of an Application on the part of of that notwithstanding the provisions of section 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, the Applicant may be at liberty to levy a distress for rent amounting to £ due from you to him on premises situate at and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such Order will be made and proceedings taken as the Court may think just and expedient.

Dated this day of , 19 .

Registrar.

14.

Order on Summons for leave to distrain.

In the County Court of , holden at .
In the Matter of the Rent and Mortgage Interest Restrictions Act, 1920 to 1925.

No. of Application .

Between

A.B. (address and description)

Applicant,

and

C.D. (address and description)

Respondent.

UPON HEARING the application of (add, if so, and upon hearing the Respondent)

IT IS ORDERED that notwithstanding the provisions of section 6 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, the Applicant be at liberty to levy a distress for rent amounting to £ due from the Respondent to him on premises situate at (here add conditions, if any).

AND IT IS ORDERED that the applicant be allowed the sum of £ for fees and costs on this application, and that the respondent do pay the said sum to the applicant on or before the day of , 19 .
To the Respondent (naming him).

Dated this day of , 19 .

Registrar.

(NOTE.—The above forms 13 and 14 are the forms now in use.)

15.

Summons for Declaration and Order relating to payment of Compensation under Section 5, sub-section (6).

In the County Court of , holden at .
In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B. (address and description)

Applicant,

and

C.D. (address and description)

Respondent.

To of .
TAKE NOTICE, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 5, sub-section (6) of the said Act, on the part of of , for a declaration that the order [or judgment] dated the day of , and made [or given] in an action in this Court (here give title of action) for possession of [or ejection from] certain premises [or of part, that is to say (here specify the part) of certain premises] to which the said Act applies, situate at , and known as , of which the Applicant was the tenant, and you the Respondent were the landlord, was obtained by misrepresentation [or the concealment of material facts], and that the Applicant is entitled to recover from you compensation for damage or loss sustained by him as the result of the said order [or judgment], and for an order ordering you to pay the sum of £ [or such sum as shall appear to the Court sufficient], as compensation for such damage or loss, or for such other declaration and order on that behalf as the Court may think fit, and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To *(the Respondent, naming him)*.

16.

Order on Application for Declaration and Order relating to Payment of Compensation under Section 5, sub-section (6).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B. *(address and description)*

Applicant,

and

C.D. *(address and description)*

Respondent.

On the application of and upon hearing

The Court doth declare and adjudge that the order [or judgment] dated the day of , and made [or given] in an action in this Court *(here give title of action)* , for possession of [or ejection from] certain premises [or of part, that is to say *(here specify the part)*] of certain premises] to which the said Act applies, situate at , and known as , of which the Applicant was the tenant and the Respondent was the landlord, was obtained by misrepresentation [or the concealment of material facts], and that the Applicant is entitled under Section 5, sub-section (6) of the said Act to recover against the Respondent the sum of £ as compensation for damage or loss sustained by the Applicant as the result of the said order [or judgment] and it is ordered that the Respondent do pay the said sum of £ to the Registrar of this Court on the day of [or it is ordered that the application of the said be, and the same is hereby dismissed].

[Add order as to costs, if any : see Form 6.]

Dated this day of , 19 .

By the Court,
Registrar.

To *(the Applicant and Respondent, naming them)*.

17.

Form of Request for Arbitration under Section 11 (2).

In the County Court of holden at .

In the Matter of the Rent and Mortgage Interest Restrictions Act, 1923.

Whereas certain questions have arisen between us in relation to the tenancy of under or in connection with the principal Act or Part I of the above-mentioned Act of 1923 that is to say we hereby request the judge or registrar of the above court [or some person to be nominated by the judge] to act as arbitrator between us and determine the above questions under section 11 (2) of the Act of 1923 such determination to be final and conclusive and binding upon us for all purposes.

Each of us is to bear and pay his own costs but the court or arbitrator's fee of £1 10s. sent herewith is to be borne by us in equal shares.

The arbitrator may view the premises before determining any question. He may also at the request of either of us exercise the power of amending a notice of increase conferred on the Court by section 6 (1) of the Act of 1923.

(Signature)

The words in brackets may be struck out if desired by the signatories

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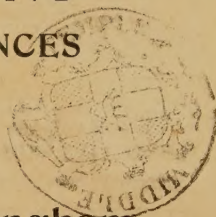
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